

When It Is Not Too Late: California Supreme Court Rules That 100-Day Time Limit for  
Moving to Vacate an Arbitration Award Is Not Jurisdictional

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With so many matters going to Arbitration, and sometimes with very challenging results, the losing party may wish to seek to have the trial court vacate the Arbitration Award. Such a procedure is permitted, pursuant to the California Arbitration Act, and specifically *Code of Civil Procedure* § 1288.<sup>1</sup> A question, however, that has arisen is whether the 100-day time limit set forth in *Code of Civil Procedure* § 1288 is jurisdictional. Many have thought that the jurisdictional time period set for a Motion for a New Trial, as expressed in *Code of Civil Procedure* §§ 659-660, suggested that the 100-day time limit to vacate an Arbitration Award is jurisdictional, leaving the Court without the ability to rule on a late filed Motion to Vacate an Award.

In a high-profile action arising from a probate dispute in *Law Finance Group, LLC v. Sarah Plott Key* (2023) WL 4168752 (“*Law Finance Group* case”), the trial court, Court of Appeal, and then ultimately the California Supreme Court grappled with this issue. The *Law Finance Group* case arose from a probate dispute. In brief, Sarah Plott Key (“Key”) is one of three children of a wealthy family who ended up having a dispute over her parents’ trust, known as the Plott Family Trust. Under the terms of the Trust, Key’s parents were to provide equally for their three daughters, so that each would inherit a one-third interest in the parents’ estate (which apparently was worth over \$20 million). When her mother died, Key expected to receive her one-third share but learned that, several years before, her mother had executed an amendment to the Trust that effectively disinherited Key of millions of dollars. Key filed a probate action against one of her sisters, alleging that the sister had procured the Trust amendment through undue influence over their mother. Key subsequently had difficulties in paying for the litigation of the probate action. On the eve of trial, Key had run out of money, and her attorneys were threatening to withdraw. Key then turned to Law Finance Group, LLC (“Lender”). The Lender entered into an agreement to loan Key up to \$3 million to pay for attorney’s fees. Key ultimately borrowed \$2.4 million for that purpose. The Lender charged a very significant interest rate with complex components.

Key ultimately prevailed in the probate action, entitling her to one-third of her parents’ estate, equivalent to about \$20 million. Key repaid Lender, but only repaid the \$2.4 million principal, arguing that the interest rates in the loan agreement were unlawful

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<sup>1</sup> *Code of Civil Procedure* § 1288 provides in pertinent part: "A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner."

under the California financing law statute. The Lender then submitted the interest dispute to Arbitration, seeking about \$3.5 million in unpaid compound interest and fees. In the Arbitration, the Arbitral Panel agreed with Key that, because the loan was going to finance a dispute about parental inheritance, the loan should be classified not as a commercial loan but as a consumer loan, thereby limiting the amount of interest that Lender could legally charge. The Arbitral Panel, however, agreed that the Lender was not barred from recovering any amount of interest under the agreement beyond the principal that had been repaid. The Panel then calculated a “fair computation” of damages and awarded Lender about \$800,000 in damages, plus substantial attorney’s fees.

The Arbitral Panel served the parties the final award on September 19, 2019. On October 1, 2019, the Lender filed a Petition with the Superior Court to confirm the award. Thereafter, Key’s counsel and the Lender’s counsel had various discussions about procedural issues. The result of those discussions is that there was an agreement to extend the time to file a Motion to Vacate the Arbitration Award. A Motion to Vacate the Arbitration Award was then filed, but beyond the 100-day limit, set forth in *Code of Civil Procedure* § 1288.

At the trial court level, Judge Rafael Ongkeko agreed with Key and vacated the \$778,851 Arbitration Award in favor of the Lender. The Lender then appealed and the Court of Appeal reversed the Trial Court, ruling that the time period under *Code of Civil Procedure* § 1288 was jurisdictional and that the parties therefore lacked the power to extend it by stipulation. The matter then went to the California Supreme Court where, in an Opinion written by Justice Kruger, the California Supreme Court ruled that the 100-day time period was not jurisdictional. The California Supreme Court also ruled that the 100-day time period, or compliance with the time period, 1, and remanded the matter to the Court of Appeal.

What is very important about the *Law Finance Group* case is that, in the event a party seeks to challenge an arbitration award, the 100-day time limit for moving to vacate an arbitration award is not jurisdictional and is subject to equitable estoppel. However, of course, it would certainly behoove any party, having failed at arbitration, to file a Motion to Vacate within the 100-day time limit.

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