

The Lengthening Arm of the California Arbitration Statute: Court Of Appeal Rules That Entity Which Was Not Party To Any Contract Containing An Arbitration Clause Could Be Added As A Respondent Debtor To An Arbitration Award On A Joint And Several Basis

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Consistent with a recent series of published opinions interpreting the California Arbitration Act, the California Court of Appeal, Second Appellate District, ruled that an arbitrator, in the context of a post hearing motion, had the authority to add a non-party entity to an award on a joint and several basis even though the entity was not a party to any arbitration contract which was before the arbitrator.

This decision of the California Court of Appeal was issued on June 25, 2010 in the case of Greenspan v. LADT, LLC (2010) 185 Cal. App.4th 413 ("Greenspan"). In Greenspan, two investors acquired a commercial building in Los Angeles (the famous Higgins Building in downtown Los Angeles) in 1998 through an investment entity, known as LADT ("LADT"). LADT converted the dilapidated structure, built in 1910, from an office building into apartments. In 2003, Barry Shy ("Shy"), who managed LADT, proposed to convert the Higgins Building into loft-style residential condominiums, with commercial units on the ground floor. At the time, Shy held a 50 percent interest in LADT through a company he controlled, LABAR, LLC. ("LABAR"). The Andrew Meieran Family Trust ("Trust") held the other 50 percent interest. The Trust had, as its primary interest, the rehabilitation of properties to operate bars, and decided that it wanted to sell its interest in the entity (it later established the Edison Bar on the first floor of that building). In 2004, the Trust entered into an agreement with the principal of LABAR (Mr. Shy) to sell its one-half share. The Trust's one-half share was then sold to a new entity controlled by the principal of the other investor, which was commonly known in that case as LA ABC, LLC ("LA ABC"). Thereafter, LA ABC defaulted on its payment obligations under the purchase agreement. The purchase agreement did not have an arbitration clause.

In an attempt to settle their disputes, the Trustee of the Trust and Shy participated in a Mediation in September 2005. They then signed a handwritten settlement agreement (prepared by the mediator) which included a provision for arbitration in the event a later dispute arose. Thereafter, on August 10, 2006, the Trustee of the Trust filed an action against LADT, LA ABC and Shy. The Defendants then petitioned to compel arbitration and the petition was granted. During the pendency of the litigation, the Trust became embroiled in a dispute with Shy on another investment, which also went into arbitration. The litigation on the other investment was arbitrated before retired Judge Keith Wisot of

JAMS. Judge Wisot rendered an award unfavorable to Shy. Shy then sued, unsuccessfully, Judge Wisot and the JAMS organization.

An arbitration then went forward on the Higgins Building matter before Judge Wisot, who again ruled in favor of the Trust and against Shy. After the award was issued, the Trust sought to reopen the hearing to add LADT as a joint and severally liable respondent to the award. Judge Wisot reopened the hearing and added LADT as a respondent debtor.

The Trust then filed a Petition to Confirm the Award, which was granted. LADT, LA ABC and Shy then appealed arguing that Judge Wisot exceeded his authority as the arbitrator, among other reasons. On appeal, the Court of Appeal ruled that because there was an arbitration agreement between LA ABC and the Trust, because the parties later agreed to select JAMS as the arbitration entity, and given JAMS Rule 11 which provides that the arbiter decides arbitrability of disputes, there was "clear and unmistakable evidence" of the parties' intent to delegate the issue of arbitrability to the arbitrator. Based on that conclusion, the Court ruled it would affirm Judge Wisot's conclusion as to arbitrability of the disputes unless it found the arbitrator's decision to be "wholly groundless". Applying that standard, the Court of Appeal ruled that Judge Wisot's determination of arbitrability-that the parties submitted to arbitration the issue of LADT's liability for breach of contract-was not wholly groundless. The Court of Appeal ruled, again using the "wholly groundless" standard, that the finding of joint and several liability, resting on alter ego principles, was also arbitrable under the savings clause found in JAMS Rule 24 which provides that, absent an agreement of the parties, the arbitrator shall be guided by general rules of law and equity.

The Court of Appeal further ruled that, since the arbitrator had the authority to issue the award, it could not review the determination on the merits.

The decision in Greenspan is significant in two respects. First, it provides authority for the proposition that the Court, in deciding the scope of the arbitration agreement, will consider not only the parties' arbitration contract, but the rules of the alternative dispute resolution provider which is selected to arbitrate the matter. The Greenspan decision is of particular note in that the alternative dispute resolution provider - JAMS, was not mentioned in the parties' arbitration contract and was only selected after the Court had granted a petition to compel arbitration. Second, it specifically provides that, when the alternative dispute resolution provider's rules contain a general (and broad) savings clause dealing with the arbitrator's powers, additional parties may potentially be added as jointly and severally liable respondents, even if they were not party litigants to the arbitration.

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