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Another Victory Under The California Arbitration Statute.... Court of Appeal Affirms
Petition To Confirm Award Of Arbitrator In Attorney-Client Fee Dispute Even Though
Contingent Fee Was Allegedly Equal To Or Exceeded The Consideration Paid In Settlement

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In a case which demonstrates the limits for judicial review of arbitration awards, the California Court of Appeal, First District recently issued an opinion in Cotchett, Pitre & McCarthy (2010) 187 Cal.App.4th 1405 ("Cotchett Case") which affirmed the ruling of an arbitrator who had awarded over \$7,500,000 in fees and costs to a plaintiff counsel in a real estate litigation matter. The ruling occurred in spite of the fact that the fees and costs which were awarded by the arbitrator nearly exceeded the value of the settlement of the underlying case in which the plaintiff counsel represented the client. The Cotchett Case is notable in that it provides the limits of review of arbitration awards, and also demonstrates the unwillingness of the Courts to strike down contingent fee agreements negotiated by a sophisticated client represented by its own counsel.

The Cotchett Case concerned a fee dispute which arose following the conclusion of a complex environmental litigation matter. As for the underlying matter, Universal Paragon Corporation ("UPC"), a real estate development firm, acquired real property in the Brisbane area which was located adjacent to what is known as the Schlage Lock site. The Schlage Lock site was owned by Ingersoll-Rand Corporation and was apparently contaminated with acid and fuel from railroad operations by the Southern Pacific Railroad. UPC retained the law firm of Cotchett, Pitre & McCarthy ("CPM") in regards to claims which it had involving the Schlage Lock site. After substantial negotiations, the parties agreed the law firm would charge a reduced hourly rate, plus costs, and would receive a contingency fee based upon the difference between the value of the Schlage Lock site and what UPC would be required to pay for it. UPC was represented by its in-house counsel during negotiations with CPM.

CPM later filed a lawsuit on behalf of UPC. Ultimately, a settlement was reached in that litigation whereby UPC was paid \$6,000,000 by Ingersoll-Rand Corporation in damages and received title to the Schlage Lock property for essentially no money.

Thereafter, UPC and CPM were unable to agree on the value of the Schlage Lock site, which dictated the contingency fee. Essentially, UPC argued that the Schlage Lock site was only worth \$1,800,000 in its present condition, which dictated a lower fee than sought by CPM. UPC demanded a nonbinding fee arbitration, which resulted in an award

of nearly \$5,000,000 on a quantum merit basis. UPC rejected the award and requested that a JAMS Arbitration occur pursuant to the parties' fee agreement. The JAMS Arbitration then took place and resulted in an award of \$7,554,149.13 in fees to CPM. CPM then filed a motion with the Trial Court to have the award confirmed as a judgment, which was granted. On appeal, UPC argued that the Arbitrator had exceeded her powers and argued that the Arbitration Award was unconscionable on its face because the Schlage Lock site was only worth \$1,800,000 in its contaminated state.

On appeal, the Court of Appeal noted that judicial review of an Arbitrator's Award is very limited because of the strong public policy in favor of private arbitration citing, among other decisions, Cable Connection, Inc. v. DIRECTV (2008) 44 Cal.4th 1334 and Burlage v. Superior Court (2009) 178 Cal.App.4th 524, 529. Based on this limited judicial review, the Court of Appeal affirmed. In its holding, the Court of Appeal ruled that the award did not violate an explicit legislative expression of public policy and noted that fee disputes do not generally involve the public interest. The Court also found that the award, even though it may have nearly exceeded the value of the underlying settlement, was not unconscionable on its face and further noted that the client, UPC, was sophisticated and was represented by its own counsel.

The Cotchett Case follows a trend demonstrating the limited judicial review of arbitration awards and will likely have impacts on future disputes. The Cotchett Case also demonstrates the unwillingness of the courts to strike down attorney fee contingency arrangements involving sophisticated clients represented by counsel.

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