

**Not So Fast...Court of Appeal Rules That Trial Court May Not Have
Jurisdiction To Compel Parties to Complete Arbitration Where Plaintiff
Dismisses Complaint After Petition To Compel Arbitration Is Granted**

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In a split decision, the California Court of Appeal, Second District, ruled that a party litigant may not be bound by a trial court's order compelling arbitration where the complaint which was the subject of the petition to compel arbitration was voluntarily dismissed by the plaintiff and the plaintiff filed a separate but related complaint which only included claims not subject to the applicable arbitration clause.

This interesting decision was entered in the matter of Cardiff Equities, Inc. v. Superior Court (2008) 166 Cal.App.4th 1541 ("Cardiff Case"). In the Cardiff Case, a dispute arose involving two separate but related contracts involving an investment between Cardiff Equities, Inc. ("Cardiff"), a California corporation, and real estate developer Robert W. O'Neel III ("O'Neel").

The facts of the Cardiff Case were largely not in dispute. In or about June 2005, plaintiff Cardiff entered into a contract with O'Neel whereby Cardiff invested \$1,400,000 into a Delaware limited partnership, Myrtle Beach Partners, LP, which was formed for the purpose of funding and ultimately developing real property located in Myrtle Beach, South Carolina. That contract is herein referred to as the "Partnership Agreement". The Partnership Agreement contained an arbitration clause which called for the American Arbitration Association in New York to be the exclusive forum for dispute resolution and that Delaware law would apply.

Cardiff and O'Neel also entered into a second agreement pursuant to which O'Neel "absolutely and unconditionally" guaranteed to Cardiff the repayment of Cardiff's full investment, plus an agreed upon return, on or before July 31, 2006. That contract is herein referred to as the "Guaranty Agreement". The Guaranty Agreement did not contain an arbitration clause.

In June 2007, Cardiff filed an action against O'Neel and other entities for breach of the Partnership Agreement and the Guaranty Agreement. That Complaint is herein referred to as "Complaint No. 1". In response, O'Neel and other related defendants moved to compel arbitration under the Partnership Agreement. Cardiff opposed the motion on the basis that the Guaranty Agreement, rather than the Partnership Agreement, was the "key" document at issue.

O'Neel prevailed and the trial court ordered Complaint No. 1 to arbitration. In response, Cardiff filed an ex parte application to shorten time to hear a motion to amend Complaint No. 1 and attached a Complaint which was limited to claims involving the Guaranty Agreement. The trial court granted the ex parte application to shorten time but Cardiff then dismissed Complaint No. 1 without prejudice before the hearing.

Prior to the dismissal of Complaint No. 1 being entered by the trial court, Cardiff filed a second complaint which was nearly identical to the one it had proposed as an amended pleading. That Complaint is herein referred to as "Complaint No. 2". Cardiff filed a notice of related cases and the trial court invited additional briefing as to whether the order compelling arbitration would apply to Complaint No. 2.

At a hearing which took place in January 2008, the trial court, applying Code of Civil Procedure section 1281.4, ruled that Complaint No. 2 should be stayed pending the outcome of the arbitration of Complaint No. 1, even though Complaint No. 1 had been dismissed. In February 2008, Cardiff petitioned the Court of Appeal for a Writ of Mandate compelling the trial court to vacate its order granting O'Neel's motion to stay Complaint No. 2.

In its decision, the Court of Appeal held that a plaintiff may voluntarily dismiss a case after a motion to compel arbitration and before arbitration has commenced. The Court of Appeal distinguished the decision in Blake v. Ecker (2001) 93 Cal.App.4th 728 ("Blake Case") holding that the Blake Case merely held that the trial court lacked jurisdiction to determine a motion to dismiss after a motion to compel arbitration had been granted. The Court of Appeal further noted that a plaintiff is not precluded from dismissing its complaint, without prejudice, and re-filing at a later time so long as the statute of limitations has not expired and distinguished the case law which provides that a plaintiff's right to voluntarily dismiss is superseded where a determination which effectively disposed of the litigation has taken place as articulated in Gray v. Superior Court (1997) 52 Cal.App.4th 165, see also, Code of Civil Procedure section 581. The Court of Appeal further ruled that the new action, being Complaint No. 2, effected a "severance" so that in essence there was nothing further to litigate other than Complaint No. 2. The Court of Appeal, in rendering that decision,

distinguished the recent decision in Heritage Provider Network, Inc. v. Superior Court (2008) 158 Cal.App.4th 1146, where the Court ruled that it would be error to deny a motion to stay pending arbitration where some claims were in arbitration and there were “overlapping issues” with the claims which were not subject to the arbitration clause.

In a dissent, Justice Ashmann-Gerst agreed that Cardiff had the right to dismiss Complaint No. 1 but stated that Cardiff’s actions were an improper attempt to avoid an order compelling arbitration.

The Cardiff Case is certainly interesting and provides at least a glimmer of hope for plaintiffs who have been ordered to arbitration. However, it appears that a critical distinction exists in the fact that there were two contracts (one with an arbitration clause and one without). Going forward, a party which has separate agreements, at least one of which does not include an arbitration clause, may wish to file suit on the contract which contains no requirement to arbitrate.

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