

The Morrison Law Journal
February 2024
Volume XIV, Edition 2

Make Sure To Request Your Jury...California Supreme Court Rules That Litigant Which
Waived Jury Trial Could Not Later Demand a Jury When The Opposing Litigant Timely
Requested A Jury Trial And Then Waived Jury on the Day of Trial

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

The California Constitution provides that all civilians have a right to a jury trial, unless waived. The California Code of Civil Procedure also sets forth various acts and omissions that constitute a jury waiver. *See, Code of Civil Procedure* section 631. A waiver of jury trial does not categorically foreclose a jury trial, and a litigant that has waived jury trial may seek relief from that waiver.

One common situation is where one party, typically Plaintiff, seeks a jury and the defense does not. However, on the eve of trial or even the first day of trial, the party which requested a jury unilaterally waives a jury and consents to a court trial. This can place a particularly onerous burden on a party which waived jury but was required to prepare jury documents and perhaps even paid for a mock jury. The question then becomes whether a party who expended significant resources for a jury trial, and believed in good faith it would have a jury trial as of the day of the trial, may request a jury when it had previously waived jury.

The California Supreme Court weighed on this interesting issue in TriCoast Builders, Inc. v. Nathaniel Fonnegra (2024) Westlaw 763422. In that case, TriCoast Buildings, Inc. ("TriCoast"), a contractor, filed suit against homeowner Nathaniel Fonnegra. Mr. Fonnegra timely requested a jury. TriCoast waived jury. On the day of trial, Mr. Fonnegra waived jury, and TriCoast then unsuccessfully sought relief from the waiver. After a bench trial, the Trial Court entered Judgment against TriCoast.

On appeal, TriCoast argued that it had suffered prejudice because it had expended significant efforts to prepare for a jury trial when that had been requested by the Defendant. Based on this factual scenario, the California Supreme Court ruled that, at least under those facts, the Trial Court properly refused, within its discretion, a jury trial.

The TriCoast case is very important in that it expresses the need to timely request a jury trial, no matter what action the other parties take. In that regard, even where an opposing party requests jury, and waives jury on the day of commencement of trial, the Trial Court will have the discretion to refuse a jury trial to any other party that had previously waived jury.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 .

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.