

When It Is Not Too Late ... Court of Appeal Rules That Party That Sought Arbitration,
After 13 Months of Litigation, Did Not Waive Its Right to Arbitrate

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One of the issues that businesses are facing in California is the need to timely and effectively Move to Compel Arbitration where it suits the interests of the business entity. One of the defenses to arbitration, in many cases, relates to the business entity's failure to timely request arbitration. In a case of import, the California Court of Appeal, Second Appellate District, in Peter Quach v. California Commerce Club, Inc. (2022) WL 1468016 ("Quach case") reversed a Trial Court's refusal to grant a Motion to Compel Arbitration by California Commerce Club, Inc. ("Commerce Club").

The Quach case is fairly common. Quach was an employee of the Commerce Club, a hotel and casino in Commerce, California. Quach signed a Commerce Club Arbitration Agreement, as a condition of his employment. In November 2018, Commerce Club terminated Quach's employment after a customer paid the casino with \$100 in counterfeit bills during Quach's shift. Quach then filed a lawsuit against Commerce Club in November 2019. In January 2020, Commerce Club filed an Answer to the Complaint. Although Commerce Club asserted Quach should be compelled to arbitrate, Commerce Club did not Move to Compel Arbitration at that time, but propounded significant discovery. That discovery included Quach's deposition which was taken on June 23, 2020. In October 2020, Commerce Club informed Quach's counsel that Commerce Club had located Quach's completed Arbitration Agreement, and requested a Stipulation to Arbitrate. In December 2020, 13 months after Quach had filed his lawsuit, Commerce Club filed a Motion to Compel Arbitration. Quach opposed Arbitration as untimely. The Trial Court agreed with Quach, and, based on the holding in St. Agnes Medical Center v. Pacific Care of California (2003) 31 Cal.4th 1187, 1203, ruled that there had been prejudice due to the 13 month period in which Commerce Club had waited before moving to compel arbitration and held that Commerce Club had waived its right to arbitration.

Commerce Club appealed.

On appeal, the Court of Appeal ruled that the passage of time, and expenditure of legal fees (at least where the legal fees would have been incurred in arbitration, anyway) did not meet the "prejudice standard" under case law (the St. Agnes test). The Court of Appeal ruled that Quach had indicated nothing more than the parties participated in litigation and had conceded that there had been no determination on the merits. The Court of Appeal reversed the Trial Court ruling and remanded the matter to the Trial Court. It should be noted that there was a dissent in the Quach Opinion (from Justice Crandall), but the Quach Opinion will stand for the proposition that a Motion to Compel need not be

immediately filed, and may still be granted, even where there has been discovery (albeit without any ruling on the merits).

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