

When Personal Knowledge Is Required: Court of Appeal Affirms Denial of Petition to Compel Arbitration Based on Lack of Evidence of There Being an Arbitrable Agreement

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While California law embraces and supports private arbitration agreements (see, Rosenthal v. Great Western Financial Securities Corporation (1996) 14 Cal.4<sup>th</sup> 394 ("Rosenthal"); see also, Code of Civil Procedure § 1281.2), disputes often arise over whether there is, in fact, an agreement to arbitrate. A recent employment case, Hope Gamboa v. Northeast Community Clinic (2021) Westlaw 5575536 ("Gamboa case"), demonstrates that a Petition for Arbitration may be denied even if the signed Arbitration Agreement is put before the Trial Court.

In the Gamboa case, the Northeast Community Clinic hired Hope Gamboa as a scanner. As a condition of beginning her employment, Gamboa signed several "onboarding documents." In July 2018, Gamboa sustained an injury to her hand that affected her work. After Gamboa requested medical accommodations, the clinic terminated her employment. In July 2019, Gamboa sued the clinic for multiple causes of action relating to her employment including discrimination, retaliation, and failure to provide reasonable accommodations.

In August 2019, the Clinic filed a Motion to Compel Arbitration. The Clinic argued that Gamboa had signed an Arbitration Agreement as part of her required onboarding documents. In support of the Motion to Compel, the Clinic filed a Declaration by a Marina Lopez who stated she was the Director of Human Resources for the Clinic. Lopez attached the Arbitration Agreement as an exhibit to her Declaration. The Arbitration Agreement appeared to be signed by a representative of the Clinic and an employee (the representative of the Clinic did not appear to be Lopez).

Thereafter, Gamboa opposed the Motion on two grounds. Gamboa claimed that the Clinic did not establish it had a valid Arbitration Agreement and that the Arbitration Agreement was unconscionable and unenforceable. Gamboa filed a Declaration in support of her Opposition stating she reviewed the Arbitration Agreement attached to Lopez' Declaration and did not "remember these documents at all." She stated if she had known about the Arbitration Agreement and been told about its provisions, she would not have signed it. In reply, the Clinic argued that Gamboa's failure to remember the Arbitration Agreement did not invalidate it. The Clinic did not file a supplemental Declaration.

In February 2020, at a hearing during which no evidence or testimony was submitted, the Trial Court denied the Motion to Compel Arbitration.

On appeal, the Court of Appeal embraced the public policy in favor of arbitration, but went through the three-step process to determine arbitrability as discussed in Rosenthal. The Court of Appeal noted that the first step was for the moving party to produce "prima facie evidence of a written agreement." The Court of Appeal concluded that the Clinic had met its initial burden. The Court of Appeal noted that the second step was for the opposing party to provide evidence challenging the authenticity of the agreement. The Court of Appeal ruled, as the Trial Court did, that Gamboa had satisfied her burden of proof in attesting that she did not recall signing the Arbitration Agreement. As for the third step, the Court of Appeal noted that, if the opposing party met its burden of producing evidence that the agreement was not authentic (which Ms. Gamboa had), the moving party (the Clinic) then had to establish with admissible evidence the existence of a valid Arbitration Agreement between the parties. Under that standard, the Court of Appeal ruled that Gamboa's sworn Declaration that she did not recall even seeing the Arbitration Agreement, taken together with the Clinic's failure to produce a witness with personal knowledge of the signing of the Arbitration Agreement, militated towards a finding that no Arbitration Agreement existed.

The Gamboa case is an important reminder that, merely having an Arbitration Agreement put before the Court is not enough. There must be evidence, based on personal knowledge, of the agreement having been entered into by the parties.

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