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So, Who Decides Arbitrability? California Court Of Appeal Rules That The Court Is To Determine Arbitrability Unless There Is Clear And Unmistakable Evidence Of The Parties' Intent That the Arbitral Entity Is To Decide That Issue…

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One crucial issue that arises with respect to enforcing arbitration agreements has to do with who is to determine whether a claim is arbitrable (as opposed to being a matter that is to proceed in court). California law has generally expressed that there is a presumption that the Court will decide arbitrability, unless there is clear and unmistakable evidence of the Parties' intent to have the Arbitrator decide arbitrability. *Dennison v. Rosland Capital, LLC* (2020) 47 Cal.App.5th 204, 209. Very often, in employment agreements, the agreement signed by the new hire will express that the issue of arbitrability will be determined by way of the rules that are embraced for the arbitration (such as the arbitration rules established by the American Arbitration Association).

That is the approach that was taken by Maersk, Inc. ("Maersk"). However, in a lawsuit that was filed by a logistics employee of Maersk, *Villalobos v. Maersk, Inc.* (2025) Lexis 634 ("*Villalobos* case"), Carlos Villalobos. Mr. Villalobos sued Maersk for wage violations, including claims under the Private Attorney General Act, or PAGA. Maersk attempted to compel arbitration based on a signed employment agreement, but the Trial Court denied the Motion. Relevant to this article was whether the Trial Court, as opposed to the arbitral entity, was to determine arbitrability in the first place. In that regard, the Trial Court, and later the Court of Appeal, examined an "Employee Agreement to Arbitrate" together with an associated "Mutual Arbitration Policy." It was undisputed that Villalobos has signed the Employee Agreement to Arbitrate. The Employee Agreement vaguely stipulated that Arbitration would be conducted under the Federal Arbitration Act and the "applicable procedural rules" of the American Arbitration Association, without identifying which specific rules applied or where they could be found.

Neither the Employee Agreement nor the Arbitration Policy explicitly stated the Arbitrator had the power to rule on the existence, scope, or validity of the Arbitration Agreement. Again, as relevant for this article, the Trial Court, and later the Court of Appeal, rejected this fragmented approach, characterizing the reliance on the Arbitration Policy and incorporated external rules as insufficient to express a clear and unmistakable intent that the Arbitrator was to decide arbitrability.

The *Villalobos* case is very important in that, if the party seeking arbitration (often the employer) wishes to have the arbitral entity determine such issues as the existence, scope, or validity of the Arbitration Agreement, that must be explicitly expressed in the employment agreement signed by the party who may later challenge arbitrability.

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