

Appeals Court Holds That Defendant Waived Arbitration by Participating in Court Proceedings

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Otherwise valid arbitration agreements may be set aside if the parties to the agreement fail to pursue arbitration diligently. A new decision by the California Court of Appeal illustrates this point. In *Adolph v. Coastal Auto Sales, Inc.*, the Court of Appeal found that the defendant had waived its right to arbitrate by participating in court proceedings in the case.

Lauren Adolph bought a Honda Civic from Coastal Auto Sales. In connection with the transaction, Adolph traded in her old Ford Escort. She alleged that Coastal failed to transfer ownership of the Escort, causing her to receive parking fines, towing and impound fees, and a wage garnishment that should have been directed to the car's new owner. Adolph filed suit in Orange County Superior Court, claiming that Coastal's actions violated the Consumer Legal Remedies Act.

Coastal filed a motion to dismiss the case on the ground that Adolph's allegations were insufficient to support a finding of liability. The trial court granted the motion but allowed Adolph to file an amended complaint. Coastal then moved to dismiss the amended complaint. This time the trial court denied Coastal's motion. In the interim, Adolph served written discovery requests and sought to take depositions of Coastal's employees. Coastal responded to the written discovery but the depositions did not go forward because Coastal said that the employees were unavailable, and thereafter ignored repeated requests to schedule the depositions.

After its second motion to dismiss was denied, Coastal claimed to have located an agreement with Adolph that contained an arbitration provision. Accordingly, Coastal filed a motion to refer the case to arbitration. The trial court denied the motion. It held that Coastal's past actions were "inconsistent with an intent to arbitrate" and that "to now go to arbitration would in this court's view cause an unnecessary waste of time and effort to all concerned but more importantly is unfair and prejudicial to plaintiff."

The Court of Appeal affirmed the trial court's ruling. It recognized California's "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." Thus, the appellate court emphasized that prior decisions repeatedly have held that "a party seeking to establish waiver bears a heavy burden of proof." Moreover, the appellate court acknowledged that, under California law, "[w]aiver does not occur by mere participation in litigation." Nevertheless, the appellate court felt that Coastal's conduct warranted a finding that it had waived its right to arbitrate.

Two factors motivated the Court of Appeal's decision. First, Coastal sought to benefit from court proceedings – it filed two motions to dismiss – while at the same time refusing to cooperate in Adolph's efforts to depose Coastal's employees. Second, Coastal delayed seeking arbitration until just over three months before the trial date. Therefore, the Court of Appeal concluded that "starting anew in an arbitral forum at that late date would delay resolution of the dispute, not advance it."

Conclusion. The lesson from *Adolph v. Coastal Auto Sales* is that a party served with a lawsuit should act promptly to determine whether there is an agreement with the plaintiff calling for arbitration of the dispute. Litigants cannot assume that courts that have devoted time and attention to their cases will be sympathetic to belated claims that the matters should be arbitrated.