
California court declines enforcement of choice of forum and choice of law provisions, citing right to jury trial

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In October 2019, in a case with international litigation implications, the California Court of Appeal declined to enforce forum selection and choice of law clauses in a commercial contract because enforcement of those clauses would result in the denial of the plaintiff's right to a jury trial, *Handoush v Lease Finance Group, LLC*.¹

The holding in *Handoush* follows the California Supreme Court decision in *Grafton Partners LP v Superior Court*,² in which the state Supreme Court held that predispute

contractual jury waivers are unenforceable under California law. The *Handoush* case takes this principle a step further by rendering unenforceable choice of forum and choice of law clauses which would impair a California litigant's right to a jury trial.

In *Handoush*, the plaintiff entered into a lease agreement for credit card processing equipment. The lease provided that any disputes arising out of the lease would be governed by New York law and that any such disputes arising out of the lease would be

instituted and prosecuted solely in the federal or state courts located in New York. The lease also contained an express waiver of the parties' right to a jury trial.

Handoush brought a suit against his lessor Lease Finance Group in Superior Court, alleging causes of action for fraud, rescission, injunctive relief and violation of California Business and Professions Code section 17200. Lease Finance Group moved to dismiss the complaint under California Code of Civil Procedure section 410.30(a) based on the forum selection clause in the lease agreement.

The Court declined to enforce the choice of forum and choice of law provisions, noting that the right to a jury trial is constitutional in nature and, based on the Supreme Court's holding in *Grafton Partners*, and that right is not waivable at the predispute stage. Importantly, the court characterised *Grafton Partners*' prohibition against predispute waivers of the right to a trial by jury to be substantive in nature and not merely procedural.

The implications arising from *Handoush* for international litigation are clear. California residents, especially those who are plaintiffs in California courts, can now seek to avoid enforcement of choice of forum and choice of law provisions on the ground that their fundamental right to a jury trial under California law would be compromised if a pending action were transferred to forum where predispute jury trial waivers are enforced.

Although *Handoush* involved a choice of forum provision that called for transfer of the litigation from one US state to another, there is no reason to believe that its impact will be limited to domestic litigation. This means that overseas parties contracting with persons or companies domiciled in California need to be aware that dispute resolution provisions calling for litigation in a foreign jurisdiction,

or under foreign law, may be subject to challenge in California courts, if those parties seek to rely on a predispute jury trial waiver.

Foreign counter-parties seeking to avoid a jury trial in California would be well advised to provide for arbitration of any disputes with persons or companies domiciled in California, as an agreement to arbitrate disputes is considered to be an enforceable method for effectuating a waiver of a party's right to a jury trial.

At the same time, the California Legislature continues to express hostility toward arbitration, especially in the employment context. In a new law effective from 1 January 2020, California employers can therefore no longer require workers to arbitrate state-law discrimination and labour code claims. The law actually criminalises the use of mandatory arbitration agreements by making such a practice a misdemeanour offense. Although the enforcement of that new law has been temporarily stayed, its enactment was inspired by the #MeToo movement and was intended to prevent businesses from silencing workers who have experienced discrimination and colleagues who have witnessed the misconduct.

This new law arises in the larger context of an ongoing battle between the California appellate courts and the federal appellate courts about whether state laws, such as the Legislature's recent enactment, which subject arbitration agreements for special treatment or special scrutiny, violate the Federal Arbitration Act.³ In this regard, there will undoubtedly be constitutional challenges to the new law, which will ultimately have to be resolved by the federal courts.

Notes

- 1 *Handoush v Lease Finance Group, LLC*, 41 Cal App 5th 729 (2019).
- 2 *Grafton Partners LP v Superior Court*, 36 Cal 4th 944 (2005).
- 3 See for example, *AT&T Mobility LLC v Concepcion*, 563 US 333 (2011).