

# Employer Did Not Waive Right to Arbitration Despite One-Year Delay, California Court Rules

**Jackson Lewis**

Article By

[Mark S. Askanas](#)

[Mitchell F. Boomer](#)

[Jackson Lewis P.C.](#)

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An employer that petitioned to compel **arbitration** one year after the employee filed his employment-related complaint did not waive its right to arbitrate the complaint, the California Court of Appeal has ruled, confirming the burden of proving a party waived its right to arbitration is a heavy one. [\*\*\*Gloster v. Sonic Automotive, Inc.\*\*\*](#), No. A137081 (Cal. Ct. App. May 21, 2014).

The Court found the employer consistently communicated to the employee's counsel and the court that the dispute should be arbitrated, and the delay, in large measure, was caused by the employee's inclusion of multiple defendants in the lawsuit. It found significant that the employer filed its petition to compel arbitration shortly after the trial court resolved issues related to the other defendants, and the employee was not prejudiced by the delay. The Court reversed the order denying arbitration.

## Background

While working for Melody Toyota, Sean Gloster signed several agreements requiring him to arbitrate all disputes with Melody.

In 2011, Gloster filed an employment-related lawsuit against Melody, Melody's

parent corporation and others. Melody filed an answer asserting as an affirmative defense that Gloster was required to arbitrate his claims. Melody took the same position at case management conferences and in communications with Gloster's counsel. Melody responded to Gloster's discovery requests, but did not seek any discovery from Gloster.

In January 2012, the trial court resolved issues related to other defendants. Shortly thereafter, Melody filed a petition to compel arbitration. The trial court denied the motion, finding Melody had waived its right to arbitration by participating in the litigation for over one year and that Gloster was prejudiced as a result of the delay.

## **Applicable Law**

California law requires close **judicial scrutiny** of **waiver claims**. When determining whether a waiver has occurred, California courts may consider the following factors, among others: whether the party's actions are inconsistent with the right to arbitrate; whether "the litigation machinery has been substantially invoked"; and whether the delay "affected, misled, or prejudiced" the opposing party. Courts will not find prejudice where the party opposing arbitration shows only that it incurred court costs and legal expenses.

## **No Waiver Found**

Gloster argued that Melody waived its right to arbitrate because it waited over one year before filing its motion to compel and that he was prejudiced because he incurred legal expenses and experienced anxiety as a result of the litigation. The appellate court rejected these arguments.

The Court said Melody did not take any actions inconsistent with its position that the case should be arbitrated. Melody asserted arbitration as an affirmative defense, raised the issues consistently at case management conferences and in communications with Gloster's counsel, and did not serve any discovery requests, although it responded to Gloster's discovery requests. Melody promptly filed its motion to compel arbitration after the trial court resolved issues related to the other parties in the case. Further, it was not unreasonable for Melody to wait until the trial court decided issues related to the other parties as their resolution simplified the case.

In addition, the Court found Gloster failed to show he was prejudiced as a result of the delay. The "delay alone" was insufficient to establish a waiver, particularly since Gloster's inclusion of numerous parties largely caused the delay. Similarly, the Court noted, "Gloster's claim of prejudice was based on the legal expenses he incurred, which were largely the result of his own efforts" at discovery and his addition of other parties to the lawsuit. Thus, these expenses did not constitute prejudice to Gloster. Further, the Court stated it was "unaware of any decision holding that anxiety constitutes prejudice for these purposes." Accordingly, the Court reversed the order denying Melody's petition to compel arbitration.

While this case is a positive development for California employers, if confronted with a court case that arguably should be in arbitration, employers should consider

working closely with experienced employment counsel to avoid the possibility of a waiver of arbitration.

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