

Compelled Arbitration of Oral Joint Venture Concerning Real Property

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In an October 2007 decision, *Segal v. Silberstein*, the California Court of Appeal reversed the trial court's denial of a petition to compel arbitration.

The dispute concerned an *oral* joint venture agreement to split the profits of business entities formed to buy, develop and manage real property. The Court of Appeal's analysis was interesting for two reasons:

First, much of the decision involved analysis of what the Court described as a "poorly worded arbitration provision" in the operating agreement of one of the business entities. The provision specified that any "action" shall be settled by arbitration, and that arbitration shall be the exclusive dispute resolution process in Texas, but not elsewhere.

While the trial court had held that arbitration was merely optional (i.e., that arbitration was *not* the exclusive dispute resolution process for an action in California), the Court of Appeal held otherwise, noting California's preference for arbitration, and ruling that:

- "Action" meant a proceeding in court, and excluded arbitration
- "Shall" has long been considered mandatory, but would be rendered meaningless if the petition to compel arbitration was denied
- When the parties referred to a non-exclusive dispute resolution process outside of Texas, they "were referring to even less costly and time-consuming dispute resolution processes such as mediation and conciliation"

Second, the Court of Appeal further demonstrated its view of California's preference for arbitration with a footnote that rejected an argument that had not even been raised by any of the parties – that the oral joint venture agreement did not include an agreement to arbitrate disputes:

"[Plaintiff] did not contend below that the arbitration provisions [in the operating agreements] were not at issue because his suit alleged breach only of the oral joint venture agreement entities [sic], an agreement presumably without an arbitration provision. Had he done so, we would most likely reject that contention. To do otherwise would strip the written operating agreements of legal effect merely because they were the product of an underlying oral agreement."

The case illustrates two points:

- In the context of a business dispute, an apparently ambiguous arbitration provision may be interpreted as requiring arbitration
- Whether a dispute about an oral joint venture agreement is subject to arbitration may involve evaluation of arbitration provisions in agreements *beyond* the oral joint venture agreement itself