

## New Decision Limits Enforceability of Arbitration Agreements Against Non-Signatories

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December 2007

In 2005, the California Court of Appeal ruled that an arbitration agreement could be enforced against a third party who had not signed the agreement, if the third party was an agent of one of the parties to the agreement. Now, in a decision filed on December 7, 2007, the Court of Appeal has limited its prior holding, making clear that a non-signatory to an arbitration agreement cannot enforce the agreement against another non-signatory.

The case is *Nguyen v. Tran*. It involved a real estate purchase agreement in which the sellers and the buyers agreed to arbitrate any dispute between them. The buyers sued the sellers, the sellers' agent and their own agent, claiming that they had failed to disclose that a guest house located on the property had been built without necessary permits. Even though neither agent had signed the arbitration agreement, the buyers' agent sought to compel arbitration of the dispute. The buyers' agent relied upon the 2005 decision, which held that arbitration was appropriate "when a nonsignatory and one of the parties to the agreement have a preexisting agency relationship that makes it equitable to impose a duty to arbitrate on either of them."

As the buyers' agent noted, courts have applied this concept to permit a non-signatory to an arbitration agreement to compel arbitration with a party to such an agreement, and to permit a signatory to an arbitration agreement to compel arbitration with another signatory's agent. In this case, the buyers' agent sought to take a further step: He argued that, if agency relationships exist, a non-signatory to an arbitration agreement should be permitted to compel arbitration against another non-signatory.

The Court of Appeal was unwilling to extend the right to arbitration this far. While acknowledging the "strong public policy in favor of arbitration," the court drew the line at cases in which neither the party seeking to enforce arbitration, nor the party opposing arbitration, had signed the arbitration agreement. As the appellate court put it, "we see no basis to create another exception to the general rule that an arbitration cannot be enforced to compel a nonsignatory to arbitration."

The case illustrates that parties seeking to enter into enforceable arbitration agreements should take care to obtain the written agreement of every party, including third parties, that is likely to become involved in any dispute that may arise. Otherwise, a party to an arbitration agreement may be able to avoid arbitration by including a non-signatory in his or her lawsuit. In this case, for example, the buyers were able to avoid arbitration, simply by adding the sellers' broker as a defendant in the case.