

Non-Signatories Can Compel Arbitration

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Efforts to compel arbitration often fail. See, e.g., [Appellate Court Invalidates Arbitration Agreement Presented to Employees Through Interoffice Mail](#), [New Decision Limits Enforceability of Arbitration Agreements Against Non-Signatories](#) and [Arbitration Clause In Employee Handbook Held Unenforceable Because Employee Did Not Sign Separate Arbitration Agreement](#).

However, a recent decision in a case involving claims against the shareholders and directors of a dissolved corporation shows that non-signatories to an arbitration agreement may be able to compel arbitration of a dispute, even though they did not sign the arbitration agreement.

In *Rowe v. Exline*, the California Court of Appeal remanded the matter to the trial court for an order compelling arbitration.

Plaintiff Rowe's complaint alleged that:

- Rowe was to receive a last installment of \$175,000, pursuant to a written settlement agreement that, on its face, was between Rowe and a corporation, and which contained an arbitration provision
- The settlement agreement had been signed by one defendant as the chief executive officer and secretary of the corporation, and by another as the corporation's president and chief operating officer
- The two individual defendants also signed and filed a certificate of dissolution of the corporation with the California Secretary of State
- On the date of the dissolution, the corporation's accounts receivable exceeded \$175,000, and its assets were distributed to its shareholders
- Counsel for the two defendants informed Rowe that the corporation had been reincorporated, and there was no money to pay the \$175,000 installment

Rowe sued, alleging four causes of action:

- Breach of contract (i.e., the written settlement agreement) against the corporation, and against the two individual defendants, on the basis that the corporation was the alter ego of the two individuals
- Violation of Corporations Code section 1903(c) (failure to provide notice) against all three defendants
- A derivative claim on behalf of the corporation against the individual defendants as directors for allegedly improper distribution of corporate assets under Corporations Code section 316(a)
- A further derivative claim on behalf of the corporation against the individual defendants as shareholders for the receipt of corporate assets under Corporations Code section 2009 and 2011

The trial court had denied the defendants' motion to compel, because Rowe had never signed an agreement requiring him to arbitrate his claims against the *individual* defendants.

The Court of Appeal recognized the "strong public policy favor[ing] the arbitration of disputes," and reversed, concluding that *all* of the causes of action were subject to arbitration.

The Court of Appeal concluded that a defendant sued as an alter ego on a contract was entitled to benefit of an arbitration provision in the contract.

As to the other causes of action, the Court held that:

- Those causes of action were within the scope of the broad arbitration clause, whether the legal theory was breach of contract, tort, or violation of a statute
- The individual defendants were entitled to enforce the arbitration provision, on the grounds of equitable estoppel – a plaintiff who seeks to hold non-signatories liable for “damages under a contract, by alleging they are unified with the signatory entity, cannot also adopt the inconsistent position that the arbitration provision in the contract is unenforceable by or against those individuals.”

This case illustrates that whether a business dispute is subject to arbitration is not limited to the question of “who signed the agreement?”