

CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION
FOUR

Goodwin v. Comerica Bank, N.A.

Goodwin · No. A160909 · Decided January 5, 2022

SUMMARY

The California Court of Appeal, First Appellate District, Division Four, modified its published opinion in Goodwin v. Comerica Bank, N.A. and denied rehearing without changing the judgment. The court held that Comerica forfeited its right to disqualify the arbitrator based on alleged disclosure omissions because it failed to raise the issue promptly after learning of the omitted information. The court reversed the orders vacating the arbitration award and denying Goodwin’s petition to confirm it, and remanded with instructions to confirm the award.

CASE DETAILS

COURT	California Court of Appeal, First Appellate District, Division Four
WRITING FOR THE COURT	P. J. Pollak; Pollak, P. J.; Brown, J.; Ross, J.
JURISDICTION	California
DECIDED	January 5, 2022
DOCKET	A160909
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mark Goodwin appealed concurrent orders denying his petition to confirm an arbitration award and granting Comerica Bank's petition to vacate the award based on the arbitrator's alleged nondisclosure of a prior interim award involving Goodwin's lawyers.
STANDARD OF REVIEW	De novo review applies to whether a party forfeited the right to disqualify an arbitrator when there are no pertinent disputed facts; review of an order vacating an arbitral award is otherwise de novo except insofar as it depends on the trial court's resolution of factual disputes.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	Mark Goodwin v. Comerica Bank, N.A.

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QUESTIONS PRESENTED

1. Whether Comerica forfeited its right to disqualify the arbitrator by failing to serve a notice of disqualification within 15 days after discovering the alleged nondisclosure.
2. Whether the statutory deadline and forfeiture rules applied even though the alleged nondisclosure was discovered after the merits hearing and interim award but before the final award on fees.
3. Whether the orders vacating the arbitration award and denying Goodwin's petition to confirm should be reversed.

HOLDINGS

1. A party that discovers a material omission or misrepresentation in an arbitrator's disclosure must object at the earliest practicable opportunity and, under the applicable ethics standard, within 15 days after becoming aware of it; failure to do so forfeits the right to demand disqualification.
2. The fact that a disqualification ground is discovered after the arbitration hearing or a merits ruling does not permit a party to remain silent and later seek vacatur; when the ground falls within the statutory disqualification standard, the party must demand disqualification before the arbitration concludes.

KEY QUOTATIONS

“A party who learns of a basis to disqualify an arbitrator cannot “wait and see how the arbitration turn[s] out before raising the[] issue[],” which would allow the party to “play games” with the arbitration and “not raise the issue” “until [they] los[e].”” (at 9-10)

“Because the bank failed to seek the arbitrator’s disqualification within 15 days of discovering the facts requiring disqualification and before the arbitrator decided the pending fee motion, it forfeited the right to demand disqualification.” (at 15)

FACTUAL BACKGROUND

Goodwin received disability benefits by direct deposit into a Comerica account and alleged that identity thieves withdrew most of his April 2016 benefits and that the bank failed to respond fairly. The parties arbitrated the dispute before retired Judge Read Ambler, who had previously arbitrated matters involving the parties' lawyers. The arbitrator's disclosures described one prior matter involving Goodwin's lawyers as settled before a final award but did not disclose an interim attorney-fee award issued before settlement. Comerica learned of that interim award while briefing Goodwin's fee motion but did not seek disqualification or raise the nondisclosure before the arbitrator issued the final award.

PROCEDURAL HISTORY

Goodwin's dispute with Comerica was arbitrated under the parties' arbitration agreement. The arbitrator issued an interim award in Goodwin's favor and later a final award of damages, fees, costs, and interest. The Alameda County Superior Court granted Comerica's petition to vacate and denied Goodwin's petition to confirm, finding that the arbitrator materially omitted or misrepresented information in the disclosure. The Court of Appeal reversed both orders and remanded for entry of orders denying vacation and confirming the award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order granting Comerica's petition to vacate the arbitration award and the order denying Goodwin's petition to confirm. Remand with directions to issue orders denying Comerica's petition to vacate and granting Goodwin's petition to confirm.

CASES CITED

- Honeycutt v. JPMorgan Chase Bank, N.A. (2018) 25 Cal.App.5th 909, 921
- Alper v. Rotella (2021) 63 Cal.App.5th 1142, 1152-1153
- Cummings v. Future Nissan (2005) 128 Cal.App.4th 321, 329
- Haworth v. Superior Court (2010) 50 Cal.4th 372, 383
- Dornbirer v. Kaiser Foundation Health Plan, Inc. (2008) 166 Cal.App.4th 831, 842
- Caminetti v. Pacific Mut. Life Ins. Co. of Cal. (1943) 22 Cal.2d 386, 392
- Gray v. Chiu (2013) 212 Cal.App.4th 1355, 1366
- United Health Centers of San Joaquin Valley, Inc. v. Superior Court (2014) 229 Cal.App.4th 63, 79-85
- Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP (2013) 219 Cal.App.4th 1299, 1313-1314
- Jolie v. Superior Court (2021) 66 Cal.App.5th 1025, 1043, 1046
- United States v. Olano (1993) 507 U.S. 725, 733-734
- People v. Simon (2001) 25 Cal.4th 1082, 1097, fn. 9

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