

**GIBSON DUNN**



**Appellate & Constitutional Law Update**

**July 26, 2024**

## **California Supreme Court Eliminates Prejudice Requirement For Waivers Of Right To Arbitrate**

*Quach v. California Commerce Club, Inc.*, S275121 – Decided July 25, 2024

**The California Supreme Court held yesterday that, consistent with federal law, California courts should not consider prejudice to the party resisting arbitration when deciding whether a party has waived its right to compel arbitration.**

*“Because the state law arbitration-specific prejudice requirement finds no support in statutory language or legislative history, we now abrogate it.”*

**JUSTICE GROBAN, WRITING FOR THE COURT**

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### **Background:**

Parties can waive their right to compel arbitration by waiting too long to assert it or engaging in other conduct inconsistent with an intent to arbitrate. Under the test for waiver the California Supreme Court adopted in *St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, the most “critical” (and often “determinative”) factor is prejudice to the party resisting

arbitration. The *St. Agnes* rule is an arbitration-specific exception to general state-law principles governing waiver of contract rights, which focus entirely on the conduct of the party that assertedly waived the right. In *Morgan v. Sundance* (2022) 142 S.Ct. 1708, however, the U.S. Supreme Court rejected a similar rule under the Federal Arbitration Act. The Court held that the FAA does not authorize courts to apply an arbitration-only rule asking whether a party's waiver resulted in prejudice for the other side.

Peter Quach sued his former employer, the California Commerce Club, after he was fired. Although the Club asserted in its answer that Mr. Quach had agreed to arbitrate any disputes, it initially demanded a jury trial and proposed a discovery plan. The Club didn't move to compel arbitration until more than a year after the complaint had been filed, and after the parties had engaged in significant discovery. The trial court denied the Club's motion to compel, ruling that it had waived its arbitration right. A divided panel of the California Court of Appeal reversed, holding that Mr. Quach had not sufficiently shown that he had been prejudiced by the delay under *St. Agnes*.

#### **Issue Presented:**

In deciding whether a party has waived its right to compel arbitration, should courts consider prejudice to the party resisting arbitration (as *St. Agnes* held), or instead focus only on the conduct of the waiving party (as *Morgan* held)?

#### **Court's Holdings:**

Courts should not consider prejudice to the party resisting arbitration. The *St. Agnes* rule has been abrogated.

#### **What It Means:**

- Parties seeking to enforce arbitration agreements should move to compel arbitration promptly and should avoid engaging in any conduct—including litigation of the merits and factual development through discovery—that suggests an inconsistent intent to proceed in court.
- The Court's decision brings California law in line with federal law, ensuring that courts will apply the same waiver principles regardless of whether a case is governed by the Federal Arbitration Act or the California Arbitration Act. Under those principles, courts should focus "exclusively ... on the waiving party's words or conduct."
- By eliminating the "stringent" prejudice requirement, the decision will make it easier for parties resisting arbitration to show that the party invoking an arbitration agreement had waived its rights under the agreement. Future courts will be especially on the lookout for signs of "undue delay and gamesmanship" in the invocation of an arbitration agreement.
- The Court also cautioned that lower courts "should separately evaluate each generally applicable state contract law defense raised by [a] party opposing arbitration," including waiver, forfeiture, estoppel, laches, and untimeliness, rather than "lump[ing] distinct legal defenses into a catch-all category called 'waiver.'"

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## Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice group leaders:

### Appellate and Constitutional Law

[Thomas H. Dupree Jr.](#)  
+1 202.955.8547  
[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

[Allyson N. Ho](#)  
+1 214.698.3233  
[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

[Julian W. Poon](#)  
+1 213.229.7758  
[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

[Lucas C. Townsend](#)  
+1 202.887.3731  
[ltownsend@gibsondunn.com](mailto:ltownsend@gibsondunn.com)

[Bradley J. Hamburger](#)  
+1 213.229.7658  
[bhamburger@gibsondunn.com](mailto:bhamburger@gibsondunn.com)

[Michael J. Holecek](#)  
+1 213.229.7018  
[mholecek@gibsondunn.com](mailto:mholecek@gibsondunn.com)

### Related Practice: Labor and Employment

[Jason C. Schwartz](#)  
+1 202.955.8242  
[jschwartz@gibsondunn.com](mailto:jschwartz@gibsondunn.com)

[Katherine V.A. Smith](#)  
+1 213.229.7107  
[ksmith@gibsondunn.com](mailto:ksmith@gibsondunn.com)

[Jesse A. Cripps](#)  
+1 213.229.7792  
[jcripps@gibsondunn.com](mailto:jcripps@gibsondunn.com)

### Related Practice: Litigation

[Theodore J. Boutrous, Jr.](#)  
+1 213.229.7804  
[tboutrous@gibsondunn.com](mailto:tboutrous@gibsondunn.com)

[Theane Evangelis](#)  
+1 213.229.7726  
[tevangelis@gibsondunn.com](mailto:tevangelis@gibsondunn.com)

*This alert was prepared by associates Daniel R. Adler, Ryan Azad, and Matt Aidan Getz.*

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