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Appellate Reports

ATTORNEY FEE DISPUTES AND DECLARATORY RELIEF; ALSO, DO CONTRACTS THAT SPECIFY THE ARBITRATION FORUM AS JAMS UNMISTAKENLY DELEGATE THE RIGHT TO DETERMINE THE ENFORCEABILITY OF THE ARBITRATION CLAUSE?

Attorney fee disputes; Availability of declaratory relief to resolve disputes with client and former counsel: *Jacobs v. Papez* (2026) _ Cal.App.5th __ (Third District)

Clients retained attorney Papez to represent them on a contingency fee basis, then terminated him and retained attorney Jacobs, who litigated the case to a settlement. Jacobs sued the clients and Papez for declaratory relief, seeking a declaration of the parties' rights to the settlement proceeds. Papez moved to dismiss, arguing that the trial court lacked jurisdiction to hear the case because Jacobs was required to first establish the existence, amount, and enforceability of his lien in an independent action against the clients before he could seek an adjudication of Papez's rights. The trial court granted the motion. Reversed.

An attorney's lien is only enforceable after the attorney adjudicates the validity and amount of the lien. If any party objects, this adjudication cannot occur in the underlying action in which the attorney is or was representing the client. Here, Jacobs's declaratory-relief claim was independent of the clients' claim against the defendant tortfeasor.

While Jacobs could not have sued Papez independently to resolve his lien rights without suing the clients, he did not do that here; he sued Papez and the clients. With the clients included in the suit, the trial court could resolve the validity and amount of Jacobs's attorney lien claim against both the clients and Papez.

Arbitration; Agreement that providing that JAMS would administer the arbitration “unmistakably” delegated the right to determine the enforceability of the arbitration clause to the arbitrator, given JAMS rules: *Sandler v. Modernizing Medicine, Inc.* (9th Cir. 2026) _ F.4th __.

The employment contract between Plaintiff Kara Sandler and her employer Defendant Modernizing Medicine (ModMed) specifies that any employment-related disputes “shall be subject to binding arbitration under the Federal Arbitration Act in conformity with the procedures of the California Arbitration Act.” The contract also states that the arbitration shall be administered by JAMS, whose rules in turn say that an

arbitrator must resolve questions of whether the contract itself (including the agreement to arbitrate) is valid and enforceable.

Sandler sued ModMed in federal court for age discrimination. ModMed moved to compel arbitration. Sandler opposed, contending that the arbitration agreement was unconscionable.

The district court agreed with Sandler and denied ModMed's motion. The district court acknowledged that the arbitration agreement, which incorporated the JAMS rules, delegated the question of the agreement's validity to an arbitrator to decide. But the district court, relying on California state court decisions, ruled that, where (as here) “a contract includes a severability clause” permitting a “court or other body of competent jurisdiction” to “excise an unconscionable provision,” the delegation clause did not constitute a clear and unmistakable delegation and thus could not be enforced. Reversed.

Who gets to decide the arbitration agreement's validity – an arbitrator or a court – depends on whether there is “clear and unmistakable” evidence that the parties agreed to delegate the validity question to the arbitrator. That standard is met here. The parties clearly and unmistakably agreed to have the arbitrator resolve any challenge to the validity of the arbitration agreement by incorporating the JAMS rules, which delegate the question of the agreement's validity to the arbitrator. That incorporation evinces a “clear and unmistakable” intent to delegate.

The clear and unmistakable nature of the delegation is not negated by the presence of a severability clause. Many contracts contain a generic severability clause that authorizes a court or other body of competent jurisdiction to sever provisions that are deemed unconscionable or otherwise unenforceable. Such a severability clause does not conflict with the clear and unmistakable delegation to an arbitrator to resolve questions of the arbitration agreement's validity. Nor does the clause render the delegation ambiguous. The reference to a “court” in a severability clause does not mean that the parties did not agree to have an arbitrator decide questions about

an agreement's validity; all it means is that, in the event that a court were to interpret the contract, severance would be permitted. Simply put, the severability clause and the delegation clause are not at odds; both can be given effect.

Arbitration; Agreement that provided that JAMS would administer the arbitration did not “unmistakably” delegate the right to determine the enforceability of the arbitration clause to the arbitrator, given JAMS rules. *Wright v. WellQuest Elk Grove, LLC* (2026) _ Cal.App.5th __ (Third District)

Kathleen Charles suffered from dementia. Her family moved her into the defendant's memory care wing. They advised the staff that Kathleen was a “wanderer” who needed close monitoring, or she would leave the facility. Three days after her admission, Kathleen was found unresponsive, sitting in a courtyard in direct sun on a 102-degree day. Her internal temperature was about 105 degrees. She was in a coma and died four days later. Her family sued. The trial court denied the motion, specifically rejecting the contention that the arbitration agreement, which stated that “arbitration shall be administered by the Judicial Arbitration and Mediation Services (JAMS)” unmistakably delegated the power to determine the enforceability of the arbitration agreement to the arbitrator. Affirmed.

Here, the language of the agreement is silent as to the issues of interpretation, enforceability, and unconscionability of the agreement. In addition, the provision stating that JAMS shall administer the arbitration makes no reference to the applicable rules and procedures, nor does there appear to be an internet link to the rules, an attached copy of the rules, or any other indication that the rules were available to the parties prior to signing the arbitration agreement. Under these circumstances, we cannot find that language reflects the parties' clear and unmistakable intent to delegate all issues of arbitrability to an arbitrator. ☞

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