



MICHAEL R. DILIBERTO, ESQ.



Back In Time

An employer and its employee signed an agreement to submit all disputes to arbitration. Does the agreement apply to disputes that occurred before the arbitration agreement was signed? The answer is yes, according to *Salgado v. Carrows Restaurants, Inc.* (Cal. Ct. App., Mar. 25, 2019, No. B285756) 2019 WL 1323988.

Salgado sued her employer for employment discrimination. Fifteen days later, she signed an arbitration agreement with her employer. Salgado later amended her complaint to include Carrows, which moved to compel arbitration. Salgado opposed, claiming her lawsuit was filed before she signed the arbitration agreement, and the agreement is not retroactive.

The agreement provided in relevant part, “The Company and I agree and acknowledge that we will utilize binding arbitration as the sole and exclusive means to resolve all disputes which [1] *may arise* out of *or* [2] be related in any way to my application for employment and/or employment” (Emphasis added.) The trial court denied the motion and ruled, “The language of the agreement suggest[s] that it applies to future disputes not ones that have already resulted in a formal lawsuit.”

Carrows appealed and argued that the “may arise” language in the agreement is followed by the second phrase, “*or* be related in any way to my application for employment and/or employment.” Carrows contends the “use of the word ‘or’ means the preceding terms ‘may arise’ are not exclusive or controlling. So long as [Salgado’s] employment dispute is the type of claim that is ‘related in any way to [her] employment,’ it falls within the terms of the Agreement.”

The court of appeal agreed, and noted that Salgado focused only on one phrase in the arbitration agreement. But the word “or” shows that there is an alternative. Each phrase must be considered. The second phrase following “or” broadly applies to “all disputes” related “in any way” to employment. This language is “clear and explicit.” Also, a second provision in the agreement provided that “any claim, dispute, and/or controversy” between the parties would be determined exclusively by binding arbitration.

The court of appeal reversed the order denying the motion to compel arbitration. The matter was remanded to the trial court to determine whether Carrows knew or should have known Salgado was represented by counsel when she signed the arbitration agreement. Salgado claimed that she was “confronted” at work and “forced” to sign the agreement without advice of counsel, indicating unconscionability. If so, the trial court will decide whether the arbitration agreement is enforceable.