

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 11/19/13

DEPT. 55

HONORABLE Malcolm Mackey

JUDGE

E. VERNER

DEPUTY CLERK

HONORABLE #6

JUDGE PRO TEM

K.A. LOGAN, CSR#12608 PRO TEMPORE

ELECTRONIC RECORDING MONITOR

M. KINNEY, CA

Deputy Sheriff

Reporter

8:31 am

BS143076

Plaintiff JONATHAN W. BIRDT (X)

Counsel

ANTHONY LOMBARD-KNIGHT, ET AL

Defendant SCOTT A. MEEHAN (X)

Counsel

VS

RAINSTROM PICTURES INC

**NATURE OF PROCEEDINGS:**

MOTION OF PETITIONERS ANTHONY LOMBARD-KNIGHT AND JAKOB KINDE FOR SUMMARY JUDGMENT;

RESPONDENTS RAINSTROM PICTURES, INC.'S MOTION FOR SUMMARY JUDGMENT;

Matter comes on calendar for Petitioners' Motion for Summary Judgment filed July 15, 2013. Opposition filed November 5, 2013. Reply filed November 12, 2013 and; Respondents' Motion for Summary Judgment filed October 9, 2013. Opposition filed October 24, 2013. Reply filed November 13, 2013.

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

Motions for Summary Judgment are argued and ruled upon as fully reflected in the notes of the court reporter and incorporated by reference herein. The Court's ruling, in brief, as follows:

Plaintiffs Anthony Lombard-Knight and Jakob Kinde's Motion for Summary Judgment is denied. Respondents' Motion for Summary Judgment is granted.

As for plaintiffs' ground that service was not in compliance with the Hague Convention, the Court concludes, as an issue of first impression in California, that service in compliance with

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arbitration law suffices.

Importantly, if applicable state law does not require transmittal of the subject documents, then the Hague Convention is not implicated (Yamaha Motor Co. Inc., v. Sup. Ct. (2009) 174 Cal.App.4th 264, 270; see also, Code of Civil Procedure Section 413.10(c)).

As a matter of law, disputes about service would be immaterial (Shively v. Dye Creek Cattle Co. (1994) 29 Cal.App.4th 1620, 1627; Saldana v. Globe-Weis Systems Co. (1991) 233 Cal.App.3d 1505, 1518; Riverside County Cmty. Facilities Dist. v. Bainbridge 17(1999) 77 Cal. App.4th 644, 653).

The arbitration award (see Scott Meehan decl., ex 3), is not legitimately modifiable, including to the effect that evidence supports the finding that plaintiffs were signatories to the arbitration agreements, and that the signatory corporation did not exist, even assuming that plaintiffs were misled to believe the corporation existed and did not intend to sign as individuals.

Unless a petition or response seeking to correct or vacate an arbitration award was filed properly based upon valid grounds, or the proceeding is dismissed, courts are required to enter judgment in conformity with the award (Valsan Partners Ltd. Partnership v. Calcor Space Facility (1994) 25 Cal.App.4th 809, 818).

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Only extrinsic fraud which denies a party a fair hearing may serve as a basis for vacating an award (Comerica Bank v. Howsam (2012) 208 Cal.App.4th 790, 825).

It is not the presence or absence of a signature which is depositive; it is the presence or absence of evidence of an agreement to arbitrate which matters. (Banner Entertainment, Inc. v. Sup.Ct. (1998) 62 Cal. App.4th 348, 361).

Plaintiffs failed to file a timely petition that is cognizable.

Petitions to vacate or responses to petitions to confirm arbitration awards must be filed within 100 days from the date of service of the award (Eternity Investments, Inc. v. Brown (2007) 151 Cal. App.4th 739, 745).

A trial court is required to confirm an arbitration award where no timely petition or response to vacate or correct it was filed, subject to any relief under Code of Civil Procedure Section 473 or equitable relief based on extrinsic fraud or mistake (Eternity Investments, Inc. v. Brown (2007) 151 Cal.App. 4th 739, 746).

The Court denies plaintiffs' opposing request for a continuance, it finding that discovery would not be essential in light of immaterial issues raised, and

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that plaintiffs' have had sufficient time in taking depositions and obtaining discovery orders.

The Court notes that the parties' mutual use of the summary judgment motions to address petitions regarding arbitration awards, is highly unusual, but both have invited the process.

"By expressly consenting to an erroneous procedure an appellant acquiesces in it and thereby loses the right to attack the error on appeal." (Stebbins v. White (1987) 190 Cal.App.3d 769, 782).

Prevailing party to give notice and prepare an appropriate Judgment.

Case Management Conference is placed off calendar, as moot.

The Court finds that there are no jury fees on deposit in this action

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