



National Conference of Personal Managers, Inc.

The Nation's Oldest Trade Association Committed to the Advancement of Personal Managers and Their Clients
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May 25, 2021

Chief Justice Tani Cantil-Sakauve
And the Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Bacall v. Shumay, S269407/B302787

Dear Chief Justice and Associates,

Pursuant to Rule 8.500(g), National Conference of Personal Managers Inc. (NCOPM), the nation's oldest trade association committed to the advancement of personal managers and their clients, respectfully request that this Court grant Petitioners' petition in the matter of *Bacall v. Shumway (Bacall)*.

Speaking for our members nationwide and the thousands of talent agents, personal managers, casting directors, producers, and the other entertainment industry professionals that NCOPM interacts with daily, we have grave concerns about how this case would negatively impact our industry.

THE ISSUE AT BAR

NCOPM recognizes that this case began not in a courtroom, but as an arbitration between the parties, and recognizes "the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law." *Moncharsh v. Heily Blasi*, 3 Cal.4th 1 (1992).

Among those exceptions: if the Arbitrator exceeds his authority by creating and enforcing statutory prohibitions that do not exist.

In agreeing to arbitrate a statutory claim, a party "does not forego the substantive rights afforded by statute but only submits to their resolution in an arbitral, rather than a judicial, forum." *Armendariz v Foundation Health*, 24 Cal.4th 83, 99-100 citing *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 U.S. 614, 628.

“[A]n agreement to arbitrate a statutory claim implicitly incorporates ‘the substantive and remedial provisions of the statute’ so that parties to the arbitration would be able to vindicate their “statutory cause of action in the arbitral forum.” *Broughton v. Cigna Healthplans*, 21 Cal.4th 1066, 1087.

If, as stated in *Armendariz*, (at 101, quoting *Broughton* qt 1087), “[P]arties agreeing to arbitrate statutory claims must be deemed to ‘consent to abide by the substantive and remedial provisions of [a] statute,” the arbitrator must stay within that structure as well. “Otherwise, a party would not be able to fully ‘vindicate [his or her] statutory cause of action in the arbitral forum.’” *Id.*

The statutory claim in this case is whether a personal manager “had represented himself as a lawyer and provided legal services to [a screenwriter] despite not being authorized to practice law. *Bacall* at 3.

The arbitrator “concluded that because Shumway was providing unlicensed legal services under the agreements, the contract between the parties was properly ended, for good and valid reason.” *Id.*

The arbitrator defined unlicensed activities as, “corresponding with attorneys about a contract, redlining agreements, and making comments on proposed contracts.” *Id.*

The Petitioners did “contend the award violates their statutory rights” by noting that this work was done under the umbrella of Labor Code 1700.44(d) of the Talent Agencies Act (“TAA”), which allows unlicensed representatives to engage in the negotiation of an employment contract for artists in conjunction with, and at the request of, a licensed talent agency.” *Id.* at 10.

That claim was denied, with *Bacall* finding that while there was no evidence showing the license had ever requested that help.

As this was a multi-year relationship where there were many contracts negotiated by the team of Shumway and CAA, Bacall’s talent agency, it is illogical, if not absurd, to conclude that CAA did not invite the collaboration.

The more relevant issue is “corresponding with attorneys about a contract, redlining agreements, and making comments on proposed contracts” a defined activity of an attorney, but not one statutorily reserved for licensees, which would mean the Arbitrator exceeded his authority by prohibiting a layperson from engaging in a legal activity, or, as the Arbitrator ruled, activities that become unlawful when done by anyone but licensed attorneys.

The *Bacall* decision is in conflict with Labor Code § 1700.44 (d). The question is no longer, “Can only licensed talent agents negotiate an employment contract for artists,” but now, “Can licensed agents negotiate an employment contract?”

Not only are talent representatives invested in knowing the answer, if *Bacall* remains the abiding holding, but then anyone who enters into contracts – meaning everyone who does business in California – can be affected by this enforcement.

DISCUSSION

The term contract, as defined by Law.com, is:

“an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. Since the law of contracts is at the heart of most business dealings, it is one of the three or four most significant areas of legal concern and can involve variations on circumstances and complexities.

“The existence of a contract requires finding the following factual elements: a) an offer; b) an acceptance of that offer which results in a meeting of the minds; c) a promise to perform; d) a valuable consideration (which can be a promise or payment in some form); e) a time or event when performance must be made; f) terms and conditions for performance, including fulfilling promises; g) performance, if the contract is "unilateral". A unilateral contract is one in which there is a promise to pay or give other consideration in return for actual performance.

“A bilateral contract is one in which a promise is exchanged for a promise. (I promise to fix your car by Thursday, and you promise to pay \$500 on Thursday.)”

This document, if accepted by the Court and part of the legal record, will be preserved and over time may be read by tens of thousands of people. Odds are none of them will have hired counsel to negotiate the last time they rented a car.

Every transaction that involves an exchange of benefits is a contract. Following *Bacall*, as the only people with the lawful authority to negotiate and/or change the terms of a contract is a licensed attorney. All procurement officers must now have their law licenses. Anyone who rents cars – “Yes, I can give you a premium car for the midsize price” – or apartments – “We will paint and replace the kitchen appliances if you sign a two-year lease” – must now have their law licenses.

In the climactic scene of *THE MIRACLE ON 34TH STREET*, after the Post Office Department, a branch of the Federal Government, delivered thousands of letters to Kris Kringle during his trial, recognizing him as the one and only Santa Claus, the Judge ruled that, “Since the United States Government accepts that this man is Santa Claus, this Court will not dispute it.”

While that case may have been fictional, it mirrors the instant circumstance.

The Labor Commission, has for the last fifty years, affirmed in their rulings – <https://www.dir.ca.gov/dlse/DLSE-TACs.htm> – that just as Labor Code § 1700.4 (a) defines them, licensed talent agents may procure employment for artists. Procuring that employment for actors, writers, directors, musicians, comedians, cinematographers and all the others which § 1700.4 (b) defines as artists in almost every instance requires the execution of a contract. “The Labor Commissioner has long held that “procurement” includes the process of negotiating an agreement for an artist’s services.” *Danielewski v. Agon*, TAC 41-03, pgs. 15-16, quoting *Pryor v. Franklin*, TAC 17 MP, 114 (1982).

If the CA Labor Commission, a branch of the State Government, recognizes talent agents have the right to negotiate contracts, this Court should, instead of letting *Bacall* end that practice, consider if it should affirm it. “The Labor Commissioner’s views are entitled to substantial weight.” *Marathon Supra* at 988.

Relatedly, the Labor Commissioner has repeatedly ruled that without the TAA having a statutory exemption for attorneys, licensed attorneys can only procure if they also have a talent agency license (see *Solis v. Blancarte*, TAC-27089 (2013), *Doughty v. Hess*, TAC 39547 (2017)).

In *Jewel v. Vainshtein*, TAC 02-99, the songwriter’s personal manager partnering on contracts with her transactional attorney did not make either’s actions lawful:

“An attorney is not specified in 1700.44 (d), or for that matter anywhere else within the Act that could be construed to extend the exemption to licensed California attorneys.” ... “There may be considerable opposition that could argue an attorney’s license involves far greater protections for an artist/client than a talent agency license.

“However, we cannot rewrite the statute.” *Id.*, pgs. 24-25.

If *Bacall* stays law, neither attorneys nor agents lawfully able to provide and negotiate an artist’s contract. Moving forward, only lawbreakers will be engaging in that activity. Just like the procurement execs, the car brokers and the kid buying a Hershey’s Kiss.

It will be lawbreaking that will be almost entirely ignored, except by those who though not damaged by that action, will see the restriction as an opportunity to avoid paying their otherwise-owed obligation, which seems to be the sole motivation of Mr. Bacall.

CONCLUSION

Should this Court, after full consideration of the facts and law, not grant review or uphold the Appellate ruling, there will be a paralyzing impact on commerce in general. Therefore, it is only sensical to give this matter further reflection by accepting Petitioner’s petition in the matter of *Bacall v. Shumway* (*Bacall*).

Sincerely,

Clinton Ford Billups Jr.

Clinton Ford Billups Jr.
NCOPM National President

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is P.O. Box 50008, Henderson, NV 89016-0008.

On May 25, 2021, I served the foregoing document described as: AMICUS LETTER on the interested parties in this action as follows:

Petitioner/Appellant Jeffrey Shumway's Counsel

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Department 72, Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. May 25, 2021, Henderson, Nevada.

/s/Clinton Ford Billups Jr.
ClintonFord Billups Jr.