

Filed 2/28/17 Porter v. AG Arcadia CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PATRICIA PORTER et al.,

Plaintiffs and Respondents,

v.

AG ARCADIA, LLC et al.,

Defendants and Appellants.

B276183

(Los Angeles County  
Super. Ct. No. BC512207)

APPEAL from an order of the Superior Court of Los Angeles County, Mark A. Borenstein, Judge. Dismissed.

Garcia, Artigliere & Medby, Stephen M. Garcia, David M. Medby; Petrullo and Sabrina Jangda for Defendants and Appellants AG Arcadia, LLC and AG Facilities Operations, LLC.

Moran Law, Lisa Trinh Flint and Zahra Aziz for Plaintiffs and Respondents.

Defendants, AG Arcadia, LLC and AG Facilities Operations, LLC have appealed from an order denying a motion to vacate an arbitration award. On September 9, 2016, plaintiffs filed a motion to dismiss the appeal.

Defendants, AG Arcadia, LLC and AG Facilities Operations, LLC have appealed from an order *denying* a motion to vacate an arbitration award. However, an appeal may be taken from an order *dismissing* a motion to vacate an award. (Code Civ. Proc., § 1294, subd. (b); *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1453-1454.) No appeal may be taken from an order *denying* a motion to vacate an arbitration award. (*Cummings v. Future Nissan* (2005) 128 Cal.App.4th 321, 326-327; *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 30; *Mid-Wilshire Associates v. O'Leary, supra*, 7 Cal.App.4th at pp. 1453-1454; see *Cooper v. Lavelly & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 10, fn. 3.) Because the challenged order denying the motion to vacate the arbitration award is not appealable, the appeal must be dismissed. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 709, disapproved on another point in *People v. Green* (1980) 27 Cal.3d 1, 34-35; *Skaff v. Small Claims Court* (1968) 68 Cal.2d 76, 78.)

The sanctions motion of plaintiffs, Patricia Porter and Linda Solis, is denied. There is insufficient evidence of an intent to delay. Further, there is insufficient evidence the appeal is frivolous. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650; *Franceschi v. Franchise Tax Bd.* (2016) 1 Cal.App.5th 247, 263.) Defendants, AG Arcadia, LLC and AG Facilities Operations, LLC, argue we should treat this appeal as a writ matter. However, this case does not meet the criteria for treating an appeal as a writ petition. (*Morehart v. County of Santa Barbara*

(1994) 7 Cal.4th 725, 744-747; *Olson v. Cory* (1984) 35 Cal.3d 390, 401.) We thus decline to treat this appeal as a writ matter.

The appeal is dismissed without prejudice. All parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL  
REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KIN, J. \*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.