

*Fair v. Bakhtiari (Stonesfair Financial Corp. et al.) (S129220)*

Sometimes people involved in a lawsuit try to resolve their dispute by meeting with a mediator before going to court. Mediation is an informal process that depends on the parties' willingness to "put all their cards on the table" to see if they can reach a compromise. Of course, the parties would not want to do that if they thought that what they said in mediation might be used against them later in court, if the mediation is not successful. And so, the Legislature passed a law making confidential everything that is said or written down for purposes of mediation. If the parties do reach a compromise, however, it may be necessary for their settlement agreement to be brought to court in order to enforce it. Therefore, the law makes exceptions to the rule of confidentiality so that settlement agreements can be "admissible," meaning they can be disclosed in court.

This case involves a business dispute. After two days of mediation the parties and the mediator signed a one-page handwritten memorandum briefly outlining the terms of a settlement. One of these terms said that "any and all disputes" would be subject to arbitration. (Arbitration is another way to resolve a case outside of court, but it is more formal than mediation and the arbitrator makes a decision that the parties have to accept.) At first, the parties told the court they had settled the case. But then disagreements arose, the defendants refused to go through with the settlement, and the plaintiff asked the trial court to send the case to arbitration. That court refused, deciding the settlement memorandum was confidential and therefore could not be enforced.

The Court of Appeal disagreed. It concluded the agreement was not confidential because Evidence Code section 1123(b) makes a signed written settlement agreement admissible if it "provides that it is enforceable or binding or words to that effect." The Court of Appeal reasoned that because arbitration is a way of enforcing a settlement, the agreement in this case included words "to the effect" that it was "enforceable." The Supreme Court will decide whether an arbitration clause qualifies as "words to that effect" under section 1123(b).