

Bird Marella Succeeds in Protecting Client's Constitutional Rights to a Jury Trial by Invalidating Contractual Forum Selection Clauses Designating the Delaware Court of Chancery

Principal Ekwan Rhow and associate Kate Shin are featured in the *Daily Journal* for their successful motion practice in the Los Angeles Superior Court in a dispute against a Delaware corporation, a high-profile network security company.

Bird Marella's client, William West, is a California resident who co-founded the defendant company and served as its executive officer until his termination. In his lawsuit, Mr. West claims that he was wrongfully terminated and divested of his valuable founder shares and equity. In an attempt to force a bench trial of Mr. West's claims, defendants moved to transfer the case to the Delaware Court of Chancery, a non-jury trial court, under the Delaware choice of forum clauses contained in some of the parties' pertinent agreements. Bird Marella then filed a motion in the Los Angeles Superior Court, arguing that the California court should exercise its jurisdiction because recognizing the choice of forum in the Court of Chancery would inevitably result in a violation of Mr. West's right to a jury trial under the California Constitution.

The Los Angeles County Judge David J. Cowan agreed with Bird Marella and held that a continuing validation of the Delaware choice of forum is contrary to the California law and its policy vigorously protecting its citizens' constitutional right to a jury trial. As the *Daily Journal* noted, this ruling is particularly significant to California business litigators as it casts serious doubts upon the Delaware Chancery Court's ability to fairly adjudicate disputes involving California citizens.

After Judge Cowan's July 2020 ruling, the defendants returned to California court and filed a renewed motion to stay, arguing that since they are no longer seeking to transfer the case to Delaware Chancery Court, the California court should impose a second stay so that the case can proceed to a jury in Delaware Superior Court. Bird Marella successfully opposed the motion.

In October 2020, Judge Cowan ruled that since William West's claim for breach of fiduciary duty cannot be heard in the Delaware Superior Court because it is a claim in equity exclusively belonging to the Delaware Chancery Court under Delaware law, William West's right to a jury trial is still going to be deprived in Delaware. Judge Cowan declared William West is entitled to have all of his claims – both legal and equitable claims – heard by a California jury.

A significant victory for California business litigants, these rulings unequivocally preserved California citizens' constitutional right to a jury trial notwithstanding the mandatory forum selection clauses designating Delaware Chancery Court.

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