

# Daily Journal

## LA judge rules state's litigants can't be forced into Delaware Chancery Court

The move to a court that does not hold jury trials violated the plaintiff's rights under the California Constitution, wrote Los Angeles Superior Court Judge David Cowan.



Los Angeles County Judge David J. Cowan

For years, California business attorneys have attempted to free their clients from litigating in Delaware courts. On Wednesday, a Los Angeles-based firm succeeded.

Los Angeles County Judge David J. Cowan ruled that under the state constitution, a California entrepreneur could not be forced to pursue a \$20 million dispute with a former employer in a Delaware state court that won't allow him a jury trial.

Cowan's ruling lifted a stay imposed on a California case in 2017 by Judge Dalila C. Lyons. *West v. Access Control Related Enterprises LLC et al.*, BC642062 (LA Super. Ct., filed Nov. 28, 2016).

The plaintiff is William West, who in 2012 co-founded the network security company he is now suing, referred to as ACRE in court documents. Hoping to get the funding to grow the company more quickly, the next year West and his partner agreed to sell a majority stake and cede control of the company's board to LLR Equity Partners, a private equity firm headquartered in Philadelphia.

West claimed he was led to believe the company would pursue a long-term growth strategy for ACRE. Instead, he contends, by 2015 LLR had begun to load ACRE with debt as a means of extracting profit. When he complained and suggested an alternate strategy, West alleged, he was forced out, threatened with litigation and deprived of \$20 million in founder shares and equity.

West then sued in Los Angeles County Superior Court. LLR argued West was lawfully terminated for improperly attempting to buy out a subsidiary of ACRE. It also cited agreements West had signed, including submitting to jurisdiction of Delaware courts.

Emails and phone calls to LLR and the attorneys listed as counsel on the court's website were not returned by press time.

West is represented by principal Ekwan E. Rhow and associate Kate S. Shin with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow PC. According to a motion to lift the stay filed in June in Los Angeles Court, their client did pursue litigation in Delaware Superior Court. But LLR filed a successful motion to dismiss West's demand for a jury trial and transfer the matter to the Delaware Court of Chancery, which does not use juries.

The move to a court that does not hold jury trials violated West's rights under the California Constitution, they wrote.

"This result should not be condoned by this court and is expressly unconstitutional pursuant to the holding in *Grafton Partners v. Superior Court*, 36 Cal. 4th 944 (2005)," they argued. "Grafton and its progeny expressly held that pre-dispute jury waivers and related forum selection clauses that substantially diminish constitutional rights of California residents are illegal."

They also wrote the management team and companies involved have sufficient connection to California that the dispute should be tried in a California court. Though ACRE is registered in Delaware, it is headquartered in Long Beach. Two of its three top managers at the time of the dispute, including West, are California residents.

Judge Cowan agreed. Referencing the California Supreme Court's ruling in *Grafton*, he wrote that LLR had not shown the agreement met any of the "six possible ways to waive the right to a jury" permitted under the California Constitution.

"Both the agreement to waive a jury and the filing of any such agreement must occur subsequent to the commencement of the lawsuit," Cowan wrote.

Cowan went on to reject arguments that he was bound by Lyons' earlier stay or that West's motion to lift was untimely. Rather, he said, Lyons ruled properly at the time given that West was seeking a jury trial in Delaware. Nor, he wrote, was he seeking to reconsider Delaware Judge Mary M. Johnston's decision to transfer that case to Chancery Court.

"The only issue before this court is whether Judge Johnston's decision, regardless of the merits, violates California public policy by ordering transfer to a court that does not conduct jury trials," Cowan wrote.

"This ruling is impactful in that it calls into question the jurisdiction of the Court of Chancery to hear disputes involving citizens of California in the absence of a jury trial," said Geoffrey G. Grivner, who represented West in Delaware as a principal with Buchanan, Ingersoll & Rooney PC in Wilmington, in an email.

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