

SANTA BARBARA NEWS-PRESS ORDERED TO PAY OVER \$900,000 IN COSTS AND ATTORNEYS FEES TO PRIOR EDITOR...AND THE MATTER TO GO TO APPEAL: THE REAL ISSUE? NOT THE MATTERS THAT WILL BE APPEALED...



INTRODUCTION:

After over two years of intense conflict in a prolonged and multimillion dollar arbitration in which our firm represented him, Jerry Roberts, the former editor of the Santa Barbara News-Press was awarded over nine hundred thousand dollars in attorneys fees and costs against his former employer, the Santa Barbara News-Press, a paper operated by Wendy McCaw, a billionaireess who has become famous (or infamous) in Santa Barbara for engaging in vituperative and high publicity litigation against those she considers to have wronged her...including many of her past employees. With almost unlimited economic resources at her disposal and a penchant for retaining extremely aggressive counsel, Ms. McCaw has been engaged in numerous litigations and hearings but her action involving Jerry Roberts was probably the most high profile and most expensive of all.

To get background on the famous Ms. McCaw, check out this article from [Vanity Fair](#). And to get a detailed account of the judgment and the oncoming appeal, the [blog of Craig Smith](#) is perhaps the best source since the blog is written by an attorney who is intimately familiar with the dynamics of the Santa Barbara legal scene.

Our firm will be working with appellate specialists to represent Jerry Roberts on the appeal thus it is not appropriate for us to discuss the details of the case nor “argue” the issues at bar. Instead, this article will discuss a troubling aspect of the case that perhaps both Ms. McCaw and Jerry Roberts would be able to agree occurred: the tremendous cost and long time period required until judgment...in an employment matter.



ARBITRATION TO GET QUICK AND RELATIVELY INEXPENSIVE RELIEF?

As discussed in our article on [Arbitration](#), a primary purpose in adopting that method of resolving disputes is to achieve efficient and less expensive conclusions. One gives up a jury trial. One gives up strict adherence to California law since arbitrators are given extremely wide latitude in application of the law. One usually gives up depositions and other forms of discovery. One gives up a public trial. One gives up myriad rights in law and motion.

One must accept a private judge who may or may not have the requisite experience in judging that the typical State or Federal judge has and one often gives up a judge who is used to handling obstreperous attorneys and parties.

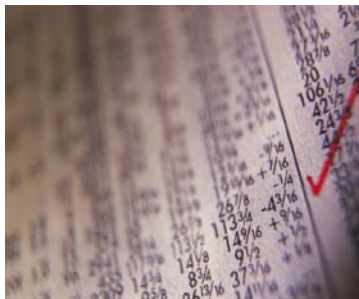
But what one gets is a supposedly fast and fair process that will allow parties without massive resources to engage in litigation against a much better funded adversary. Arbitration can be seen as the “great equalizer” which allows David to take on Goliath since the forum does not normally allow the massive expenditures that a court process necessarily entails. For what one surrenders by going to arbitration instead of court, one gets a practical and affordable method to achieve a judgment.

In employment disputes this need for efficiency and cost savings is even more apparent since one often has an entity that is well funded versus an unemployed individual. The process can only work if it is fair, fast and relatively inexpensive and arbitration is honed to achieve that.

That’s the theory, at least. But here, Jerry faced an adversary who spent, according to her own documents filed, well over two millions of dollars in fees and arbitration costs even *before* the judgment. Half a dozen attorneys, with massive support staff appeared at the Hearings with file cabinets of “evidence” and many other legal workers back at the office supporting the newspaper team. Jerry had two attorneys and a paralegal (Andrine Smith, Seth Schwartz and Kim Ferer.) Depositions went on for weeks, and ultimately the newspaper even refused to pay some of the arbitrator’s fees, forcing the employee to proceed to pay them himself to keep the arbitration progressing.

In the long run, depending on the Appeal results, Jerry still came out ahead with a victory...but the economic strain on him was tremendous, as well as the mental strain of years in arbitration and his desperate need to cover costs and to arrange methods of payment with the experts and attorneys. Because of his charisma and the support of the community and his professional team, he received donations and discounts not always available to a party in an arbitration. He was able to survive the full court press of a much better funded adversary.

But what of the typical employee or party? How could an arbitration erupt into as much expense as expensive litigation? Does this mean that the little guy has no real protection when going against the big guy? Does that mean the big guy will end up in a forum as expensive as court? THAT is the real issue that this case presents though it will not be the issue that goes up on appeal.



COSTS AND ARBITRATION:

It can be argued that Jerry’s case was unique. It was high publicity, the entire community was aroused, and his adversary was a newspaper able to achieve publicity at will and operated by a woman with massive resources, used to litigation and used to spending a great deal of money on legal costs. Usually, parties are restrained by their

own need to watch their budgets and will engage in close cost benefit analysis to limit the costs of an arbitration. Unless emotions become aroused, all the parties normally want an efficient and inexpensive process. Even the better funded adversary usually does not want to waste money in arbitration which is, after all, a forum in which the emotions of a jury is absent.

But when one does encounter someone without such constraints, there are two tools available to limit the damage. First, a good arbitrator can limit the amount of discovery and expense of the proceedings and arguments can be advanced presenting the overwhelming need of a party to limit the costs or face disaster long before the hearing. Second, the underlying agreement or law leading to the arbitration can provide that the prevailing party is to receive attorneys fees and costs incurred, thus ultimately making the other party whole.

Here, that is what happened, of course, and the arbitrator made clear in her judgment that she was aware of the “scorched earth” method of litigation employed by the better funded party. But for most cases, it is likely that the party forced to spend all their resources fighting the better funded adversary will run out of resources long before the hearing.

Thus, somehow arbitrators must be educated better as to the practical reality of the costs of dispute. Somehow, arbitrators must be led to understand that justice costs money, yes...but justice that is too expensive is out of the reach of some parties and thus the entire thrust of arbitration is undermined. See our article on **Buying Justice**.

That said, it is still apparent that as expensive as this matter was, court would have been even more expensive and the simple fact is that a party who wants to spend a great deal of money can do so in arbitration...and even more in court. Thus, ultimately it is the fee shifting provision, requiring payment of attorneys fees to the prevailing party that is the real relief that must be inserted into an agreement before equalization of access to justice can be achieved...and that is true in arbitration proceedings as well as court.

Stay tuned for the results of the appeal...

