

Memorandum

California Supreme Court: Forum Selection Clauses Designating Courts That Conduct Bench Trials Are Not Per Se Unenforceable

July 23, 2025

On July 21, 2025, the California Supreme Court issued a significant decision reversing and remanding a Court of Appeal decision that had held that a trial court had properly declined to enforce forum selection clauses in a company's certificate of incorporation and bylaws designating the Delaware Court of Chancery because they constituted an implied predispute jury trial waiver, in violation of the right to trial by jury under the California Constitution. [*EpicentRx, Inc. v. Superior Court*](#), S282521, 2025 Cal. LEXIS 4499 (Cal. July 21, 2025). The California Supreme Court held that a "forum selection clause is not unenforceable simply because it requires the parties to litigate in a jurisdiction that does not afford civil litigants the same right to trial by jury as litigants in California courts enjoy." The Supreme Court explained that the extent of a civil jury trial right in the selected forum may be relevant to the enforceability of a forum selection clause but that "the impact on a party's jury trial right does not, itself, provide grounds to decline to enforce a forum selection clause."

Background and Procedural History

This litigation arose when a minority shareholder of Delaware biotechnology company EpicentRx, Inc., filed a complaint in California Superior Court asserting claims for breach of contract, fraudulent concealment, promissory fraud, breach of fiduciary duty, and unfair business practices against EpicentRx, its controlling stockholder, and certain individuals. Defendants moved to dismiss on the ground of forum non conveniens, based on forum selection clauses in the company's certificate of incorporation and bylaws, which identified the Delaware Court of Chancery as the sole and exclusive forum for most stockholder lawsuits.¹

The trial court denied defendants' motion to dismiss and the Court of Appeal denied a petition for writ of mandate challenging the trial court's order. Both lower courts held that the forum selection clauses were unenforceable, noting that if plaintiff's claims were litigated in California, plaintiff would have a right to a jury trial, while the Delaware Court of Chancery does not conduct jury trials. Thus, the lower courts concluded that because the forum selection clauses would effectively deprive plaintiff of its jury trial right, similar to a predispute jury trial waiver,

¹ Specifically, the four types of claims required to be brought in Delaware Court of Chancery were: (i) derivative claims; (ii) breach of fiduciary duty claims; (iii) claims under the Delaware General Corporation Law or EpicentRx's corporate documents; and (iv) claims governed by the internal affairs doctrine.

the clauses were unenforceable because they were contrary to California public policy against predispute jury trial waivers. Several defendants petitioned the California Supreme Court for review.

California Courts Do Not Have Unbounded Discretion to Decline to Enforce Otherwise Valid Forum Selection Clauses

The California Supreme Court stated that forum selection clauses typically will be enforced, absent a showing that enforcement of the forum selection clause would be unfair or unreasonable. The Court noted that one exception to this general rule of enforceability is that California courts will refuse to enforce a forum selection clause if to do so would bring about a result contrary to state public policy. The Supreme Court cautioned that “[t]his exception, however, does not give courts unbounded discretion to decline to enforce otherwise valid forum selection clauses” emphasizing that the power to declare a contract void for being in contravention of sound public policy “is a very delicate and undefined power, and . . . should be exercised only in cases free from doubt.” On this point, the Court provided guidance stating that before a court determines that a transaction is void, “it should be satisfied that the advantage to accrue to the public for so holding is certain and substantial, not theoretical or problematical.” The Court further stated that the “burden is on the opposing party to show that its enforcement would be in violation of the settled public policy of this state[.]”

The Court went on to point out that courts may properly consider whether enforcement of a forum selection clause would violate public policy, noting California’s strong public policy in favor of the jury trial right, based on the California Constitution. However, the Court cautioned that California’s strong public policy “does not speak to the availability of the jury trial right in other forums.” The Court stated that sophisticated parties engaging in arms-length commercial transactions may depend on the selection of a forum for dispute resolution, such as the courts of a foreign country, which do not offer a jury trial right. The Court pointed out refusing to enforce such a forum selection clause could leave California businesses deprived of transactions with foreign businesses and make foreign businesses reluctant to transact with California businesses.

The Court further explained that the “California Constitution and related statutory provisions do not reflect any public policy regarding the right to a civil jury trial in other forums.” The Court explicitly rejected plaintiff’s invitation to treat a forum selection clause as equivalent to a predispute jury trial waiver. The Court explained that the “former reflects *where* a dispute will be litigated, while the latter reflects *how* it will be litigated.” The Court stated that “[a]lthough the practical effect of the forum selection clause may be that plaintiff’s claims are not heard by a jury, California public policy does not require invalidation of the forum selection clause in all circumstances for that reason alone.”

The Supreme Court noted that forum selection clauses “serve vital commercial purposes” and that their enforcement “in specific circumstances is especially important.” Among the reasons the Court offered in favor of enforcement were protecting parties’ legitimate expectations, furthering the vital interests of the justice system, and the fact that the clause may have figured centrally in the parties’ negotiations, affected monetary and other contractual terms, and been “a critical factor” in their agreement to do business together in the first place.

The Court remanded, noting that the Court of Appeal had found the lack of a right to a jury trial in the Delaware Court of Chancery dispositive and had not considered plaintiff's other arguments against enforcement, such as the forum selection clause's manner of adoption as part of the corporation's certificate of incorporation and bylaws. Although plaintiff raised it, the Court declined to consider this issue in the first instance.

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