

[Lower Court Properly Reinstates Arbitration Award Granting Fees](#)

Posted on April 26, 2011 by [David J. McMahon](#)

In [Lee v. Kwong](#), 2011 DJDAR 4599 (2011), a panel from the [California Fifth District Court of Appeal](#) affirmed the lower court's decision to reinstate an arbitrator's decision, granting a fee award.

Audrie Lee ("Lee") entered into an agreement for the purchase of a restaurant business with David and Alice Kwong ("Kwong"). The agreement included an arbitration clause as well as an attorney fee provision. That provision provided for an award of fees in favor of a prevailing party in any dispute arising from the agreement.

The parties agreed to judicial arbitration when the dispute arose. The sale of the business failed to close in a timely manner. The arbitrator denied Lee's claims and awarded attorney fees to the Kwongs. Lee requested a trial *de novo*, but later filed a request for dismissal, which the clerk promptly entered as requested.

The trial court granted the Kwongs' motion to vacate the dismissal filed by Lee. The court entered judgment to the Kwongs and awarded attorney fees pursuant to the parties' agreement. Lee argued that the action of the lower court went too far, and exceeded its jurisdiction by vacating the dismissal and reinstating the award.

The court of appeal affirmed, noting that a plaintiff is allowed to voluntarily dismiss an action **before** the commencement of trial. After entry of a voluntary dismissal, the trial court would not have any power to issue further orders in the case.

However, the court of appeal noted that the phrase "**commencement of trial**" is not restricted to **only** jury or court trials on the merits. The court noted that the term also includes pretrial process and procedures that dispose of litigation. The court of appeal noted that Lee's reliance on the statute was misplaced. The arbitration was effectively a trial on the merits.

For these reasons, the court of appeal ruled that the trial court did not err in vacating the dismissal and affirming the fee award.