



Arbitration Provisions in Contracts: The High Hurdle in Obtaining a Right to Attach Order and Writ of Attachment, Valley Lawyer

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(October 2012)

The remedy of a prejudgment attachment of defendant's assets was created by the California Legislature to ensure that there would be assets to execute upon once a judgment was obtained. Halsted v. Halsted (1946) 72 Cal.App.2d 832, 836. However, merely adding an arbitration provision to a contract or an attorney-client fee retainer agreement exponentially increases the difficulty of obtaining a right to attach order and writ of attachment against a defendant.

The advantages of arbitration versus litigation may still weigh in favor of retaining arbitration clauses in contracts. Still, practitioners should be aware of the consequences of placing arbitration provisions in contracts if they wish to seek a pre judgment right to attach order and writ of attachment. Further, anytime a right to attach order and writ of attachment is sought an attorney should immediately review the contract to determine if it contains an arbitration provision, which triggers a heightened threshold to obtain the writ.