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Appeals court sanctions Arent Fox, Fisher Phillips \$40K

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The 4th District Court of Appeal sanctioned Arent Fox LLP and Fisher Phillips LLP \$40,000, ruling the firms acted in bad faith by seeking to compel arbitration in a \$100 million employment lawsuit involving a luxury car dealer.

In its Thursday ruling, the appellate panel affirmed a trial court in denying compelled arbitration of a lawsuit against Fletcher Jones, owner of an Orange County Mercedes-Benz dealership represented by Arent Fox and Fisher Phillips. The lawsuit was filed by Greenberg Gross LLP on behalf of Garth Blumenthal, a former partner of the dealership who said he was wrongfully terminated by Jones.

The appellate court said Arent Fox, led by managing partner Aaron Jacoby, filed a “frivolous appeal” and conducted “forum shopping” by filing for arbitration nine months into the case. It also noted similar conduct of stalling litigation by defendants in two separate previous cases. *Lewis v. Fletcher*

Jones Motor Cars Inc. (2012) 205 Cal. App.4th 436, 449 (Fletcher Jones). *Adolph v. Coastal Auto Sales Inc.* (2010) 184 Cal.App.4th 1443, 1452 (Adolph).

“In any event, the specifics of the parties’ arbitration clause here show Jones’s choice to litigate the matter was inconsistent with an intent to arbitrate and ultimately supported the trial court’s bad faith finding,” ruled the appellate panel consisting of Justices Thomas J. Goethals, Richard M. Aronson and Presiding Justice Kathleen E. O’Leary.

Orange County Superior Court Judge Robert J. Moss presided over the case on the trial level.

“We are pleased that the appellate court has once again rejected the deliberate stalling tactics of Fletcher Jones,” Alan A. Greenberg, the Greenberg Gross managing partner and lead attorney for Blumenthal, said in a statement. “We look forward to taking this extremely important case to trial.”

Jacoby didn’t respond to a request for comment. *Blumenthal v. Fletcher*, G057864 (4th Dist., May 27, 2020).

Fletcher’s counsel argued they moved to compel arbitration because Greenberg Gross’ complaint morphed into an employment claim. But the panel disagreed, saying none of the additions in the second amended complaint changed the gravamen of the lawsuit.

“The fact that Jones requested arbitration only after its demurrers failed to remove any of Blumenthal’s causes of action, or indeed achieve any material change to the pleadings, creates a strong odor of forum shopping. We are loathe to condone such a subversion of the judicial process and of the public policy in favor of arbitration,” the panel ruled.

Blumenthal said Jones fired him after he helped build the company, which is now considered the largest Mercedes-Benz dealership in the United States.

As part of a separate arbitration filed by Jones against Blumenthal over ownership, an arbitrator in 2019 rejected Jones’ claims and ordered him to more than \$500,000 in attorney fees.

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