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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

METIS DEVELOPMENT LLC et al., **Cross-complainants and Respondents,** **v.** **CORTLAND BOHACEK et al.,** **Cross-defendants and Appellants.**	**A129650** **(San Mateo County Super. Ct. No. CIV 491482)**

Appellants Cortland Bohacek and Puja Bohacek, in her capacity as trustee of the 2000 Bohacek Family Trust, appeal from an order denying their petition to compel arbitration of claims alleged against them in a cross-complaint filed by respondents. They contend: (1) the order must be reversed due to the court's refusal to issue a statement of decision; (2) the court erred in finding that they waived their right to arbitrate; and (3) the court erred in denying their petition on the ground that there would be a possibility of conflicting rulings on common questions of law or fact.

In the published portion of our opinion, we conclude that the trial court erred in failing to issue a statement of decision under Code of Civil Procedure section 1291. In the nonpublished portion of our opinion, we conclude that the waiver finding was erroneous and the appellate record does not support the denial of arbitration under Code

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts II.B, II.C., and II.D.

of Civil Procedure section 1281.2, subdivision (c). We will therefore reverse the order and remand for further consideration consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY[1]

MPC 823 LLC (MPC 823) is a limited liability company that was formed to pursue the development of residential property in Menlo Park. Its members are appellant Cortland Bohacek and respondent Metis Development LLC (Metis). The members of Metis are respondents Richard Wellman (Wellman) and Carol Bennett (Bennett).

A. *The MPC 823 Operating Agreement and Arbitration Provision*

Cortland Bohacek and Metis, by its members Wellman and Bennett, entered into the MPC 823 Operating Agreement effective January 1, 2008. Section 2 of the Operating Agreement required Metis to make specified capital contributions, and other provisions of the agreement spelled out additional rights and duties.

Section 8.8 of the Operating Agreement provided for the arbitration of disputes, reading in part as follows: "Any controversy or claim arising out of or relating to this Agreement, the Company or the Members' rights or duties shall be settled by binding arbitration in San Mateo County, California. Such arbitration shall be conducted by JAMS/Endispute or any other judicial arbitration service agreed to by the parties, and judgment upon the award may be entered in any court of competent jurisdiction." A First Amended and Restated Operating Agreement retained the arbitration provision.

B. *MPC 823's Default and CBT's Complaint*

In July 2008, MPC 823 obtained a construction loan from Vineyard Bank, N.A. (Vineyard) for the development of certain real property. The loan was guaranteed by appellant Cortland Bohacek, the 2000 Bohacek Family Trust, and respondents Metis, Wellman, and Bennett. MPC 823 allegedly defaulted on the loan.

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[1] Almost none of the assertions of fact in the respondents' brief are supported by citations to the appellate record. We disregard those assertions that lack record citations. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Goodstein v. Cedars-Sinai Med. Center* (1998) 66 Cal.App.4th 1257, 1260 & fn. 1.)

In January 2010, California Bank & Trust (CBT), as the successor to Vineyard's rights under the loan, filed a lawsuit against MPC 823, its members Cortland Bohacek and Metis, the members of Metis (Wellman and Bennett), and Cortland Bohacek and Puja Bohacek in their capacities as trustees of the 2000 Bohacek Family Trust. CBT's complaint sought judicial foreclosure, deficiency judgments, and other relief in regard to the loan on which MPC 823 defaulted.

C. *The Bohaceks' Cross-Complaint Against Metis, Wellman, and Bennett*

On April 14, 2010, appellants Cortland Bohacek and Puja Bohacek, in her capacity as trustee, filed an answer to CBT's complaint along with a cross-complaint seeking indemnity and contribution from respondents Metis, Wellman, and Bennett. The cross-complaint is not in the appellate record.

D. *Respondents' Cross-Complaint Against the Bohaceks and Others*

Also on April 14, 2010, Metis, Wellman and Bennett filed a cross-complaint against Cortland Bohacek, Puja Bohacek in her capacity as trustee, Bohacek Ventures LLC (Bohacek Ventures), and others. This cross-complaint is not in the record either.

On May 14, 2010, Metis, Wellman and Bennett filed a verified first amended cross-complaint against Cortland Bohacek, Puja Bohacek (this time as an individual and in her capacity as trustee), Bohacek Ventures, CBT (as successor to Vineyard), CBT employees (Natalie Taaffe, Sandy Swenson, and Maria Ybarra, for actions taken while Vineyard employees), bookkeeper Karen Polati, and Shade Construction & Engineering, Inc. For convenience, except where necessary to distinguish between the original and amended pleading, we will refer to the amended cross-complaint as "respondents' cross-complaint."

In essence, respondents' cross-complaint alleged that respondents were fraudulently induced to invest in MPC 823 and to become guarantors of its obligations under the Vineyard loan. They purported to assert 19 causes of action, for fraud, negligent misrepresentation, constructive fraud, conspiracy, breach of fiduciary duties, accounting, unjust enrichment, injunction, concealment of material facts, breach of contract, violation of Corporations Code sections 25400 and 25500, rescission under

multiple statutes, restitution, conversion, violation of Corporations Code sections 17254 and 17255, equitable indemnity, comparative indemnity, and contribution.

E. *Appellants' Case Management Statement*

Appellants filed a case management statement on May 20, 2010, advising the court and respondents that they expected to file, among other things, a petition to compel arbitration.

F. *Appellants' Petition to Compel Arbitration*

On June 18, 2010, appellants sought an extension from respondents of the time to answer respondents' cross-complaint. An extension was apparently granted to July 6, 2010, at which time appellants filed their petition to compel arbitration as their first and only response to the cross-complaint.

In their petition, appellants asserted that all of the causes of action in respondents' cross-complaint presented a controversy or claim subject to the arbitration provision in the Operating Agreement. In addition, appellants alleged, Cortland Bohacek and Metis were bound by the arbitration provision as signatories to the Operating Agreement, Puja Bohacek could enforce the arbitration provision because she was alleged to have offered and sold membership interests pursuant to the Operating Agreement, and Wellman and Bennett could be compelled to arbitrate because they asserted claims as members of signatory Metis.

Respondents opposed the petition, filing a joint declaration by Metis, Wellman and Bennett and a memorandum of points and authorities. Respondents argued that the petition should be denied because (1) the Bohaceks waived their right to arbitrate (Code Civ. Proc., § 1281.2, subd. (a)), (2) there were grounds for revocation of the Operating Agreement, and (3) the parties to the arbitration agreement are also parties to a pending court action with a third party arising out of the same series of transactions and there is a

possibility of conflicting rulings on a common issue of law or fact (Code Civ. Proc., § 1281.2, subd. (c)).[2]

G. *Trial Court's Ruling*

By its tentative ruling of August 4, 2010, the trial court indicated its intention to deny the petition to compel arbitration. The tentative ruling advised in relevant part: "Petitioners have engaged in litigation activity which would indicate a waiver of the right to compel arbitration. (See § 1281.2[, subd.] (a); *Sobremonte v. Superior Court* (1998) 61 Cal.App.4th 980, 991.) [¶] Further, Cross-Defendant Karen Polati is neither alleged to be a signatory to the Operating Agreement, nor has given assent to submitting the dispute to arbitration. Accordingly, there is a possibility of conflicting rulings on common issues of law or fact. (§ 1281.2[, subd.] (c).)"

At the hearing on the petition, appellants' counsel requested a statement of decision on the issues set forth in the tentative ruling. The court declined, reasoning that the proceeding was a "law and motion" matter.

After argument by appellants' counsel and respondents' counsel, the attorney for third party Polati asserted that, if the claims against appellants were sent to arbitration, the possibility of inconsistent rulings would be eliminated if the litigation were stayed as to Polati as well as the Bohaceks. Polati's attorney also agreed with appellants' counsel that the claims of CBT in the complaint were separate from those asserted in respondents' cross-complaint and could proceed in court.

At the conclusion of the hearing, the trial court acknowledged the argument as to Polati but stated that "there are other parties as well, who I think present possibilities of conflicting rulings." The court then directed entry of the order in accord with the tentative ruling, modified to omit the reference to the claims against Polati.

A written order filed August 24, 2010, denied the petition to compel arbitration because "[p]etitioners have engaged in litigation activity which would indicate a waiver

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[2] Unless otherwise indicated, all statutory references hereafter are to the Code of Civil Procedure.

of the right to compel arbitration" and "[t]here is a possibility of conflicting rulings on common issues of law or fact."

This appeal followed.[3]

II. DISCUSSION

As mentioned, appellants contend that the court erred in (1) declining to issue a statement of decision, (2) finding that their right to arbitrate had been waived, and (3) denying their petition due to the possibility of inconsistent rulings. Respondents debate these points and contend further that some of the claims in their cross-complaint are not arbitrable, Wellman and Bennett cannot be compelled to arbitrate, and Puja Bohacek cannot enforce the arbitration provision.

A. *Failure to Issue Statement of Decision*

Code of Civil Procedure section 1291 reads: "A statement of decision shall be made by the court, if requested pursuant to Section 632, whenever an order or judgment, except a special order after final judgment, is made that is appealable under this title." Noting that an order denying a petition to compel arbitration is an order "appealable under this title" (§ 1291; see § 1294, subd. (a)), appellants argue that a statement of decision must be issued if requested pursuant to section 632.[4] Under section 632, where the "trial" is concluded within one day, the request must be made before submission of the matter for decision and may be made orally "on the record in the presence of the

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[3] Bohacek Ventures and Puja Bohacek (in her individual capacity) also filed petitions to compel arbitration, which the trial court denied in separate orders. Those orders are the subject of appeal numbers A130456 and A130457.

[4] Section 632 states in pertinent part: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision."

parties," "specify[ing] those controverted issues as to which the party is requesting a statement of decision." (§ 632.) Because the hearing took less than a day, and counsel requested the statement of decision before submission of the matter, appellants urge that the court erred in refusing to issue a statement of decision. (See *Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 127 [failure to issue statement of decision upon request under § 632 is reversible error]; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 268 [tentative decision or memorandum decision does not satisfy requirement of statement of decision].)

We agree. Section 1291 appears in Article 1 of Chapter 5 of Title 9. Title 9 governs arbitration, and Article 1 of Chapter 5 specifically deals with "petitions," including petitions to compel arbitration and petitions to confirm arbitration awards. (See §§ 1290 et seq.) Because section 1291 mandates the issuance of a statement of decision in the part of the Code of Civil Procedure that pertains to petitions to compel arbitration, and the denial of a petition to compel arbitration is an appealable order, the logical inference is that the Legislature intended to require the trial court to issue a statement of decision, upon proper request under section 632, when denying a petition to compel arbitration.

It is true, as respondents point out and the trial court implied, that section 632 has been interpreted to require statements of decision for "trials," not *motions*. (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 294 [references to "trial" in § 632 suggest that a statement of decision is required only "in the event of a trial, as that term is commonly understood"]; see *Lien v. Lucky United Properties Investment, Inc*. (2008) 163 Cal.App.4th 620, 624 [general rule is that a statement of decision is not required for an order on a motion] (*Lien*).) Indeed, section 632 has been held inapplicable even where the motion involved an extensive evidentiary hearing (*People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68, 72 [preliminary injunction]), or the order was appealable (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 [order to pay spousal support and attorney fees]).

We are dealing here, however, with a petition to compel arbitration. Such a petition is heard *in the manner of* a motion, with factual issues determined upon declarations or, if necessary, live testimony. (§ 1290.2; *Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 413-414 (*Rosenthal*).) But a petition to compel arbitration is " ' "in essence a suit in equity to compel specific performance of a contract." ' " (*Rosenthal,* at p. 411.) Unlike most motions, it provides a final determination of certain factual issues – such as whether the right to arbitrate was waived – and results in an appealable order. Moreover, in ruling on the petition when factual matters are in dispute, the court must weigh credibility and the strength of competing evidence. (*Id*. at p. 414.) As such, a hearing on a petition to compel arbitration has attributes of a trial that suggest the need for a statement of decision to enable meaningful appellate review. (See also *Lien*, *supra*, 163 Cal.App.4th at pp. 624-625 [noting an exception to the general rule that statements of decision are not required for motions, where the issues are of sufficient importance and appellate review cannot be accomplished effectively without one].) In addition, of all the cases cited by respondents that hold section 632 inapplicable to motions, not one of them involved a petition to compel arbitration; nor did they involve a specific statute – such as section 1291 – requiring that a statement of decision be issued whenever requested pursuant to section 632.

While section 632 requires a statement of decision only upon "the *trial* of a question of fact by the court" and refers to "the principal controverted issues at *trial*" and "any party appearing at the *trial*," construing section 632 and the term "trial" to permit the issuance of a statement of decision only in the event of a traditional trial would render section 1291 meaningless. The hearing on a petition to compel arbitration is not a trial in the traditional sense; nor is a traditional trial required for any of the appealable orders for which section 1291 requires a statement of decision. (See § 1294.) A strict construction of the term "trial" in section 632 would thus always preclude the issuance of the statement of decision mandated by section 1291. To harmonize section 1291 and section 632, we therefore must conclude that, at least where there is an adjudication of a

question of fact by the court in deciding a petition to compel arbitration, a request for a statement of decision in the *manner* required by section 632 obligates the court to issue one. (See *Painters Dist. Council No. 33 v. Moen* (1982) 128 Cal.App.3d 1032, 1042 [in the context of a petition to confirm an arbitration award, under the earlier language of § 1291 requiring findings of fact and conclusions of law, § 1291 must be read in light of § 632, which requires findings only upon the trial of a question of fact, not where the issue is only one of law].)[5]

As applied here, there is no dispute that appellants complied with section 1291 by requesting a statement of decision "pursuant to Section 632," in the sense that the request was timely and in proper form. Nor do respondents argue in their briefs that appellants' counsel failed to sufficiently identify the controverted issues for the court. Indeed, counsel's reference to the court's tentative ruling appears adequate under these circumstances, and any elaboration would have been futile given the court's denial of the request on the general ground that it was a "law and motion" matter. With the requisites of section 632 and 1291 met, the court was required to issue a statement of decision, specifying the factual and legal basis for its decision as to the principal controverted issues: whether appellants waived their right to arbitrate and whether there was a possibility of conflicting rulings on a common question of law and fact, such that arbitration should be denied.

Although the court refused to prepare a statement of decision, we must next consider whether the court's written order might have nonetheless satisfied the requirements and purposes of a statement of decision. To comply with a request for a statement of decision, a court need only fairly disclose its determinations as to the ultimate facts and material issues in the case. (*Central Valley General Hospital v. Smith*

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[5] A number of cases have held that a statement of decision was not required under section 1291 for the adjudication of a petition to confirm an arbitration award, because no statement of decision was *requested*. (See, e.g., *Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1134-1135; *Stermer v. Modiano Constr. Co*. (1975) 44 Cal.App.3d 264, 271-272.) These cases do not expressly hold, but perhaps imply, that a statement of decision would have been required if requested.

(2008) 162 Cal.App.4th 501, 513.) "When this rule is applied, the term 'ultimate fact' generally refers to a core fact, such as an essential element of a claim. [Citation.] Ultimate facts are distinguished from evidentiary facts and from legal conclusions. [Citations.]" (*Ibid.*)

Here, the court's written order specified that "litigation activity" amounted to a waiver under section 1281.2, subdivision (a), and there was a "possibility of conflicting rulings on a common issue of law or fact" for purposes of section 1281.2, subdivision (c). To deny arbitration due to waiver under section 1281.2, subdivision (a), however, there must be not only "litigation activity," but also prejudice. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1203 (*St. Agnes Medical Center*).) The court made no finding as to prejudice. To deny arbitration due to a possibility of conflicting rulings on common issues under section 1281.2, subdivision (c), there must be not only the possibility of conflicting rulings, but a determination that this possibility should lead to the denial of arbitration, rather than one of the other alternatives set forth in the statute. The court did not explain its factual or legal basis for this decision, or even state that the denial of arbitration was the best of the available alternatives. We also note that, while the tentative ruling had identified the claims against Polati as the basis for the court's finding of a possibility of conflicting rulings, the final written order omitted the reference to Polati and contained no basis for the finding. As we shall see *post*, the brevity of the court's order also makes appellate review difficult. (See *In Re Marriage of Fong*, *supra*, 193 Cal.App.4th at p. 293 ["statement of decision facilitates appellate review by revealing the bases for the trial court's decision"].) Respondents offer no substantial argument to the contrary.[6]

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[6] At oral argument in this appeal, respondents' counsel pointed out that section 1291 requires only an oral statement of decision for matters concluded within a day. On this basis, respondents' counsel argued for the first time that the trial court orally complied with its obligations. Not so. At the hearing, the court declared: "And the only statement [of] decision, Counsel, that you'd be receiving would be *a form of order submitted in the normal course*. I'm not going to write up a state of procedure [sic] with law and motion." (Italics added.) That certainly does not sound like the court was undertaking to issue an

We conclude that the trial court failed to meet its obligation to issue a statement of decision under section 1291. On this basis, given the existence of evidence that could have led to a ruling in appellants' favor, the order denying appellants' petition to compel arbitration could be reversed outright. (See *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 536.) Nonetheless, we will continue our analysis of the issues in this appeal, both to assist the parties and the court upon remand and to provide the foundation for our disposition of appeals from similar rulings by other parties in this case (appeal numbers 130456 and 130457).[7]

B. *Arbitrability*

The parties assume that the requested arbitration of this matter is governed by California arbitration law. Under California law, a court must compel arbitration of claims that fall within the scope of a valid, enforceable agreement to arbitrate, unless a statutory exception applies. (§§ 1281, 1281.2.) There is, of course, a strong public policy favoring arbitration. (See, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 97.)

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oral statement of decision, as respondents now urge. Furthermore, even if we ignored the court's expressed intent and looked to the reasons the court eventually stated on the record for denying the motion – as if it were an oral statement of decision – the court's statement would again be inadequate: the court did not mention waiver or prejudice at all, and the court did not explain that the risk of inconsistent rulings on common questions of law or fact would require denying arbitration, as opposed to other statutory alternatives set forth in section 1281.2, subdivision (c).

[7] We are also mindful that the distinction between ultimate facts, which must be resolved in a statement of decision, and evidentiary facts, which do not, is sometimes a fine one, and whether the court has issued a proper statement of decision can then become a close question. (*Central Valley General Hospital, supra*, 162 Cal.App.4th at p. 527.) Because we proceed *as if* the court had met its obligations under section 1291, and presume that the court made the factual findings necessary to support the judgment and review those implied findings for substantial evidence, our ultimate disposition of this appeal would be reached whether or not we concluded that the court erred under section 1291. In addition, the factual questions of waiver and conflicting issues, when decided upon undisputed evidence of what the parties did and what the pleadings allege, come close to questions of law. In that instance, a statement of decision might not be required, but our review would arguably be de novo. Even if we applied de novo review in this case, the disposition would be the same.

Appellants had the burden of proving the existence of a valid arbitration agreement, and respondents had the burden of proving any fact necessary to their defense. (*Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 972.)

In this appeal, there is no dispute that the agreement to arbitrate is valid and enforceable. Respondents urged in the trial court that the Operating Agreement was subject to revocation, but they do not press the issue here. Instead, they argue that the claims in the cross-complaint are not arbitrable, Wellman and Bennett cannot be compelled to arbitrate, and Puja Bohacek cannot enforce the arbitration provision. We address these issues briefly, even though respondent raised only the second of these issues in the trial court.

1. *Arbitrability of Claims*

We first consider whether the claims asserted against appellants are subject to the arbitration clause. On this question, the party opposing arbitration has the burden of showing that the arbitration agreement does not apply, and doubts are resolved in favor of arbitration. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc*. (2010) 186 Cal.App.4th 696, 705 (*Molecular Analytical*).)

Section 8.8 of the Operating Agreement requires arbitration of "[a]ny controversy or claim arising out of or relating to" the Operating Agreement, MPC 823, *or* the "rights and duties" of the "Members" of MPC 823 (i.e. Cortland Bohacek and Metis).

The causes of action in respondents' cross-complaint fall within the broad scope of the arbitration clause. Their cross-complaint asserts that Cortland Bohacek induced Metis, Wellman and Bennett to invest in MPC 823 and become obligated to make capital contributions to the project under the terms of the Operating Agreement, which is attached to the amended cross-complaint as an exhibit. Although respondents argue that some of their causes of action arise out of Cortland Bohacek's fraud or agreements other than the Operating Agreement, such as loan agreements and guaranties, all of respondents' claims appear to arise out of MPC 823 or the "rights and duties" of the "Members" of MPC 823 (Cortland Bennett and Metis).

2. *Wellman and Bennett Can Be Compelled to Arbitrate*

Wellman and Bennett did not sign the Operating Agreement in their individual capacity, but in their capacity as members of Metis. Because usually only parties to a contract can be bound by its provisions, respondents contend they cannot be compelled to arbitrate. They are incorrect.

Where a legal entity has signed an arbitration agreement, a nonsignatory agent and beneficiary of the entity can be compelled to arbitrate claims they bring that are within the scope of the arbitration agreement. (*Keller Construction Co. v. Kashani* (1990) 220 Cal.App.3d 222, 224-229 [sole general partner of limited partnership was bound by an arbitration agreement between the partnership and a third party; a general partner is an agent of the partnership, a beneficiary of its agreements, and liable for the partnership's debts and obligations] (*Keller*).)

Respondents attempt to distinguish *Keller* on the ground that, unlike a general partner of a limited partnership, Wellman and Bennett are not liable for the debts and obligations of Metis, which is a limited liability company. The distinction is unpersuasive. In summarizing its holding, the court in *Keller* did not base its decision on the fact that the nonsignatory partner would be liable for the obligations of the signatory partnership, but instead said: "To sum up, a sole general partner of a limited partnership under the facts of this case is subject to an arbitration agreement between the partnership and a third party. *As the agent and a beneficiary of the partnership*, to require him to be a party to the arbitration is consistent with what the late Justices Raymond Peters and Matthew Tobriner labeled a ' " 'a strong public policy in favor of arbitrations . . . .' " ' [Citation.]" (*Keller, supra*, 220 Cal.App.3d at p. 229, italics added.)

Having signed the Operating Agreement on behalf of Metis, advanced claims within the scope of the arbitration provision, and alleged a right to their own recovery based on the rights of the signatory party, Wellman and Bennett are subject to the arbitration provision. (*Harris v. Superior Court* (1986) 188 Cal.App.3d 475, 477-478 [nonsignatory agent of signatory may be compelled to arbitrate]; see also *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 418 [nonsignatory defendant may compel

arbitration if sued as an agent of signatory]; *Izzi v. Mesquite Country Club* (1986) 186 Cal.App.3d 1309, 1319; cf. *Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1514 [plaintiff *shareholders* of a corporation who did not sign the agreement individually *or on behalf of* the corporation could not be compelled to arbitrate].)

Respondents also insist that "[t]he benefits derived from MPC823 to Metis were solely for Metis, not for [Wellman and Bennett as] the members of Metis." Their pleading, however, paints a very different picture. Under section 2 of the Operating Agreement, for example, cash contributions are to be made by "Metis." In respondents' cross-complaint, however, it is not just Metis that contends it is entitled to recover for amounts contributed to the project due to appellants' purported fraudulent inducement and other wrongdoing. Both Wellman and Bennett, along with Metis, are identified as "Cross-Plaintiffs" who seek recovery: the cross-complaint alleges that "collectively WELLMAN, BENNETT and METIS shall hereinafter be referred to as the 'Cross-Plaintiffs'." (Underscoring in original.) Further, Wellman and Bennett allege that Cortland Bohacek was in a fiduciary relation to *them*, as cross-plaintiffs, because he was a member of MPC 823. Plainly, Wellman and Bennett seek recovery as if *they* were induced into the Operating Agreement, contributed capital under the terms of the Operating Agreement, and were parties to the Operating Agreement.[8]

Because Wellman and Bennett each acted as the agent and beneficiary of signatory Metis, and seek to recover as members of Metis, they are bound by the arbitration agreement.

3. *Cortland Bohacek and Puja Bohacek, as Trustee, Can Compel Arbitration*

There is no dispute that Cortland Bohacek, a signatory to the Operating Agreement, may enforce the arbitration provision. Respondents urge, however, that Puja

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[8] In fact, in opposing the petition to compel arbitration, Wellman and Bennett each signed, as individuals, a declaration in their names averring that *they* entered into the operating agreement for MPC 823, and *they* invested in the project, based on Cortland Bohacek's representations.

Bohacek cannot enforce the provision because she was neither a signatory nor an intended third party beneficiary. Respondents are again incorrect.

A nonsignatory to a contract containing an arbitration provision may compel arbitration under an estoppel theory if the causes of action against her are " ' "intimately founded in and intertwined" with the underlying contract obligations.' " (*Molecular Analytical, supra,* 186 Cal.App.4th at p. 706, quoting *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 271 (*Boucher*).) By basing a claim against a nonsignatory at least in part on the provisions of a contract that contains an arbitration provision, a plaintiff may be equitably estopped from repudiating the nonsignatory's right to arbitrate under the arbitration provision. (*Boucher, supra*, at p. 272.) Or, as we put it a few years ago: "[c]laims that rely upon, make reference to, or are intertwined with claims under the subject contract are arbitrable" by the nonsignatory. (*Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1287 (*Rowe*).)

Respondents seek to distinguish *Molecular Analytical* on the ground that they are not trying to enforce a contract against a nonsignatory while ignoring the contract's arbitration clause. They assert "[t]here is no claim that Mrs. Bohacek breached the terms of the MCP823 Operating Agreement nor is there a claim to enforce the MCP823 Operating Agreement against Mrs. Bohacek."

Respondents' argument is unconvincing. Their cross-complaint alleges that Puja Bohacek is one of several defendants collectively referred to as "Cross-Defendant BOHACEK," against whom liability is sought in every cause of action. Paragraph 18 of the cross-complaint alleges that Puja Bohacek is liable both as an alter ego of the Bohacek Family Trust, and due to her personal participation in the fraudulent inducement of respondents to invest and participate in MPC823 – which assuredly includes entry into the Operating Agreement.[9] (*Rowe, supra,* 153 Cal.App.4th at p. 1285 [non-signatories

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[9] Paragraph 18 reads as follows: "On information and belief, the basis for these allegations, Defendant PUJA BOHACEK, is and was, at all relevant times, an individual, trustee of its [*sic*] alter ego the BOHACEK FAMILY TRUST, and resides in the State of California. PUJA BOHACEK continued to perpetrate Cross-Defendant BOHACEK's

sued as alter egos of a signatory corporation are entitled to enforce the arbitration provision].) The claims against Puja Bohacek rely upon, make reference to, or are intertwined with claims under the Operating Agreement, and Puja Bohacek is entitled to the benefit of the arbitration provision. (*Id*. at pp. 1286-1290.)

We next consider the grounds cited by the trial court in denying appellants' petition to compel arbitration.

C. *Waiver (§ 1281.2, subd. (a))*

Arbitration may be denied if the party seeking to arbitrate has waived his right to do so. (§ 1281.2, subd. (a).) We review a finding of waiver for substantial evidence. (*St. Agnes Medical Center, supra,* 31 Cal.4th at p. 1196.) "'When, however, the facts are undisputed and only one inference may reasonably be drawn, the issue is one of law and the reviewing court is not bound by the trial court's ruling.' [Citation.]" (*Ibid*.)

Our review is governed by well-established precepts. Doubts regarding a purported waiver should be resolved in favor of arbitration. (*St. Agnes Medical Center, supra,* 31 Cal.4th at p. 1195.) "[W]aivers are not to be lightly inferred and the party seeking to establish a waiver bears a heavy burden of proof." (*Ibid*.) "[A] waiver generally does not occur where the arbitrable issues have not been litigated to judgment." (*Id*. at p. 1201.)

Factors to consider in deciding whether there has been a waiver include the following: (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether " 'the litigation machinery has been substantially invoked' and the parties 'were well into preparation of a lawsuit' before the party notified the opposing party of an intent to arbitrate;" (3) whether a party requested arbitration close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking

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acts of fraud, commingling funds, offering unqualified securities, and induced Cross-Plaintiffs to invest in MPC823. Defendant PUJA BOHACEK coerced and deceived Cross-Plaintiffs to continue to invest and participate in MPC823 from November 2007 through the filing of this Complaint. Defendant PUJA BOHACEK acted as an unqualified broker/dealer, licensed real estate broker/agent and participated in dinners wherein she induced Cross-Plaintiffs to invest in MPC823."

arbitration filed a counterclaim without requesting a stay; (5) " 'whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place'"; and (6) whether the delay affected, misled, or prejudiced the opposing party. (*St. Agnes Medical Center, supra*, 31 Cal.4th at p. 1196; *Sobremonte v. Superior Court* (1998) 61 Cal.App.4th 980, 992 (*Sobremonte*).)

In the matter before us, Cortland Bohacek and Puja Bohacek, in her capacity as trustee, sought arbitration of respondents' cross-complaint in their initial response to that pleading, about three months after the cross-complaint was filed, without conducting any discovery or other litigation activity in regard to the claims they sought to arbitrate. As we shall see, there is nothing in the record to suggest that appellants relinquished their right to arbitrate those claims.

1. *The Trial Court's Finding of Litigation Activity*

The trial court ruled that appellants waived their right to arbitrate the claims in respondents' cross-complaint because they "engaged in litigation activity which would indicate a waiver." It is unclear what the court meant by "litigation activity," but respondents had argued that appellants filed an answer and indemnity cross-complaint in response to CBT's complaint.

Appellants' answer to *CBT's* complaint certainly did not waive their right to arbitrate the claims *respondents* later asserted in their cross-complaint. CBT's complaint was filed before respondents' cross-complaint, and no one contends that any of the issues in CBT's complaint were arbitrable.

Appellants' cross-complaint against respondents sought indemnity and contribution for the liability alleged in the CBT complaint. There is no indication in the record that appellants' cross-complaint pertained to issues that could have been arbitrated. Indeed, respondents contend in their briefing that some of the allegations of appellants' cross-complaint were *outside* the scope of the arbitration clause. Because, apparently, appellants' cross-complaint did not assert arbitrable claims and was filed

before appellants were served with respondents' cross-complaint, it could not be inconsistent with their right to arbitrate the claims in respondents' cross-complaint.[10]

Nor did appellants engage in any other litigation activity inconsistent with arbitrating the claims in respondents' cross-complaint. Appellants participated in a case management conference, but their case management statement disclosed that they expected to file a petition to compel arbitration: that is an act *consistent* with seeking arbitration. Appellants sought an extension of time to "answer" respondents' cross-complaint without expressing an intention to seek arbitration, but they had already notified respondents and the court of that intention in their case management statement.

Furthermore, as respondents acknowledge, engaging in litigation activity does not in itself waive the right to arbitrate. (*Outdoor Services, Inc. v. Pabagold, Inc*. (1986) 185 Cal.App.3d 676, 685.) "[T]he mere filing of a lawsuit does not waive contractual arbitration rights." (*Doers v. Golden Gate Bridge, etc. Dist.* (1979) 23 Cal.3d 180, 185-188.)

To the contrary, a waiver will not be found unless the litigation activity caused prejudice. (*St. Agnes Medical Center, supra*, 31 Cal.4th at p. 1203.) "Because merely participating in litigation, by itself, does not result in a waiver, courts will not find prejudice where the party opposing arbitration shows only that it incurred court costs and legal expenses." (*Ibid*.) "Prejudice typically is found only where the petitioning party's conduct has *substantially* undermined this important public policy or *substantially* impaired the other side's ability to take advantage of the benefits and efficiencies of arbitration." (*Id.* at p. 1204, italics added.)

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[10] At oral argument, respondents' counsel changed course and asserted that the claims in appellants' cross-complaint *were* arbitrable. This epiphany does not help respondents, however. Appellants were seeking to arbitrate the claims in respondents' cross-complaint, not the claims in their own cross-complaint. Moreover, there can be no waiver of the right to arbitrate appellants' cross-complaint, let alone respondents' cross-complaint, unless the filing of appellants' cross-complaint caused prejudice to respondents. (*St. Agnes Medical Center, supra,* 31 Cal.4th at p. 1203.) For the reasons stated in the text *post*, we find no such prejudice.

Respondents argue that they were prejudiced by appellants' answering CBT's complaint and filing their indemnity cross-complaint – rather than seeking arbitration at the outset of the case – because as a result respondents went to the expense of filing *their* cross-complaint and later disclosed too much information and strategy in their amended cross-complaint. Their argument has no merit, for several reasons.

First, their contention that appellants should have sought arbitration at the outset of the case is untenable, because it presupposes that appellants should have filed a petition to compel arbitration of respondents' claims before appellants knew of them. Respondents did not file the claims appellants seek to arbitrate until April 14, 2010. The record discloses no reason for appellants to petition to compel arbitration of those claims before they were served with the cross-complaint. Nor do respondents provide authority for the proposition that a party can preserve the right to arbitrate claims only by seeking to compel their arbitration before the claims even exist.

Second, respondents' assertion that they filed their initial cross-complaint because appellants filed their own cross-complaint is not supported by the record. Both of those cross-complaints were filed on April 14, 2010. Respondents represent that they filed their cross-complaint at the "end of the day" "due to" appellants' cross-complaint, suggesting that they received appellants' cross-complaint earlier in the day and, within no more than a few hours, whipped up their own pleading from scratch, obtained the approval of two clients, and got it on file before the court closed. The likelihood of this feat is difficult to evaluate, since the record does not contain the April 14 cross-complaint. More importantly, respondents do not provide any citation to the record supporting their assertion, and we find nothing in the record to substantiate it. Although the register of actions lists appellants' cross-complaint before respondents' cross-complaint, it is silent on when appellants' cross-complaint was served on respondents and the time that either cross-complaint was filed on April 14. Furthermore, the receipt for appellants' filing fee that day was number 100414-0198, while the receipt issued for respondents' filing fee was number 100414-*0196*, perhaps suggesting that respondents' cross-complaint was actually filed first. At best, the record is inconclusive; it certainly

does not establish that respondents would have foregone the preparation and filing of their initial cross-complaint if appellants had filed their petition to compel arbitration earlier.

Third, respondents do not establish that they filed their amended cross-complaint due to any delay of appellants in filing their petition to compel arbitration. Respondents amended their cross-complaint voluntarily, not because appellants had filed a demurrer, but "in order to defend against a likely attack on the pleadings." In other words, respondents saw some deficiencies in the pleading they filed initially, and elected to fix it so it could survive a potential demurrer, which could have been brought by appellants – or a cross-defendant *not* subject to the arbitration clause. Because respondents had to be concerned about a demurrer from cross-defendants other than appellants, there is nothing to suggest that respondents would not have filed their amended cross-complaint if appellants alone had sought arbitration earlier.

Furthermore, respondents do not establish that they were prejudiced by filing their amended cross-complaint. By respondents' account, their amended cross-complaint provides a "detailed account of relationships and transactions between all of the parties," and offers insight into their case, "including emails, writings detailing the interactions between the bank employees and Appellant, Cortland Bohacek, and materials submitted by Appellants and CBT to Respondents misrepresenting the terms of their arrangement." But surely respondents did not let too many cats out of the bag by informing appellants of communications appellant *himself* made or received, or materials he himself submitted. Voluntarily making such disclosures is a far cry from, for example, being subjected to rigorous depositions and other discovery before the opponent seeks arbitration. Moreover, respondents insist they amended their cross-complaint because their existing pleading was deficient; bringing a pleading up to the bare minimum required by the Code of Civil Procedure is hardly the type of prejudice that should preclude the other party's enforcement of an arbitration provision.

Respondents rely in this regard on *Kaneko Ford Design v. Citipark, Inc*. (1988) 202 Cal.App.3d 1220 (*Kaneko*). Their reliance is misplaced. In *Kaneko*, the plaintiff

filed a complaint against the defendants and, over five months later without prior notice of its intent to arbitrate its claims, filed a motion to stay the litigation and compel arbitration. In the interim, the defendants had incurred litigation expenses, expended time and effort in the case, and disclosed their legal theories and strategy in an answer to the complaint. The court held that the plaintiff had waived its right to arbitrate its claims. (*Id*. at pp. 1223-1225, 1228.)

Kaneko is plainly distinguishable from the matter before us. The plaintiff in *Kaneko* did not advise the other party of its intent to seek arbitration until it filed its motion to arbitrate; here, appellants advised respondents in their case management statement of their intent to file a petition to compel arbitration, and they did so just a few days after respondents amended their cross-complaint. The plaintiff in *Kaneko* waited over five months after filing its complaint, and almost four months after serving it, before seeking to arbitrate its *own* claims; here, appellants took less time before seeking to arbitrate *respondents'* claims, in their very first response to those claims. The defendant in *Kaneko* had disclosed its strategy and legal theories in filing an *answer* to the plaintiff's claims; here, respondents merely filed an amended statement of their own claims to meet general pleading standards. *Kaneko* does not demonstrate that Cortland Bohacek or Puja Bohacek in her capacity as trustee waived their rights to arbitrate.

In sum, there is no evidence to support the court's conclusion that appellants engaged in litigation activity that would constitute a waiver.

2. *The Waiver Finding is Not Otherwise Supported*

Respondents make arguments under each of the so-called *Sobremonte* factors in an effort to convince us that the waiver finding should be upheld. (See *Sobremonte, supra*, 61 Cal.App.4th at p. 992.) We have addressed most of these arguments already.

Under the headings of actions inconsistent with the right to arbitrate and substantially invoking "the litigation machinery" (*Sobremonte, supra*, 61 Cal.App.4th at p. 992), respondents point to appellants' filing of their answer and indemnity cross-complaint in response to CBT's complaint. As discussed *ante*, however, appellants' filings did not address the claims they seek to arbitrate in respondents' cross-complaint.

In terms of the timing of appellants' request to arbitrate, respondents do not and cannot assert that appellants waited until close to trial. (*Sobremonte, supra*, 61 Cal.4th at p. 992.) Instead, they argue that appellants delayed their request seven months – apparently counting from the time that elapsed from the filing of the *CBT* complaint. Their argument is meritless. It was about six months, not seven, from the time CBT filed its complaint in January 2010 and the time appellants filed their petition to compel arbitration in July 2010. Moreover, the relevant time period did not commence in January 2010 when CBT filed its complaint, but in April 2010 when respondents filed their cross-complaint containing the arbitrable issues that appellants seek to arbitrate. Appellants' petition to compel arbitration was filed just three months after respondents filed their initial cross-complaint and less than two months after they filed their amended cross-complaint, and respondents provide no authority that the passage of this period of time – under any circumstances remotely akin to the matter at hand – should give rise to a waiver.

Respondents next argue that appellants filed a "counterclaim" without seeking a stay, again referring to appellants' cross-complaint. (See *Sobremonte, supra*, 61 Cal.4th at p. 992.) Their arguments concerning the significance of appellants' cross-complaint are meritless, for the reasons stated *ante*. We also note, by way of clarification, that appellants did not file any "counterclaim," in the sense of responding to *respondents'* claims with claims of their own: they merely filed an indemnity cross-complaint in response to CBT's claims.

The factor of "intervening steps" pertains to occurrences arising between the time arbitration could have been sought and the time it was actually sought, such as the taking of discovery that would not be available in the arbitration. (*Sobremonte, supra*, 61 Cal.4th at p. 992.) Appellants did not engage in any discovery with respect to respondents' cross-complaint or – from what we can tell from the record – at all. Respondents refer to their own filing of their amended cross-complaint as an intervening event, but as discussed *ante* their arguments are meritless in this regard.

Lastly, respondents argue they were prejudiced because they "handed Appellants their entire theory of [the] case in the First Amended Cross-Complaint" and were misled because appellants sought an extension of time to answer the cross-complaint. Under the facts of this case, neither constitutes the type of substantial prejudice that may preclude a party from seeking to enforce his or her right to arbitrate. None of the *Sobremonte* factors points to a waiver by appellants.

In the final analysis, the record does not support the trial court's conclusion that appellants waived their right to arbitrate the claims in respondents' cross-complaint. Accordingly, this ground cannot serve as a basis for the denial of appellants' petition to compel arbitration.

D. *Possibility of Conflicting Rulings (§ 1281.2, subd. (c))*

If "[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same related transaction or series of transactions and there is a possibility of conflicting rulings on a common issue of law or fact," the court may pursue one of several options, including: denying arbitration so that all issues between all parties are resolved in the judicial proceeding; compelling arbitration to the extent the issues are arbitrable and staying the litigation until the arbitration is completed; or staying the arbitration pending resolution of the non-arbitrable issues in the judicial proceeding. (§ 1281.2, subd. (c).)

In the matter before us, parties to the arbitration agreement (e.g. Cortland Bohacek and Metis) are also party to claims against other parties (e.g. CBT and its employees) that are not subject to the arbitration provision, and which arise out of the same transaction or series of transactions. The application of section 1281.2, subdivision (c), therefore turns on whether "there is a possibility of conflicting rulings on a common issue of law or fact" if respondents arbitrate their claims against Cortland and Puja Bohacek and proceed with litigation as to non-arbitrable claims. We review the court's determination of this issue for an abuse of discretion. (*Henry v. Alcove Investment, Inc*. (1991) 233 Cal.App.3d 94, 101.)

The trial court ruled that the possibility of such conflicting rulings existed. However, we are given no idea by the court's order – or by the respondents' brief in the trial court or the respondents' brief in this appeal – precisely what issues are common to both respondents' claims against Cortland and Puja Bohacek and any other claims in the litigation. Appellants argue that the court's ruling is without basis, because respondents' complaints about the discussions leading up to the Operating Agreement are not alleged to have involved the third parties, and ten of respondents' causes of action are asserted against Cortland Bohacek, Puja Bohacek, and Bohacek Ventures only, rather than the third parties who are not subject to the arbitration clause.

The closest respondents come to addressing appellants' assertion is a reference to their conspiracy claim and to "representations made by CBT employees regarding Cortland Bohacek's credibility, investment know-how, loan to project ratio, approvals and the projects' likely success."[11] But respondents do not support their argument with any citation to the record. Nor do they explain what causes of action rely on these representations, the extent to which these common questions exist, or why there would be a risk of inconsistent adjudication.

Although unaided by respondents, our own review of the record suggests that it would not be arbitrary or illogical for the court to conclude that there is at least a risk of conflicting rulings on some common questions. Several causes of action are asserted against third parties as well as Bohacek, alleging that Bohacek was able to perpetrate at least some of his alleged fraud and wrongdoing because Vineyard employees essentially vouched for him and contributed to his purported scheme and misdeeds. In addition, respondents contend that Vineyard conspired with and aided and abetted Bohacek in

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[11] In their opposition to the petition in the trial court, respondents asserted: "Respondents allege fraud, negligent misrepresentation, and conspiracy against Bohacek, CBT employees and CBT in Respondents' verified Cross-Complaint which arise from the same set of facts and circumstances relating to the project and investment in MPC 823, including the representations made by CBT employees[] regarding Bohacek's credibility and investment know-how." Presumably, respondents are referring to representations made not by individuals employed at the time by CBT, but by Vineyard employees, for which CBT might be liable as Vineyard's successor.

perpetrating the frauds by making representations to respondents that Bohacek was a trusted client, as well as other statements.

However, finding that there is a possibility of inconsistent rulings on common questions does not conclude the analysis under section 1281.2, subdivision (c). As mentioned, the statute gives the court several options, including denying the petition for arbitration, staying the arbitration pending disposition of non-arbitrable claims in the court, or staying the litigation pending completion of the arbitration. (See *Rodriguez v. American Technologies, Inc*. (2006) 136 Cal.App.4th 1110, 1114-1115.) What the trial court chooses to do in this situation is a matter of its discretion, guided largely by the extent to which the possibility of inconsistent rulings may be avoided.

In this case, the record does not support the court's decision to deny arbitration entirely. The written order does not include a finding that this option was best, and we cannot discern from the record why it would be reasonable to so conclude, given what transpired at the hearing. The court's tentative ruling was to deny arbitration because of the possibility of inconsistent rulings as to third-party Polati. At the hearing, Polati's attorney argued that this possibility of inconsistent rulings would be *removed* by staying the claims against her pending the proposed arbitration, and the court did not disagree. Instead, the court announced at the hearing that there was a possibility of conflicting rulings as to other third parties and adopted the tentative ruling after *striking* the reference to Polati. The court's striking of the reference to Polati seems to indicate that the court accepted her argument that the problem of inconsistent rulings could be remedied by a stay of claims. While we can infer that the other third parties to which the court was referring were CBT and the former Vineyard employees, there is no indication why the possibility of conflicting rulings as to those third parties could not also be resolved by staying the claims against them, given the court's apparent conclusion that it could be resolved by staying the claims against Polati.[12]

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[12] We do not decide whether or not staying the claims against Polati or against CBT and the former Vineyard employees would, in fact, remove the risk of inconsistent

Furthermore, although the selection of the statutory alternatives under section 1281.2, subdivision (c) is a matter for the court's discretion, an abuse of discretion may be found when the court proceeds upon a mistaken premise or a factual finding not supported by substantial evidence. (See *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393.) Here, the court had concluded that Cortland and Puja Bohacek had waived their rights to arbitrate. While waiver is an independent ground for denying arbitration, we cannot say that the court's ruling would have been the same if it had believed that Cortland Bohacek and Puja Bohacek, in her capacity as trustee, had not waived their rights to arbitrate. In addition, although the court had not at that point decided whether Bohacek Ventures or Puja Bohacek in her individual capacity had waived *their* rights to arbitrate, our holdings in appeal numbers A130456 and A130457 that they did not waive their rights might be a consideration in an analysis under section 1281.2, subdivision (c) as well.

Given these developments, the state of the appellate record, the paucity of justifications for the court's order in response to appellants' challenge in this appeal, and the strong public policy favoring arbitration, we believe the prudent course is to reverse the order denying arbitration and remand the matter for further consideration under section 1281.2, subdivision (c). On remand, the court should consider (1) whether there is the possibility of inconsistent rulings on common questions of law or fact and (2) whether, on that basis, given the extent and nature of the potential inconsistent rulings, arbitration should be denied as to the claims against Cortland Bohacek and Puja Bohacek in her capacity as trustee.[13]

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rulings; our point is simply that the tentative ruling and final order do not appear consistent, based on the record of the hearing.

[13] On a different tack, respondents argue: "Appellants in their Cross-Complaint acknowledged that there is a possibility of multiple actions (therefore also multiple rulings) given the circumstances and allegations made by all of the parties against one another. Appellants, in their Cross-Complaint against Respondents seek Declaratory Relief stating: 'the claim of Plaintiff and claim of Cross-Complainants arise [out] of the same transaction and determination of both claims in one proceeding is appropriate in order to avoid a multiplicity of actions." Respondents' argument is incorrect. Appellants

III. DISPOSITION

The order is reversed. The matter is remanded for further consideration under Code of Civil Procedure section 1281.2, subdivision (c), consistent with this opinion.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.

referred to the possibility of multiple actions merely to explain that their indemnity claims should be heard in the same case as CBT's claims in order to avoid the inefficiencies of multiple actions. Appellants did not admit there would necessarily be multiple or conflicting rulings if their rights to arbitrate respondents' cross-complaint were enforced.

Trial court:	San Mateo County Superior Court
Trial judge:	Hon. John L. Grandsaert

Orrick, Herrington & Sutcliffe, Freitas Tseng Baik & Kaufman and Robert E. Freitas for Cross-defendants and Appellants.

Sayar Fausto and Mario Fausto for Cross-complainants and Respondents.