

The California Supreme Court (and Court of Appeal) - June 15 - July 14, 2023

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The California Court of Appeal, Fourth District, Division One, issued the following published decision:

McConnell et al. v. Advantest America, Inc., et al., Case No. D080532: In this decision, the Court of Appeal held that an arbitrator abused their discretion by issuing a “hearing” subpoena compelling non-parties’ document production but not their testimony. The arbitrator in a business dispute issued “hearing” subpoenas summoning non-parties to appear at a hearing “for the limited purposes of receiving documents.” The subpoenas expressly provided that after the non-parties produced the documents, the “hearing” would adjourn, and the non-parties would be summoned to testify at a later date. Rejecting the non-parties’ objections that the subpoenas improperly sought pre-hearing discovery, the arbitrator issued an order compelling compliance. The trial court declined to vacate the order, finding that the subpoenas were permissible “hearing” subpoenas under California Code of Civil Procedure section 1282.6(a), the California Arbitration Act (CAA) provision authorizing arbitrators to issue subpoenas requiring witnesses’ attendance and production of documents “at an *arbitration proceeding*.” (Emphasis added). The non-parties appealed the order, arguing that the trial court erred by failing to consider the subpoenas’ purpose regardless of their “hearing” labels: to end-run the restriction on pre-hearing discovery from non-parties.

The Court of Appeal agreed, reversing and remanding with instructions for the trial court to vacate the arbitrator’s order. The court noted that while California courts have restricted arbitrators’ authority to compel non-party document production through “discovery” subpoenas, none addressed whether an arbitrator may issue a subpoena that calls for pre-hearing discovery in all but name. See *Aixtron, Inc. v. Veeco Instruments, Inc.*, 52 Cal. App. 5th 360 (2020). The court clarified that to be a “hearing” subpoena under section 1282.6, the subpoena must compel a non-party to appear for the purpose of giving testimony. While section 1282.6 permits an arbitrator to issue a “hearing” subpoena that requires a non-party to produce documents at the hearing, it does not permit arbitrators to issue a “hearing” subpoena “for the purposes of” obtaining

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non-party discovery. Here, that the “hearing” would last only “so long as needed for the documents to be collected” from the non-parties made the subpoenas impermissible under the CAA.

Read the [full opinion](#).