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# CURTAILING THE ARBITRATOR'S POWER: VALID WITHHOLDING OF JURISDICTION OR JUDICIAL FLAW?

*Cobler v. Stanley, Barber, Southard, Brown & Associates*<sup>1</sup>

## I. INTRODUCTION

With the movement toward alternative dispute resolution comes the issue of how much freedom arbitrators will be given before the courts will find the arbitrator's rulings to be beyond their jurisdiction. This Note will provide an understanding of the decision in *Cobler v. Stanley, Barber, Southard, Brown & Associates*, where the court limited the power of the arbitrator.<sup>2</sup> Further, this Note will explain how *Cobler* is inconsistent with California case law which suggests that great deference shall be given to the power of arbitrators.

## II. THE CASE

Ed Cobler, desiring to live in San Diego, California, flew to San Diego in April 1987 and met with a representative from Stanley, Barber, Southard, Brown & Associates (hereinafter Stanley Barber), a professional career consulting agency, for the purpose of finding employment.<sup>3</sup> Cobler was told that Stanley Barber would secure job interviews for Cobler and three job offers within ninety days.<sup>4</sup> Cobler and Stanley Barber entered into a contract which contained an arbitration clause and provided for \$1,400 in fees.<sup>5</sup> Cobler returned to San Diego from Colorado three times to meet with Stanley Barber representatives during his job hunt.<sup>6</sup> Cobler's third visit resulted in a meeting with a representative who spent three hours with Cobler before handing him a telephone book and telling him to set up his own interviews.<sup>7</sup> Cobler found this method futile and returned to the

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1. 217 Cal. App. 3d 518, 265 Cal. Rptr. 868 (Cal. Ct. App. 1990).

2. *Id.*

3. 217 Cal. App. 3d at 523, 265 Cal. Rptr. at 869-70.

4. *Id.* at 523, 265 Cal. Rptr. at 870.

5. *Id.*

6. *Id.*

7. *Id.*

Stanley Barber office only to find his representative leaving town.<sup>8</sup> After another unsuccessful meeting with another representative, Cobler returned to Colorado.<sup>9</sup>

Stanley Barber solicited Cobler to pay the \$1,450 contract price.<sup>10</sup> After those requests proved futile, Stanley Barber petitioned the American Arbitration Association (hereinafter AAA) for arbitration, giving as its complaint the nonpayment of the contract price.<sup>11</sup> In addition, Stanley Barber also sought arbitration costs.<sup>12</sup>

Stanley Barber amended its petition a month later to include a claim that Cobler continued to make verbal and written allegations and threats against it.<sup>13</sup> Cobler then filed a counterdemand for arbitration claiming breach of contract and seeking \$2,496.13 plus \$300 arbitration fees.<sup>14</sup> Through his attorney, Cobler amended his counterdemand, adding a \$75,000 claim for punitive damages on "unspecified grounds."<sup>15</sup> With both parties' consent an arbitrator was appointed.<sup>16</sup> Three arbitration sessions were held, in addition to a supplemental briefing by each of the parties, at the request of the arbitrator.<sup>17</sup>

The arbitrator awarded Cobler \$9,852.86, \$7,500 of which was for emotional damages.<sup>18</sup> The arbitrator found that Stanley Barber was negligent and had breached its contract with Cobler.<sup>19</sup> In addition, the award ordered Stanley Barber to give Cobler \$332.92 as fees paid to AAA by Cobler and to pay AAA \$750 for the arbitrator's salary.<sup>20</sup>

Subsequently, Cobler filed a petition in the superior court to confirm the arbitration award.<sup>21</sup> In return, Stanley Barber filed a petition to overturn the award on the statutory grounds of corruptness of the arbitrator,<sup>22</sup> error of law on the face of the decision,<sup>23</sup> and "excess of jurisdiction of the issues resolved and the amount awarded."<sup>24</sup> The trial court upheld the award and held that there was

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8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 524, 265 Cal. Rptr. at 870-71.

18. *Id.* at 524, 265 Cal. Rptr. at 871 n.1. The award of \$9,852.86 to Cobler was broken down as follows: refund of all monies paid under contract, \$1,400; mileage, \$636; lodging, \$216.86; compensation for five missed days of work, \$500; emotional distress resulting from conduct of Stanley Barber, \$7,500; offset for value received, \$400. *Id.*

19. *Id.* at 524, 265 Cal. Rptr. at 870.

20. *Id.*

21. *Id.* at 524, 265 Cal. Rptr. at 871.

22. *Id.* The trial court held that there was no corruption on the part of the arbitrator. *Id.*

23. *Id.* The trial court held there was no error of law on the face of the decision. *Id.*

24. *Id.* The statutory claims are supported by CAL. CIV. PROC. CODE §§ 1285, 1286.2(a), (d), (e) (West 1982).

no excess of jurisdiction since the parties agreed to widen the issues in the pleadings to include infliction of emotional distress.<sup>25</sup> The superior court confirmed the \$9,852.86 award for Cobler and demanded that Stanley Barber pay \$750 additional costs to the AAA.<sup>26</sup>

Stanley Barber appealed to the California Court of Appeals, Fourth District.<sup>27</sup> The court of appeals addressed the issues of the arbitrator's impartiality,<sup>28</sup> the award of costs to the AAA,<sup>29</sup> and the alleged excess of jurisdiction by the arbitrator.<sup>30</sup> Stanley Barber claimed that the arbitrator did not have jurisdiction to award tort damages for emotional distress or any other damages over the contract damages pled in the demands for arbitration.<sup>31</sup> The court first looked to the arbitration clause in the contract to determine whether the arbitrator exceeded his jurisdiction.<sup>32</sup> The arbitration clause read: "should there be a dispute arising from this Agreement, it is mutually agreed that it shall be promptly settled through binding arbitration in accordance with the rules of the [AAA]."<sup>33</sup> The court ruled that the arbitration clause was limited in scope and did not provide for the arbitrator to rule on the claim of emotional damages.<sup>34</sup> Therefore, the court struck down the part of the arbitration award that provided damages for emotional distress.<sup>35</sup> The court of appeals held that when an arbitration agreement limits the scope of an arbitrator's authority, the arbitrator has the duty to confine the arbitration ruling to the issues pled by the parties; therefore, informal amendments to the pleading will not increase the arbitrator's jurisdiction.<sup>36</sup>

### III. LEGAL BACKGROUND

The *Cobler* court struck down the arbitrator's grant of emotional damages by finding that the arbitrator exceeded the limits of the arbitration agreement.<sup>37</sup> In finding that the arbitrator exceeded his jurisdiction, the court placed strong

25. *Cobler*, 217 Cal. App. 3d at 525, 265 Cal. Rptr. at 872.

26. *Id.*

27. *Id.* at 526, 265 Cal. Rptr. at 872.

28. *Id.* at 526, 265 Cal. Rptr. at 873. The court held that the trial court did not error in finding no bias existed on the part of the arbitrator. *Id.*

29. *Id.* at 533, 265 Cal. Rptr. at 877. The court held that the trial court did not abuse its discretion in ordering the \$750 to be paid directly to the AAA. *Id.*

30. *Id.* at 530, 265 Cal. Rptr. at 875-77.

31. *Id.* at 530, 265 Cal. Rptr. at 875.

32. *Id.*

33. *Id.*

34. *Id.* at 531, 265 Cal. Rptr. at 876.

35. *Id.* at 532, 265 Cal. Rptr. at 877.

36. *Id.* The Court of Appeals also held that there was no actual bias on the part of the arbitrator. Stanley Barber asserted that the arbitrator was biased, because he was a law partner in the law firm that represented one of Stanley Barber's major competitors. No abuse of discretion was found on the part of the trial court in ordering the \$750 to be paid directly to the AAA. *Id.*

37. *Id.*

importance on what it perceived to be a narrower arbitration clause than usually found in other contracts.<sup>38</sup>

California has long held that an arbitrator derives his power from the arbitration agreement and is prohibited from exceeding this power.<sup>39</sup> The policy behind this rule is to give effect to the contractual obligations and rights between those parties entering into the arbitration agreement.<sup>40</sup> However, no policy exists in compelling persons to accept arbitration of issues which they have not agreed to arbitrate and which are not made arbitrable by statute.<sup>41</sup>

A California court of appeals in *Mansdorf v. California Physicians' Service Inc.*<sup>42</sup> held that arbitrators are bound by the arbitration agreement because arbitration is a matter of contract.<sup>43</sup> Since the arbitrator is confined to deciding disputes within the arbitration agreements, California courts interpret arbitration agreements differently depending upon a slight change in wording.<sup>44</sup> The *Mansdorf* court interpreted an arbitration agreement which required "arbitration of disputes with respect to any of the terms, conditions or benefits of this agreement" in a narrow fashion. It held that a subscriber's claim of bad faith on the part of the operator of a health benefit plan is outside of the scope of the arbitration agreement.<sup>45</sup> However, the district court of appeals in *Crofoot v. Blair Holding Corporation*<sup>46</sup> gave broader meaning to an arbitration agreement which stated that the parties agreed to arbitrate "all issues existing between them and raised by any pleadings served by any of them in any of the said actions . . . ." <sup>47</sup> The arbitration agreement further provided that "[t]he arbitrator shall be given such powers as are provided for by law."<sup>48</sup> The *Crofoot* court held that this agreement includes liabilities in tort as well as liabilities in contract.<sup>49</sup> In *Berman v. Dean Witter & Co., Inc.*,<sup>50</sup> the court of appeals held that the arbitration agreement which read "any controversy . . . arising out of or relating to this contract . . ." included both contract and tort claims.<sup>51</sup>

38. *Id.* at 530, 265 Cal. Rptr. at 875.

39. See generally *William B. Logan & Assocs. v. Monogram Precision Indus. Inc.*, 184 Cal. App. 2d 12, 7 Cal. Rptr. 212 (Cal. Dist. Ct. App. 1960); *Delta Lines, Inc. v. International Bhd. of Teamsters*, 66 Cal. App. 3d 960, 136 Cal. Rptr. 345 (Cal. Ct. App. 1977); *Mansdorf v. California Physicians' Serv., Inc.*, 87 Cal. App. 3d 412, 151 Cal. Rptr. 388 (Cal. Ct. App. 1978).

40. *Delta Lines*, 66 Cal. App. 3d at 960, 136 Cal. Rptr. at 345.

41. *Id.*

42. 87 Cal. App. 3d 412, 151 Cal. Rptr. 388 (Cal. Ct. App. 1978).

43. *Id.* at 417, 151 Cal. Rptr. at 391.

44. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 868.

45. *Mansdorf*, 87 Cal. App. 3d at 417, 151 Cal. Rptr. at 391.

46. 119 Cal. App. 2d 156, 260 P.2d 156 (Cal. Dist. Ct. App. 1953).

47. *Id.* at 164, 260 P.2d at 159.

48. *Id.*

49. *Id.*

50. 44 Cal. App. 3d 999, 119 Cal. Rptr. 130 (Cal. Ct. App. 1975).

51. *Id.* at 1003, 119 Cal. Rptr. at 133.

Because arbitration is favored as a means of settling disputes, California courts have given the utmost effect to such proceedings.<sup>52</sup> Another reason for giving great weight to arbitration proceedings is that each of the parties agreed to be bound by any award pursuant to the provisions of their contract.<sup>53</sup> Not only the arbitration proceedings, but also the decisions of the arbitrators themselves are given a significant amount of deference; so as a general rule, arbitrators do not have to give reasons and findings of facts for their awards.<sup>54</sup> As a further indicator of favoring arbitration, California courts have held that arbitrators, unless specifically required to act in conformity with rules of law, may base their award upon "broad principles of justice and equity."<sup>55</sup>

The grounds for vacating an arbitration award in California are controlled by statute.<sup>56</sup> In particular, an arbitration award will be set aside if the court determines that: (1) the award was obtained through any undue means;<sup>57</sup> (2) there was corruption on the part of the arbitrator;<sup>58</sup> (3) the rights of a party were substantially prejudiced by misconduct of the arbitrator;<sup>59</sup> (4) the arbitrator went beyond his or her power and therefore the award cannot be remedied without affecting the merits of the decision;<sup>60</sup> or (5) the arbitrator refused to postpone the hearing upon sufficient cause being shown, resulting in substantial prejudice to a party; or the arbitrator refused to hear evidence material to the dispute; or the arbitrator displayed general misconduct.<sup>61</sup> This statute provides the only grounds for setting aside an arbitration award in California.<sup>62</sup>

In general, an error of law committed by the arbitrator, regardless of how severe, is not a ground for vacating an arbitration award.<sup>63</sup> At least one court has held that an award may be set aside as being in excess of the arbitrator's powers if it is in violation of California civil procedure.<sup>64</sup> However, even if the award conflicts with substantive law, the arbitrator may make a binding award which a court is required to enforce.<sup>65</sup> Unsound reasoning on the part of an

52. *Atlas Floor Covering v. Crescent House & Garden, Inc.*, 166 Cal. App. 2d 211, 333 P.2d 194, (Cal. Dist. Ct. App. 1959). This court held that every intendment of validity must be given to an arbitration award and the arbitration proceeding may be based on broad principles of equity. *Id.* at 215, 333 P.2d at 197.

53. *Mansdorf*, 87 Cal. App. 3d at 412, 151 Cal. Rptr. at 388.

54. *Sapp v. Barenfeld*, 34 Cal. 2d 515, 212 P.2d 233 (Cal. 1949).

55. See generally *Lewsadder v. Mitchum, Jones & Templeton, Inc.*, 36 Cal. App. 3d 255, 100 Cal. Rptr. 405 (Cal. Ct. App. 1973); *Delta Lines*, 66 Cal. App. 3d 960, 136 Cal. Rptr. 345.

56. CAL. CIV. PROC. CODE § 1286.2 (West 1982).

57. *Id.* § 1286.2(a).

58. *Id.* § 1286.2(b).

59. *Id.* § 1286.2(c).

60. *Id.* § 1286.2(d).

61. *Id.* § 1286.2(e).

62. *State Farm Mut. Auto. Ins. Co. v. Galeserian*, 28 Cal. App. 3d 397, 403, 104 Cal. Rptr. 683, 687 (Cal. Ct. App. 1972).

63. *Id.*

64. *Id.*

65. *Id.*

arbitrator in reaching a conclusion within the scope of arbitration will not invalidate the award.<sup>66</sup> Even an erroneous conclusion based on an error in law which does not appear from the record will not render the award invalid.<sup>67</sup> However, where the error appears on the face of the record and causes substantial injustice, the award may be vacated.<sup>68</sup>

California courts have also held that neither the merits of the controversy nor the sufficiency of the evidence to support the arbitrator's award are reviewable.<sup>69</sup> Decisions such as *Johnston v. Security Insurance Co. of Hartford*<sup>70</sup> suggest that a court will give great weight to an arbitrator's award. Only when courts exceed the parameters of the arbitration clause will the arbitration award be struck down.<sup>71</sup>

#### IV. THE INSTANT DECISION

The *Cobler* court curtailed the movement in California toward giving great weight to an arbitrator's findings. After examining each of the possible grounds the arbitrator may have relied on in awarding emotional damages, the court struck down each one and concluded that the arbitrator exceeded his authority.<sup>72</sup>

First, the *Cobler* court determined that the issues presented to the arbitrator were contract claims (raised by both parties); Stanley Barber's claim that Cobler had made allegations and threats; Cobler's \$75,000 claim for punitive damages based on his contract claim; and Cobler's theories of fraud and emotional distress.<sup>73</sup> The court further observed that the arbitrator did not rule on the fraud issue.<sup>74</sup> The issue before the court, then, was whether the \$7,500 for emotional distress was within the scope of the matters submitted.<sup>75</sup>

The court observed that the arbitrator determined that Stanley Barber had breached an unspecified duty of care to Cobler and had also breached its contract.<sup>76</sup> The court then stated that apparently the arbitrator treated the matter as a professional negligence or malpractice matter.<sup>77</sup> However, the court determined that the award of damages for emotional distress could not have been

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66. *Durand v. Wilshire Ins. Co.*, 270 Cal. App. 2d 58, 75 Cal. Rptr. 115 (Cal. Ct. App. 1969).

67. See *Ray Wilson Co. v. Anaheim Memorial Hosp. Ass'n*, 166 Cal. App. 3d 1081, 213 Cal. Rptr. 62 (Cal. Ct. App. 1985); *Abbott v. California State Auto Ass'n*, 68 Cal. App. 3d 763, 137 Cal. Rptr. 580 (Cal. Ct. App. 1977).

68. *Id.*

69. See *Johnston v. Security Ins. Co. of Hartford*, 6 Cal. App. 3d 839, 86 Cal. Rptr. 133 (Cal. Ct. App. 1970); *Delta Lines*, 66 Cal. App. 3d 960, 136 Cal. Rptr. 345.

70. 6 Cal. App. 3d 839, 86 Cal. Rptr. 133 (Cal. Ct. App. 1970).

71. *Id.*

72. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 876.

73. *Id.* at 523, 265 Cal. Rptr. at 875.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

based on the contract issues, since this type of damages is rarely awarded in breach of contract claims.<sup>78</sup> According to the *Cobler* court, then, the only basis for emotional distress damages must have been based on any tort issue properly before the arbitrator.<sup>79</sup>

The court next stated that Stanley Barber's claim that *Cobler* threatened Stanley Barber did not support an award of emotional distress damages against Stanley Barber.<sup>80</sup> The court then assumed that the punitive damages claim was based on fraud; yet, since the arbitrator held he was not ruling on fraud, there was no basis for punitive damages for emotional distress.<sup>81</sup> It further stated that the scope of the submissions did not include negligence findings.<sup>82</sup> Finally, the court held that emotional damages could not have been based on professional malpractice because there is no authority for extending malpractice doctrines to a professional career consulting agency.<sup>83</sup> Nor was this a proper claim for negligent infliction of emotional distress.<sup>84</sup>

The court addressed Stanley Barber's claim that the arbitrator decided issues and awarded damages beyond the scope of the submissions to the arbitrator. It drew a distinction between the arbitration clause in the instant decision and an arbitration clause which allows arbitration of "any controversy . . . arising out of or relating to this agreement", holding that the latter is broader in scope.<sup>85</sup> The court therefore agreed with Stanley Barber that the arbitrator had exceeded his scope of powers. To support its contention, the court cited *Mansdorf v. California Physicians' Service Inc.*,<sup>86</sup> in which the California Court of Appeals drew a like distinction between two types of arbitration clauses.<sup>87</sup>

The *Cobler* court also relied on *Delta Lines Inc. v. International Brotherhood of Teamsters*<sup>88</sup> for the proposition that the powers of an arbitrator are confined by the arbitration clause or submitted issues.<sup>89</sup> The court also cited *Atlas Floor Covering v. Crescent House & Gardens*<sup>90</sup> for the proposition that an arbitrator

78. *Id.* at 526, 265 Cal. Rptr. at 876.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. 87 Cal. App. 3d 412, 151 Cal. Rptr. 388 (Cal. Ct. App. 1978).

87. *Id.* at 414, 151 Cal. Rptr. at 388. *Mansdorf* interpreted an arbitration clause which required arbitration "of disputes with respect to any of the terms, conditions or benefits of this agreement." *Id.* at 417, 151 Cal. Rptr. at 391. The *Mansdorf* court found this clause to be much more limiting than the arbitration agreement found in *Crofoot* which required arbitration of "all issues existing between them and raised by any pleadings . . ." *Crofoot*, 119 Cal. App. 2d at 159, 260 P.2d at 159.

88. 66 Cal. App. 3d 960, 136 Cal. Rptr. 345.

89. *Id.* at 964, 136 Cal. Rptr. at 349.

90. 166 Cal. App. 2d 211, 333 P.2d 194.



may not create a new cause of action which gives rise to new damages.<sup>91</sup> Additionally, the court relied upon the California Code of Civil Procedure<sup>92</sup> to invalidate the award based on its finding that the arbitrator exceeded his powers. In particular, section 1286.2(d) states that an arbitration award which purports to decide unsubmitted issues is to be vacated.<sup>93</sup> Finally, the court looked to *Ray Wilson Co., v. Anaheim Memorial Hospital Association*,<sup>94</sup> which held that the courts will not intervene when the arbitrator has made an error of law, unless the error results from an irrational construction of the disputed contractual provisions.<sup>95</sup> The *Ray Wilson* court gave special consideration to whether the arbitrator ignored the contractual provisions or misinterpreted the provisions in the contract for arbitration.<sup>96</sup> The *Cobler* court concluded that this was a case in which the arbitrator irrationally construed the disputed contract provisions.<sup>97</sup>

## V. ANALYSIS AND CONCLUSION

A cursory reading of *Cobler* would lead one to believe that the court simply curtailed the powers of an arbitrator based upon supportive case law and statutory authority. However, a closer reading reveals that while the court achieved its goal of striking down the award for emotional distress, it did so by a suspicious reading of California case law and statutes. In particular, the court's analysis of *Mansdorf*,<sup>98</sup> *Ray Wilson*,<sup>99</sup> and section 1286.2 of the California Code of Civil Procedure<sup>100</sup> is misguided in its application to the instant case.

A major part of the court's holding is based upon the arbitration agreement being limited in scope.<sup>101</sup> For support of this finding *Cobler* relied principally on *Mansdorf*.<sup>102</sup> The *Mansdorf* court was faced with an arbitration agreement which required arbitration of "disputes with respect to any of the terms, conditions or benefits of this agreement."<sup>103</sup> The *Cobler* court compared the arbitration clause in the contract between *Cobler* and Stanley Barber to the clause discussed in the *Mansdorf* holding and found that the arbitration clauses in both cases were

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91. *Id.*

92. CAL. CIV. PROC. Code § 1286.2(d) (West 1982).

93. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 868.

94. *Ray Wilson*, 166 Cal. App. 3d at 1081, 213 Cal. Rptr. at 62.

95. *Cobler*, 217 Cal. App. 3d at 532, 265 Cal. Rptr. at 876.

96. *Ray Wilson*, 166 Cal. App. 3d at 1081, 213 Cal. Rptr. at 62.

97. *See Cobler*, 217 Cal. App. 3d at 532, 265 Cal. Rptr. at 876.

98. *Mansdorf*, 87 Cal. App. 3d at 412, 151 Cal. Rptr. at 388.

99. *Ray Wilson*, 166 Cal. App. 3d at 1081, 213 Cal. Rptr. at 62.

100. CAL. CIV. PROC. Code § 1286.2(d) (West 1982).

101. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 868.

102. *Id.* at 530, 265 Cal. Rptr. at 875, citing *Mansdorf*, 87 Cal. App. 3d 412, 151 Cal. Rptr. 388.

103. *Mansdorf*, 87 Cal. App. 3d at 412, 151 Cal. Rptr. at 388.

more limited in scope than a clause providing for arbitration of "any controversy . . . arising out of or relating to this agreement."<sup>104</sup>

However, the arbitration clause in *Mansdorf* is strikingly different than the clause discussed in *Cobler*. The arbitration clause in *Mansdorf* was limited to disputes of the terms, conditions or benefits of the agreement.<sup>105</sup> The arbitration agreement in *Cobler* did not include language limiting the jurisdiction of the arbitrator to the terms of the agreement.<sup>106</sup> Instead, the arbitration agreement in *Cobler* bestowed upon the arbitrator the power to hear disputes "arising from this Agreement."<sup>107</sup> A stronger argument could be made for the limited holding in *Cobler* if the arbitration clause could truly be read as being similar to the clause in *Mansdorf*. The *Cobler* court did not state why the arbitration clause before it was closer in meaning to the clause found in *Mansdorf*, than a clause which requires arbitration of "any disputes arising out of or relating to this agreement."<sup>108</sup>

*Cobler* cites *Ray Wilson* for the proposition that where an arbitrator has made an error of law, the courts will intervene only when the error is based on a "completely irrational construction to the provision in dispute."<sup>109</sup> *Ray Wilson* stands for the proposition that the merits of the controversy are for the arbitrator, not the courts.<sup>110</sup> Further, *Ray Wilson* stands for the rule of law that it is not the place of the court to review the sufficiency of the evidence before the arbitrator or to question the soundness of the arbitrator's reasoning.<sup>111</sup> Ironically, the *Cobler* court cites *Ray Wilson* for these propositions,<sup>112</sup> yet fails to explain how *Ray Wilson* is applicable to the facts found in *Cobler*.

Another justification the *Cobler* court gave for striking down the award for emotional distress damages was its reliance on California Code of Civil Procedure section 1286.2.<sup>113</sup> This provision states that a court shall vacate an award if the court determines that "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted . . . ." <sup>114</sup> However, a majority of *Cobler's* reasoning is spent dissecting the arbitrator's findings and stating its belief that the facts taken together do not support a finding of damages for emotional distress.<sup>115</sup> By doing so, the court comes dangerously close to implying that if the arbitrator

104. *Cobler*, 217 Cal. App. 3d at 394, 265 Cal. Rptr. at 875.

105. *Mansdorf*, 87 Cal. App. 3d at 412, 151 Cal. Rptr. at 388.

106. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 868.

107. *Id.*

108. *Cobler*, 217 Cal. App. 3d at 530, Cal. Rptr. at 875, quoting *Mansdorf*, 87 Cal. App. 3d at 417, 151 Cal. Rptr at 391.

109. *Ray Wilson*, 166 Cal. App. 3d at 1091, 213 Cal. Rptr. at 68.

110. *Id.* at 1092, 213 Cal. Rptr. at 69.

111. *Id.*

112. *Cobler*, 217 Cal. App. 3d at 530, 265 Cal. Rptr. at 876.

113. *Id.* at 530, 265 Cal. Rptr. at 875.

114. CAL. CIV. PROC. CODE § 1286.2 (West 1982).

115. *Cobler*, 217 Cal. App. 3d at 518, 265 Cal. Rptr. at 868.

makes an incorrect finding then the arbitrator has necessarily exceeded his powers.<sup>116</sup> But the California Code of Civil Procedure does not provide that incorrect findings on the part of an arbitrator justify the setting aside of an arbitration award.

In *Cobler v. Stanley, Barber, Southard, Brown & Associates*, the court implies that the arbitrator made a mistake as to law; yet the court vacated the award by characterizing the arbitrator's actions as being in excess of his powers.<sup>117</sup> While no case law has emerged supporting or overturning *Cobler*, it appears that *Cobler* has created another ground, not recognized by California statute, which will justify setting aside an arbitrator's award.

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116. *Id.*

117. *Id.* at 533, 265 Cal. Rptr. at 877.