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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

SHERA BECHARD, Plaintiff, Cross-defendant and Respondent, v. ELLIOTT BROIDY et al., Defendant, Cross-defendant and Appellant; KEITH M. DAVIDSON et al., Defendants, Cross-complainants and Respondents.	B293997 Los Angeles County Super. Ct. No. BC712913

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Latham & Watkins, Marvin S. Putnam, Jessica Stebbins Bina, and Melissa Arbus Sherry for Defendant, Cross-defendant, and Appellant Elliott Broidy.

Stris & Maher, Peter K. Stris, Elizabeth R. Brannen, Dana Berkowitz, Kenneth J. Halpern, and John Stokes for Plaintiff, Cross-defendant, and Respondent Shera Bechard.

Berra Law, Paul S. Berra for Defendants, Cross-complainant, and Respondents Keith M. Davidson and Keith M. Davidson & Associates.

No appearance for Defendant and Respondent Michael Avenatti.

INTRODUCTION

Elliott Broidy appeals from an order denying his motions to compel arbitration of Shera Bechard's breach of contract claim and Keith M. Davidson & Associates, PLC's (Law Firm) cross-claims for declaratory relief. The trial court acknowledged those claims were subject to arbitration but denied the motions because Bechard's tortious interference claim against Michael Avenatti was not arbitrable, and there was a possibility of conflicting rulings on a common issue of fact or law. Broidy contends the court erred because there was no possibility of conflicting outcomes or judgments. Broidy also contends the court erred by failing to consider alternatives to denying arbitration. We reject both contentions and affirm the order.

FACTUAL BACKGROUND

Broidy is a former finance chairman of the Republican National Committee, and Bechard is a former Playboy Playmate. Between 2013 and 2017, Bechard and Broidy were involved in an intimate relationship. Around September 2017, Bechard discovered she was pregnant.

In November 2017, Bechard retained Keith Davidson, an attorney with the Law Firm, to help resolve her "situation" with Broidy. Around the time she retained Davidson, Bechard signed an " 'Attorney-Client Contingency Fee Agreement' " requiring Bechard to pay the Law Firm "35% of any settlement proceeds regarding [Bechard's] potential claims against Broidy." Davidson later approached Michael Cohen, Broidy's attorney, to negotiate a confidential settlement agreement through which Broidy would agree to pay Bechard child-support payments in exchange for Bechard keeping the details of her relationship with Broidy confidential.

Around early December 2017, Broidy and Bechard signed an agreement requiring Broidy to pay Bechard $1.6 million, through eight installment payments of $200,000 (Settlement Agreement). Broidy and Bechard agreed to "never again speak of the affair" and to waive their rights to sue each other "for everything that had previously happened between them." The Settlement Agreement contained an arbitration provision (Arbitration Provision), which required Broidy and Bechard to submit to confidential binding arbitration "any and all claims or controversies" between them.[1]

Broidy made the first two installment payments under the Settlement Agreement in December 2017 and April 2018.

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[1] Broidy has not included a copy of the Settlement Agreement in the record on appeal. Accordingly, our summary of the agreement's terms, including the Arbitration Provision, comes from Bechard's complaint, the Law Firm's cross-complaint, and Broidy's declaration filed in support of his motion to compel arbitration of the first cause of action in Bechard's complaint.

Davidson deducted $70,000, or 35 percent, from each payment, plus nearly $4,000 in costs from the second payment.

In early April 2018, the FBI raided Cohen's office, apartment, and hotel room. Shortly after the raid, "Davidson learned that the Wall Street Journal … was working on a story regarding Broidy's relationship with a Playboy playmate, a resulting pregnancy, and a settlement agreement they had reached to cover up the affair."

On April 12, 2018, Davidson spoke to Avenatti. Davidson told Avenatti that the Wall Street Journal "had notified [Davidson] days before that it would be running a story involving a case between a wealthy GOP donor and Playboy playmate that [Davidson] and Cohen had worked on." Davidson claims he did not divulge the names of any of the parties to the Settlement Agreement or any of the agreement's details.

On April 12, 2018, immediately after his conversation with Davidson, Avenatti referenced the Settlement Agreement on his Twitter account. Specifically, Avenatti tweeted: "In [the] last 18 mo[nth]s, Mr. Cohen negotiated yet another hush NDA, this time on behalf of a prominent GOP donor who had a relationship with a[n] LA woman, impregnated her and then made sure she had an abortion. The deal provided for multiple payments across many months. … [¶] And to be clear, the GOP donor is also LA based."

On April 13, 2018, the Wall Street Journal published an article discussing the details of the Settlement Agreement and identifying Bechard and Broidy as parties to the agreement. The Wall Street Journal later published an updated version of the article, in which one of Broidy's attorneys accused Davidson of "improperly discuss[ing] the hush-money agreement" with Avenatti.

Bechard fired Davidson after news outlets reported that he and Cohen had "collude[ed]" on two other "hush" agreements, including "an agreement between Donald Trump and Stephanie Clifford (aka 'Stormy Daniels'), and … an agreement between America Media, Inc. … and Karen McDougal, which also related to Donald Trump."

On July 1, 2018, Broidy refused to make the third installment payment under the Settlement Agreement. Aside from the first two payments made in December 2017 and April 2018, Broidy has not made any additional payments under the Settlement Agreement.

PROCEDURAL BACKGROUND

On July 6, 2018, Bechard sued Broidy, Davidson, the Law Firm, and Avenatti. As to Broidy, Bechard asserted a cause of action for breach of contract (first cause of action), alleging Broidy breached the Settlement Agreement by acknowledging the agreement's existence in the Wall Street Journal article and refusing to make the third installment payment under the agreement. The second and third causes of action were asserted against Avenatti, Davidson, and the Law Firm, alleging those defendants tortiously interfered with Bechard's contractual relations and prospective economic advantage (second cause of action) and conspired to commit breach of fiduciary duty (third cause of action) by publicly disclosing details of the Settlement Agreement and inducing Broidy to breach the agreement. Finally, as to Davidson and the Law Firm, Bechard alleged five separate causes of action, including a claim for breach of fiduciary duty (sixth cause of action) and legal malpractice (seventh cause of action).

On August 3, 2018, Broidy moved to compel arbitration of the first cause of action asserted in Bechard's complaint. Broidy argued Bechard must arbitrate her claim against him because the Settlement Agreement contained an arbitration provision requiring confidential binding arbitration of any claims or controversies arising between Broidy and Bechard.

Bechard opposed arbitration, arguing the parties' dispute fell within the third-party exception to arbitration under Code of Civil Procedure[2] section 1281.2, subdivision (c). According to Bechard, the court could not compel her to arbitrate her claims against Davidson and Avenatti since they are not parties to the Settlement Agreement. Bechard argued that because those claims arose out of the same transaction as her claim against Broidy—the alleged breach of the Settlement Agreement—any order requiring her to arbitrate her claim against Broidy could lead to conflicting rulings on common issues of fact and law. The only "equitable" solution, Bechard argued, was to deny arbitration and have all the claims tried in one action in the court.

On August 8, 2018, the Law Firm filed a cross-complaint against Broidy and Bechard for declaratory relief. As to Broidy, the Law Firm sought a declaration that the Settlement Agreement is valid and enforceable. As to Bechard, the Law Firm sought a declaration that she owed the firm "35% of all settlement proceeds pursuant to [their] contingency fee agreement."

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[2] All undesignated statutory references are to the Code of Civil Procedure.

On August 30, 2018, Broidy moved to compel arbitration of the Law Firm's cross-complaint. Broidy argued that although the Law Firm did not sign the Settlement Agreement containing the Arbitration Provision, the firm was bound by the agreement because its cross-claims arose out of the underlying Settlement Agreement—i.e., the Law Firm's claim that it is entitled to 35 percent of all settlement payments made by Broidy to Bechard. The Law Firm and Bechard each opposed Broidy's motion to compel arbitration of the cross-complaint.

On September 7, 2018, the court granted in part and denied in part Broidy's motion to strike portions of Bechard's complaint as irrelevant, and it denied Broidy's motion to seal the portions of the complaint addressed in the motion to strike. The court also granted in part and denied in part Avenatti's special motion to strike the second and third causes of action asserted against him in Bechard's complaint (anti-SLAPP motion). Specifically, the court struck the claims against Avenatti for tortious interference with prospective economic advantage alleged in the second cause of action and conspiracy to commit breach of fiduciary duty alleged in the third cause of action; the court denied the motion as to the claim against Avenatti for tortious interference with contractual relations alleged in the second cause of action.

On November 15, 2018, the court issued a written ruling denying Broidy's motions to compel arbitration.[3] The court found Bechard's claim for breach of contract and the Law Firm's cross-

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[3] In its written ruling, the court first addressed the motion to compel arbitration of the Law Firm's claims asserted in its cross-complaint. It then adopted the same analysis when it denied the motion to compel arbitration of Bechard's claim against Broidy for breach of contract. The court adopted its written ruling as its statement of decision.

claims were subject to the Arbitration Provision. The court also found Avenatti was not bound by the Arbitration Provision and, therefore, could not be compelled to arbitrate Bechard's claim for tortious interference with contractual relations. Since Avenatti could not be compelled to arbitrate, the court concluded the case fell within section 1281.2, subdivision (c)'s exception to arbitration because there was "a possibility of conflicting rulings upon a common issue of law or fact" if the Law Firm and Bechard were required to arbitrate their claims against Broidy while Bechard litigated her claim against Avenatti in court.

The court explained why splitting the claims between different forums could lead to inconsistent results: "Regardless of whether a party is named in the arbitration or in this litigation [in court], their role in this whole scenario—who if anyone actually disclosed the terms of the settlement in violation of the confidentiality provision—still must be determined, if only to exonerate the parties before the particular forum. That is, even if only Bechard's claim against Avenatti is litigated in Superior Court, the roles of [the Law Firm] and Broidy cannot simply be ignored."

The court posed several hypothetical scenarios to illustrate how the arbitrator and the court could make inconsistent rulings. "[A]s an example, the arbitrator may find Avenatti, by virtue of tweeting what he did, is the sole source of disclosure of the settlement terms, because Avenatti is not a party to the arbitration proceedings, none of the parties in arbitration may be held responsible. On the other hand, after a jury trial, there is a possibility that *none of the defendants*, [the Law Firm], Avenatti or Broidy is found to be responsible for disclosing the terms of the settlement agreement, but rather, that the Wall Street Journal

obtained such information from the records obtained from Cohen's office, and this is the sole cause of the disclosure of the terms of the settlement agreement. This would result in an inconsistent determination as to Avenatti's liability which could leave Bechard without a remedy against any of the Defendants. Alternatively, the trier of fact in either arbitration or at trial could find that one or more of the defendants, [the Law Firm], Avenatti or Broidy actually disclosed such terms of the settlement agreement in a manner which became publicly known and thus caused a breach of the confidentiality provisions. Certainly, in that Davidson allegedly spoke to Avenatti, who then tweeted about it, both of them could be found to be concurrent causes of Plaintiff Bechard's damages. However, as Plaintiff Bechard points out in her opposition—*she* personally did not disclose any terms of the confidential settlement agreement to anyone, yet she is bearing the brunt of one or more of Davidson, Avenatti, or Bro[i]dy's disclosures of the confidential terms because she is no longer receiving the settlement payments. To the extent that an arbitrator would allocate fault to non-party Avenatti in a manner inconsistent with the way fault is allocated to Avenatti at trial, this also presents a possibility of conflicting rulings between what an arbitrator would find if [the Law Firm's] claims against Broidy were arbitrated, and what a jury would find as to Avenatti's liability, which could reduce Bechard's rightful recovery."

After finding Bechard's and the Law Firm's claims against Broidy fell within the scope of the third-party exception under section 1281.2, subdivision (c), the court "exercise[d] its discretion" to deny Broidy's motions to compel arbitration. The

court then stayed the entire action pending Avenatti's appeal from the court's ruling on his anti-SLAPP motion.[4]

Broidy appeals.

DISCUSSION

Broidy contends the court misconstrued the scope of the third-party exception under section 1281.2, subdivision (c). He also contends, even if section 1281.2, subdivision (c), applies, the court erred by failing to stay the claim against Avenatti pending arbitration of the parties' other claims.

1. Applicable Law and Standard of Review

California and federal law have strong public policies in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195.) A "court is required to order a dispute to arbitration when the party seeking to compel arbitration proves the existence of a valid arbitration agreement covering the dispute." (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1404–1405 (*Laswell*).) But a court may deny arbitration if the case falls into one of the three exceptions identified in section 1281.2 or if grounds exist to revoke the parties' agreement. (§§ 1281, 1281.2; *Laswell*, at p. 1405.)

One exception to arbitration exists where "[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 transaction or series of related transactions and there is a

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[4] We later dismissed Avenatti's appeal from the order denying in part his anti-SLAPP motion after he failed to file an opening brief.

possibility of conflicting rulings on a common issue of law or fact." (§ 1281.2, subd. (c).) Section 1281.2, subdivision (c), "addresses the peculiar situation that arises when a controversy also affects claims by or against other parties not bound by the arbitration agreement." (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393 (*Cronus*).) "The exception thus does not apply when all defendants, including a nonsignatory to the arbitration agreement, have the right to enforce the arbitration provision against a signatory plaintiff." (*Laswell, supra*, 189 Cal.App.4th at p. 1405.)

If the court determines that the requirements of section 1281.2, subdivision (c), are satisfied, it "(1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding." (§ 1281.2.)

Where the court's order denying a motion to compel arbitration is based on an issue of fact, we apply a substantial evidence standard of review. (*Laswell, supra*, 189 Cal.App.4th at p. 1406.) But if the court's denial resolves only a question of law, we independently review the court's order. (*Ibid*.) If the third-party exception applies, the court's decision to stay or to deny arbitration is subject to review for abuse of discretion. (*Ibid*.)

2. The third-party exception to arbitration applies.

Broidy contends the court erred in finding the third-party exception to arbitration under section 1281.2, subdivision (c),

applies because neither Bechard's breach of contract claim against Broidy, nor the Law Firm's declaratory relief claims, requires "any determination of Mr. Avenatti's knowledge, intentions, or actions."[5] According to Broidy, a trier of fact could determine Broidy's, Bechard's, or Davidson's role in breaching the Settlement Agreement without any need to ascertain Avenatti's role in revealing the agreement's existence. Broidy argues that since any finding concerning Avenatti's responsibility for leaking the terms of the Settlement Agreement would be ancillary to any determination of Broidy's, Bechard's, or Davidson's liability, section 1281.2, subdivision (c), does not apply, and the court should have granted his motions to compel arbitration. We disagree.

2.1. Adequacy of the Record

We begin with the record before the trial court when it denied Broidy's motions to compel arbitration. Although the allegations of the parties' pleadings may constitute substantial evidence sufficient to support a court's finding that section 1281.2, subdivision (c) applies (*Abaya v. Spanish Ranch I, L.P.* (2010) 189 Cal.App.4th 1490, 1498–1499), Broidy contends the court committed legal error by not tethering its " 'inconsistent rulings' finding to the elements of the claims." Broidy argues, therefore, that our standard of review is de novo. (See *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 972 ["If the court based its decision [to apply section 1281.2,

[5] None of the parties dispute that Avenatti is not a party to the Settlement Agreement and cannot be compelled to arbitrate Bechard's claim for tortious interference with contractual relations.

subdivision (c)] on a legal determination, then we adopt the de novo standard."].)

Although Broidy spends much time discussing it, the standard of review is hardly determinative here. If we were reviewing this matter de novo, as Broidy urges, we would affirm the order denying the motions to compel arbitration due to an inadequate record. Stated differently, because the record does not contain a copy of the Settlement Agreement, we cannot evaluate Broidy's arguments.

Bechard's breach of contract claim against Broidy, her tortious interference with contractual relations claim against Avenatti, and the Law Firm's declaratory relief claims against Broidy and Bechard, are based on violations of the Settlement Agreement's terms. But without the Settlement Agreement, we cannot determine the scope of Bechard's and Broidy's obligations and rights under that agreement, or the nature of Bechard's claim against Avenatti for disrupting Bechard's and Broidy's contractual relationship. (See *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383 ["[T]he plaintiff must plead the existence of a contract, its terms which establish the obligation in issue, the occurrence of any conditions precedent to enforcement of the obligation, and the breach of that obligation."]; *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148 [to prevail on a claim for tortious interference with contractual relations, a plaintiff must prove, among other things, the existence of a valid contract between the plaintiff and a third party and actual breach or disruption of the contractual relationship].)

Importantly, the scope of Bechard's and Broidy's obligations and rights under the Settlement Agreement is relevant in determining whether there is a possibility of

conflicting rulings if Bechard's claims against Broidy and Avenatti are resolved in different forums. For example, the Settlement Agreement could include a confidentiality provision that excuses Broidy's obligation to make settlement payments to Bechard if the existence of the agreement, the identity of the parties to the agreement, or any of the agreement's terms are made public by a third party. If the Settlement Agreement contains such a provision, the arbitrator and the court could make inconsistent findings with respect to Broidy's role, if any, in leaking details about the agreement, which, in turn, could affect any potential recovery by Bechard on her breach of contract and tortious interference claims. Without the Settlement Agreement, we also cannot evaluate Broidy's argument that whether Avenatti "knew about the parties' agreement, how he learned of it, and whether he wanted to disrupt it, are ancillary factual questions immaterial to the resolution of the contract claims by and among" Bechard, the Law Firm, and Broidy.

2.2. The Possibility of Inconsistent Rulings

In any event, the limited record before us establishes a possibility of conflicting rulings on a common issue of fact or law. Accordingly, the court did not err when it found the third-party exception to arbitration applies.

Bechard's breach of contract claim against Broidy, her tortious interference claim against Avenatti, and the Law Firm's declaratory relief claims all require a determination of a common factual issue: who was responsible for publicly disclosing the existence of, and details about, the Settlement Agreement? Here, there is a possibility of conflicting rulings on this issue, an issue central to Bechard's claims and the Law Firm's cross-claims.

For example, the arbitrator deciding Bechard's breach of contract claim against Broidy could find Avenatti was solely responsible for leaking the terms of the Settlement Agreement, thereby excusing Broidy's obligation to make additional settlement payments under the agreement. Bechard would not be able to recover any damages in the arbitration, however, because Avenatti would not be a party to that proceeding. The Law Firm would also likely be barred from obtaining a declaration that the Settlement Agreement remains valid and enforceable because, under the arbitrator's ruling, Broidy would be excused from further performing under the Settlement Agreement.

But the court deciding Bechard's tortious interference claim against Avenatti could find that Broidy, not Avenatti, was responsible for leaking details about the Settlement Agreement. That finding, in turn, could eliminate Bechard's recovery against Avenatti. And because Broidy would not be a party to the court proceeding, Bechard could not recover damages against Broidy for his role in breaching the Settlement Agreement. Moreover, had the Law Firm's claims been before the court, the firm could obtain a declaration upholding the validity of the Settlement Agreement because Broidy would not be excused from performing under the Settlement Agreement based on his breach of the agreement's confidentiality provisions. Thus, there is a possibility of inconsistent rulings on a common issue of fact or law that could affect the outcome of the arbitration and the litigation if the parties' claims are resolved in different forums.

These issues notwithstanding, Broidy argues that any finding by the court in an action against Avenatti determining Broidy's responsibility for breaching the Settlement Agreement would be "surplusage" or "ancillary" because such a finding would

not be necessary to hold Avenatti liable. Consequently, Broidy argues, any finding by the court concerning Broidy's conduct with respect to the breach of the Settlement Agreement would "not [be] a part of the *rulings*" against Avenatti and could not be used as a basis for denying arbitration under section 1281.2, subdivision (c). We are not persuaded.

Broidy cites to *Weddle v. Loges* (1942) 52 Cal.App.2d 115 and a treatise on California civil procedure, which explain that where a verdict includes an improper finding, the verdict may be upheld if the improper finding is "surplusage" or can otherwise be excised without undermining the validity of the verdict. (See 7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 366; *Weddle*, at p. 119.) Nothing in *Weddle* nor the portion of the treatise cited by Broidy suggests that it is improper for the trier of fact to make a finding that is not essential to proving an element of a cause of action, or that such a finding cannot support application of the third-party exception to arbitration under section 1281.2, subdivision (c).

Broidy also relies on *Bos Material Handling, Inc. v. Crown Controls Corp.* (1982) 137 Cal.App.3d 99 (*Bos Material*), to argue the court misapplied section 1281.2, subdivision (c), because the statute applies "only to potentially inconsistent *outcomes* or *judgments*, not merely ancillary findings." Broidy's reliance on *Bos Material* is misplaced.

In *Bos Material*, the court of appeal reversed the trial court's order denying Crown Controls Corporation's (Crown) motion to compel arbitration of Bos Material's claims alleging wrongful termination of a "dealer agreement." (*Bos Material*, *supra*, 137 Cal.App.3d at pp. 103–105.) Bos Material argued that section 1281.2, subdivision (c), applied because, after the court

issued its order denying arbitration on other grounds, Bos Material tried to substitute a new defendant who was not subject to the underlying arbitration agreement for an "unnamed third party 'Doe' " in the fifth cause of action for antitrust violations and the sixth cause of action for intentional interference with prospective economic advantage and contract. (*Bos Material,* at p. 112.) The court reasoned Bos Material's addition of the new defendant did not justify applying section 1281.2, subdivision (c), to uphold the trial court's order denying the motion to compel arbitration because: (1) the amendment was made *after* the court ruled on the motion to compel arbitration; (2) "the record [was] silent as to whether or not any third parties would agree to submit to arbitration"; (3) the antitrust claim was already excluded from arbitration on other grounds; and (4) the "action alleging that third parties intentionally interfered with prospective business advantage clearly [was] ancillary to the causes of action alleged against Crown." (*Bos Material,* at p. 112.) The court concluded, "[i]f arbitration defenses could be foreclosed by naming third party Does, the utility of arbitration agreements would be 'seriously compromised.' [Citation.]" (*Ibid*.)

This case is distinguishable from *Bos Material*. First, this case does not involve unnamed "Doe" defendants or the substitution into the action of a third party not subject to an arbitration agreement *after* the court ruled on the underlying motion to compel arbitration. Rather, Avenatti was named as a defendant in Bechard's original complaint, and it is undisputed that Avenatti is not subject to the Arbitration Provision.

Second, unlike the tortious interference claims at issue in *Bos Material*, Bechard's claim against Avenatti is not ancillary to the claims subject to arbitration. As we explained above,

Bechard's breach of contract claim against Broidy, her tortious interference claim against Avenatti, and the Law Firm's declaratory relief claims all have a factual issue in common—the party, or parties, responsible for publicly disclosing details about the Settlement Agreement. Resolution of that central issue can affect the ultimate outcome of the arbitration of Bechard's and the Law Firm's claims against Broidy and the court's resolution of Bechard's claim against Avenatti. *Bos Material*, therefore, does not compel us to reverse the court's order denying Broidy's motions.

In short, there is a possibility of conflicting rulings on the individual responsible for publicly disclosing the existence of and details about the Settlement Agreement, a fact central to the parties' arbitrable claims and the nonarbitrable claim against Avenatti.[6]

3. The court did not abuse its discretion in denying arbitration.

Broidy also contends the court erred as a matter of law when it failed to consider alternatives to denying arbitration under section 1281.2. Broidy claims the court's statement of decision "contains no discussion supporting the [court's] refusal to order arbitration while the Avenatti case was stayed." According

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[6] In light of our conclusion, we need not address Broidy's argument that the court's interpretation of section 1281.2, subdivision (c), is preempted by federal law on the grounds that it permits denial of arbitration because of the possibility of inconsistent rulings on "ancillary" issues that could have no impact on the judgment. For the same reason, we need not address Broidy's argument that application of the third-party exception to "ancillary" issues undermines the purpose of section 1281.2, subdivision (c).

to Broidy, had the court "considered the statutory alternatives" it would have been obligated to grant Broidy's motions to compel arbitration. This argument lacks merit.

As noted above, section 1281.2 lists the alternatives to denying arbitration the court may choose after finding the third-party exception under subdivision (c) applies, including ordering arbitration among the parties who have agreed to arbitration and staying the court action pending the outcome of the arbitration. (See § 1281.2.) In its statement of decision, the court discussed each of these alternatives immediately before addressing the potential for conflicting rulings if Bechard and the Law Firm arbitrate their claims against Broidy while Bechard litigates her claim against Avenatti in court. The court also addressed the possible consequences of splitting Bechard's claims between arbitration and litigation, such as depriving Bechard of any recovery should the arbitrator find Avenatti responsible for leaking the details of the Settlement Agreement, while the court or a jury finds someone other than Avenatti leaked the agreement's details. After concluding its analysis, the court stated that it "exercises its discretion pursuant to CCP § 1281.2(c) & (d)[7] to refuse to enforce the arbitration agreement" as to the Law Firm and Bechard. The statement of decision, therefore, shows the court considered the statutory alternatives to denying arbitration entirely. (See *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380 ["The court's

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[7] As noted by Broidy, the court's reference to subdivision (d) appears to be a scrivener's error since that subdivision relates to a state or federally chartered depository institution. The court clearly meant to refer to the alternatives to arbitration discussed in the statute *after* subdivision (d). (§ 1281.2.)

statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case."].)

It is also clear from the transcripts of the hearing on the motions to compel arbitration that the court considered Broidy's request to stay, rather than deny, arbitration under section 1281.2. At that hearing, Broidy's counsel asked the court to consider staying Bechard's case against Avenatti while requiring Bechard and the Law Firm to arbitrate their claims against Broidy. The court acknowledged that it considered counsel's argument and rejected it: "All right. Well, you've made your point, but it's not persuasive." Thus, nothing in the record suggests the court refused or otherwise failed to consider the alternatives to denying arbitration outlined in section 1281.2.

Once the statutory prerequisites to section 1281.2, subdivision (c), are met, the trial court has broad discretion in selecting among the statute's delineated options. (See *Lindemann v. Hume* (2012) 204 Cal.App.4th 556, 568 (*Lindemann*).) It is, of course, not the province of this court to second-guess the trial court's evaluation of different options available under section 1281.2. In many instances there will be more than one reasonable choice and the selection of one over the other will not amount to an abuse of discretion. (*Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 351.)

On this record, we cannot say the court's denial of arbitration exceeded the bounds of reason. At minimum, staying Bechard's claim against Avenatti while requiring arbitration of the parties' other claims would not achieve the statute's goal of avoiding potential inconsistency in outcomes as well as duplication of efforts. (*Cronus*, *supra*, 35 Cal.4th at p. 393.)

Because of the possibility of inconsistent outcomes and duplication of efforts, "it was eminently reasonable for the court to conclude the entire case should be resolved in a single litigation." (*Lindemann*, *supra*, 204 Cal.App.4th at p. 568.)

4. The court was not biased.

Finally, Broidy contends the court's "naked advancement" of Bechard's interests "is another abuse of discretion warranting reversal." In support of this argument, Broidy points to two statements in the court's written ruling. In the first statement, the court noted that "as Plaintiff Bechard points out in her opposition—*she* personally did not disclose any terms of the confidential settlement agreement." In the second statement, made shortly after the first statement, the court noted that inconsistent findings between the arbitrator and the court concerning Avenatti's fault for disclosing the terms of the Settlement Agreement "could reduce Bechard's rightful recovery." Broidy insists these statements show the court was motivated "to benefit [Bechard] and resolve the motion[s] in the way [Bechard] preferred."

The court's challenged statements reflect its analysis of potential scenarios in which the arbitrator and the court could make inconsistent rulings if the claims are resolved in different forums. As we discussed, a trial court must engage in an analysis of hypothetical results that could flow from granting or denying a motion to compel arbitration when determining whether the case falls within the scope of section 1281.2, subdivision (c). Nothing in the court's written ruling supports an inference that the court did anything other than engage in such an analysis, and nothing in the record remotely suggests the court was biased.

DISPOSITION

The order denying Broidy's motions to compel arbitration is affirmed. Bechard, Davidson, and the Law Firm shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.