

Petitioner /Plaintiff HCAL Packaging is seeking a pre-trial right to attach order and a writ of attachment against the Defendants Savino Farms, Inc., and Gabriel Contreras in the amount of almost \$2.4 million based upon financing agreements entered into between the parties in 2021 to 2023.

Plaintiff's request is denied without prejudice as this dispute and entire matter is subject to an arbitration clause in the original financing agreements. Courts generally have no authority to grant a writ of attachment where an agreement to arbitrate grants the arbitrator, by the terms of the agreement, the ability to grant provisional relief. That appears to be the case here.

At least two of the applicable financing agreements contain arbitration clauses containing language that provides: "any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or viability thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be governed by California law and shall be administered by arbitration in Los Angeles County, California before one arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules....."

California Code of Civil Procedure, section 128.8(b) provides that a party to an arbitration agreement may file in the court where the arbitration proceeding is pending, or if an arbitration proceeding has not commenced, in any proper court, an application for a provisional remedy in connection with an arbitrable controversy *but only upon the ground that the award to which the applicant maybe entitled may be rendered ineffectual without provisional relief.* (Emphasis added).

See, *California Retail Portfolio Fund GMBH & Co. KG v. Hopkins Real Estate Group (California Retail)* (2011) 193, Cal. App. 4th 849, 856 citing *Woolley v. Embassy Suites, Inc.* (1991) 227 Cal. App. 3d. 1520, 1527. These cases hold that a party requesting a provisional remedy from a court when there is an arbitration clause must satisfy the statutory requirements for a writ of attachment *as well as the ineffectual relief requirement* pursuant to Code of Civil Procedure section 1281.8.

In this instant matter, plaintiff has failed to meet its burden under Code of Civil Procedure, section 1281.8(b). The motion is denied without prejudice. The parties may elect to seek relief with their chosen arbitration provider pursuant to the contractual arbitration clause(s). Alternatively, if the motion is to be renewed in this court, the requisite showing of the requirements for a writ of attachment AND the ineffectual relief requirement must be satisfied.