

TYPES NOT MAPPED YET July 28, 2021 | TTR not mapped yet | Jeffrey N. Brown, Aya Elalami

Cannabis company denied arbitration - reminder to avoid conflicting remedies in lease agreements

In a lease dispute between a ranch-owner and cannabis company, a California state court of appeal ruled that the arbitration provision included in the lease was not enforceable, as it would nullify conflicting remedy rights granted to the landlords elsewhere in the lease.

The dispute arose after Mary S. Etter and Mary V. Etter, landlords and owners of the ranch, brought an unlawful detainer action against MCB Valley Properties, LLC, a cannabis company and tenant under the lease in question. The Etters argued that MCB was in violation of the lease for failure to pay rent, taxes and utilities totaling \$178,087, and for failure to maintain the property as required under the lease. In response to the Etters' eviction action, MCB moved to compel arbitration, which was denied by the trial court.

The dispute as to whether the tenant could compel arbitration of the landlords' eviction lawsuit arose from a clear tension between two sections in the lease. Tenant MCB argued that the issue must go to arbitration, as the "Miscellaneous" section of the lease states that "[any] unresolved controversy or claim arising out of or relating to this Lease shall be submitted to arbitration." However, the "Remedies" section of the lease gives the Etters, as landlords, the right to remedy certain defaults by stating that "Landlord may elect" to enforce performance of certain provisions of the lease by "appropriate judicial proceeding, either at law or in equity." This section of the lease also states that "each right and remedy of Landlord...shall be in addition to every other right and remedy provided for in this Lease."

The appellate court affirmed the trial court's decision denying MCB's motion to compel arbitration, allowing the Etters to proceed with their judicial action. The court of appeal relied heavily on the principle that contractual disputes should be interpreted in a manner that gives meaning to every provision, and courts should avoid interpreting a contract in a way that renders certain provisions moot. The court noted that interpreting the lease to require arbitration proceedings for all claims or controversies would mean that

"no dispute whatsoever would fall within the ambit of [the Remedies section]. Such an interpretation would completely foreclose the Etters from seeking any remedy for any violation through a judicial proceeding. This cannot have been the parties' intent."

This outcome reminds attorneys to be careful when drafting provisions that may result in conflicting rights and obligations of the parties, as the court is most concerned with settling the inconsistent terms on their face, rather than determining which party may have been negligent in their drafting and review of the contract.

Furthermore, this case serves as a reminder that skillful lease drafting not only requires carefully reading the text within the four corners of a contract, but also includes looking at the applicable state and federal laws. Even if the appellate court disagreed with the trial court and held that the landlords did not have a right to bring judicial action, the arbitration clause is not enforceable as written. The lower court had issued an alternative ruling that held the arbitration provision is not enforceable because it does not comply with California law and does not fall under the scope of the Federal Arbitration Act. These arguments over conflicting meaning and statutory compliance are better handled in the early stages of negotiating the agreement, rather than in front of the bench years into the lease term.

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