

New Case Update

Tarrant Bell Property, LLC v. The Superior Court of Alameda County and Spanish Ranch I, L.P. v. The Superior Court of Alameda County

2009 WL 4295925 (Cal.App. 1 Dist.) Dec. 2, 2009

HOLDING

The California Court of Appeal's decision on December 2, 2009 in *Tarrant Bell Property, LLC v. The Superior Court of Alameda County and Spanish Ranch I, L.P. v. The Superior Court of Alameda County* gives the trial court discretion in determining whether to enforce a judicial reference provision in the agreements between the owners of a mobile home park and the residents. The court specifically noted that this breadth of discretion did not exist where the agreement required arbitration.

BACKGROUND FACTS

120 current and former residents of the Spanish Ranch I Mobile Home Park sued the park owners alleging a failure to properly maintain the common areas and facilities within the mobile home park, resulting in substandard living conditions.

Some of the residents signed leases containing arbitration **and** judicial reference provisions while other residents' agreements did not contain either of these provisions. The agreements stated that disputes would first be submitted to arbitration and, if the arbitration provision was deemed unenforceable, the dispute would be referred to judicial reference.

The trial court denied the motion to compel arbitration. The subsequent request to compel judicial reference was also denied. This appeal followed, dealing exclusively with the court's ruling on the motion to compel judicial reference.

ANALYSIS

The court held that California Code of Civil Procedure § 638 grants the trial court discretion in ordering the enforcement of judicial reference provisions. The court noted the word "may" as evidence of the Legislature's intent to allow discretion in deciding whether to compel judicial reference. The court compared this to other uses of the word "shall" in CCP § 638. The court also compared the judicial reference statute to the arbitration statute, noting the presence of specific exceptions to the enforcement of arbitration provisions. The use of the word "may" as well as the absence of a list of specific exceptions in the judicial reference statute, was viewed as the Legislature's clear intent to make judicial reference provisions discretionary.

After deciding that the trial court had the discretion to deny the motion to compel judicial reference, it reviewed the facts of this particular case. Here, the fact that many of the residents could not be re-

quired to participate in the reference would have resulted in duplicative and unnecessary discovery, increased costs, and potentially, delays in resolution.

The park owners argued that each resident's alleged damages were unique and, thus, there was no risk of inconsistent rulings. In rejecting this argument, the court held that common issues existed regarding liability for the alleged failure to maintain the common areas of the mobile home park. The court also rejected the argument that the parallel proceeding would reduce, not increase costs, noting that the residents in the judicial reference would nonetheless be called as witnesses in court to establish the pervasiveness of the alleged substandard living conditions. Additionally, the same expert witnesses would be required to appear in both proceedings.

SIGNIFICANCE

This holding is significant in two ways. First, in distinguishing between the discretionary language for judicial reference provisions and the language for arbitration provisions with specific exceptions, the court basically confirmed that arbitration provisions are much more likely to be upheld—only specific exceptions to the enforcement of arbitration provisions are listed in the statute, though court arguably still has discretion to deny arbitration. While the owners in this case attempted to include both types of provisions in their agreements, owners and developers should consider that arbitration provisions may be much easier to enforce when drafting agreements.

Second, this holding is a reminder of the importance of consistency in *all* contrac-

tual arbitration and judicial reference provisions among tenants and home buyers. The inconsistency of the judicial reference provisions among the residents was a key factor in the court's denial of the park owners' motion. If all of the agreements had contained an identical judicial reference, it is much more likely that the court would have exercised its discretion and compelled the reference.

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