

## Commercial and Complex Litigation Practice Group

March 03, 2016

## AALRR Alert



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## Appellate Court Upholds Provision in Residential Lease Agreement Limiting Attorney Fees

In *511 S. Park View, Inc. v. Maria Tsantis et al.*, 249 Cal. App. 4th Supp. 44 (L.A. Superior Court App. Div. Oct. 5, 2015), a California appellate court recently addressed the enforceability of a provision in a residential lease agreement capping the amount of attorney fees that the prevailing party may recover.

Plaintiff (landlord) filed an unlawful detainer complaint against defendants (tenants) in the trial court alleging defendants' failure to comply with a three-day notice to pay rent or quit. Plaintiff's complaint requested possession of the premises, past due rent, holdover damages, forfeiture of the lease agreement, costs, and "reasonable" attorney fees. In response, defendants filed an answer in which they also requested "reasonable" attorney fees.

Following an unlawful detainer court trial in defendants' favor, defendants filed a motion for attorney fees as the prevailing parties. Defendants argued that they were entitled to recover \$12,375 in attorney fees pursuant to Civil Code section 1717 and the attorney fees provision

in the parties' lease agreement, and that the provision in the lease limiting the recovery of fees to \$750 was void and unenforceable. Plaintiff argued that there was no right to recover attorney fees in excess of \$750 because attorney fee provisions in lease agreements, like all other contractual provisions, are enforced according to their terms. The attorney fees provision in the lease stated: "In any legal action brought by either party to enforce the terms of this Lease, the prevailing party shall be entitled to all costs, reasonably incurred in connection with that action, limited to no more than five hundred dollars (\$500.00). In addition, the prevailing party is entitled to reasonable attorney fees, limited to no more than seven hundred fifty dollars (\$750.00)." The trial court granted the defendants' motion for fees in its entirety, finding that "the \$750.00 limitation on attorney fees in the lease is void and unenforceable."

The appellate court reversed the order awarding \$12,375 in attorney fees holding that the attorney fees provision was not void, and that the trial court abused its discretion in

awarding attorney fees in excess of the contractual limit. In its opinion, the appellate court noted at the outset that an attorney fees provision in a contract is interpreted under ordinary contract principles and that "[u]nder statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. Such intent is to be inferred, if possible, solely from the written provisions of the contract. The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage', controls judicial interpretation. Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning. [Citations omitted.]"

--> "511 S. Park View is an important reminder that caps on attorney fees in residential lease agreements may help landlords avoid large attorney fees..."

Here, the appellate court found there was no conflict or ambiguity created by the attorney fees provision simply because reasonable fees were capped at \$750. The appellate court rejected the defendants' contention that the provision was inconsistent and unreasonable. The appellate court also held that the provision did not contravene Civil Code section 1717 because it was reciprocally binding upon all parties in accord with the main purpose of the statute. Finally, the appellate court noted that there is ample case law which holds that parties to a contract may limit entitlement to fees. *See, e.g., Kalai v. Gray* (2003) 109 Cal.App.4th 768, 777 [trial court erred in awarding attorney fees in a civil action because the parties' agreement specifically limited the award of fees to the prevailing party in arbitration].

*511 S. Park View* is an important reminder that caps on attorney fees in residential lease agreements may help landlords avoid large attorney fees being awarded if a landlord loses in a lawsuit against a tenant, and that landlords should consider incorporating these types of provisions into their lease agreements.

If you have any questions regarding this case, please contact one of the authors at AALRR.