

California's Prohibition on Arbitration Agreements in Residential Leases is Extended to Continuing Care Contracts

In *Harris v. University Village Thousand Oaks, CCRC, LLC*, plaintiffs, residents at Defendant's continuing care retirement community who had previously signed binding arbitration agreements in their continuing care contracts, argued that under applicable California law, the arbitration agreements were invalid and they could therefore litigate their claims in a court of law.

Defendant University Village sought to enforce the arbitration provisions of the continuing care contracts. On Jun. 1, 2020, the California Court of Appeal for the Second Appellate District ruled in favor of the plaintiffs. On Sept. 16, 2020, the California Supreme Court rejected Defendant's petition for review, upholding the Court of Appeal's ruling.

The central issue of the case was whether California Civil Code section 1953(a)(4) applies to continuing care contracts. Civil Code 1953(a)(4), states that any provision "of a lease or rental agreement" which modifies or waives a tenant's procedural rights in litigation, is void as contrary to public policy. University Village argued that while continuing care contracts do include the provision of housing, they are primarily a contract for the promise of care and services, generally for the duration of a resident's life. University Village also argued that the arbitration clauses had been approved by the Department of Social Services and that the Continuing Care Act preempted the landlord-tenant law relied upon by the Court.

The Court of Appeal was unmoved by University Village's arguments and focused its analysis less on the fundamental nature and primary purpose of a continuing care contract, and more on the intent of the legislature in enacting Civil Code 1953. Ultimately, while acknowledging some differences between standard leases and continuing care contracts, the Court of Appeal concluded that Section 1953 was enacted to protect tenants from waiving their right to litigate housing-related claims in court, and that this protection extends to continuing care residents. The Court's ruling is consistent with a recent judicial trend in protecting tenants' litigation rights.

Concurrent with its denial of University Village's petition for review, the California Supreme Court also denied University Village's request to de-publish the Court of Appeal's opinion.



by Payam A. Saljoughian

Accordingly, in light of this new case law, senior living communities are advised to revise their arbitration agreements. While arbitration clauses can no longer bind residents' disputes related to housing issues, arbitration arguably still is enforceable for disputes relating to care and services. Arbitration clauses should be amended to clarify that they cover claims related to the care and services offered pursuant to the contract, but not to landlord-tenant claims covered by the Civil Code.

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