

TYPES NOT MAPPED YET November 17, 2023 | TTR not mapped yet | Jeffrey N. Brown

# Be careful what you wish for: Using a license instead of a lease may preclude the use of California's summary eviction procedure

In *Castaic Studios, LLC v. Wonderland Studios LLC*, the California Court of Appeal held that when a property owner only licenses its real property to another, the property owner cannot use California's summary eviction process, unlawful detainer, against the defaulting party. Here, Castaic entered into a written agreement by which it granted Wonderland the "exclusive right to use" certain areas of Castaic's commercial property. The agreement specified it was a "license agreement" as opposed to a lease, with Castaic retaining legal possession and control of the premises. The agreement also provided that it was to be "governed by the contract[] laws and not by the landlord tenant laws."

Wonderland defaulted on the agreement, and Castaic filed an unlawful detainer action seeking possession of the property. The trial court dismissed the lawsuit, "reasoning that Castaic had waived its right to pursue the remedy of unlawful detainer."

The applicable terms of the agreement were:

Section 6 of the agreement states, "[t]his agreement is not a lease or any other interest in real property. It is a contractual arrangement that creates a revocable license. Licensor retains legal possession and control of the Premises and the area(s) assigned to Licensee. Licensor has the right to terminate this Agreement due to Licensee's default. When this Agreement is terminated . . . the license to use the Premises is revoked. Licensee agree[s] to remove Licensee's personal property and leave the area(s) as of the date of termination. Licensor is not responsible for personal property left in the area(s) after termination."

Section 12.1 states, "Licensee is in default . . . if: [] Licensee does not pay the required amount payable . . . hereunder on the designated payment date and after written notice of the Licensee's failure to pay, Licensee does not pay within 3 days after the date of such notice . . . . If Licensee defaults on Licensee's obligation under this Agreement, Licensee agrees that Licensor may cease to provide . . . access to the Licensee's area(s) of use without notice or the need to initiate legal process."

Section 13.3(a) provides that if Wonderland defaults, Castaic may "immediately terminate Licensee's right to use of the Premises by any lawful means, in which case Licensor's obligations under this Agreement shall immediately terminate and Licensor shall have option to immediately take over use of the Premises from the Licensee."

Section 29 provides, "[t]his agreement will be governed by the contract laws and not by the landlord tenant laws."

The Court of Appeal explained that the cause of action for unlawful detainer "is a remedy available to a landlord against a tenant who breaches a lease and is 'intended and designed to provide an expeditious remedy for the recovery of possession of real property.'" Again, in this case, not only had Castaic designated its arrangement with Wonderland as a license and not a lease, but the terms of the license agreement described above waived any right for Castaic to file an action for unlawful detainer. The Court focused on the language which provided that the agreement will be governed by the contract laws and not by the landlord tenant laws, and that "this agreement is not a lease or any other interest in real property. It is a contractual arrangement that creates a revocable license."

The Court noted that whether an agreement is a lease or license "is a subtle pursuit." It also noted that regardless of the distinction, in this case, because of the multiple provisions which waived the rights of Castaic to be a landlord having the benefits of the unlawful detainer procedure, that Castaic could not pursue such a claim.



Therefore, when drafting agreements with respect to use of real property, one of the important issues to keep in mind is how the owner can assert its rights to evict a defaulting user of the real property. In this case, the owner was precluded from using the easiest, quickest method to remove the defaulting user from the property.

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