

ARTICLE:**A CONTRACT DRAFTING CONUNDRUM: CAN A REAL PROPERTY LICENSE AGREEMENT DISCLAIM A LANDLORD-TENANT RELATIONSHIP WHILE RETAINING THE SUMMARY REMEDY OF UNLAWFUL DETAINER FOR THE LICENSOR-OWNER?**

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Introduction

A landowner desiring to enter into a license agreement for the use of real property must take care to ensure that the license agreement does not contain terms that inadvertently waive the landowner's right to recover the property through the summary proceeding of an unlawful detainer action. This is the lesson from *Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th 209, 315 Cal. Rptr. 3d 163 (2d Dist. 2023) (*Castaic Studios*), where the Second District Court of Appeal recently held that Castaic Studios, LLC ("Castaic") waived the remedy of unlawful detainer when it entered into a contractual agreement with defendant Wonderland Studios, LLC ("Wonderland") that expressly created a revocable license and recited that it would be exclusively governed by contract law, not landlord-tenant law.

While *Castaic Studios* is an example of how *not* to draft a license agreement on behalf of a licensor, it leaves open questions regarding the best way to draft a license agreement that avoids the implications of the landlord-tenant relationship while preserving the licensor's summary remedy of unlawful detainer for the licensor. The ruling also implicates the broader nature of the differences between lease agreements and license agreements relating to the right to use real property, and raises significant questions as to what remedies are available to a licensor when a licensee refuses to leave the property despite a breach or lapse of its contractual rights under the license agreement. In exploring these questions and potential answers in more detail, it is helpful to examine the myriad rights, duties, and obligations between the parties to a lease agreement and license agreement, as they relate to the use of real property.

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Comparison of Rights and Remedies Among Lessors-Lessees and Licensors-Licensees, and the Owner's Recovery of Possession under a Lease vs. a License Agreement

Lease Agreement between Lessor and Lessee

A lease is an agreement that creates a landlord-tenant relationship and gives the lessee exclusive possession of the premises “against all the world, including the owner.”¹ In California, a lease provides a host of statutory protections to tenants while placing certain statutory duties on landlords that do not apply to licensors. For example, under California law every lease, including those for commercial tenancies, contains certain implied covenants, including that the landlord has title to the premises and the parties will act in good faith and fair dealing with one another in accordance with the terms of the lease.² Every lease agreement also contains an implied covenant of quiet enjoyment, which prohibits a landlord from interfering with the tenant’s right to “use and enjoy the premises for the purposes contemplated by the lease.”³ Although this implied covenant can be waived in commercial tenancies,⁴ it typifies the protections that lessees generally enjoy under a lease agreement arising from the principle that a lessee is entitled to enjoy an exclusive, undisturbed, possessory interest in the land that they are leasing for the full term of the lease.⁵

Additionally, tenants typically enjoy stronger claims for renewal of the tenancy at the expiration of the lease term,⁶ and, due to their exclusive right to use and occupy the property, a protected interest in the property that can only be terminated through specific legal processes such as an unlawful detainer action or civil lawsuit.⁷ For example (assuming it is not prohibited by the lease), a tenant who remains in possession of the property after the expiration of the lease term and who pays rent that is accepted by the landlord is presumed to have renewed the lease as a “periodic tenant” on the same terms and conditions as those set forth in the now-lapsed lease.⁸ Likewise, commercial lease agreements routinely include options to extend the lease, which, unless expressly disclaimed in the lease, are covenants running with land and therefore available to a tenant’s successors and assigns.⁹

With respect to residential leaseholds, statutory protections for tenants are even stronger. Indeed, landlords owe a statutory duty to maintain the property in a condition reasonably suitable for residential use and occupation and to repair any dilapidations that render the property untenable except for those dilapidations caused by the tenant’s lack of ordinary care.¹⁰ Landlords of resi-

dential property also owe an implied warranty of habitability and an implied covenant of quiet enjoyment to their tenants.¹¹ The implied warranty of habitability requires landlords to inspect the premises to discover dangerous conditions and to maintain the premises during the tenant's occupancy.¹² The implied warranty of habitability cannot be waived or modified by the tenant, and any alleged waiver is void as being against public policy.¹³ Even if a tenant *knows* that the premises are in poor condition at the time he or she rents the premises, this knowledge does not operate to waive the implied warranty or the tenant's available remedies as a result of those defects.¹⁴ As such, a landlord who fails to maintain the premises in a safe condition has unlawfully interfered with the tenant's quiet possession and enjoyment of said premises.¹⁵

A landlord who seeks to recover monetary damages and/or possession from a tenant must do so in accordance with the contractual obligations, if any, set forth in the lease, the statutory requirements under Civ. Code, §§ 1951.2 and/or 1951.4 (governing lessor's remedies and right to terminate the lease), and the statutory requirements set forth in Civ. Proc. Code, § 1161(1) (the "Unlawful Detainer Statute").

The primary purpose and intent of the Unlawful Detainer Statute is to provide a landowner with an "expeditious remedy" to recover possession of real property, and landowners must strictly comply with its provisions if they want to obtain relief under its terms.¹⁶ A tenant's default, on its own, is not sufficient to render the tenant guilty of unlawful detainer.¹⁷ Instead, the tenant must receive a valid notice of the default *and* fail to cure the default prior to expiration of the notice period.¹⁸ Only after this occurs may a landlord initiate an unlawful detainer proceeding to recover possession of the premises from the tenant.¹⁹ Because the primary purpose and intent of an unlawful detainer action is to recover possession of the property, monetary damages available to landlords via an unlawful detainer action are limited to: (1) past due rent; (2) the value of the premises for the period of time in which the tenant wrongfully retains possession as a holdover tenant; and (3) the cost of recovering possession of the premises.²⁰ While a landlord may pursue the recovery of additional monetary damages, including lost future rent and damages incurred as a result of other breaches to the lease, those damages must be pursued in a separate, civil action.²¹

Notably, there is no corresponding summary proceeding for a tenant to obtain an expeditious remedy due to a breach by the landlord—instead, tenants typically must initiate a civil lawsuit to enforce their rights under the lease. In

this regard, a tenant's remedies arising from a landlord's breach of the lease agreement mirror those for any other breach of contract claim, e.g., the tenant may recover damages or be entitled to equitable or injunctive relief, including specific performance of the agreement.²²

License Agreement between Licensor and Licensee

A revocable license is a personal privilege that authorizes the holder of the license (the licensee) to use or perform certain act(s) on the land of another pursuant to the express or implied permission of the property owner (the licensor).²³ Unlike a lease agreement, a license is personal, meaning it cannot be assigned without the express permission of the licensor, and is therefore revocable by the licensor.²⁴ In other words, a license is a "mere personal privilege" that does not transfer or convey any interest in real property. Instead, it "merely makes lawful an act that otherwise would constitute a trespass."²⁵ This is in direct contrast to a lease, which gives a lessee an exclusive possessory interest in the property, that allows the lessee to exclude all other persons, including the landowner, from the property. Notably, however, while a license is typically revocable at will by the licensor, the fact that a license agreement is not revocable or "terminable at will" does not "destroy its character as a license or convert it into a lease."²⁶

Another key difference between a lease and a license is that because a licensor can, in general, revoke its license at any time, a licensor is not required to provide notice before it terminates the license or, as a result, the occupancy of a licensee.²⁷ Because of this, if a licensee remains in possession of the premises after the licensor terminates the license, the licensee is a trespasser and is liable to the licensor for damages.²⁸ Moreover, even though a licensee does not have any possessory interest in the land, the Unlawful Detainer Statute by its terms applies to and includes a person who became an occupant of real property as a licensee²⁹—although, as explained below, the *Castaic Studios* court, construing the specific terms of the license at issue in that case, determined the licensor/property owner had waived this aspect of the Unlawful Detainer Statute.

Under Civ. Proc. Code, § 1161(1):

A tenant of real property, for a term less than life . . . is guilty of unlawful detainer . . . [w]hen the tenant continues in possession . . . after the expiration of the term for which it is let to the tenant . . . *including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal*

and agent, *or licensor and licensee*, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired. . . .³⁰

Therefore, absent waiver, a licensor seeking to recover possession of the licensed property from a lapsed or terminated licensee may do so through an unlawful detainer action.³¹

If the remedy of an unlawful detainer action is unavailable, a licensor's remedies may include self-help, injunctive relief, or ejectment. A licensor who resorts to "self-help" methods of recovering real property without any underlying legal proceeding could face liability exposure for conversion, tortious interference with possession, and even criminal liability for assault and battery or theft of personal property.³² To avoid this, a licensor may initiate a civil action for trespass, ejectment, and/or quiet title, and seek monetary damages due to the licensee's alleged failure to vacate the property.³³

With respect to ejectment, a licensor may recover possession of the property at issue "either by a judgment for its possession, to be executed by the Sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property."³⁴ Indeed, the gravamen of an ejectment action is the wrongful withholding of possession of property.³⁵ In terms of recoverable damages, a party bringing an action for ejectment is entitled to the value of the use of the property, which is measured by either the reasonable rental value of the property during the time of wrongful possession, or the benefits obtained by the party wrongfully occupying the property, whichever is greater.³⁶ That said, while this remedy is available to landowners, it requires the initiation of a civil lawsuit that, unlike an unlawful detainer action, is generally not subject to summary and expedited proceedings.³⁷

Likewise, with respect to the cause of action for trespass, a licensor must show: (1) its "ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm."³⁸ However, even if a licensor establishes these elements, it must still go through the regular civil litigation process rather than the expedited summary proceeding of an unlawful detainer action, which is specifically designed to provide an expeditious process for recovering possession from a recalcitrant occupant.

With this backdrop, we return to *Castaic Studios*.

Case Study: Castaic Studios

As previously noted above, in *Castaic Studios*, the court held that Castaic waived its right to the remedy of unlawful detainer when it entered into a contractual agreement with defendant Wonderland that expressly created a revocable license governed by contract law, not landlord-tenant law. Castaic owned commercial property in Castaic, California. In October 2021, Castaic entered into a License Agreement (“the Agreement”) with Wonderland, which granted Wonderland “the exclusive,” but “non-possessory” right “for the use of” a portion of Castaic’s property. The Agreement provided Wonderland 35 consecutive one-month options to extend on the condition that Wonderland timely made all payments and gave Castaic written notice of its intent to extend the term at least 20 days before the end of the current month.³⁹

No doubt aware of the rights and responsibilities that attach to a landlord-tenant relationship outlined above, the drafter expressly created a revocable license governed by contract law, not landlord-tenant law. The Agreement stated, in relevant part:

This agreement is not a lease or any other interest in real property. It is a contractual agreement 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 areas(s) as of the date of termination. Licensor is not responsible for personal property left in the area(s) after termination.⁴⁰

The Agreement further provided the following three key provisions:

(1) If Wonderland defaulted due to non-payment and failed to cure within three days upon receiving written notice of this failure, Castaic could stop providing Wonderland with access to the property “without notice or the need to initiate legal process”;

(2) If Wonderland defaulted, Castaic could “immediately terminate” Wonderland’s right to use the Premises “by any lawful means,” at which time Castaic’s “obligations under this Agreement shall immediately terminate and [Castaic] shall have the option to immediately take over use of the Premises from [Wonderland]”; and

(3) Critically important to the court of appeal’s analysis, the license agree-

ment provided: “[t]his agreement will be governed by the contract [] laws and not by the landlord tenant laws.”⁴¹

Wonderland defaulted in July 2022 and failed to give written notice of its intent to extend the license term to August 2022. Castaic thereafter notified Wonderland that it was in default and filed an unlawful detainer action against Wonderland seeking both possession of the property and unpaid “rent.” Wonderland filed a demurrer to the unlawful detainer action on the grounds that: (1) “the Agreement expressly stated it was not governed by landlord-tenant law”; and (2) the three-day notice Castaic served on Wonderland did not comply with Civ. Proc. Code, § 1161(2). The trial court sustained Wonderland’s demurrer without leave to amend on the grounds that: (1) the agreement constituted a revocable license; (2) Castaic had “waived its right to pursue the remedy of unlawful detainer”; and (3) Castaic failed to comply with the notice requirements under Civ. Proc. Code, § 1161(2).

On appeal, Castaic argued that the express designation of “contract[] laws” and disavowal of “landlord tenant laws” in the Agreement did not preclude it from pursuing an unlawful detainer action against Wonderland.⁴² The Second District Court of Appeal considered three questions: (1) Does the Agreement constitute a lease agreement?; (2) Was Castaic permitted to waive its right to pursue an unlawful detainer action as a remedy for Wonderland’s default under the Agreement?; and (3) Given that Civ. Proc. Code, § 1161(1) expressly extends to licensor-licensee relationships, may Castaic proceed with an unlawful detainer action against Wonderland?⁴³

With respect to the first question, the court found that the Agreement did not constitute a lease agreement. Specifically, the court first observed that “[w]hen the contract is clear and explicit, the parties’ intent is determined solely by reference to the language of the agreement.”⁴⁴ The court further noted that while the question of whether an agreement constitutes a lease or license is a “subtle pursuit,” in this case, even if the Agreement contained some elements of a lease, “its express terms show the parties’ intent to waive any rights afforded by the landlord-tenant laws, including a landlord’s remedy of unlawful detainer.”⁴⁵ In support of this finding, the court cited to § 29 of the Agreement, which stated in all caps and bold font that it was a license agreement and not a lease or other interest in real property, and stated that it was “hard to imagine” clearer contractual language.⁴⁶ The court also found the parties’ “intent to avoid

application of landlord tenant law [to be] further evinced by the recital that Castaic retained ‘legal possession’ of the premises.”⁴⁷

As for the second inquiry, the court found that Castaic was permitted to waive its right to an unlawful detainer action against Wonderland. In support of this finding, the court first observed that “[a]ny one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.”⁴⁸ In examining whether waiving the right to pursue an unlawful detainer as a remedy would violate this provision, the court noted that: “parties, generally speaking, have power to determine the terms of their contractual engagements.”⁴⁹ In this case, because the unlawful detainer remedy is “intended and designed to provide an expeditious remedy for the recovery of possession of real property,” the court saw no “‘public reason’ that would prohibit a landowner from agreeing to waive the unlawful detainer remedy in any particular undertaking.”⁵⁰

Finally, the court also rejected Castaic’s argument that the unlawful detainer statute does not qualify as a landlord-tenant law because, by its express terms, Civ. Proc. Code, § 1161(1) specifically extends to those circumstance in which the person or entity in possession is a licensee. In rejecting this argument, the court noted that when interpreting a contract, courts “‘give words their ordinary and popular meaning, unless the parties . . . have given the words a specialized or technical meaning.’”⁵¹ The court further found that “the unlawful detainer statute primarily concerns landlord tenant relationships” and that “the existence of ‘a conventional relationship of landlord and tenant is *sine qua non* to maintenance of [an unlawful detainer action].’”⁵² As such, the court rejected Castaic’s argument that because the express language of Civ. Proc. Code, § 1161(1) includes licensees, its application is not limited to landlord-tenant relationships. Instead, the court held that the “popular meaning” of “unlawful detainer” meant that the unlawful detainer statute should be treated as landlord-tenant law, notwithstanding its express reference to licensees. As a result, the court found that Castaic waived its right to bring an unlawful detainer action against Wonderland and affirmed the judgment sustaining Wonderland’s demurrer without leave to amend.⁵³

Notably absent from the court’s analysis, which relied so heavily on the “popular meaning” of unlawful detainer, was a discussion regarding the parties’ reasons for the “contract law, not landlord-tenant law” recital in the Agreement. Likewise, because the case was decided on the pleadings alone, and apparently

did not address any claim of ambiguity or other meanings that the contractual language could be considered to include, there was no discussion of extrinsic evidence of the parties' intent with regard to "landlord and tenant laws" or "contract laws." The case therefore turned on an interpretation of the contractual language as a pure question of law, without consideration of any matters extrinsic to the writing other than the court's own understanding of "popular meaning" of the language used by the parties.⁵⁴

Addressing the Questions raised by *Castaic Studios*

Although not discussed in *Castaic Studios*, there are a variety of compelling reasons why a landowner in *Castaic's* position would have found a license agreement more desirable than a lease agreement and therefore taken care to disclaim any applicability of landlord-tenant law to its license. As noted above, a lease agreement conveys a possessory right to tenants,⁵⁵ while a licensee's right to use the property may, in general, be revoked at any time by the licensor.⁵⁶ A lease agreement affords far broader statutory protections to tenants than those rights enjoyed by a mere licensee, such as the implied covenant that a landlord has title and the implied covenants of quiet enjoyment and good faith and fair dealing.⁵⁷ For residential tenants, statutory protections are even stronger and include an implied warranty of habitability. Tenants also typically enjoy stronger claims for renewal of the tenancy at the expiration of the lease term,⁵⁸ and a protected interest in the property that can only be terminated through specific legal processes such as an unlawful detainer action or civil lawsuit.⁵⁹

By contrast, a licensee, in general, enjoys only a personal, nonexclusive, revocable, and unassignable right to use the premises without any interest in the property or right to claim continued occupancy.⁶⁰ This is in stark opposition to the litany of rights afforded to both commercial and residential tenants described above and creates a strong incentive for landowners, particularly of commercial real estate, to enter into license agreements over lease agreements.

The incentive to enter into a license agreement rather than a lease is buttressed by the fact a licensor, like a lessor, ordinarily may bring an action for unlawful detainer against a licensee whose license has terminated but refuses to leave the premises.⁶¹ "The remedy of unlawful detainer is a statutory and summary one, and a person who seeks it must bring himself clearly within the relationship between himself and the occupier of the property that is described in the statute."⁶²

The Unlawful Detainer Statute expressly references licensees, and until *Castaic Studios*, courts examining this issue had consistently held that licensees are subject to unlawful detainer actions. For example, in *Smith v. Municipal Court*,⁶³ the court rejected the licensee's argument that he was not subject to an unlawful detainer action because he was only a licensee and not a tenant. Likewise, in *Goetze v. Hanks*,⁶⁴ while the court ultimately held that summary eviction proceedings under the Unlawful Detainer Statute were inapplicable, this was because the court found that the relationship between the parties was vendor-vendee rather than licensor-licensee.⁶⁵ To the extent an unlawful detainer remedy may be available to lessors and licensors alike, a landowner retains heavy incentives to choose a license agreement over a lease.

When a landowner does desire to enter into a license agreement, great care must be taken in drafting the agreement. Determining whether an agreement constitutes a lease or license for the use and enjoyment of real property is a question of law that arises "out of the construction of the instrument" whereby if the agreement provides "exclusive possession of the premises against all the world, including the owner," it constitutes a lease, and if it "merely confers a privilege to occupy under the owner," it constitutes a license.⁶⁶ Another fundamental difference between a license and lease is that in the latter, payment for use of the premises comes in the form or legal equivalent of rent.⁶⁷ That said, given the "fine distinction" between a lease and a license, an owner of real property desiring to enter into a license agreement should take care in the drafting to ensure that, by its terms, the agreement does not inadvertently convey a possessory interest in the property to the putative licensee.

Castaic Studios did not examine any of the above considerations. Instead, the court focused its inquiry on the narrow issue of what the parties were deemed to have contracted for through their use of specific language relating to "landlord-tenant laws" and the court's conclusion that this included the Unlawful Detainer Statute.⁶⁸ In so doing, *Castaic Studios* left several key questions unanswered. First, it did not explain why the "popular meaning" of the term "unlawful detainer" should take precedence over the express language of the Unlawful Detainer Statute, which is not limited to landlord-tenant relationships and which, by its terms, expressly includes licensor-licensee relationships.⁶⁹ Nor did the court set forth any factual basis establishing that the "'popular meaning' ascribed to unlawful detainer" is that it is "a remedy pertaining above all to landlord tenant relationships."⁷⁰ Instead, *Castaic Studios* folded the Unlaw-

ful Detainer Statute into “landlord-tenant law” while dismissing the fact that the statute applies equally to occupants of real property who are not tenants of that property. While it is true that the “unlawful detainer statute primarily concerns landlord tenant relationships,”⁷¹ it is also true that the statute expressly applies to “servant[s],” employees, agents, and licensees, none of whom hold any possessory interest in the land or any rights as tenants.⁷² As such, the Unlawful Detainer Statute can reasonably be said to exist both within and outside the bounds of “landlord-tenant law,” a possibility that the court did not consider.

Likewise, the court did not consider what alternative remedies could be available if a landowner is unable to use the summary proceeding of an unlawful detainer action against a licensee. In fact, those remedies are less likely to restore the property to the owner in a timely manner. “Self-help” methods of recovering property without any underlying legal proceeding may subject a landowner to a litany of civil and criminal claims.⁷³ Civil actions for trespass, ejection, and/or quiet title and actions for money damages are subject to different burdens of proof and are not subject to the same fast-tracking rules as unlawful detainer actions.⁷⁴ Thus, by this ruling, the court appears to give a licensee who does not have any possessory interest in the property a stronger position against eviction than a tenant who *does* hold a possessory interest in the property. In this regard, *Castaic Studio’s* holding that an action for unlawful detainer was not available to the property owner had the ironic result of placing Wonderland in a better position than it would have been had Castaic entered into a lease agreement with Wonderland rather than a license agreement.

In light of this holding, licensors should carefully consider the language used in license agreements, particularly any language that disclaims the applicability of landlord-tenant law in governing the terms of the license, to ensure that they do not inadvertently waive their right to seek unlawful detainer against a recalcitrant licensee who refuses to vacate the property following either a breach or revocation of the license agreement. While the court’s ruling leaves open the possibility that parties can enter into a license agreement that reserves (or avoids waiving) the licensor’s right to seek recovery through an unlawful detainer action, the court’s ruling does not instruct how to achieve that objective.

Conclusion

A licensor entering into a license agreement for the use of real property should take care to avoid the application of landlord-tenant principles while also

including language that protects its right to seek the unlawful detainer remedy. The ruling in *Castaic Studios* highlights what can occur if parties fail to expressly state what rights and/or obligations they intend to preserve through their agreement difficulty. At the same time, a licensor may face in lawfully removing a licensee who has no possessory interest in the property if the remedy of unlawful detainer is not available to them. Indeed, while a civil lawsuit for ejectment, trespass, and/or quiet title remains available, the practical reality is that initiating a civil lawsuit takes significantly more time, expense, and resources than a summary proceeding such as an unlawful detainer action.

Unfortunately, the *Castaic Studios* decision provides little guidance on how to draft a license agreement that accomplishes these objectives. Retaining the position of a licensor while not waiving the unlawful detainer remedy is a complicated drafting issue that is made more difficult by the court's decision. However, the solution is not to concede that renouncing the application of landlord-tenant principles is a bad idea. Given the many reasons a landowner may have to favor a licensor-licensee relationship, a landowner intending to enter into a license agreement may still be well advised to disclaim any intent to create a landlord-tenant relationship, although perhaps not to use the specific language disclaiming the application of "landlord-tenant law" versus "contract law" that was used in the *Castaic Studios* license agreement.

Following *Castaic Studios*, a drafter could consider including a "contract not a lease" provision in a license agreement while expressly stating an intent to reserve the unlawful detainer remedy. However, such an approach may pose its own problems, namely, giving the licensee (or a court) the idea that the licensee would have all of the procedural defenses to which a tenant might be entitled under the unlawful detainer statute even when the license is terminated by its terms, including the three-day notice mandate and rigid technical compliance requirements of the statute.⁷⁵ An alternative might be to simply avoid stating that landlord-tenant law has no application to the transaction, while averring that the parties intend to create a mere non-possessory contractual license and not a lease or other possessory interest in the property.

With so many potential pitfalls and little guidance from the courts, crafting a contractual license agreement without inadvertently waiving the unlawful detainer remedy will remain a conundrum for the foreseeable future, but for most landowners, it is a challenge worth pursuing.

ENDNOTES:

¹*Von Goerlitz v. Turner*, 65 Cal. App. 2d 425, 429, 150 P.2d 278 (3d Dist. 1944).

²10 Miller & Starr, Cal. Real Estate 4th § 34:53.

³*Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC*, 192 Cal. App. 4th 1183, 1191, 122 Cal. Rptr. 3d 417 (4th Dist. 2011).

⁴*Multani v. Knight*, 23 Cal. App. 5th 837, 854, 233 Cal. Rptr. 3d 537 (2d Dist. 2018).

⁵*Von Goerlitz v. Turner*, 65 Cal. App. 2d at 429.

⁶10 Miller & Starr, Cal. Real Estate 4th, § 34:34; Civ. Code, § 1945.

⁷Civ. Code, §§ 1951.2, et. seq.; Civ. Code, §§ 1951.4, et. seq.; Civ. Proc. Code, § 1161(1).

⁸Civ. Code, § 1945.

⁹*In re Circle K Corp.*, 127 F.3d 904 (9th Cir. 1997) (holding that assignee of the lease can exercise the option to renew or extend the term).

¹⁰Civ. Code, § 1941.

¹¹*Peterson v. Superior Court*, 10 Cal. 4th 1185, 1205, 43 Cal. Rptr. 2d 836, 899 P.2d 905 (1995).

¹²*Id.*

¹³Civ. Code, § 1953, subds. (a)(5), (b).

¹⁴*Knight v. Hallsthammar*, 29 Cal. 3d 46, 54, 171 Cal. Rptr. 707, 623 P.2d 268 (1981).

¹⁵*Ginsberg v. Gamson*, 205 Cal. App. 4th 873, 896, 141 Cal. Rptr. 3d 62 (2d Dist. 2012); see also Civ. Code, § 1927.

¹⁶*Larson v. City and County of San Francisco*, 192 Cal. App. 4th 1263, 1297, 123 Cal. Rptr. 3d 40 (1st Dist. 2011) (citing *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 151, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976)).

¹⁷10 Miller & Starr, Cal. Real Estate 4th, § 34:182.

¹⁸*Id.*

¹⁹*Id.*

²⁰Civ. Code, § 3334; *11382 Beach Partnership v. Libaw*, 70 Cal. App. 4th 212, 218, 82 Cal. Rptr. 2d 533 (4th Dist. 1999).

²¹Civ. Code, § 1951.2, subds. (a)(1), (a)(2), and (a)(4).

²²10 Miller & Starr, Cal. Real Estate 4th, § 34:227.

²³*Goetze v. Hanks*, 261 Cal. App. 2d 615, 617, 68 Cal. Rptr. 150 (1st Dist. 1968).

²⁴*Id.*

²⁵*Richardson v. Franc*, 233 Cal. App. 4th 744, 758-759, 182 Cal. Rptr. 3d 853 (1st Dist. 2015).

²⁶*Qualls v. Lake Berryessa Enterprises, Inc.*, 76 Cal. App. 4th 1277, 1284, 91 Cal. Rptr. 2d 143 (1st Dist. 1999) (citing 6 Miller & Starr, Cal. Real Estate 4th, § 8.5, p. 13).

²⁷10 Miller & Starr, Cal. Real Estate 4th, § 34:5.

²⁸*Id.*

²⁹Civ. Proc. Code, § 1161(1).

³⁰*Id.* (emphasis added).

³¹*Id.*

³²*Daluiso v. Boone*, 71 Cal. 2d 484, 486, 78 Cal. Rptr. 707, 455 P.2d 811 (1969) (holding that “a person in peaceable possession of real property may recover, in an action sounding in tort, damages for injuries to his person and goods caused by the forcible entry of one who is, or claims to be, the lawful owner or possessor and that the forcibly entering defendant’s title or right of possession is no defense to such action”). See also Pen. Code, §§ 240, 242.

³³Civ. Code, § 760.020; Civ. Proc. Code, § 3375; 10 Miller & Starr, Cal. Real Estate 4th, § 34:226. See also 28 Cal. Jur. 3d Ejectment and Related Remedies § 1.

³⁴Civ. Code, § 3375.

³⁵*Johnson v. Vance*, 86 Cal. 128, 131, 24 P. 863 (1890).

³⁶10 Miller & Starr, Cal. Real Estate 4th, § 34:226.

³⁷*Id.*

³⁸*Ralphs Grocery Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 245, 262, 225 Cal. Rptr. 3d 305 (4th Dist. 2017).

³⁹*Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th 209, 212, 315 Cal. Rptr. 3d 163 (2d Dist. 2023).

⁴⁰*Id.* at 213.

⁴¹*Id.*

⁴²*Id.* at 214.

⁴³*Id.* at 215-217.

⁴⁴*Id.* at 214, citing *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1385, 137 Cal. Rptr. 3d 293 (2d Dist. 2012).

⁴⁵*Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th at 215.

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.* (citing Civ. Code, § 3513; *Simmons v. Ghaderi*, 44 Cal. 4th 570, 585, 80 Cal. Rptr. 3d 83, 187 P.3d 934 (2008); *Outboard Marine Corp. v. Superior*

Court, 52 Cal. App. 3d 30, 41, 124 Cal. Rptr. 852 (3d Dist. 1975)).

⁴⁹*Id.* at 216 (cleaned up, citing *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459, 465 & fn. 3, 11 Cal. Rptr. 2d 330, 834 P.2d 1148 (1992)).

⁵⁰*Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th at 216 (first quotation cleaned up, internal citations omitted).

⁵¹*Id.* at 217 (citations omitted).

⁵²*Id.* (citing *Cavanaugh v. High*, 182 Cal. App. 2d 714, 716, 6 Cal. Rptr. 525 (2d Dist. 1960); *Stancil v. Superior Court*, 11 Cal. 5th 381, 394, 278 Cal. Rptr. 3d 27, 485 P.3d 446 (2021)).

⁵³*Id.*

⁵⁴The court of appeal's only statement in this regard was: " 'The fundamental goal of contract interpretation is to give effect to the mutual intention of the parties as it existed at the time they entered into the contract.' (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1385, 137 Cal.Rptr.3d 293 (*Klein*); see Civ. Code, § 1636.) 'When the contract is clear and explicit, the parties' intent is determined solely by reference to the language of the agreement.' (*Klein v. Chevron U.S.A., Inc.*, at p. 1385, 137 Cal.Rptr.3d 293, citing Civ. Code, §§ 1638, 1639)." *Castaic Studios*, 97 Cal. App. 5th at 214.

⁵⁵*Von Goerlitz v. Turner*, 65 Cal. App. 2d at 429.

⁵⁶*Goetze v. Hanks*, 261 Cal. App. 2d at 617. See also *Richardson v. Franc*, 233 Cal. App. 4th at 758-759 (license agreement does not convey possessory right).

⁵⁷10 Miller & Starr, Cal. Real Estate 4th, § 34:53.

⁵⁸*Id.* at § 34:34; Civ. Code, §§ 1945, 1951.2, et seq., 1951.4, et seq.; Civ. Proc. Code, § 1161(1).

⁵⁹Civ. Code, §§ 1951.2, et. seq.; Civ. Code, §§ 1951.4, et. seq.; Civ. Proc. Code, § 1161(1).

⁶⁰See, e.g., *Goetze v. Hanks*, 261 Cal. App. 2d at 617; *Richardson v. Franc*, 233 Cal. App. 4th at 758-759.

⁶¹*Taylor v. Nu Digital Marketing, Inc.*, 245 Cal. App. 4th 283, 288-289, 199 Cal. Rptr. 3d 488 (3d Dist. 2016) (citing *Greene v. Municipal Court*, 51 Cal. App. 3d 446, 450, 124 Cal. Rptr. 139 (2d Dist. 1975)).

⁶²*Goetze v. Hanks*, 261 Cal. App. 2d at 616 (citing *Woods-Drury, Inc. v. Superior Court in and for City and County of San Francisco*, 18 Cal. App. 2d 340, 344, 63 P.2d 1184 (1st Dist. 1936)).

⁶³*Smith v. Municipal Court*, 202 Cal. App. 3d 685, 688, 245 Cal. Rptr. 300 (1st Dist. 1988).

⁶⁴*Goetze v. Hanks*, 261 Cal. App. 2d 615, 617 (1st Dist. 1968).

⁶⁵See also *Marvell v. Marina Pizzeria*, 155 Cal. App. 3d Supp. 1, 12, 202 Cal. Rptr. 818 (App. Dep't Super. Ct. 1984) (finding that plaintiffs did not "oc-

copy the legal status of a ‘conditional licensee’ or a ‘tenant at will,’ ” making the remedy of unlawful detainer unavailable).

⁶⁶*Von Goerlitz v. Turner*, 65 Cal. App. 2d at 429.

⁶⁷*Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 1041, 90 Cal. Rptr. 3d 453 (6th Dist. 2009).

⁶⁸*Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th at 214-217.

⁶⁹*Id.* at 217; Civ. Proc. Code, § 1161(1).

⁷⁰*Castaic Studios, LLC v. Wonderland Studios LLC*, 97 Cal. App. 5th at 217.

⁷¹*Id.*

⁷²Civ. Proc. Code, § 1161(1).

⁷³*Daluiso v. Boone*, 71 Cal. 2d 484, 486, 78 Cal. Rptr. 707, 455 P.2d 811 (1969) (holding that “a person in peaceable possession of real property may recover, in an action sounding in tort, damages for injuries to his person and goods caused by the forcible entry of one who is, or claims to be, the lawful owner or possessor and that the forcibly entering defendant’s title or right of possession is no defense to such action”). See also Pen. Code, §§ 240, 242.

⁷⁴See discussion, *infra*. See also Civ. Code, § 760.020; 28 Cal. Jur. 3d Ejectment and Related Remedies § 1; Civ. Proc. Code, § 3375; 10 Miller & Starr, Cal. Real Estate 4th, § 34:226.

⁷⁵Geier, *Strict Compliance with Statutory Conditions: Another Challenge for California Landowners in the Eviction Process*, 23 Miller & Starr Real Estate Newsletter 321 (January 2023).