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Digest: Gueyffier v. Ann Summers, Ltd.

Allison De Tal

Opinion by Werdegar, J., expressing the unanimous view of the Court.

Issue

“Does an arbitrator exceed his powers when he applies equitable defenses to excuse a party from performing a material condition of an agreement that provides the arbitrator may not modify or change any of the agreement’s material provisions?”¹

Facts

In January 2000, Celine Gueyffier, a French citizen living in California, and Ann Summers, Ltd., a British lingerie and sex toy retailer, entered into a written franchise agreement under which she was to own and operate an Ann Summers retail store in Los Angeles.² The franchise agreement provided that any dispute arising out of the agreement was to be submitted to arbitration.³ In March 2001, Gueyffier opened her store.⁴ The store was not well received and was promptly closed.⁵ Pursuant to the franchise agreement, both parties demanded arbitration.⁶

The arbitrator found that Ann Summers breached the agreement and awarded Gueyffier consequential damages for the store’s closing.⁷ The arbitrator noted that the requirement in the agreement that Gueyffier give sixty days written notice of the breach was moot because the effect of the breach was incurable.⁸ The trial court confirmed Gueyffier’s award.⁹ The Court of Appeal held that the arbitrator exceeded his powers under California Code of Civil Procedure section 1286.2(a)(4) because the agreement prohibited him from modifying or changing a material term of the agreement.¹⁰ The Court of Appeal reversed and vacated the award.¹¹

¹ Gueyffier v. Ann Summers, Ltd., 184 P.3d 739, 741 (Cal. 2008).

² *Id.* at 742.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 742–43.

¹¹ *Id.*

The California Supreme Court granted petition for review.¹²

Analysis

When parties agree to arbitrate a contractual dispute, the arbitrator has broad powers to decide legal and factual issues or questions regarding the interpretation of the contract to reach a decision.¹³ Generally, therefore, “[a]rbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact.”¹⁴ However, the Court said that the parties may contractually limit an arbitrator’s powers.¹⁵ In this case, the franchise agreement provided that an arbitrator could not modify or change any material term, including the notice-and-cure provision.¹⁶

The Court disagreed with the Court of Appeal’s determination that the arbitrator changed a material term of the agreement.¹⁷ The Court reasoned that excuse of performance of a material term is not ordinarily a modification or change of that term.¹⁸ The Court said that the parties could have ensured against excuse of performance of material terms by expressing providing so.¹⁹ Here, however, the Court said that the arbitrator’s conclusion that the notice-and-cure provision was inapplicable to the facts was merely an exercise of his power to interpret the agreement and to apply it to the facts.²⁰

Holding

The Court held that an arbitrator does not exceed his powers when he applies equitable defenses to excuse a party from performing a material condition of a contract, even if it provides that the arbitrator may not change or modify the contract’s material provisions.²¹

Legal Significance

As a result of this decision, parties that do not desire an arbitrator to have the power to excuse the performance of a material term in their agreement should include a clause specifically stating so in the agreement.

¹² *Id.* at 743.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 744.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 746.