

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DC UNIVERSAL, LLC,

Plaintiff and Respondent,

v.

UNIVERSAL BANK,

Defendant and Appellant.

B279239

(Los Angeles County  
Super. Ct. No. EC065581)

APPEAL from a judgment of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Reversed.

Dykema Gossett, Jeffrey G. Huron, Janis H. Ozaki and Jyoti P. Avila for Defendant and Appellant.

Wong & Mak and Steven W. Hashimoto for Plaintiff and Respondent.

\* \* \* \* \*

Appellant Universal Bank (Tenant) appeals from the denial of its motion to compel arbitration of an unlawful detainer action filed by respondent DC Universal, LLC (Landlord). We reverse and direct the trial court to order the parties to arbitration.

### **BACKGROUND**

The relevant facts in this case are not disputed. Tenant and Landlord's predecessor in interest entered into a five-year lease commencing July 1, 2002, for a commercial property in Rosemead. A paragraph in the lease entitled "Holding Over" (underscoring omitted) provided that if Tenant remained in possession after the end of the lease term, the occupancy would be month-to-month with rent increased to 110 percent of the rent in effect at the end of the lease term. The month-to-month tenancy was "terminable on thirty (30) days[]" notice given at any time by either party."

Landlord purchased the property in 2003 and succeeded to its predecessor's interests under the lease.

In 2004, Tenant filed a lawsuit against Landlord and its predecessor alleging contractual breaches and economic torts. The parties settled the claims in 2005. As part of the settlement, Tenant and Landlord executed a "Third Lease Addendum" (boldface and underscoring omitted) extending the lease term to June 30, 2010, with an option for Tenant to extend the term an additional five years. The addendum contained a provision stating that "[a]ny dispute arising under or in connection with this Third Lease Addendum, including without limitation the interpretation or enforcement of this Third Lease Addendum, any dispute in connection with [Landlord's] maintenance, repairs, or improvements to the Property required by the Lease, and any other dispute arising under or in connection with the Lease, will

be submitted to [Alexander S.] Polsky for resolution and Mr. Polsky's decision shall be final and binding.”<sup>1</sup>

Tenant exercised its option and extended the lease to June 30, 2015. When the lease term ended, the parties could not agree on a new rental rate. Tenant remained in possession as a month-to-month tenant, paying the holdover rental rate specified in the lease.

On August 1, 2016, Landlord sent Tenant a notice to quit stating that the month-to-month tenancy would end in 30 days. On September 15, 2016, following the expiration of the 30-day period, Landlord filed an unlawful detainer complaint in Los Angeles Superior Court seeking to reclaim possession of the property.

On September 19, 2016, Tenant's counsel sent Landlord a letter stating that the unlawful detainer proceeding was subject to the arbitration provision in the Third Lease Addendum, and asking Landlord to dismiss its complaint. Separately, Tenant filed a demand for arbitration with JAMS, claiming that Landlord had been unreasonable in negotiating the terms of a new lease and had breached various provisions of the current lease by overcharging Tenant for common area expenses, failing to install promised signage, and conducting renovations that interfered with Tenant's operation of its business.

Landlord did not dismiss its complaint, and Tenant filed a motion with the court to compel arbitration and stay the pending action. The court denied the motion, concluding that the tenancy had terminated following the expiration of the 30-day period specified in the notice to quit, and therefore the parties were no

---

<sup>1</sup> Polsky was a mediator with JAMS, an alternative dispute resolution provider.

longer bound by the arbitration clause in the Third Lease Addendum. The court stated the principle that “the terms of [an expired] lease continue if the tenant remains on the property with the permission and consent of the lessor.” Applying that principle, the court ruled that “the arbitration agreement in the Third Addendum continued to be effective after the term of the lease ended on June 30, 2015 because [Tenant] had permission to remain as a month-to-month tenant. However, [Landlord] revoked this permission on August 1, 2016 when it served the demand to quit within 30 days. After August 31, 2016, the terms of the Third Addendum were no longer in effect because [Tenant] no longer had permission of [Landlord] to remain.” The court stated that Tenant “could have enforced the arbitration agreement through August 31, 2016,” but after that point “the lease was terminated and there was no longer an agreement to arbitrate.”

Tenant timely appealed.<sup>2</sup>

### **DISCUSSION**

Tenant argues that the trial court erred in concluding that the arbitration agreement was no longer in effect after the expiration of the 30-day period initiated by Landlord’s notice to quit served on August 1, 2016.<sup>3</sup> We agree with Tenant.

“Petitions to compel arbitration are governed by Code of Civil Procedure section 1281.2, which states in relevant part that

---

<sup>2</sup> A party may appeal from “[a]n order dismissing or denying a petition to compel arbitration.” (Code Civ. Proc., § 1294, subd. (a).) All further statutory references are to the Code of Civil Procedure.

<sup>3</sup> The parties do not dispute that the arbitration clause continued to apply during the month-to-month tenancy.

‘the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists,’” subject to certain exceptions not applicable here.<sup>4</sup> (*California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 204.) “Accordingly, in ruling on a petition to compel, the court must determine whether the parties entered into an enforceable agreement to arbitrate that reaches the dispute in question, construing the agreement to the limited extent necessary to make this determination.” (*Id.* at pp. 204-205.) “‘[A]rbitration should be upheld “unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute.” ’” (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 185 (*Rice*).)

When evaluating an order denying a motion to compel arbitration, we review the trial court’s factual findings for substantial evidence, and review decisions of law de novo. (*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2015) 234 Cal.App.4th 459, 467.) Interpretation of the scope of an arbitration clause is a matter of law if the language is

---

<sup>4</sup> The exceptions are: “(a) The right to compel arbitration has been waived by the petitioner; . . . [¶] (b) Grounds exist for the revocation of the agreement[; or] [¶] (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.” (§ 1281.2, subs. (a)-(c).) Landlord has not asserted that any of these exceptions apply, either in its opposition to the motion to compel arbitration or in its brief on appeal. Nor do we see any indication in the record that they apply.

not in dispute. (See *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1202.) Here the language and the relevant facts are undisputed,<sup>5</sup> so the question before us is one of law, namely, whether the court correctly concluded that the filing of the notice to quit and the expiration of the 30-day period rendered the arbitration clause ineffective as to the unlawful detainer action.

Tenant argues that even if the court correctly concluded that the tenancy had terminated, the arbitration provision would still apply to the unlawful detainer action. We agree. “[A] party’s contractual duty to arbitrate disputes may survive termination of the agreement giving rise to that duty.” (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 545.) Even

---

<sup>5</sup> Landlord raises only one factual dispute as to the intent behind the language of the arbitration agreement, but it is unsupported by the record. In its opposition below Landlord claimed that it “never contemplated that events occurring after the termination of the lease would be subject to arbitration,” citing a declaration from Eric Lee, Landlord’s managing member. In its appellate brief, Landlord similarly states that Lee “averred in his declaration that, at the time that [Landlord] signed the ‘Third Lease Addendum,’ it was not [Landlord’s] intent to allow arbitration of disputes pertaining to events that occurred after the termination of the lease.” These statements mischaracterize Lee’s declaration, which states only that “it was not [Landlord’s] intent to allow [the arbitrator] to decide whether disputes pertaining to events that occurred after the termination of the lease would be arbitrated.” Lee did not claim, as Landlord asserts, that the arbitration clause was not intended to reach posttermination disputes, but only that a court, rather than an arbitrator, should determine the scope of that clause as to a particular posttermination dispute.

claims arising from conduct taking place after a contract has terminated may be arbitrated if they are “‘rooted’ in the contractual relationship between the parties.” (*Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, 1407 (*Buckhorn*).)

In *Buckhorn*, a physician sued his former employer, a medical group, for wrongful termination, as well as “various torts allegedly committed after he was discharged, including defamation and interference with prospective economic advantage.” (*Buckhorn, supra*, 121 Cal.App.4th at p. 1403.) The medical group invoked an arbitration clause in the employment agreement applying to disputes “‘concerning the enforcement or the interpretation of any provisions of this Agreement.’” (*Ibid.*) The physician argued the arbitration clause “only governed ‘contract related actions,’ ” and was therefore inapplicable to the tort claims that arose after he was terminated. (*Id.* at p. 1406.)

The appellate court rejected the physician’s argument: “. . . Buckhorn’s temporal test misconstrues the applicable standard. The issue turns on whether the tort claims are ‘rooted’ in the contractual relationship between the parties, not when they occurred.” (*Buckhorn, supra*, 121 Cal.App.4th at p. 1407.) For example, the claims that the medical group had interfered with the physician’s relationships with his patients posttermination were related to the employment agreement because those relationships arose through the physician’s employment with the medical group. (*Ibid.*) “[T]herefore the employment agreement would inform the extent of any economic interest” the physician had in those relationships. (*Id.* at pp. 1407-1408.) “Because Buckhorn failed to demonstrate his tort claims were ‘wholly independent’ of the employment agreement,

and any doubts must be resolved in favor of arbitration,” the court held that all of the claims must be submitted to arbitration. (*Id.* at p. 1408.)

Applying the reasoning of *Buckhorn*, we conclude that the arbitration provision in the Third Lease Addendum applied to the unlawful detainer proceeding, regardless of when the circumstances giving rise to that proceeding arose. As an initial matter, it is clear that the arbitration provision was broad enough to encompass an unlawful detainer proceeding. “[T]he decision as to whether a contractual arbitration clause covers a particular dispute rests substantially on whether the clause in question is “broad” or “narrow.” ’ ” (*Rice, supra*, 248 Cal.App.4th at p. 186.) Clauses have been considered “broad” when they contain language such as “ ‘ “any claim arising from or related to this agreement,” ’ ” or “ ‘ “arising in connection with” the agreement.’ ” (*Ibid.*) When an arbitration provision contains this broad language, “ ‘ “[t]here is no requirement that the cause of action arising out of a contractual dispute must be itself contractual.” ’ ” (*Ibid.*) Thus, an unlawful detainer action was subject to arbitration under a provision applying to “any controversy or dispute arising out of or in connection with” an agreement. (*Mleynek v. Headquarters Companies* (1984) 165 Cal.App.3d 1133, 1134, 1136 (*Mleynek*); see *Pioneer Take out Corp v. Bhavsar* (1989) 209 Cal.App.3d 1353, 1355-1357 [unlawful detainer proceeding based on breach of contract arbitrable under agreement applying to “controversies ‘relating to this Agreement, or any breach thereof’].)

Here, the language of the arbitration clause is broad, as it applies to “any . . . dispute arising under or in connection with the Lease.” This is nearly identical to the language approved in



*Mleynek* as to an unlawful detainer proceeding, and in *Rice* as to noncontractual claims in general. (*Mleynek, supra*, 165 Cal.App.3d at p. 1134; *Rice, supra*, 248 Cal.App.4th at p. 186.) Thus, an unlawful detainer proceeding falls within the scope of the arbitration clause.

The question then becomes whether this particular unlawful detainer action is “‘rooted’ in the contractual relationship between the parties.” (*Buckhorn, supra*, 121 Cal.App.4th at p. 1407.) We hold that it is. The primary purpose of an unlawful detainer suit is recovery of possession. (*Drybread v. Chipain Chiropractic Corp.* (2007) 151 Cal.App.4th 1063, 1072.) Here, any entitlement to possession Tenant may claim is based on the lease, the terms of which continued throughout the month-to-month tenancy. Landlord for its part is seeking a ruling that the tenancy and the continuing terms of the lease have been terminated and Tenant no longer has any entitlement to possession. Because the issue of possession is inseparable from the issue of the termination of the lease, the dispute is certainly “‘rooted’ in the contractual relationship between the parties.” (*Buckhorn, supra*, at p. 1407.) Thus, the arbitration clause applies to the unlawful detainer proceeding regardless of when the tenancy is deemed to have terminated.<sup>6</sup>

---

<sup>6</sup> The trial court and Landlord both cite to *Grant v. Aerodraulics Co.* (1949) 91 Cal.App.2d 68, 75, for the proposition that termination of a contract “do[es] away with the existing agreement.” *Grant* was not an arbitration case; it provided this explanation of termination simply to distinguish it from alteration, a distinction at issue in the case. (*Id.* at pp. 74-75.) *Grant* had no occasion to consider the effect of its stated rule on arbitration provisions, and it is not relevant to the issues in this appeal.

Landlord argues that its unlawful detainer action concerns issues entirely separate from the lease. Landlord asserts that it is only seeking to recover the possession to which it was entitled before the lease was executed, and it is not seeking any relief under the lease itself, such as unpaid rent, common area charges, late fees, or contractual attorney fees.<sup>7</sup> Moreover, Landlord argues, the unlawful detainer action is not premised on a breach of the lease or any conduct by Tenant during the existence of the tenancy.

These arguments do not affect our holding. Even accepting that Landlord is not requesting any monetary relief under the lease nor claiming any breach, Landlord nonetheless is seeking a ruling concerning the lease, namely that its terms have been terminated and Tenant no longer has a right of possession. The unlawful detainer action therefore is not “ ‘wholly independent’ ” of the lease such that the arbitration provision cannot apply to it. (*Buckhorn, supra*, 121 Cal.App.4th at p. 1408.) Nor is it of consequence whether the claims arose based on Tenant’s posttermination conduct, as *Buckhorn’s* rejection of a “temporal test” makes clear. (*Id.* at p. 1407.)

Because the arbitration provision encompassed Landlord’s unlawful detainer action, and no exceptions to enforcement of

---

<sup>7</sup> Landlord in fact included a request for attorney fees in its complaint pursuant to a provision in the lease. During the hearing on the motion to compel arbitration, the court noted Landlord’s inconsistency in arguing that the lease was ineffective for purposes of arbitration but effective for purposes of attorney fees. Subsequently, at Landlord’s request, the court struck the claim for attorney fees from the complaint.

that provision have been asserted (see fn. 4, *ante*), the trial court erred in denying Tenant's motion to compel arbitration.

**DISPOSITION**

We reverse the order denying Tenant's motion to compel arbitration and direct the trial court to enter an order granting the motion. Tenant is entitled to costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.