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ADR Case Update 2022 - 3

California

- **NON-DISPARAGEMENT CLAUSE IN MEDIATION AGREEMENT DID NOT APPLY TO LITIGATION STATEMENTS**

Olson v Doe
2022 WL 121309
Supreme Court of California
January 13, 2022

Condominium owner Jane Doe filed for a restraining order against building owner Curtis Olson, alleging civil harassment. In court-ordered mediation, the parties signed a mediation agreement (Agreement) restricting future contact, and the court dismissed Doe's request without prejudice. Doe later filed an administrative complaint with HUD, naming Olson and the HOA as respondents and alleging discrimination based on sex and gender. Olson cross-claimed for damages and specific performance, alleging that Doe's legal claims breached the Agreement's non-disparagement clause. Doe moved to strike Olson's cross-complaint under anti-SLAPP laws, and Olson opposed, claiming waiver. The court granted Doe's motion to strike, and Olson appealed. The appellate court reversed in part, finding that Olson had made a prima facie case for contract breach but affirmed the denial of specific performance. Olson appealed.

The Supreme Court of California reversed and remanded, holding that the non-disparagement clause did not extend to Doe's litigation claims. The Agreement was drafted within the narrow framework of a civil harassment restraining order proceeding (§527.6) and was intended to resolve interpersonal conflict between Doe and Olson by setting terms for their future interactions as co-residents. Absent from the agreement were terms providing a release from liability or waiver of claims. The parties' agreement further suggested that they contemplated the possibility of future litigation, with mediation/ confidentiality provisions stating that "each party...understood and acknowledged that evidence presented during this mediation may be verified outside of the mediation process and used as evidence in subsequent legal proceedings." The Agreement, the statutory context in which it was negotiated, and the fact that it implicated petitioning activity protected by the California Constitution led the court to conclude that the non-disparagement

clause did not apply to the circumstances here. The clause was directed toward rumor-spreading among fellow building residents, not a waiver of Doe's right to petition the courts as protected by the Anti-SLAPP statute.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.

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