August 2, 2023

ADR Case Update 2023 - 15

Federal Courts

- **CASE DISMISSED FOR LACK OF ADVERSE PARTIES**

  The Branch of Citibank, N.A. v de Navares
  United States Court of Appeals, Second Circuit
  2023 WL 4479321
  July 12, 2023

  Argentinian citizen Alejandro de Navares obtained a multi-million dollar Argentinian judgment against Citibank for wrongfully failing to reinstate him at Citibank's Buenos Aires Branch Office (the Branch). The Branch filed an arbitration demand under De Navares's employment agreement and petitioned in U.S. district court to compel arbitration and enjoin De Navares from enforcing the Argentinian judgment. De Navares opposed and moved to dismiss for lack of subject matter jurisdiction, arguing that the Branch held no legal identity separate from Citibank and could not bring the action on its own behalf. The court granted the Branch's motions to compel arbitration and issue the preliminary injunction and denied De Navares's motion to dismiss. De Navares appealed.

  The United States Court of Appeals, Second Circuit reversed. The Branch failed to meet its burden to show, under Argentinian law, that it was a separate legal entity from Citibank. As Citibank "never sought" to substitute itself for the Branch as the real party in interest, the action lacked adverse parties and therefore did not constitute an Article III case or controversy. The Court remanded for the lower court to dismiss for lack of subject matter jurisdiction.

- **TREATY DELEGATED JURISDICTION DETERMINATION TO ARBITRATOR**

  Olin Holdings Ltd. v State of Libya
  United States Court of Appeals, Second Circuit
  2023 WL 4479318
  July 12, 2023

  Cyprus and Libya signed a 2004 Bilateral Investment Treaty (BIT), which prohibited both

countries from expropriating foreign investment property without due process. Soon after, Olin Holdings built a dairy factory in Libya, which Libya expropriated upon its completion. Olin unsuccessfully sued in Tripoli, challenging the expropriation order and seeking damages, then initiated ICC arbitration under the BIT. Libya opposed, arguing that the BIT required Olin to choose either litigation or arbitration and Olin's prior litigation, therefore, barred the ICC Tribunal's jurisdiction. Following bifurcated proceedings, the Tribunal issued a partial Jurisdiction Award confirming its jurisdiction and a Final Award holding Libya in breach of the BIT and awarding Olin € 18 million in damages. Libya opposed Olin's petition to confirm the award, claiming that the Tribunal lacked authority to determine jurisdiction. The court confirmed the award, and Libya appealed.

The United States Court of Appeals, Second Circuit affirmed. The Court confirmed the existence of a valid arbitration agreement. A BIT constitutes a standing offer by the signatories to arbitrate disputes within its coverage. Olin accepted this standing offer by complying with BIT's requirements to provide Libya written notice of the dispute and wait six months before submitting to arbitration. The BIT provided clear and unmistakable evidence of the parties' intention to delegate arbitrability issues, including jurisdiction, to the Tribunal by expressly authorizing ICC arbitration under ICC Rules. The Rules state, in Article 6, section 3, that "any question of jurisdiction" shall be "decided directly by the arbitral tribunal."

- **FORUM SELECTION CLAUSE DID NOT BAR SUBJECT MATTER JURISDICTION**

  Rabinowitz v Kelman
  United States Court of Appeals, Second Circuit
  2023 WL 4688183
  July 24, 2023

  Benzion Rabinowitz and Levi Kelman signed a Settlement Agreement and an Arbitration Agreement in which they agreed to submit their real estate dispute to binding arbitration in rabbinical court Bais Din Maysharim. Both Agreements contained forum selection clauses. In the Settlement Agreement, the parties agreed to "submit to the jurisdiction" of New Jersey State Courts and the courts of Israel; in the Arbitration Agreement, the parties submitted themselves to "the personal jurisdiction of the courts of the State of New Jersey and/or New York. The arbitration concluded in an award to Rabinowitz, and Rabinowitz petitioned to confirm in the Southern District of New York. The court held that the Arbitration Agreement's forum selection clause required the action to be brought in New Jersey or New York state court and dismissed for lack of subject matter jurisdiction.

  The United States Court of Appeals, Second Circuit, vacated and remanded. Forum selection clauses have "no bearing" on a court's subject matter jurisdiction: private parties have no power to contract their way out of federal court jurisdiction. Here, the case was properly in federal court under diversity jurisdiction, and the court below erred in dismissing for lack of subject matter jurisdiction. *Forum non conveniens* is the proper vehicle to determine whether a forum selection clause requires dismissal. Here, the forum selection clauses in both Agreements were permissive rather than mandatory. The Arbitration Agreement, for example, identified New Jersey and New York courts as possible fora but did not designate them to be the exclusive fora. It is widely accepted that designation of a state for jurisdiction includes both state and federal courts, and the court below erred in holding that the Southern District of New York was an improper forum.

- **RETIREMENT PLAN'S ARBITRATION AGREEMENT BOUND PARTICIPANTS**

  Berkelhammer v ADP TotalSource Group, Inc.
  United States Court of Appeals, Third Circuit
  2023 WL 4554581
  July 17, 2023

  Displeased with the performance of their Retirement Savings Plan, Beth Berkelhammer and Naomi Ruiz (Participants) filed an ERISA 502(a)(2) derivative action against the Plan's portfolio manager, NFP Retirement, for breach of fiduciary duties and ERISA violations. NFP moved to compel arbitration under its Investment Advisory Agreement (IAA) with the Plan. Participants opposed, arguing that, as non-signatories, they were not bound to arbitration under the IAA. The

court granted the motion to compel, and Participants appealed.

The United States Court of Appeals, Third Circuit, affirmed that Participants were bound to arbitration under the IAA. ERISA 502(a)(2) allows individuals to seek remedies for breach of fiduciary duties "in a representative capacity on behalf of the plan as a whole." Participants here were acting on behalf of the Plan, not as individuals, and their individual consent to arbitration was irrelevant. The Plan had agreed to arbitrate under the IAA, and that agreement applied to Participant's claims made on the Plan's behalf.

- **DR PROVISION REQUIRED EXPERT DETERMINATION, NOT ARBITRATION**

Sapp v Industrial Action Services., LLC
United States Court of Appeals, Third Circuit
2023 WL 4632784
July 20, 2023

Kevin Sapp and Jamie Hopper (Sellers) sold their cleaning equipment company to Industrial Action Services (IAS) for a combination of cash, stock, and three yearly Earn Out Consideration (EOC) Payments to be paid if the company's performance exceeded certain benchmarks. To determine the EOC Payments, § 2.3 of the Purchase Agreement required the IAS to submit a yearly Earn-Out Statement, which would become final after 30 days unless Sellers filed a "notice of disagreement." If notice was filed, the parties would resolve the dispute within 30 days on their own or by submitting the dispute to an outside Accounting Firm. IAS made no EOC Payments, and Sellers sued for breach of contract. IAS moved to compel arbitration under Purchase Agreement § 2.3. The court granted the motion, and the parties submitted their dispute to arbitration by an accounting firm, which concluded that Sellers had no right to any EOC payments. Sellers moved to vacate the award. The court denied Sellers' motion and entered judgment for IAS. Sellers appealed.

The United States Court of Appeals, Third Circuit, reversed and remanded, holding that the lower court erroneously interpreted § 2.3 as an arbitration provision. Arbitration and expert determination are two distinct forms of private, binding alternative dispute resolution. § 2.3, which limited the Accounting Firm's authority to "deciding a specific factual dispute" in a 30-day period, clearly evinced the parties' intention for the Accounting Firm to "act narrowly as an expert, and not as an arbitrator." The fact that the Purchase Agreement included a separate ADR provision indicated that the parties intended to agree to "(1) expert determination by the Accounting Firm of narrow accounting-related questions and (2) mediation and litigation of all other disputes."

- **DELIVERY COMPANY NOT EXEMPT FROM ARBITRATION UNDER FAA § 1**

Amos v Amazon Logistics, Inc.
United States Court of Appeals, Fourth Circuit
2023 WL 4713756
July 25, 2023

Amazon entered into a Delivery Service Partner Program Agreement (DSPPA) for Kirk Delivery, a Durham, N.C. company employing 450 drivers, to deliver packages to local Amazon customers. Amazon later terminated the Agreement, citing material breach, and Kirk, as well as its owner and operator, Ahaji Amos, filed actions in tort, contract, and employment law against Amazon. Amazon moved to dismiss and compel arbitration under the DSPPA. Amos opposed, arguing that she was a transportation worker exempt from FAA and WUAA arbitration. The court granted Amazon's motion, holding that arbitration was required under the WUAA. Amos and Kirk Delivery appealed.

The United States Court of Appeals, Fourth Circuit, affirmed that Amos was not a "transportation worker" under FAA § 1's exemption of "contracts of employment" for workers engaged in interstate commerce. The DSPPA was not a "contract of employment" but an agreement for one business to provide services to another. The exemption was intended to apply to individual workers, not to a large-scale business such as Kirk Delivery, nor did it apply to Amos, who was not party to the DSPPA.

- **TESTIMONY DENYING SIGNATURE CREATED GENUINE ISSUE OF FACT**

  Bazemore v Papa John's U.S.A., Inc.
  United States Court of Appeals, Sixth Circuit
  2023 WL 4631540
  July 20, 2023

  Pizza delivery driver Andrew Bazemore sued his employer, Papa John's, for under-reimbursing vehicle expenses in violation of the Fair Labor Standards Act. Papa John's moved to compel arbitration under its online Arbitration Agreement. A Papa John's employee testified that all new employees were required to sign the Agreement as a condition of employment, and Papa John's presented records showing that Bazemore had completed the multi-step signing process. Bazemore responded with his own declaration, sworn under penalty of perjury that he had "never seen" or "heard about" the Agreement. Bazemore testified that the login credentials used in the signing process derived from demographic information Papa John's could have culled from his application and that he had seen his manager login for other employees "to complete training materials." The court granted Papa John's motion to compel, and Bazemore appealed.

  The United States Court of Appeals, Sixth Circuit, reversed and remanded. The lower court erroneously placed the burden of proof on Bazemore to show that he had not signed the Agreement. The burden of proof instead rests with the party seeking to enforce the agreement. An electronic signature is legally valid only if "made by the action of the person the signature purports to represent." Bazemore's testimony that he had never seen the Agreement "was enough to create a genuine issue as to whether he signed it." It was irrelevant that Bazemore's declaration did not specifically state that Bazemore "did not sign" the Agreement. A reasonable factfinder could "plainly infer" that Bazemore had not signed an Agreement that he had not seen.

- **"LAST LEG" INTRASTATE TRUCK DRIVERS WERE WORKERS ENGAGED IN INTERSTATE COMMERCE FOR PURPOSES OF FAA § 1 EXEMPTION**

  Carmona v Domino's Pizza, LLC
  United States Court of Appeals, Ninth Circuit
  2023 WL 4673469
  July 21, 2023

  Domino's Pizza employed truck drivers to pick up restaurant ingredients at a California supply center and deliver them to Domino's franchisees throughout the state. A group of such Drivers filed a putative class action against Domino's Pizza for labor law violations. Domino's moved to compel arbitration. The court denied the motion, holding that Drivers were workers engaged in interstate commerce exempt from arbitration enforcement under FAA § 1. The Court of Appeals affirmed, finding that Drivers were "last leg" drivers engaged in a "single, unbroken stream of interstate commerce." The Supreme Court granted certiorari, vacated, and remanded for reconsideration in light of its recent decision in *Southwest Airlines Co. v Saxon.*

  The United States Court of Appeals, Ninth Circuit again affirmed that the Drivers were workers engaged in interstate commerce exempt from the FAA. *Saxon* established that courts must focus not on the nature of the employer's business but on the "actual work" class members "typically carry out." The Court held that its prior reasoning created no conflict with *Saxon*. The inquiry was whether Drivers "operate in a single, unbroken stream of interstate commerce that renders interstate commerce a central part of their job description." Here, Domino's ingredients were purchased from outside California and shipped to Domino's southern California supply center, where they were weighed and packaged but not otherwise altered. The Drivers then picked up the ingredients and delivered them to local franchisees. The goods were "destined from the outset" to travel from outside California to the local franchisees, an interstate journey that included Drivers' "last leg" intrastate delivery.

- **REMAND FOR ARBITRATOR TO DETERMINE ARBITRABILITY**

  Holley-Gallegly v TA Operating, LLC
  United States Court of Appeals, Ninth Circuit
  2023 WL 4674372

July 21, 2023

Truck mechanic Kenneth Holley-Gallegly filed a class action against truck stop owner TA Operating for employment law violations. TA moved to compel arbitration under the Arbitration Agreement Holley-Gallegly signed as a condition of his employment. The Agreement included a delegation clause and provided that if the Agreement were found unenforceable, any claims against TA would be "subject to a non-jury trial." The court denied TA's motion. The court held that the delegation provision was substantively unconscionable because Holly-Gallegly would be required to waive his right to jury trial if the arbitrator held the Agreement unenforceable. The court held that it, rather than the arbitrator, should determine arbitrability and, after concluding that the Agreement was permeated with unconscionability, held the Agreement unenforceable. TA appealed.

The United States Court of Appeals, Ninth Circuit vacated. The court below erred in relying on the jury waiver to find the delegation clause unconscionable. The jury waiver applied only if the Agreement were held unenforceable, i.e., it "would only have an effect – if any – after it has been determined that the Agreement is unenforceable." The jury waiver, therefore, could not, of itself, support the conclusion that the delegation clause was unenforceable. The Court remanded the case with directions that the lower court order the arbitrator to decide arbitrability.

- **ARBITRATION AGREEMENTS DID NOT APPLY TO DISCRIMINATION CLAIMS**

  Perez v Discover Bank
  United States Court of Appeals, Ninth Circuit
  2023 WL 4697253
  July 24, 2023

  In 2010, Iliana Perez took out a Citibank student loan subject to loan documents containing an arbitration agreement (Citibank Agreement). Discover became the holder of the loan the following year when it acquired Citibank. In 2018, Perez applied to consolidate the loan with Discover. The application contained an arbitration agreement (Discover Agreement) allowing a 30-day opt-out following the loan's "consummation." A Discover representative denied the loan, citing Perez's non-citizen status, and Perez sued Discover for discrimination. Discover moved to compel arbitration under both the Citibank Agreement and the Discover Agreement. Perez argued that the Citibank Agreement did not apply to her Discover application and that both Agreements were unconscionable. In the hearing, Discover's counsel argued that the Discover Agreement was not unconscionable because Perez still retained the right to opt out, in which case the Discover Agreement would not bind her to arbitration of her discrimination claims. The court then granted the motion to compel under the Discover Agreement. Perez gave notice that she was opting out of the Discover Agreement and moved for partial reconsideration. Discover then argued that the opt-out did not apply to her discrimination claims because they accrued prior to her opt-out, and that the Citibank Agreement still mandated arbitration. The court rescinded its order compelling arbitration of the discrimination claims, holding that the claims were no longer subject to arbitration under the Discover Agreement following Perez's opt-out, and fell outside the scope of the Citibank Agreement. Discover appealed.

  The United States Court of Appeals, Ninth Circuit affirmed. Discover was judicially estopped from arguing that Perez's opt-out of the Discover Agreement did not apply to her discrimination claims. The lower court had rejected Perez's unconscionability claim in part based on its understanding from Discover's counsel that Perez could opt out of the Discover Agreement for purposes of arbitrating her discrimination claims. Discover could not subsequently benefit from taking the opposite position. The Citibank Agreement did not constitute an agreement to arbitrate Perez's discrimination claims. In agreeing to the Citibank Agreement, Perez "could not have reasonably expected" that she would be forced to arbitrate unrelated claims arising from an application for a Discover loan eight years later.

- **COURT PROPERLY EXERCISED SUBJECT MATTER JURISDICTION**

  Baker Hughes Services Intl., LLC v Joshi Technologies Intl., Inc.
  United States Court of Appeals, Tenth Circuit
  2023 WL 4503531

July 13, 2023

American-based Baker Hughes and Ecuador-based Pesago Consortium submitted a payment dispute to arbitration in Ecuador. The resulting award held the Consortium and its members jointly and severally liable for a damages award to Baker. Baker filed a U.S. district court action to confirm the award against Consortium member Joshi Technologies. Joshi argued that the court lacked subject matter jurisdiction under the New York Convention because Baker failed to comply with Article VI requirements to provide original documents as well as English translations. Joshi also argued lack of a valid arbitration agreement, as Joshi was not party to the Arbitration Agreement between Baker and the Consortium. The court entered judgment against Joshi for the full award amount. Joshi appealed.

The United States Court of Appeals, Tenth Circuit affirmed that the court below properly exercised subject matter jurisdiction. N.Y. Convention Article VI is not a jurisdictional provision. Baker's failure to comply with Article VI's procedural requirements did raise a merits question as to Baker's ability to enforce the award, but the issue was waived by Joshi's failure to raise the argument. The Court found that Joshi was bound to the Arbitration Agreement despite Joshi's non-signatory status. At the time of signing, the Consortium consisted only of Joshi and one other member, and Joshi had agreed with that member, in writing, that they would be jointly and severally liable under the Arbitration Agreement.

- **PARTY TO MEDIATION NOT OBLIGED TO DISCLOSE INFORMATION OPPOSING PARTY LEARNED INDEPENDENTLY**

First Baptist Ferry Pass Inc. v Western World Ins. Co.
United States District Court, N.D. Florida
2023 WL 4364403
July 6, 2023

First Baptist sued insurer Western World for refusing coverage of hurricane damage. Following initial discovery, the parties submitted to mediation. In the interval, First Baptist executed an Assignment of Benefits (AOB) to its architect and expert witness KDH Architecture. First Baptist submitted no formal disclosure of the AOB, but Western learned of it a month before the mediation from an emailed invoice sent by KDH. The mediation concluded with a signed Settlement Agreement, which stated that the settlement did not "reduce, release, or resolve any pending Assignment of Benefits (AOB)." The mediator reiterated this statement in her email summary to both parties. First Baptist moved to enforce the settlement. Western World opposed, arguing that First Baptist violated Fed.R.Civ.Proc. § 26(e)(a)(A) by failing to disclose the AOB in discovery and requested that the Settlement Agreement be rescinded for unilateral mistake.

The United States District Court, N.D. Florida granted First Baptist's motion to enforce the settlement. First Baptist did not violate Fed.R.Civ.Proc. § 26(e)(1)(A). At the time of its initial disclosures, First Baptist had not made the AOB to KDH, and any duty to supplement those disclosures was obviated once Western learned of the AOB from KDH's email. This email notice, which arrived a month before the mediation, gave Western sufficient time to review the AOB before signing the Settlement Agreement. The unilateral mistake doctrine did not apply, as any failure to understand the AOB exclusion, set forth in underlined, bold-faced type in the Settlement Agreement, was the product of Western's "inexcusable lack of due care."

- **COURT LACKED AUTHORITY TO REMOVE ARBITRATOR IN FOREIGN ARBITRATION**

Endurance Specialty Insurance Ltd. v Horseshoe RE Ltd.
United States District Court, S.D. New York
2023 WL 4346605
July 5, 2023

Bermuda insurance companies Endurance Specialty Insurance and Horseshoe RE submitted to a Bermuda arbitration governed by Bermuda procedural law. Each party appointed one arbitrator as required by their Arbitration Agreement, but the arbitrators failed to agree on an Umpire. Horseshoe applied to the ICC Court, which appointed Sir Bernard Eder. Endurance unsuccessfully challenged this appointment in the ICC Court, alleging that Eder was biased

because 1) the ICC had informed Sir Bernard that Horseshoe sought an Umpire with his "precise background" and that Endurance "aggressively opposed" an Umpire with that background and 2) Sir Bernard previously had a "negative experience" with Endurance's counsel in an unrelated arbitration. Endurance then petitioned in New York state court to remove Sir Bernard for impartiality. Horseshoe removed to federal court and moved to dismiss for failure to state a claim.

The United States District Court, S.D. New York denied Endurance's motion to remove Sir Bernard and granted Horseshoe's motion to dismiss. The Court lacked authority to remove Sir Bernard, as Bermuda procedural law grants the Bermuda Supreme Court exclusive discretion to remove an arbitrator or umpire where there is a "real danger" of bias. Even assuming the Court held removal authority, Endurance failed to identify "any reasonable basis" for disqualifying Sir Bernard. Disclosures of a party's preferences are insufficient to establish bias, and Sir Bernard's previous experience with Endurance's counsel involved a different party and was unrelated to the present case.

- **FURLOUGH CONSTITUTED "PERMAMENT LAYOFF" FOR PURPOSES OF ADR EXCEPTION**

  Staley v Hotel 57 Services, LLC
  United States District Court, S.D. New York
  2023 WL 4339678
  July 5, 2023

  New York's Four Seasons Hotel closed during the Covid pandemic, leaving employees on "indefinite furlough." In 2022, three Employees sued the Hotel on behalf of themselves and other employees, arguing that the continued furlough constituted a "permanent layoff" entitling them to no-fault separation pay and notice of termination. The Hotel moved to compel arbitration and strike all class claims under the ADR Provision in the Employees' contracts. The Provision required arbitration of all employment claims except for those arising out of a "permanent layoff" and stated that any employee who did not opt out of the ADR Provision waived the right to have their claims submitted in any class or collective judicial action.

  The United States District Court, S.D. New York denied the Hotel's motions to compel arbitration and strike class claims. "Under almost any definition," the Employees' years-long layoff qualified as a "permanent layoff," entitling Employees to separation pay and notice of termination. The Court cited for reference New York and federal statutes defining "permanent layoff" as any layoff longer than six months. The class waiver did not bar Employee's actions. As written, the class action waiver prevented employees from bringing class actions for claims they would otherwise be required to arbitrate under the ADR Provision. As the ADR Provision exempted claims arising out of "permanent layoff," logic dictated that the waiver did not apply to those claims. "It would be strange," the Court noted, to require employees "to expressly opt out of the procedure from which they are already exempt."

California

- **ARBITRATION OF INDIVIDUAL PAGA CLAIM DID NOT DIVEST PLAINTIFF OF STANDING IN REPRESENTATIVE ACTION**

  Adolph v Uber Technologies, Inc.
  Supreme Court of California
  2023 WL 4553702
  July 17, 2023

  Uber Eats delivery driver Erik Adolph filed an individual action and a representative PAGA action against Uber for mischaracterizing him as an independent contractor. Uber moved to compel arbitration under his signed Arbitration Agreement, which included a PAGA waiver and severability clause. The court granted Uber's motion to compel arbitration of Adolph's individual claim and dismissed his class action claims. Adolph filed an amended complaint, which eliminated his individual Labor Code claims and class claims, retaining only his PAGA claim for

civil penalties. The court granted Adolph's request for a preliminary injunction preventing arbitration, holding the PAGA waiver unenforceable as violative of public policy. Uber petitioned for review. The United States Supreme Court subsequently decided *Viking River Cruises v Moriana*, and the California Supreme Court granted review "to provide guidance on statutory standing under PAGA."

The Supreme Court of California reversed. Noting that the highest court of each state "remains the final arbiter of State law," the Court rejected *Viking*'s holding that once a plaintiff's individual claim is committed to arbitration, the plaintiff no longer has standing to maintain non-individual PAGA claims. Reiterating its holding in *Kim v Reins International California, Inc.*, the Court held that a worker becomes an "aggrieved employee" with standing to litigate representative PAGA claims "upon sustaining a Labor Code violation committed by his or her employer." This standing is "not affected" by "enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum." Here, Adolph's allegations that Labor Code violations were committed against him while he was employed by Uber were sufficient to confer PAGA standing.

Florida

- **DOCK SLIP LICENSE NOT APPURTENANT TO CONDOMINIUM FOR PURPOSES OF STATUTORY NON-BINDING ARBITRATION REQUIREMENT**

  Randolph Farms I Condominium Assoc., Inc.
  Florida District Court of Appeal, Second District
  2023 WL 4372836
  July 7, 2023

  Kimberly and Gary Otto owned a condominium unit in Randolph Farms I condominium community. The Condominium Association owned a nearby dock and sometimes offered its members and residents a License to utilize one of the dock slips. The Ottos obtained and used one such License. The License stated that it did not create "any right or property interest appurtenant to Licensee's Unit" and that the License would "automatically terminate upon sale of the Licensee's Unit by the Licensee." The Association subsequently terminated the Ottos' License, but the Ottos refused to remove their boat. The Association sued to enjoin the Ottos from using the dock and to enforce the termination. The court dismissed, holding that, before proceeding in litigation, the Association was first required to engage in nonbinding arbitration pursuant to Florida Statute § 718.1255, which applies to disputes in which a condominium association seeks to require a unit owner to take or desist from actions involving that unit. The Association appealed.

  The Florida District Court of Appeal, Second District, reversed. § 718.1255 did not apply because the dock license was not appurtenant to the Ottos' unit. The License was obtained through a transaction separate from the unit purchase; the License did not convey an ownership interest, and the License did not transfer with the sale of the Licensee's unit.

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