

Digest: Gueyffier v. Ann Summers, Ltd.

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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.