



The Law

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Informal Agreement Doesn't Transfer

by Ron Davis

A tenant's efforts to remain the exclusive seller of name-brand grocery products at a California shopping center have hit an impasse.

The shopping center is Highland View, in suburban San Diego, and the tenant has operated a convenience grocery store at the center since 1992. The tenant's original lease, however, failed to mention any exclusivity for the sale of goods. But the center's owner apparently promised orally that he would protect the tenant from any other sales of name-brand grocery products at Highland View.

As it happened, that exclusivity promise was tested in 1997 when another multi-product tenant began operations at the shopping center. The center's owner subsequently barred that tenant from selling the same laundry products that the grocery-store tenant offered. But the restriction on other tenants' sales was largely informal.

It was informal, that is, until new owners gained control of the shopping center. Under the terms dictated at the time of the ownership exchange, the tenant signed a pact terminating the prior lease and specifying that there were "no collateral agreements not reflected in the written lease."

Those terms would come back to haunt the tenant. That's because a few months after signing the new pact, the tenant noted that another store at the shopping center was selling name-brand products that were similar to those that his store sells. The new owners of the shopping center refused to take any action against his competitor, however. Then, another tenant began operations at the center, and occasionally that tenant would sell food products, though most of its sales consisted of clothing, electronics, and household products.

The grocery-store tenant nevertheless sued the shopping center owners.

A California court interpreted the exclusive-use clause as preventing the leasing of space at the shopping center to another "convenience or grocery market." But the court added that the clause was not intended to bar the center's owners from leasing to another tenant that was not a convenience or grocery store "merely because the other tenant sold some products the grocery-store tenant either sold or might elect to sell."

The grocery-store tenant appealed that interpretation, arguing that his exclusive-use restriction barred any sales of competing products by any newly leased stores.

A California appellate court agreed with the lower-court judge, explaining, "There is substantial evidence to support the holding that the proper interpretation of the exclusive-use clause was to preclude the center's owners from leasing to a class of businesses (for example, a convenience or grocery market) rather than to prohibit the leasing to any other business selling some products the grocery-store tenant either sold or might elect to sell at some future date."

(Hanna v. ENS Management, LLC, 2011 WL 3806950 [Cal.App. 4 Dist.])

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