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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MINDY FREILE,

Plaintiff and Respondent,

v.

TIM LINCECUM,

Defendant and Appellant.

A135010

(City & County of San Francisco  
Super. Ct. No. CGC-11-514877)

Defendant Tim Lincecum appeals from an order denying his motion to compel arbitration of a dispute with his former landlord and to stay the litigation pending arbitration. The trial court correctly ruled that the arbitration clause in the parties' rental agreement is void under Civil Code section 1953, subdivision (a)(4),<sup>1</sup> so we affirm.

**BACKGROUND**

Lincecum rented an apartment from plaintiff Mindy Freile from May 2010 through February 2011. The lease permitted either party to submit disputes to binding arbitration. It specified that: "In the event a dispute arises between the parties concerning any provision of this contract, either party may submit such issue to binding arbitration under the rules of the American Arbitration Association in San Francisco, California. . . . Any such arbitration proceedings and decisions shall be private and confidential, and both parties agree not to disclose any aspect thereof without the prior written consent of the other party. Either party may bring action at law or in equity to

<sup>1</sup> Further statutory references are to the Civil Code.

enforce any such arbitration decision or award, including, without limitation, obtaining injunctive relief.”

Freile sued Lincecum for breach of contract, conversion, trespass, and other claims related to his occupancy. Lincecum moved to compel arbitration pursuant to the rental agreement. The trial court ruled that the arbitration provision was void under section 1953, subdivision (1)(4), and denied the motion. Lincecum filed this timely appeal.

### DISCUSSION

Section 1953, subdivision (a) provides that “Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive any of the following rights shall be void as contrary to public policy: [¶] . . . [¶] (4) His procedural rights in litigation in any action involving his rights and obligations *as a tenant*.” A tenant’s “procedural rights” include his right to jury trial. (*Jaramillo v. JH Real Estate Partners, Inc.* (2003) 111 Cal.App.4th 394, 403–404.)

Lincecum contends that the objective of section 1953 is to protect tenants’ rights, and, therefore, while it bars Freile from demanding arbitration, it does not prevent him from doing so. Lincecum’s argument confuses the difference between *void* and *voidable* contracts. It is fundamental that a *void* contract (or, as here, contractual term) has no legal force or effect. “ ‘A void contract is no contract at all; it binds no one and is a mere nullity.’ ” (See, e.g., *R.M. Sherman Co. v. W. R. Thomason, Inc.* (1987) 191 Cal.App.3d 559, 563; *Guthman v. Moss* (1984) 150 Cal.App.3d 501, 507; *A-Mark Coin Co. v. General Mills, Inc.* (1983) 148 Cal.App.3d 312, 322 [“No rights are enforceable under a void contract”]; Black’s Law Dict. (8th ed. 2004) pp. 1604-1605; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 2, p. 60.) On the other hand, a voidable contract “is one which may be rendered null at the option of one of the parties, *but it is not void until so rendered.*” ’ ” (*Guthman, supra*, at pp. 509-510; 1 Witkin, *supra*, Contracts, § 2, p. 60.)

Here, section 1953 expressly states that a contract term that waives or modifies a tenant’s procedural litigation rights is void. Although Lincecum argues, in effect, that the

Legislature intended for such terms to be voidable at the tenant's option rather than void,<sup>2</sup> the statutory language is contrary and unambiguous: "Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive any of the following rights shall be void as contrary to public policy." "In the absence of compelling countervailing considerations, we must assume that the Legislature "knew what it was saying and meant what it said." [Citation.] [Citation.] Furthermore, "[e]ach of the quoted words [in a statute] must be presumed to have been used intelligently and designedly and for an express purpose by the Legislature." (Guthman v. Moss, supra, 150 Cal.App.3d at pp. 508-509.) The statutory language is unambiguous and its application does not lead to an absurd result, so we must apply it as written. (Ailanto Properties, Inc. v. City of Half Moon Bay (2006) 142 Cal.App.4th 572, 582; MacIsaac v. Waste Management Collection & Recycling, Inc. (2005) 134 Cal.App.4th 1076, 1083; Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 37 Cal.App.4th 855, 862.)

Lincecum also contends section 1953 does not apply because the lease does not require arbitration unless one of the parties invokes the arbitration clause. Therefore, as we understand his argument, the arbitration term is not void because it does not automatically result in a waiver of a tenant's right to litigate lease disputes. We disagree. Lincecum's agreement to arbitrate at Freile's option waived, or, at a minimum, modified his right to litigate such disputes by giving Freile the authority to demand arbitration. The trial court correctly applied the statute as written and ruled that the arbitration provision is void.

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<sup>2</sup> We grant Lincecum's unopposed request for judicial notice of legislative history pertinent to this argument.

**DISPOSITION**

The order is affirmed.

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Siggins, J.

We concur:

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McGuiness, P. J.

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Jenkins, J.