

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

Brooks v. Greystar Real Estate Partners, LLC

Brooks · No. 23cv1729-LL-VET · Decided March 31, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiff Philip McGill’s motion to certify the court’s July 19, 2024 order for interlocutory appeal. The court held that there was no substantial ground for difference of opinion regarding its determination that the Federal Arbitration Act applies to the residential lease and preempts California Civil Code section 1953 to the extent it prohibits arbitration.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Linda Lopez                                                                                                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | March 31, 2025                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 23cv1729-LL-VET                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Plaintiff moved under 28 U.S.C. § 1292(b) to certify the court's prior order compelling arbitration for interlocutory appeal.                                                                                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | A district court may certify an interlocutory appeal under 28 U.S.C. § 1292(b) only when the order involves a controlling question of law, there is a substantial ground for difference of opinion, and an immediate appeal may materially advance the litigation. The court focused on whether controlling law was sufficiently unclear to create a substantial ground for difference of opinion. |
| PRECEDENTIAL VALUE    | district court opinion; precedential status unknown                                                                                                                                                                                                                                                                                                                                                |
| PARTIES               | Philip McGill v. Greystar Real Estate Partners, LLC, Greystar California, Inc.                                                                                                                                                                                                                                                                                                                     |

TOPICS

- interlocutory appeal
- arbitration
- appellate procedure
- civil procedure
- landlord tenant

## PRACTICE AREAS

Arbitration

Civil procedure

Appellate procedure

Real estate

Contracts

## QUESTIONS PRESENTED

1. Whether the July 19, 2024 order compelling arbitration should be certified for interlocutory appeal under 28 U.S.C. § 1292(b).
2. Whether the court's determination that the FAA applies to residential real-estate leases and preempts California Civil Code section 1953 presents a substantial ground for difference of opinion.

## HOLDINGS

1. The order did not qualify for interlocutory certification because Plaintiff failed to show a substantial ground for difference of opinion concerning the FAA's application to the residential lease and its preemption of California's prohibition on arbitration clauses in residential leases.
2. The court reaffirmed its prior determination that the FAA applies to the arbitration agreement in the residential lease because the rental of real estate affects or involves interstate commerce.
3. To the extent California Civil Code section 1953 prohibits arbitration of claims covered by an enforceable arbitration agreement, it is preempted by the FAA.

## KEY QUOTATIONS

*“Under § 1292(b), a district court may only certify an order for interlocutory appeal if the moving party demonstrates that the order (1) “involves a controlling question of law,” (2) “as to which there is substantial ground for difference of opinion, and” (3) “that an immediate appeal from the order may materially advance the ultimate termination of the litigation.”” (at 6)*

*“The Court finds Russell is well-settled regarding its holding that the rental of real estate affects interstate commerce.” (at 8)*

*“The Court’s finding that the FAA preempts California Civil Code section 1953 prohibiting arbitration in residential leases was founded on three distinct but related controlling legal precedents, and Plaintiff does not show that courts have differed as to those three well-established findings.” (at 9)*

## FACTUAL BACKGROUND

Plaintiffs alleged that Greystar unlawfully withheld portions of residential tenants' security deposits without providing required statutory disclosures. Plaintiff's apartment lease contained an arbitration agreement, and the court previously found that Plaintiff assented to arbitration and that the Federal Arbitration Act applied because residential real-estate rental affects interstate commerce. The court also concluded that the FAA preempted California Civil Code section 1953 to the extent that provision prohibits arbitration.

## PROCEDURAL HISTORY

Plaintiff and other putative class representatives sued Greystar and numerous property-related entities over alleged unlawful withholding of security deposits. The court compelled arbitration of Plaintiff's individual

claims but declined to stay the action. Plaintiff then sought certification of the arbitration order for interlocutory appeal. While the motion was pending, the court partially granted and partially denied Defendants' motion to strike and dismiss, and Plaintiffs filed a Second Amended Complaint. The court denied certification because Plaintiff failed to establish a substantial ground for difference of opinion under § 1292(b).

**DISPOSITION**

other

**CASES CITED**

- Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576, 582, 590 (2008)
- Cho v. Casnak LLC, No. 222CV04642JLSAFM, 2022 WL 16894869, at \*3 (C.D. Cal. Sept. 7, 2022)
- Russell v. United States, 471 U.S. 858, 859, 862 (1985)
- A-1 A-Lectrician, Inc. v. Commonwealth REIT, 943 F. Supp. 2d 1073, 1078 (D. Haw. 2013), amended (June 27, 2013)
- Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 478 (1989)
- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 341 (2011)
- Couch v. Telescope Inc., 611 F.3d 629, 633 (9th Cir. 2010)
- Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 268, 272–74, 281 (1995)
- United States v. Corona, 108 F.3d 565, 569 (5th Cir. 1997)
- Terkel v. Centers for Disease Control & Prevention, 521 F. Supp. 3d 662, 672, 676 (E.D. Tex. 2021)
- Jeffers v. Babera Management Corp., No. CV 14-00787-RGK ASX, 2014 WL 2526960, at \*1–2 (C.D. Cal. June 3, 2014)

**OPINION**

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF  
CALIFORNIA 10 11 RONNIE BROOKS, et al., Case No.: 23cv1729-LL-VET 12 Plaintiffs,  
ORDER DENYING PLAINTIFF’S 13 v. MOTION TO CERTIFY JULY 19, 2024 ORDER FOR  
14 GREYSTAR REAL ESTATE INTERLOCUTORY APPEAL PARTNERS, LLC, GREYSTAR  
15 CALIFORNIA INC., et al., [ECF No. 45] 16 Defendants. 17 18 19 Before the Court is a  
Motion to Certify the July 19, 2024 Order for Interlocutory 20 Appeal (“Motion”) filed by Plaintiff  
Philip McGill (“Plaintiff”).

ECF No. 45 (“Mot.”). 21 Defendants Greystar California, Inc. and Greystar Real Estate Partners,  
LLC (collectively 22 “Greystar” or “Defendants”) filed an Opposition to the Motion [ECF No. 46  
 (“Oppo.”)] 23 and Plaintiff filed a Reply [ECF No. 47 (“Reply”)].

The Court finds this matter suitable for 24 determination on the papers and without oral argument  
pursuant to Federal Rule of Civil 25 Procedure 78(b) and Civil Local Rule 7.1.d.1. Upon review of

the parties' submissions and 26 the applicable law, the Court DENIES the Motion. 27 / / / 28 / / / 1  
I. BACKGROUND 2 A. Procedural History 3 In the First Amended Complaint ("FAC"), Plaintiff  
Philip McGill ("McGill"), along 4 with five other Plaintiffs, sue Greystar and almost 480 different  
Defendants ("Entity 5 Defendants") in a putative class action, claiming Greystar unlawfully  
withheld portions of 6 their security deposits without providing required statutory disclosures.

ECF No. 10 ¶ 6. 7 Plaintiffs allege that Greystar "owns, controls and/or manages" hundreds of  
properties on 8 behalf of Entity Defendants. Id. ¶¶ 29, 35. On January 19, 2024, Plaintiffs  
voluntarily 9 dismissed the 478 Entity Defendants. ECF No. 30. 10 On July 19, 2024, the Court  
issued an order granting Defendants' motion to compel 11 arbitration as to Plaintiff but denying  
their motion to stay, finding a stay would result in 12 needless delay with no discernible benefit  
because resolution of one named Plaintiff's 13 arbitrable claims on an individual basis would not  
bind the Court with respect to the non- 14 arbitrable class claims.

ECF No. 44 at 13–14. 15 On August 21, 2024, Plaintiff filed the instant Motion. Mot. 16 On  
September 26, 2024, the Court issued an order granting in part and denying in 17 part Defendants'  
motion to strike and motion to dismiss the FAC. ECF No. 48. 18 On October 3, 2024, Plaintiffs  
filed a Second Amended Complaint ("SAC"). ECF 19 No. 49. 20 On October 31, 2024,  
Defendants filed a motion to dismiss the SAC, which is 21 pending.

ECF No. 52. 22 B. July 19, 2024 Order Granting Motion to Compel Arbitration 23 In granting the  
motion to compel arbitration, the Court found Plaintiff assented to 24 arbitration as part of his  
agreement to the lease contract for his apartment rental, that the 25 Federal Arbitration Act  
("FAA") applies to the arbitration agreement, and that Defendants 26 may enforce the arbitration  
agreement.

ECF No. 44 at 4–9. 27 In this Motion, Plaintiff only contests the second finding regarding the  
FAA's 28 applicability to the arbitration agreement. That section of the order is as follows: 1 The  
Court finds the FAA applies to the Arbitration Agreement.

The FAA "makes contracts to arbitrate 'valid, irrevocable, and enforceable,' so 2 long as their  
subject involves 'commerce.'" Hall St. Assocs., L.L.C. v. Mattel, 3 Inc., 552 U.S. 576, 582 (2008)  
(quoting 9 U.S.C. § 2). "Real estate rental is an activity that affects interstate commerce as a  
matter of law." Cho v. Casnak 4 LLC, No. 222CV04642JLSAFM, 2022 WL 16894869, at \*3  
(C.D.

Cal. Sept. 5 7, 2022) (citing Russell v. United States, 471 U.S. 858, 862 (1985)) (finding that the  
rental of both commercial and residential real estate is an economic 6 activity that affects interstate  
commerce and that the FAA governs rental 7 leases).

Because real estate rental involves interstate commerce, the FAA's reach applies to real estate  
leases such as the Lease at issue here. See Hall St. 8 Assocs., L.L.C., 552 U.S. at 590; Russell, 471

U.S. at 862; Cho, 2022 WL 9 16894869, at \*3.

The Court is not persuaded by Plaintiffs' mistaken argument that only commercial real estate rentals are governed by the FAA, nor by their 10 citations to cases that involve one-time real estate sales and not leases. See 11 ECF No. 36 at 23–25; Russell, 471 U.S. at 862 (finding the rental of real estate unquestionably affects commerce, and the local rental of an apartment unit is 12 a part of that broad commercial market in rental properties); *A-1 A-Lectrician, 13 Inc. v. Commonwealth Reit*, 943 F. Supp. 2d 1073, 1078 (D.

Haw. 2013), amended (June 27, 2013) (distinguishing cases involving one-time real estate 14 sales as inapplicable to whether the FAA governs real estate leases). 15 The Court also finds that FAA preemption applies, overriding California state arbitration laws, including California Civil Code section 1953. 16 “In recognition of Congress’ principal purpose of ensuring that private 17 arbitration agreements are enforced according to their terms, we have held that the FAA pre-empts state laws which require a judicial forum for the 18 resolution of claims which the contracting parties agreed to resolve by 19 arbitration.” *Volt Info.*

*Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989) (internal quotation marks and citation 20 omitted). Thus, to the extent that California Civil Code section 1953 prohibits 21 arbitration, it is preempted by the FAA. See *id.*; *AT&T Mobility LLC*, 563 U.S. at 341 (“When state law prohibits outright the arbitration of a particular type 22 of claim, the analysis is straightforward: The conflicting rule is displaced by 23 the FAA.”).

24 *Id.* at 8–9. 25 II. LEGAL STANDARD 26 “Except as otherwise provided in section 1292(b) of title 28, an appeal may not be 27 taken from an interlocutory order... directing arbitration to proceed under section 4 of 28 this title.” 9 U.S.C. § 16.

Under § 1292(b), a district court may only certify an order for 1 interlocutory appeal if the moving party demonstrates that the order (1) “involves a 2 controlling question of law,” (2) “as to which there is substantial ground for difference of 3 opinion, and” (3) “that an immediate appeal from the order may materially advance the 4 ultimate termination of the litigation.” 28 U.S.C. § 1292(b).

5 III. DISCUSSION 6 As stated above, Plaintiff seeks interlocutory appeal on the Court’s finding that the 7 FAA preempts California’s ban on arbitration clauses in residential leases. Mot. at 2. 8 Plaintiff argues that there is substantial difference of opinion on the issue because 9 there is no controlling precedent and courts have disagreed on it. Mot. at 6–7.

Defendants 10 oppose, arguing that the Court relied on related but distinct well-established legal 11 precedents to reach its finding and distinguishing the cases that Plaintiff cites as evidence 12 of disagreement. Oppo. at 8, 10. 13 “To determine if a ‘substantial ground for difference of opinion’ exists under 14 § 1292(b), courts must examine to what extent the controlling law is unclear.” *Couch v. 15 Telescope Inc.*, 611 F.3d 629, 633 (9th Cir.

2010). “Courts traditionally will find that a 16 substantial ground for difference of opinion exists where the circuits are in dispute on the 17 question and the court of appeals of the circuit has not spoken on the point, if complicated 18 questions arise under foreign law, or if novel and difficult questions of first impression are 19 presented.” *Id.* (internal quotation marks and citation omitted). “However, just because a 20 court is the first to rule on a particular question or just because counsel contends that one 21 precedent rather than another is controlling does not mean there is such a substantial 22 difference of opinion as will support an interlocutory appeal.

*Id.* (internal quotation marks 23 and citation omitted). “That settled law might be applied differently does not establish a 24 substantial ground for difference of opinion.” *Id.* 25 Although there is no binding precedent on this exact issue—whether the FAA 26 preempts state law prohibiting arbitration in residential leases—the Court finds that its 27 determination was based on clear and unambiguous controlling opinions.

First, it relied on 28 a Supreme Court opinion that the FAA “makes contracts to arbitrate ‘valid, irrevocable, 1 and enforceable,’ so long as their subject involves ‘commerce.’” *Hall St. Assocs., L.L.C. v. 2 Mattel, Inc.*, 552 U.S. 576, 582 (2008) (quoting 9 U.S.C. § 2). This is language directly 3 from the FAA that states as follows: 4 A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy 5 thereafter arising out of such contract or transaction... shall be valid, 6 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 7 4.

8 9 U.S.C. § 2 (emphasis added). In Plaintiff’s Reply, he contends that the Court’s reliance 9 on opinions finding that real estate rental “affects” interstate commerce is contrary to the 10 term “involving commerce” and what it means. Reply at 6–7. Plaintiff relies on Allied- 11 Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265 (1995), but his reliance is 12 misplaced.

In Allied-Bruce, the Court found that the FAA’s phrase “a contract evidencing 13 a transaction involving commerce” is to be read broadly, “extending the Act’s reach to the 14 limits of Congress’ Commerce Clause power.” *Id.* at 268. It contemplated whether the Act 15 “used language about interstate commerce that nonetheless limits the Act’s application, 16 thereby carving out an important statutory niche in which a State remains free to apply its 17 antiarbitration law or policy,” and concluded that it does not.

*Id.* at 272–73. The Allied- 18 Bruce Court examined “the statute’s language, background, and structure” and concluded 19 “that the word ‘involving’ is broad and is indeed the functional equivalent of ‘affecting.’” 20 *Id.* at 273–74.

In considering what the phrase “evidencing a transaction” means, it also took 21 the broader interpretation and found the Act requires that the “‘transaction’ in fact 22 ‘involv[e]’ interstate

commerce, even if the parties did not contemplate an interstate commerce connection.” *Id.* at 281. Defendants correctly point out that the rental lease at issue does in fact involve interstate commerce because, as one example, Defendants and a number of the property owners reside in other states.

*Oppo.* at 10. Plaintiff instead appears to argue that there is no controlling opinion that residential leases involve interstate commerce, and that if they do not, they cannot “in fact” involve interstate commerce. *Mot.* 1 at 7; see *Reply* at 6–7. That is the subject of the second finding that this Court made, which it addresses next. Second, the Court relied on a Supreme Court opinion, and a district court opinion that cited it, that found the rental of real estate unquestionably affects commerce and the local rental of an apartment unit is a part of that broad commercial market in rental properties.

ECF No. 44 at 8–9; *Russell v. United States*, 471 U.S. 858, 862 (1985); *Cho v. Casnak LLC*, No. 222CV04642JLSAFM, 2022 WL 16894869, at \*3 (C.D. Cal. Sept. 7, 8 2022) (citing *Russell v. United States*, 471 U.S. 858, 862 (1985)). Plaintiff argues that other courts “have noted the limited utility of *Russell*, which only dealt with whether an apartment affects commerce for purpose of a federal criminal statute.” *Mot.* at 7.

However, the three cases Plaintiff cites are inapposite. Plaintiff relies on *U.S. v. Corona*, 108 F.3d 1256 (5th Cir. 1997), but the property at issue in that case was “neither rented nor on the rental market” and was “hardly different from a private home.” *Id.* at 569. Plaintiff also cites *Terkel v. Centers for Disease Control & Prevention*, 521 F. Supp. 3d 662 (E.D.

Tex. 2021), but that court noted that the issue before it was “only eviction” and “the challenged order does not change a landlord’s or tenant’s financial obligations,” distinguishing *Russell* as a case that decided “whether an apartment building ‘affect[ed] commerce’ within the meaning of a statute” while its case involved the federal government’s commerce power under Article I of the Constitution.

*Id.* at 672, 676 (citations omitted). Plaintiff’s reliance on *Jeffers v. Babera Mgmt. Corp.*, No. CV 14-00787-RGK ASX, 2014 WL 2526960 (C.D. Cal. June 3, 2014), is also inapposite because that court’s decision was due to the lack of argument from the moving party. *Id.* at \*1–2.

The defendant in *Jeffers* argued that the case was filed in federal court, and under federal law, the FAA applied. *Id.* at \*1. The defendant did not mention *Russell* and after noting defendant “offered no argument regarding this transaction’s effect on interstate commerce,” the district court found a “residential lease agreement for California property, entered into by California residents, did not affect interstate commerce.” *Id.* at \*2.

1 Because Plaintiff’s examples of cases that limit *Russell*’s application are inapposite, the Court finds *Russell* is well-settled regarding its holding that the rental of real estate affects

interstate commerce.

Although Russell involved a criminal statute rather than the 4 FAA, there is nothing to indicate its finding was limited to that statute. The Allied-Bruce 5 Court even referenced Russell favorably in its analysis of the FAA, for the Russell Court's 6 finding that the phrase "'any building... used... in any activity affecting interstate or 7 foreign commerce' expresses an intent by Congress to exercise its full power under the 8 Commerce Clause." See Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. at 9 273 (citing Russell v. United States, 471 U.S. at 859); Russell v. United States, 471 U.S. at 10 859.

11 Finally, the Court relied on two Supreme Court cases in finding that state laws 12 prohibiting arbitration of claims that contracting parties agreed to resolve by arbitration are 13 preempted by the FAA. ECF No. 44 at 9; AT&T Mobility LLC, 563 U.S. 333, 341 (2011) 14 ("When state law prohibits outright the arbitration of a particular type of claim, the analysis 15 is straightforward: The conflicting rule is displaced by the FAA."); Volt Info.

Scis., Inc. v. 16 Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989) ("In recognition 17 of Congress' principal purpose of ensuring that private arbitration agreements are enforced 18 according to their terms, we have held that the FAA pre-empts state laws which require a 19 judicial forum for the resolution of claims which the contracting parties agreed to resolve 20 by arbitration." (internal quotation marks and citation omitted)).

Plaintiff does not argue 21 that AT&T Mobility or Volt are not well-established controlling law. 22 The Court finds there is not "such a substantial difference of opinion as will support 23 an interlocutory appeal." See Couch, 611 F.3d at 633.

The Court's finding that the FAA 24 preempts California Civil Code section 1953 prohibiting arbitration in residential leases 25 was founded on three distinct but related controlling legal precedents, and Plaintiff does 26 not show that courts have differed as to those three well-established findings.

Therefore, 27 the Court finds there is no "substantial ground for difference of opinion" necessary for 28 1 ||interlocutory appeal. See id. ("That settled law might be applied differently does not 2 || establish a substantial ground for difference of opinion.")). 3 CONCLUSION 4 For the reasons stated above, the Court finds the element of "substantial ground for 5 || difference of opinion" to be dispositive, declines to reach Plaintiff's arguments on the 6 || remaining elements, and DENIES the Motion.

7 IT IS SO ORDERED. 8 || Dated: March 31, 2025 NO 9 DE 10 Honorable Linda Lopez 1 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

