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The Power of “X”

Does a two-page hand-written agreement that uses the letter “X” to indicate a contract price to be determined later, constitute an enforceable contract? The answer is yes, according to *Tiffany Builders, LLC v. Delrahim* (2023) 97 Cal.App.5th 536.

Edwart Der Rostamian made a deal for Ibrahim Mekhail to sell 13 gas stations to Rostamian and his group of investors for \$12.8 million. Escrow did not close, and Rostamian looked for another way to consummate the deal. Rostamian was introduced to David Delrahim, who expressed an interest in the stations. After spending months exploring ways to make a deal, they ultimately met at a coffee shop to memorialize the deal.

Delrahim and Rostamian agreed that Rostamian would back out of the pending escrow with Mekhail so Delrahim could buy the stations from Mekhail for \$12.4 million, or less if Delrahim and Rostamian could negotiate a lower price. Delrahim would pay Rostamian \$500,000 to do this. Rostamian would own four gas stations (dealer sites), pay Delrahim \$4,000 a month to operate the dealer sites, and Rostamian would keep the profit from the sites.

The deal was memorialized in a two-page hand-written document, known as the “Writing,” which contained four short paragraphs. The first paragraph referred to the \$12.4 million Delrahim was willing to pay for the 13 stations. The two men inserted the phrase “X amount” in paragraphs one and three to represent a sales price less than \$12.4 million they thought they could negotiate with Mekhail. Delrahim later decided to cut Rostamian out of the deal and made a deal with Mekhail to buy the 13 stations for about \$11.0 million. Rostamian got nothing and sued Delrahim for breach of contract and related claims. The trial court granted Delrahim’s summary judgment motion, finding that the Writing was too indefinite to be a contract.

The Court of Appeal reversed. The court determined that Rostamian’s explanation of the Writing made it definite enough for judicial enforcement. On the issue of using the X term, Rostamian declared that he and Delrahim inserted the X in the agreement as a placeholder to be replaced with the final contract price Delrahim’s company would pay Mekhail. When they signed their agreement, they did not know how much lower they could negotiate the final sales price, but both understood that the actual contract price with Mekhail would replace the X.

The court found that “[u]sing X to denote a price-related term did not destroy this contract.” A contract need not specify price if price can be objectively determined. Here, the contract provided a formula for ascertaining the presently unknown sum X, which future events would

determine exactly. The X clause was no barrier to contract enforcement because the parties provided a practical and objective method for determining X's value.

The court noted that “although the necessity for definiteness may compel the court to find that the language used is too uncertain to be given any reasonable effect, when the parties’ language and conduct evidences an intent to contract, and there is some reasonable means for giving an appropriate remedy, the court will strain to implement their intent.”

The Takeaway: (1) In an agreement where price is a term left indefinite and to be settled by future agreement, if the parties provide a practical method for determining the price, there is no indefiniteness that prevents the agreement from being an enforceable contract; (2) A contract omitting details of the subject matter is enforceable when context or parol evidence can reveal the subject matter; and (3) When the parties have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances may be supplied by the court.