



CASE ALERT

New Case Says Agreeing Not to Disparage Someone as Part of a Restraining Order Mediation Agreement Does Not Prevent Filing a Complaint or Lawsuit. *Olson v. Doe* (2022) 12 Cal.5th 669

How Could This Case Help Your Client?

This case can help your clients if they agreed not to disparage the other person as part of a mediated or settlement agreement in a civil harassment case and later want to ask for a restraining order or file a tort suit. This case could also help your clients if they want to get help from federal or state agencies with laws that protect survivors of violence. This case may further help your clients if they agree not to disparage their landlord as part of an unlawful detainer (eviction) mediated settlement agreement.

Summary of the Case

Doe alleged that Olson sexually assaulted her. She filed a civil harassment restraining order against Olson who was president of their condominium association and her business partner. On the day of the hearing, the court sent Doe to mediation with Olson and his lawyer. The parties made an agreement to dismiss the restraining order request without prejudice. In the agreement the parties agreed they would not disparage each other, a common part of mediated settlements. Both the mediator and the court told Doe that signing the agreement did not prevent her from making a complaint under federal housing rules or filing a lawsuit under state tort laws. In fact, the agreement said that it could be used as evidence in other court proceedings and that Doe had the right to file another civil harassment restraining order request based on the same facts.

Doe later filed a complaint with the U.S. Department of Housing and Urban Development (HUD) against Olson. She also filed a separate lawsuit against him for sexual assault and for discrimination under California's Fair Employment and Housing Act. In response Olsen sued Doe for breaking the agreement. Olsen claimed that filing the fair housing complaint and the claims made in the lawsuit violated the non-disparagement clause of their agreement. Doe responded by filing a special motion to strike (Anti-SLAPP motion) which protects people asking the government or a court for relief. The trial court granted Doe's anti-SLAPP motion. Olson appealed and eventually the case was heard by the California Supreme Court.

The Supreme Court found that the agreement not to disparage—which was made as part of a civil harassment restraining order settlement—did not apply to or limit Doe's

ability to file any other litigation. The Court said the specific language of the non-disparagement clause, the agreement in its entirety, and the specific context of a protection order case showed that the clause was never intended to apply to future lawsuits or fair housing filings. The Court also said that the clear language of the civil harassment statute shows it has a limited purpose and does not resolve all the issues relating to relief from civil harassment.

PRACTICE TIPS

1. If your client is in settlement discussions or mediation, **everyone should be clear that by agreeing to not disparage one another, the client does not give up or limit the right to ask for other relief available to a survivor of abuse.** A non-disparagement clause is not an automatic bar to filing for other relief. Explicit language that either bars the filing for other relief or makes it clear that the agreement is not intended to bar filing for other relief can be added to the agreement. If such explicit language is not added to the agreement, it would be helpful to state the limits of the non-disparagement agreement on the record or ask the client about it on the record it because this could be important evidence that there was no intent or consent to waive any relief not specifically stated in the agreement.
2. **Informed consent means, among other things, that a client is made aware of all the potential positive and negative consequences of the agreement prior to giving consent and has had the time to consider and ask any questions about those consequences.** Whether or not it is likely that a client would seek additional relief or be successful, they must be made aware of relief available to them. If a client who wants to request a restraining order, file a complaint with a government agency, or file a lawsuit has already signed a non-disparagement clause, make sure to document the process and the client's understanding of the clause at the time of agreement. Also make sure to obtain any transcripts or documents related to the agreement.

For questions email or call Family Violence Appellate Project at info@fvaplaw.org or (510) 380-6243. Thank you!