

Published on *The National Law Review* <https://natlawreview.com>

Time Is Of The Essence Clause Does Not Necessarily Result In Breach For Late Performance

Article By:

Keith Paul Bishop

Rugger Investment Group LLC contracted to sell an airplane to Magic Carpet Ride, LLC (MCR). Rugger deposited a lien release into escrow 8 days late. MCR succeeded in obtaining summary judgment on its breach of contract claim. The Court of Appeal reversed finding that there was a triable issue of fact with respect to Rugger's substantial performance.

More interesting, however, was a question that neither party addressed on appeal - the effect of the contract's "time is of the essence" provision. The Court of Appeal, citing cases involving the sale of real property, found that the clause did not automatically render Rugger's untimely performance a breach because there are triable issues regarding the scope of that paragraph and whether its enforcement would result in an unjust forfeiture to Rugger and a windfall for MCR. *Magic Carpet Ride LLC v. Rugger Invest. Grp.*, 2019 Cal. App. LEXIS 1050.

© 2010-2025 Allen Matkins Leck Gamble Mallory & Natsis LLP

National Law Review, Volume IX, Number 303

Source URL: <https://natlawreview.com/article/time-essence-clause-does-not-necessarily-result-breach-late-performance>