WESTERN CENTER ON LAW & POVERTY

2015 TENANTS' RIGHTS CASES

Win some, lose one on local tenant protections

San Francisco ordinance regulating tenant buyouts survives Constitutional challenge
San Francisco Apartment Ass'n v. City and Cnty. of San Francisco, No. 15–cv–01545–PJH, 2015 WL 6747489 (N.D. Cal. Nov. 5, 2015)
San Francisco passed an ordinance that required landlords to make certain disclosures and file documents with the Rent Board when negotiating tenant buyouts. The ordinance also gives tenants the right to rescind buyout agreements and creates a private right of action. After landlords' groups filed suit in state court raising various constitutional challenges, the City removed the suit to federal court and moved for judgment on the pleadings. Held: the ordinance did not violate landlords' constitutional rights. The landlords are appealing.

Under Costa-Hawkins, a child not listed on a lease is still an "original occupant"
Mosser Cos. v. San Francisco Rent Stabilization & Arbitration Bd., 233 Cal.App.4th 505 (2015)
Held: tenants' son, who lived in the apartment as a child and remained there after his parents left, is an "original occupant" under Costa-Hawkins. The Court of Appeals found that San Francisco's rent control protections applied to the son's tenancy even though he was a minor when he moved in and not a party to the original lease.

Landlord may not evade rent control where tenant "voluntarily" vacates after service of an owner move-in notice
Mak v. City of Berkeley Rent Stabilization Bd., 240 Cal.App.4th 60 (2015)
Berkeley landlords served their tenant of 28 years with a 60-day notice claiming their son was moving in, and paid the tenant to vacate. Landlords then re-rented the unit for double the rent. Landlords argued that, under Costa-Hawkins, they were free to raise the rent because the tenant vacated voluntarily. The Court of Appeal held that the landlords' "subterfuge was properly rejected."

No enhanced relocation benefits for single person with a disability under LA code
City of Los Angeles v. Superior Court of Los Angeles Cnty., 234 Cal.App.4th 275 (2015)
After finding the tenant's room substandard and ordering that he be evicted, the City's relocation contractor determined that he was a "qualified tenant" under LA's municipal code because of his mobility impairment. The trial court agreed, but the Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its judgment, holding that only a head of household with such an impairment would qualify for benefits.

A rough year for UDs: fee caps and strict forfeiture clauses enforceable, and a trial court admonished to help an incarcerated landlord get default judgment

Court of Appeal to review Appellate Division decision holding landlord may evict for immaterial breach

***Boston LLC v. Juarez*,** 240 Cal.App.4th Supp. 28 (Cal. App. Dep't Super. Ct. Oct. 1, 2015)

Tenant's lease recited that "any failure of compliance" would permit owner to forfeit. It also required tenant to obtain renter's insurance. Fifteen years after the lease was signed, the landlord issued a three day notice alleging failure to obtain renter's insurance. One week later, the tenant obtained insurance. Ignoring longstanding precedent, the Appellate Division upheld the trial court's decision (i) disallowing evidence of the materiality of the breach and tenant's substantial compliance and (ii) awarding judgment to the landlord. The Court of Appeal transferred the case to itself *sua sponte* on October 14. Public Counsel represents the tenant. Neighborhood Legal Services, WCLP, Legal Aid Foundation of Los Angeles, and Inner City Law Center have filed amicus briefs.

Court of Appeal disagrees with *Delta* decision; motions to quash in legal limbo

***Borsuk v. Appellate Div. of the Superior Court*,** 242 Cal.App.4th 607 (2015)

In a published opinion, the Court of Appeal held "that a motion to quash service of summons is not the proper remedy to test whether a complaint states a cause of action for unlawful detainer or service of a notice to pay or quit," disagreeing with the longstanding and often-cited *Delta Imports v. Mun. Court,* 146 Cal. App. 3d 1033 (1983). Since both *Borsuk* and *Delta* were Court of Appeal decisions, *Delta* is not overruled; however, trial courts may be persuaded by the reasoning in the more recent decision.

$750 fee cap in lease reasonable and enforceable, Appellate Division holds

***511 S. Park View, Inc. v. Tsantis*,** 240 Cal.App.4th Supp. 44 (Cal. App. Dep't Super. Ct., Sept. 15, 2015) (r*equest for transfer to Court of Appeal denied,* Oct. 29, 2015)

The trial court granted prevailing tenant's motion for attorney fees and awarded $12,375, despite a lease provision limiting fees to $750. Held: the trial court erred in awarding more than $750 despite reasonableness language in the contract and Civil Code 1717. Ignoring the practical effect of the cap, which allows landlords to collect $750 for a default judgment but protects them from significant fee awards when they take meritless cases to trial, the Appellate Division found that the cap was enforceable. The court also found that the cap was consistent with Civil Code § 1717, which gives the court the power to award "reasonable" fees in an action on a contract containing a fee clause.

Statutory limit on attorneys' fees in small claims appeals trumps lease fee clause

Dorsey v. Superior Court, 241 Cal. App. 4th 583 (2015)

Landlord appealed a small claims court judgment in favor of tenants. Both parties were represented on appeal. The trial court upheld the judgment in tenants' favor and ordered $10,447.50 in attorneys' fees. Held: despite the lease provision entitling the prevailing

party in litigation arising from the contract to "reasonable" attorney fees, the court was bound by Code of Civil Procedure § 116.780(c), which limits attorney fee awards in small claims appeals to $150. The Court of Appeal further found that the landlord was not estopped from arguing that the statutory cap limited recovery even though he previously demanded fees exceeding $150.

Trial court erred by failing to clearly explain requirements for obtaining default to incarcerated self-represented landlord, Court of Appeal holds

Holloway v. Quetel, 242 Cal.App.4th 1425 (2015)

Self-represented incarcerated landlord filed an unlawful detainer alleging nonpayment of rent and damages of $36,000, and submitted multiple applications for default judgment, all of which were rejected. The trial court entered judgment for the tenants five years later. The Court of Appeal reversed, concluding that the trial court should have explained the requirements for obtaining a default more clearly. In a footnote, the Court of Appeal remarks that the tenants could not be located and were served via substitute service.

Appellate division affirms summary judgment for subsidized tenant

***Long Beach Brethren Manor, Inc. v. Leverett*,** 239 Cal.App.4th Supp. 24 (Cal. App. Dep't Super. Ct. 2015)

The Appellate Division affirmed the trial court's grant of summary judgment to a subsidized housing tenant, finding there was no triable issue of material fact regarding plaintiffs' failure to give 30 days' notice as required by the lease. The lease stated that the tenant was entitled to either 30 days' notice or notice in accordance with state law, whichever was later. The landlord argued that the language allowed service of a 3-day notice for nuisance, since such notice would allow the landlord to serve the notice "later." The Appellate Division disagreed and found that the language was logically interpreted to require the longer notice period. Anna Levine-Gronningsater and Jenifer Wiseman of Legal Aid Foundation of Los Angeles represented the tenant.

Tenant seeking damages in civil suit may not defeat later filed unlawful detainer with anti-SLAPP motion

Olive Properties v. Coolwater Enters., 241 Cal.App.4th 1169 (2015)

Commercial tenant filed suit against landlord, alleging another tenant used too many parking spaces and interfered with tenant's business. Three weeks later, landlord filed an unlawful detainer for nonpayment of rent. Tenant then filed anti-SLAPP motion in the unlawful detainer. The trial court denied tenant's motion and awarded sanctions. The Court of Appeal upheld the decision, finding that the unlawful detainer was not based on protected litigation activity, but rather on the tenant's failure to pay rent.

Disparate impact survives SCOTUS; tenants get mixed results on fair housing claims in lower courts

U.S. Supreme Court affirms FHA Disparate Impact Theory!
Texas Dep't of of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., __U.S. __, 135 S. Ct. 2507 (2015).
In a 5-4 decision written by Justice Kennedy, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act. The Court found that disparate impact "plays a role in uncovering discriminatory intent" by allowing plaintiffs "to counteract unconscious prejudices and disguised animus…." However the Court held that a disparate impact claim must "point to a defendant's policy or policies causing that disparity."

Disparate impact resulting from Wells Fargo's failure to monitor its lending activities is not actionable under *Inclusive Communities Project,* District Court holds
City of Los Angeles v. Wells Fargo & Co., No. 2:13–cv–09007–ODW(RZx), 2015 WL 4398858 (C.D. Cal. Jul. 17, 2015)(*appeal filed* Jul. 29, 2015).
The City of Los Angeles sued Wells Fargo, alleging lending discrimination in violation of the Fair Housing Act. The court granted summary judgment to Wells, finding that the City failed to provide evidence of a significantly disproportionate effect on minorities and failed to identify a policy that created the disparity, as required under *Inclusive Communities Project*. The court reasoned that Wells Fargo's inadequate monitoring, which allegedly resulted in the disparate issuance of high-costs loans to minority borrowers, was not a policy, but rather a lack of a policy. The City has filed an appeal in the Ninth Circuit.

Ninth Circuit finds abstention proper in case challenging consolidation of LA's unlawful detainer courts
***Miles v. Wesley*, 801 F.3d 1060 (9th Cir. 2015)**
Tenants with disabilities and non-profits brought suit challenging the LA Superior Court's plan to centralize unlawful detainer proceedings in five hub courts. The district court dismissed on abstention grounds, and the Ninth Circuit affirmed, finding that the requested injunctive relief would constitute improper interference with the state's judicial system. The Ninth Circuit denied plaintiffs' petition for rehearing en banc. During the litigation, LA designated two additional courthouses, both in the Valley, to hear unlawful detainers. Plaintiffs were represented by WCLP, Neighborhood Legal Services, Disability Rights Law Center, and Legal Aid Foundation of Los Angeles.

Marin public housing tenant's § 1983 and FHA claims dismissed
***Arceneaux v. Marin Hous. Auth.*, No. 15–cv–00088–MEJ, 2015 WL 3396673 (N.D. Cal. May 26, 2015)**
Plaintiff's daughter was attacked multiple times near her public housing unit. She requested an immediate transfer but the property manager only offered her waiting list applications. Her son was then fatally shot outside her home. The Housing Authority gave her a voucher, but terminated it before she found new housing. The court dismissed her

§ 1983 claims without leave to amend, finding that she asserted no federally enforceable right and that she failed to show defendants could be held liable for third party violence.

Homeless individuals' challenge to camping ordinance survives demurrer, barely
Allen v. City of Sacramento, 234 Cal.App.4th 41 (2015)
Homeless individuals sued the City of Sacramento after being arrested for camping. Plaintiffs alleged the camping ordinance was unconstitutional on its face and enforced in a discriminatory manner. The trial court sustained the City's demurrer as to all causes of action, but the Court of Appeal held that plaintiffs stated a cause of action for declaratory relief by asserting an as-applied challenge based on equal protection.

Tenant perceived as having a disability entitled to injunction on fair housing claims
Johnson v. Macy, __ F. Supp. 3d __, 2015 WL 7351538 (C.D. Cal. Nov. 16, 2015)
The District Court granted tenant's motion for preliminary injunction, finding that she was likely to prevail on her fair housing claims. After the tenant informed her landlord that she had been injured at work, the landlord engaged in a pattern of harassment, increasing her rent, and sending the tenant notes stating that the "tenant's life would become easier" if she moved. The decision contains a useful discussion of discrimination based on perceived disability. Housing Rights Center represented the tenant.

Demolished public housing may be rebuilt in segregated neighborhoods
McCardell v. HUD**,** 794 F.3d 510 (5th Cir. 2015)
The Galveston Housing Authority demolished public housing declared unfit for occupancy after Hurricane Ike and obtained approval from HUD to build mixed-income developments at the original sites, which were located in a segregated area. Held: none of the residents or neighbors were entitled to relief on fair housing claims. Although a neighbor had standing to challenge the redevelopment under the Fair Housing Act because she would be deprived of an integrated community, the state defendants were shielded by the 11th Amendment and the remaining defendants were protected by the safe harbor provision of 42 U.S.C. § 1437p(d), which allows housing authorities to rebuild demolished public housing on the original site if the development contains fewer public housing units than the original.

After losing in court, landlords win the right to discriminate in the Texas legislature
Austin Apartment Ass'n v. City of Austin, 89 F. Supp. 3d 886 (W.D. Tex. Feb. 27, 2015) (*appeal filed* Mar. 5, 2015; *appeal dismissed* Aug. 6, 2015).
The City of Austin enacted an ordinance prohibiting landlords from refusing to rent to tenants with vouchers. Austin Apartment Association sued, alleging preemption and various constitutional claims, but the District Court upheld the ordinance, finding that it advanced congressional purposes by increasing the number of homes available to voucher holders. An appeal to the Fifth Circuit was dismissed after the governor signed a state law banning local anti-discrimination ordinances.

Evidentiary sanctions against insurer that discriminates against Section 8 landlords
Jones v. Travelers Cas. Ins. Co. of Am., 304 F.R.D. 677 (N.D. Cal. Feb. 5, 2015)
In an ongoing case against Travelers Insurance for refusing to insure landlords who rent to Section 8 tenants, defendant told plaintiffs, represented by Brancart and Brancart, that it had no data regarding losses on apartments with Section 8 tenants. Travelers then produced the data after the close of discovery. Finding that the failure to comply with discovery rules was prejudicial, the court ordered any portions of defendant's expert reports based on the withheld data stricken. The court later denied the insurer's motion for judgment in an order available at 2015 WL 5091908 (N.D. Cal. May 7, 2015).

For more on insurer discrimination, check out ***Viens v. America Empire Surplus Lines Ins.***, __ F.3d __, 2015 WL 3875013 (D. Conn. Jun. 23, 2015).

Big local wins for low-income tenants

Court approves multimillion dollar settlement: 4,000 LA public housing tenants win rent reimbursement, attorneys' fees
Galindo v. Hous. Auth. of the City of Los Angeles
More than 4,000 Los Angeles public housing tenants will benefit from a $3.3 million settlement approved in federal court. The settlement compensates the tenants for having to pay fees for garbage pickup which, under federal law and the terms of their leases with the Housing Authority of the City of Los Angeles, the housing authority was supposed to pay. HACLA will also pay $1.25 million in attorneys' fees to plaintiffs' attorneys, WCLP, Los Angeles Center for Law and Justice, NHLP, and Arnold & Porter.

HACoLA and cities of Lancaster and Palmdale settle fair housing claims for $2 million
Housing Authority of Los Angeles County and the cities of Lancaster and Palmdale agreed to settle claims that they targeted African-American Section 8 tenants for unfair enforcement of program rules. The DOJ entered into settlement agreement providing for broad reform with the court will retaining jurisdiction over enforcement. Kudos to Neighborhood Legal Services, Disability Rights Legal Center, Public Counsel, the Community Action League, the NAACP, Gary Blasi, and everyone who worked on this case.

Motel residents win injunction preventing enforcement of ordinance that would have forced them to move every 30 days
Dadey vs. Costa Mesa
In 2014, Costa Mesa passed an ordinance prohibiting tenants from staying longer than 30 days in a motel, forcing them to move from the only affordable housing in the city. An Orange County Superior Court judge issued a preliminary injunction prohibiting enforcement of the ordinance against current residents until the City develops a relocation plan to assist those tenants who are being displaced. Plaintiffs are represented by WCLP, Public Law Center, and Haynes and Boone.

Superior Court holds settlement agreement entered after redevelopment dissolution enforceable

Limon v. Department of Finance

Residents of a Garden Grove mobile home parked sued for replacement housing and relocation after the City's redevelopment agency displaced them. After redevelopment dissolution, the successor agency settled residents' claims by agreeing to pay additional relocation, provide replacement housing and pay attorneys' fees, but the Department of Finance (DOF) denied payments. Public Counsel, the Public Interest Law Project and Norton Rose Fulbright, LLC, brought suit against DOF on the residents' behalf. In June 2015, the Sacramento Superior Court found that the settlement is an enforceable obligation and issued a writ of mandate directing DOF to approve payments.

Wins for Section 8 tenants in federal courts

Nozzi v. Hous. Auth. of the City of Los Angeles, 806 F.3d 1178 (9th Cir. 2015)

Section 8 tenants sued HACLA for reducing the payment standard, thereby increasing their share of the rent, without adequate notice. When the district court granted summary judgment in HACLA's favor, tenants appealed and the Ninth Circuit reversed and remanded. (425 Fed. Appx. 539 (9th Cir. 2011)). On remand, the same district judge granted summary judgment again and the Ninth Circuit again reversed. Judge Reinhardt, writing for the Court, explains that tenants have a property interest in vouchers and HACLA's confusing flyer failed to provide adequate notice to tenants. Applying the *Mathews* balancing test, the Court found that a $104 rent increase constitutes a "deprivation that could be very serious to a poor person" and acknowledges that "inability to pay…could result in eviction, which ultimately would require the public housing agency to terminate benefits." Finding no material facts in dispute, the Court granted summary judgment to the tenants *nostra sponte* and took the unusual step of reassigning the case on remand. Kudos to the Public Counsel team who represented the tenants along with Kaye, McLane, Bednarski and Litt LLP.

Court awards large default judgment against Section 8 landlord in False Claims case

United States v. Baran**,** No. CV 14–02639 RGK (AJWx), 2015 WL 5446833 (C.D. Cal. Aug. 28, 2015)

The District Court granted default judgment against a Section 8 landlord in a False Claims Act case, awarding $619,447 to the U.S. Government with a 27% qui tam share allocated to the tenant plus $6000 in punitive damages. Defendant landlord had demanded side payments from the tenant totaling thousands of dollars. The Court also awarded attorneys' fees and costs. Paul J. Estuar and Shayla Renee Myers of Legal Aid Foundation of Los Angeles represented the tenant.

Sixth Circuit Court of Appeal holds that fees paid by Section 8 tenants are rent

Velez v. Cuyahoga Metro. Housing Authority, 795 F.3d 578 (6th Cir. 2015)

Section 8 tenants' leases provided for a "month-to-month fee" after the initial lease term. Cuyahoga Housing Authority did not count the fees when calculating the tenants' Housing

Assistance Payment. The tenants filed a § 1983 claim against the Authority alleging the fees were rent. The trial court granted summary judgment against the tenants. Reversing, the Six Circuit relied on federal regulations, which state that rent is "[t]he total monthly rent payable to the owner under the lease for the unit…"

Mobilehome Preservation

City properly denied park owner's conversion application based on general plan inconsistency, Court of Appeal holds

***Carson Harbor Vill., Ltd. v. City of Carson*,** 239 Cal.App.4th 56 (2015)

Carson Harbor Village applied to convert its mobile home park, which includes protected wetlands, into a subdivision. The trial court found that inconsistency with the City's general plan open space provision was not a proper ground for denying the conversion application. The Court of Appeal reversed, finding that the City was required to reject the application once it determined that the conversion was inconsistent with the general plan. The decision follows years of litigation after the City denied the Park's application because it was a thinly-veiled attempt to avoid rent control and displace low-income tenants.

Sorry mobilehome park owners, rent control is STILL not an unconstitutional taking

***Rancho de Calistoga v. City of Calistoga*,** 900 F.3d 1083 (9th Cir. Sept. 3, 2015)

In affirming the district court's dismissal of yet another mobile home park owner's constitutional challenge to a rent control ordinance, the Ninth Circuit opined: "Fifth Amendment takings challenges to mobile home rent control laws are ubiquitous in this and other circuits. Quoting Yogi Berra, we have previously characterized these claims as 'deja vu all over again.' . . . . Each time a court closes one legal avenue to mobile home park owners seeking to escape rent control regimes, the owners, undaunted, attempt to forge a new path via another novel legal theory." Pacific Legal Foundation chose to ignore this wisdom when it filed a new case making the same arguments**: *Jisser et al. v. City of Palo Alto*,** No. 15-cv-05295 (N.D. Cal. Nov. 19, 2015).

Expansive interpretations of consumer laws provide potential tools for protecting tenants' and homeowners' rights

Former homeowners may sue bank under FDCPA for misleading collection letters

***Alborzian v. JPMorgan Chase Bank, N.A.*,** 235 Cal.App.4th 29 (2015)

When a homeowner has two loans on her home and the senior lienholder forecloses but does not collect enough to cover the debt, the junior lienholder may not enforce the remaining debt against the homeowner. JP Morgan Chase harassed former homeowners demanding payment on these unenforceable debts. Held: borrowers could sue under federal and state fair debt collection laws and the UCL. The court found that the bank's letters were deceptive under the FDCPA and the bank's boilerplate disclaimer did not save it from liability. The decision contains helpful language on the FDCPA and standing under the UCL.

Borrower may exercise right to rescind with notice, no lawsuit required
Jesinoski v. Countrywide Home Loans, Inc., __ U.S. __, 135 S. Ct. 790 (2015)
Justice Scalia wrote the Supreme Court's decision in this Truth in Lending Act case holding that a debtor may exercise the right to rescind by simply notifying the creditor of her intention to seek rescission within the three year period. Prior decisions required debtors to file suit within the three-year period.

Cases to watch in 2016

Supreme Court to decide Fair Credit Reporting Act case
Robins v. Spokeo, Inc., 742 F.3d 409 (9th Cir. 2014) *cert. granted*, 135 S. Ct. 1892 (Apr. 27, 2015)
The Ninth Circuit held that plaintiff had standing to pursue Fair Credit Reporting Act claims despite his lack of actual injury because the statutory cause of action does not require proof of actual damages for willful violation. In so holding, the court found that it was permissible for Congress to elevate plaintiff's injuries to confer Article III standing; like "an individual's personal interest in living in a racially integrated community," plaintiff's interests in his credit information were personal and concrete. Oral argument in the Supreme Court took place on November 2, 2015.

Building Industry seeks SCOTUS review of decision upholding inclusionary zoning
CA Bldg. Indus. Assn. v. City of San Jose, 61 Cal.4th 435 (2015)(*petition for cert. filed* September 14, 2015)
The California Supreme Court held that San Jose's inclusionary zoning ordinance did not violate the takings clause, rejecting a lower court decision holding that inclusionary zoning requirements must be reasonably related to the impact of the particular development. The builders have petitioned for certiorari and a decision is expected soon. Law Foundation of Silicon Valley and Public Interest Law Project represent the interveners in the suit.

Western Center leads the fight in the courts, counties, and capital to secure housing, healthcare, and a strong safety net for low-income Californians.