WESTERN CENTER ON LAW & POVERTY

Housing Update No. 92
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Announcements

Western Center releases the *Affordable Housing Manual*

A free manual that provides an easy-to-understand, comprehensive approach to increasing the supply of affordable housing in our communities.

Welcome Crystal Sims!

We are happy to welcome longtime housing advocate Crystal Sims to our housing team on a temporary basis, through the month of July. Crystal is the former Director of Litigation and Training at the Legal Aid Society of Orange County. Western Center honored her with an Advocates' Award last year in recognition of her lifelong dedication to legal services and excellence as an advocate. She has worked closely with Western Center over the years and we are excited to have the benefit of her knowledge and experience this summer.
Welcome Crystal!

Litigation and Local Advocacy

Landlord Tenant

Court of Appeal to decide the rent check lost in the mail case
Sleep EZ v. Mateo, B281709
The Appellate Division of Los Angeles Superior Court, in a previously published

opinion, had held that "when a tenant mails rent at a landlord's direction and, through no fault of the tenant, the landlord does not receive it, the tenant is not in default in the payment of rent in an unlawful detainer action." The Court of Appeal on its own motion transferred the case to itself, stating that it would seek further briefing on select issues and would schedule oral argument.

Minor not entitled to separate relocation check for Ellis Act eviction under SF rent ordinance, Court of Appeal holds
Danger Panda, LLC v. Launiu, 10 Cal. App. 5th 502 (2017)
The Ellis Act permits landlords to go out of business, while at the same time authorizing cities to mitigate the adverse consequences by requiring relocation assistance. The Court of Appeal has held that under San Francisco's Ellis Act mitigation ordinance, a minor resident is not a tenant entitled to a separate relocation check. The Court emphasized that it was not deciding whether San Francisco could confer a relocation benefit on a child. "Rather, we hold only that a minor is not a tenant entitled to a separate relocation payment under [the SF ordinance], as currently written." SF Supervisor Hillary Ronen has introduced legislation to amend the Ordinance and clarify that children are tenants.

Second post-foreclosure owner with plans to move in may evict tenants, court holds
Epps v. Lindsey, 10 Cal. App. 5th Supp. 1 (2017)
Transferees from post-foreclosure purchasers are "successors in interest" under Code of Civil Procedure §1161b, the Appellate Division of San Bernardino County Superior Court has held. The new owners therefore are entitled to terminate a tenancy on 90 days' notice if they intend to occupy the property, the court concluded. Although the tenant lost this one, the holding could help tenants defeat an argument that §1161b's protections do not apply to evictions by new owners who are not "immediate" successors in interest.

Lying landlords escape liability for malicious prosecution
Hart v. Darwish, __Cal. App. 5th___ (June 1, 2017) 2017 WL 2375503
In an unlawful detainer action, the court denied tenants' motion for a directed verdict but ultimately ruled for the tenants. Tenants later brought a malicious prosecution suit against landlords, and the trial court granted judgment to landlords. Held: UD judge's denial of a motion for directed verdict demonstrated that landlords had "probable cause" to bring the UD, and therefore no malicious prosecution claim could succeed. In an unpublished portion of the opinion, the court also held that the landlords' perjured testimony regarding compliance with rent control ordinance did not change this result because it was not the but-for cause of the UD court's initial ruling.

Court of Appeal denies landlords' request for fees in suit challenging Ellis Act reform ordinance
Coyne v. City and County of San Francisco (Cal. Ct. App., June 6, 2017, No. A145683) 2017 WL 2438806 (*unpublished*)
Landlords challenged a San Francisco ordinance that imposed increased mitigation measures on landlords using the Ellis Act to evict tenants. (This case involves the same ordinance that resulted in the federal district court decision *Levin v. City and County of San Francisco* (N.D. Cal. 2014) 71 F.Supp.3d 1072, *appeal dismissed and remanded* (9th Cir., Mar. 13, 2017, No. 14-17283), summarized **here**. After prevailing in the action, landlords brought a motion for fees under Code of Civil Procedure section 1021.5, the private attorney general statute. The Court of Appeal affirmed the trial court decision denying the motion, finding that the estimated value of the case to the landlords substantially outweighed the litigation costs.

Big wins for rent control – CA Apartment Association dismisses lawsuits challenging Richmond and Mountain View Rent Control Ordinances; San Jose passes just cause
The California Apartment Association has withdrawn **its lawsuits** challenging recently enacted rent control laws in Richmond and Mountain View. At the same time, San Jose **enacted a just cause** ordinance. Congratulations to everyone who has worked on enacting and defending these ordinances, including Tenants Together, Community Legal Services of East Palo Alto, Bay Area Legal Aid, the Public Interest Law Project, Law Foundation of Silicon Valley, and the Stanford Community Law Clinic.

Anti-SLAPP
No published landlord-tenant decisions to report, but those interested in Anti-SLAPP should check out recent unpublished decisions in *Parsi v. Rosemary Court Properties LLC* (Cal. Ct. App., Apr. 19, 2017, No. A146403) 2017 WL 1399702 (reversing trial court order granting Anti-SLAPP motion, finding that landlord's wrongful conduct in harassing tenant was not protected activity, even though tenant's complaint mentioned unlawful detainer) and *1918 Lakeshore Tenants Union v. Lakeshore Apartments, LP* (Cal. Ct. App., Apr. 3, 2017, No. A147950) 2017 WL 1210020 (remanding for reconsideration of Anti-SLAPP denial in light of California Supreme Court's decision in *Baral v. Schnitt,* discussed **here**).

Subsidized Housing

East Chicago public housing tenants win injunction against warrantless searches
Gutierrez v. City of East Chicago (N.D. Ind., Sept. 6, 2016, No. 2:16-CV-111-JVB-PRC) 2016 WL 5819818, *report and recommendation adopted* (N.D. Ind., Oct. 5, 2016, No. 2:16-CV-111 JVB) 2016 WL 5816804
The East Chicago Housing Authority (ECHA) conducted monthly "housekeeping inspections" where an ECHA employee and police officers searched each tenant's home. ECHA also conducted random drug checks where an ECHA employee and police officers with drug sniffing dogs searched tenant's homes. ECHA did not obtain warrants or tenants' consent for either type of search, and on one occasion the named plaintiff was subjected to both types of searches in a single day. The district court granted plaintiff's motion for preliminary injunction as to the warrantless searches and certified a class including all current and future tenants of properties owned or managed by ECHA.

Land Use

Developer may not convert residential motel to a luxury apartment complex by circumventing planning and zoning requirements for affordable housing, a Los Angeles Superior Court judge ruled
The Kennedy Commission, et al. v. City of Costa Mesa, et al., LA Sup. Ct. No. 30-2016-00832585
The trial court invalidated development approvals for conversion of the Costa Mesa Motor Inn because the City allowed the proposed project to be built at 54 units per acre, well above the maximum 40 units per acre permitted by local planning and zoning laws. The Inn has served as housing of last resort for low income people for years. The court ruled that under the state's Density Bonus Law, cities may permit

an increase in density only if the developer agrees to build some units affordable to poor people. The court also held that the development approvals violated the City's General Plan. Plaintiffs were represented by Western Center on Law & Poverty, Public Law Center, the Legal Aid Society of Orange County, the Public Interest Law Project, and Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow.

Housing Authority purchases Buena Vista Mobilehome Park; residents will keep their homes
Buena Vista residents have been fighting to keep their homes for more than 4 years. After the City of Palo Alto approved closure of the park in 2015, Buena Vista residents filed a writ in Santa Clara Superior Court. The residents prevailed and the trial court reversed the City's decision approving closure, temporarily preserving the park and preventing the residents from being evicted. The park owner has now agreed to sell Buena Vista to the Housing Authority of the County of Santa Clara, and the Housing Authority will keep the park open and allow residents to remain. Western Center on Law & Poverty, Law Foundation of Silicon Valley, and Sidley Austin LLP represent the residents.

Fair Housing

City has standing to challenge banks' racially discriminatory lending practices, but proof that banks must pay for City's injuries must be based on more than foreseeability
Bank of Am. Corp. v. City of Miami, Fla., 137 S.Ct. 1296, 1300–01 (2017)
The City of Miami has standing to sue two major banks for allegedly issuing riskier mortgages on less favorable terms to African-American and Latino customers in violation of the Fair Housing Act, the Supreme Court has held. The City's claimed harms – including reduction in property tax revenues and required increase in expenditures to remedy blight – were sufficient to confer standing.

But the Court also ruled that the City could not prove that the practices proximately caused the City's injuries merely by showing that the harms were foreseeable. The Supreme Court left it to lower courts to work out how much more than foreseeability is needed to prove a case.

Ninth Circuit affirms district court's restrictive interpretation of *ICP;* summary judgment to banks in discriminatory lending cases
City of Los Angeles v. Wells Fargo & Company (9th Cir., May 26, 2017, No. 15-56157) 2017 WL 2304375
City of Los Angeles v. Bank of America, Countrywide Home Loans Inc. (9th Cir., May 26, 2017, No. 15-55897) 2017 WL 2323441
In a pair of unpublished opinions the Ninth Circuit affirmed the district court's rulings granting summary judgment to banks on the City of Los Angeles' fair housing claims. (See our summary of the *Wells Fargo* district court decision **here**). The Ninth Circuit interprets SCOTUS's *ICP* decision as requiring a policy and a "robust" causal connection between that policy and the alleged disparate impact. In analyzing the City's disparate impact claim, the Ninth Circuit found that the banks' policies targeting low-income borrowers and incentivizing issuance of large loans affected borrowers of all races, and that the banks' failure to monitor loans for disparities was not a policy.

Landlords' refusal to accommodate SSDI recipient with adjusted rent schedule violates Fair Housing Act, Pennsylvania district court holds
Fair Housing Rights Center in Southeastern Pennsylvania v. Morgan Properties

Management Company, LLC (E.D. Pa., Apr. 11, 2017, No. CV 16-4677) 2017 WL 1326240
Tenants and a fair housing rights group stated a claim for relief under the FHA where the landlord refused to reasonably accommodate tenants' requests for an adjusted rent due date, the district court held. The court further found that the landlord's policy of refusing to accommodate SSDI recipients' need for adjusted rent due dates made housing unavailable within the meaning of 42 U.S.C. § 3604(f)(1). The decision contains a helpful discussion rejecting each of the arguments landlords always raise and illustrates an effective use of testing. Congratulations to Scott Chang, who litigated the case with Relman, Dane and Colfax, and recently joined Housing Rights Center in Los Angeles.

City of Yuma subject to disparate impact liability for refusal to rezone, district court holds on remand
Avenue 6E Investments, LLC v. City of Yuma, Arizona 217 F.Supp.3d 1040 (D. Ariz. 2017)
On remand from the Ninth Circuit (see discussion **here**), the City renewed its motion for summary judgment on plaintiff developer's disparate impact claim. The developers alleged that the City's refusal to rezone land for higher density development was based on racially charged neighborhood opposition and had a disparate impact on people of Hispanic origin. Comments at public meetings included fears about "unattended juveniles" and assertions that the "group of people" who would live in the higher density housing account for "91% of rape, murder" and other criminal activity. The district court denied the City's motion, finding that the developers met their prima facie burden and the City failed to establish a legitimate nondiscriminatory reason for the denial. The Court also noted that the showing of disparate impact was bolstered by evidence of intentional discrimination. The decision contains a helpful discussion of the expert statistical analysis necessary to establish disparate impact. Congratulations to Chris and Elizabeth Brancart on another great result in this case.

Individual plaintiffs survive motion to dismiss race and familial status claims, but fair housing organization lacks standing, district court holds
Jimenez v. Tsai (N.D. Cal., June 5, 2017, No. 5:16-CV-04434-EJD) 2017 WL 2423186
Plaintiff Latino and Latina tenants alleged familial status, race, and national origin claims against their landlords, a married couple who failed to make any repairs in a complex occupied by tenants of Mexican origin, while properly maintaining other complexes occupied exclusively by white tenants and tenants of Indian descent. The district court denied the landlord's motion to dismiss on nearly all of the federal and related state law claims, but found that fair housing organization Project Sentinel did not suffer injury in fact and therefore did not have Article III standing. Law Foundation of Silicon Valley and Fish and Richardson represented the tenants.

No disparate impact liability for lender requiring medical certification from recipients of disability-based income
Gomez v. Quicken Loans, Inc. (C.D. Cal., Apr. 20, 2016, No. CV12-10456-RGK (GJSx)) 2016 WL 8229036
A homeowner with a disability applied to Quicken for a refinance loan. Quicken repeatedly required him to provide medical certification of disability in addition to proving receipt of SSDI. In an earlier appeal the Ninth Circuit held that Quicken's policy was facially discriminatory under the FHA and related state laws (*Gomez v. Quicken Loans, Inc.*, 629 Fed. Appx. 799 (9th Cir. 2015)). On remand, the district court granted Quicken's motion to dismiss the homeowner's disparate impact claim, finding that the homeowner failed to allege a neutral policy that is arbitrary, artificial and unnecessary and that resulted in a discriminatory impact.

Occupancy standards allowing only one person in a studio apartment violate FHA
Fair Housing Center of Washington v. Breier-Scheetz Properties, LLC (W.D. Wash., May 12, 2017, No. C16-922 TSZ) 2017 WL 2022462
The district court held that a landlord's policy allowing only one person to live in studio apartments has a disparate impact on families with children in violation of the Fair Housing Act and related state and local laws.

Unfair Business Practices

Consumer entitled to broad injunctive relief against bank despite arbitration clause, California Supreme Court holds
McGill v. Citibank, N.A. (2017) 2 Cal. 5th 945
A credit card customer sued Citibank alleging violations of the UCL and other consumer laws, and seeking broad injunctive relief. Citibank invoked the arbitration clause in the account agreement, which provided that all claims would be subject to arbitration on an individual basis and relief could only be awarded on an individual basis. Held: the provision waiving the customer's right to seek public injunctive relief – relief that has the primary purpose and effect of prohibiting unlawful acts that would injure the general public – is unenforceable under California law. The Court then examined recent amendments to the UCL and concluded that an individual consumer with standing may still pursue public injunctive relief. The Federal Arbitration Act does not preempt California public policy preserving the right to such relief, the Court then concluded.

Taxpayer Standing

Property tax payment unnecessary to confer taxpayer standing, Supreme Court holds
Weatherford v. City of San Rafael, 2 Cal. 5th __ (June 5, 2017) 2017 WL 2417763
A plaintiff need not pay property taxes to have standing to sue under the taxpayer standing statute (CCP § 526a), the California Supreme Court has held. The Court held "that it is sufficient for a plaintiff to allege she or he has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the defendant locality." But the Court refused to say which taxes would qualify under this standard, reasoning that the parties had provided an insufficient factual record of what taxes the plaintiff actually paid and what happened to the money after she paid them. Justice Kruger's concurring opinion states that the opinion does not decide whether payment of sales tax qualifies for standing; consumers almost invariably actually pay that tax; and given the ambiguous statutory language, further issues should be resolved in light of the beneficial purposes of the statute.

Legislative Update

Legislative Session in Full Swing

The 2016-2017 legislative session has been a busy one on the housing front. Legislators introduced an unprecedented number of housing-related bills and housing issues have been a hot topic of conversation in the halls of the Capitol. Western Center, together with CRLAF, is sponsoring a total of 9 housing bills this year, all of which survived their first house and are continuing to move in the second house. In addition to having a very successful start to the year in terms of keeping good bills moving, our advocates have also stopped a number of bad bills that would have significantly impaired tenants' rights.

While there is still plenty of time before the September 15 deadline to send bills to the Governor's desk and many significant housing bills still being debated that would be beneficial to our clients, one place where housing was notably absent was the budget. The Legislature has passed the budget for the 2017-2018 fiscal year and the Governor will be signing it any day now without any new resources dedicated to affordable housing. The Assembly budget committee had proposed that the $400 million for housing programs that was appropriated in the 2016-17 budget act be kept in the 2017-18 budget. This funding was never released because the Legislature and the Governor could not agree on the Governor's "by-right" trailer bill last year. Unfortunately, this funding came out of the budget in the Conference Committee.

Key Western Center Bills Still Moving

AB 72 would strengthen state enforcement of housing laws, such as Housing Element Law, the Housing Accountability Act, the No Net Loss Zoning Law, and others. It is co-sponsored with CRLAF and the California Housing Consortium.

AB 291 would enact significant protections for immigrant tenants, including

prohibiting landlords from threatening to call immigration authorities and codifying an affirmative defense to evictions based on immigration status. It is co-sponsored with CRLAF.

AB 686 would establish an obligation for California state, regional, and local governments to affirmatively further fair housing in their decisions related to housing and community development. It is co-sponsored with the National Housing Law Project and Public Advocates.

AB 1397 would strengthen state Housing Element Law by limiting the reliance of local governments in meeting their RHNA obligations on sites that do not have a realistic capacity for housing development. It is co-sponsored with CRLAF and Public Advocates.

AB 1505 would overturn the *Palmer* decision and restore the ability of local governments to fully implement local inclusionary policies. It is co-sponsored with CRLAF, the California Housing Consortium, Housing California, and the Non-Profit Housing Association of Northern California.

AB 1521 would strengthen the state's Affordable Housing Preservation Notice Law by requiring that rental housing with expiring state and/or federal subsidies and/or affordability protections be offered for sale first to qualified preservation purchasers, requiring the state to monitor compliance, and providing affected tenants with the right to enforce the law. It is co-sponsored by CRLAF, the California Coalition for Rural Housing, and the California Housing Partnership.

SB 166 would amend the existing No Net Loss Zoning Law to ensure that when sites identified for lower-income housing in a jurisdiction's housing element develop at a higher income level, the jurisdiction continues to maintain an ongoing supply of sites available to meet the unmet need for lower-income housing. It is co-sponsored with CRLAF and Public Advocates.

For our complete legislative update click **here**.

Research and Resources

The **Urban Displacement Project** at UC Berkeley published ***Displacement in San Mateo County, California: Consequences for Housing, Neighborhoods, Quality of Life, and Health***.

Matthew Desmond, the author of *Evicted*, wrote an informative article describing ***How Homeownership Became the Engine of Inequality***.

Center for Community Progress' Alan Mallach published ***Neighborhoods by Numbers: An Introduction to Finding and Using Small Area Data.*** *It is designed to be a user friendly tool for finding and using local and national datasets.*

Poverty & Race Research Action Council has updated its guide to local source of income anti-discrimination laws, ***State and Local Source-of-Income Nondiscrimination Laws: Protections that Expand Housing Choice and Access to Healthy, Stable Homes***.

National Low Income Housing Coalition released ***Out of Reach 2017: The High***

Cost of Housing. Among other things the report finds that on average, a full-time worker must earn $21.21 per hour to afford a modest two-bedroom apartment in the U.S.

Trainings

WCLP's Advocacy and Litigation Skills 101 Training
July 5, 2017, 10am – 4pm, Los Angeles and Sacramento offices of the California Endowment

A Guide to Post-Traumatic Stress Disorder (PTSD) for Advocates: How to Effectively Address PTSD in Matters Involving Veterans and Others Affected by Trauma (Free)
July 19, 2017, Practising Law Institute, San Francisco, CA

Reentry in California – Overcoming Legal Barriers to Community Reintegration 2017 (Free)
August 11, 2017, Practising Law Institute, San Francisco, CA

Want to brag about a case or share a loss? Announce an upcoming training? Please contact Madeline at **mhoward@wclp.org** with updates or other items for inclusion in our Housing Update.

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