2016 Tenants' Rights Cases

An abundance of Anti-SLAPP and litigation privilege decisions

Mixed causes of action are subject to anti-SLAPP, California Supreme Court holds
Baral v. Schnitt, 1 Cal. 5th 376 (2016)
Following the rule established in *Mann v. Quality Old Time Serv., Inc.*, 139 Cal. App. 4th 328 (2006), the Court of Appeal upheld the denial of an anti-SLAPP motion because all of the challenged causes of action were "mixed," meaning they were based on protected and unprotected activity. The California Supreme Court reversed, finding that mixed causes of action are subject to anti-SLAPP motions because the anti-SLAPP statute protects *conduct*, regardless of how that conduct is framed in a cause of action.

Court of Appeal finds landlord's attorney protected by litigation privilege
Contreras v. Dowling, 9 Cal.App.5th 774 (2016)
A landlord's attorney's representation of landlords who harassed and illegally entered tenant's unit was protected by the litigation privilege, the Court of Appeal held. Prior decisions in this same case found that the conduct of the landlords themselves was not protected activity.

Tenant's claims survive anti-SLAPP motion
Khuc v. Peninsular Investments Inc., No. 15-CV-02898-BLF, 2016 WL 3916519(N.D. Cal. Jul. 20, 2016)
Commercial tenant Dr (sic) Burrito alleged state law claims and federal racketeering violations against his landlord for raising the rent in violation of the lease and for threatening eviction. The Court of Appeal upheld denial of the landlords' anti-SLAPP motion, finding that Dr Burrito's claims were based on the rent increase, which was not protected activity. Although the complaint alleged threats of eviction, those allegations were only used to support Dr Burrito's federal claims, which are not subject to anti-SLAPP.

Landlord's firm liable for FDCPA, Rosenthal Act violations
Gonzalez v. Law Office of Allen Robert King, No. 16-02231 SJO, 2016 WL 3638119, __ F. Supp. 3d __ (C.D. Cal. Jul. 6, 2016)
A tenant sued his landlord's attorney, alleging violation of state and federal debt collection laws after the landlord's attorney took a default judgment against the tenant despite an oral move-out stipulation. Held: the tenant stated a claim for violation of both the Fair Debt Collection Practices Act and California's Rosenthal Act. The court further held that the litigation privilege did not bar the tenant's claims, because it does not apply to federal claims, and applying the privilege to the Rosenthal Act would render the Act's protections meaningless.

District Court holds that lawyers violated Fair Debt laws with deceptive unlawful detainer claims and tenant's retaliation claim is not barred by litigation privilege
Phillips v. Archstone Simi Valley LLC, No. CV 15-5559 DMG (PLAx), 2016 WL 400100 (C.D. Cal. Feb. 1, 2016)
Avalon Properties, represented by Kimball Tirey & St. John, filed an unlawful detainer alleging nonpayment. Tenant lost at trial but won on appeal based on a prior unlawful detainer judgment in his favor. The tenant then filed affirmative claims against his landlord and their lawyers, alleging retaliation and violations of the Fair Debt Collection Practices Act. Held: the Kimball Tirey partner named on pleadings is a debt collector under the Act, and the tenant sufficiently alleged that Kimball Tirey violated the Act's prohibition against "false and misleading representations" by filing an unlawful detainer alleging rent the tenant did not owe. The court also held that the tenant's retaliatory eviction claim under Civil Code section 1942.5 was not barred by the litigation privilege, affirming the ruling in *Banuelos v. LA Inv. LLC*, 219 Cal.App.4th 323 (2013).

Unlawful detainers & other landlord tenants' cases

Landlord may not evict for trivial breach, regardless of lease language
Boston LLC v. Juarez (2016) 245 Cal.App.4th 75, *review denied* (May 11, 2016)
Landlord served tenant of 15 years with a 3 day notice to obtain renter's insurance on the Friday before a long weekend and tenant did not timely comply. The lease required tenants to obtain renter's insurance and stated that any breach would allow forfeiture. Landlord prevailed in the trial court and the Appellate Division affirmed. The Court of Appeal asserted jurisdiction and reversed, finding that the insurance requirement protected the tenant's interest, not the landlord's, so breach was immaterial and did not constitute grounds for forfeiture. Congrats to Public Counsel, who represented the tenant. Neighborhood Legal Services, Western Center on Law & Poverty, LAFLA, and Inner City Law Center also filed amicus briefs.

LA tenant entitled to fees under REAP where landlord dismisses before trial
Intelligent Invs. Corp. v. Miguel Gonzales, (Cal. App. Dep't Super. Ct. 2016) 204 Cal.Rptr.3d 676
The Appellate Division reversed the trial court's denial of the tenant's motion for attorney fees, holding that the Rent Escrow Account Program (REAP) fee-shifting provision entitled the tenant to fees after the landlord dismissed the case before trial. While Los Angeles' REAP ordinance does not define "prevailing party," the court found that the tenant prevailed because he maintained possession, thus defeating the plaintiff's primary purpose in filing the action. Kudos to Claudia Medina of BASTA, who represented the tenant.

LA Appellate Division publishes decision protecting pro bono attorneys' right to fees
Crasnick v. Marquez, (2016) 248 Cal.App.4th Supp. 1.
The trial court granted tenant's motion for summary judgment and subsequently, his motion for attorneys' fees. The tenant had a retainer agreement with Deepika Sharma, his attorney at Public Counsel, which provided that any attorney fees would be payable to her. While the attorneys' fees motion was pending, the landlord filed another UD and obtained a default judgment. The LA Superior Court Appellate Division affirmed the trial court's decision denying the landlord's request to use the default judgment to offset the fee award. The opinion contains helpful language about the importance of pro bono counsel for indigent tenants. The court then granted the publication request submitted by Public Counsel, WCLP, and other tenants' organizations.

Landlord seeking to enforce rental agreement for illegal unit denied possession and money
NORTH 7TH STREET ASSOCIATES v. GUILLERMO CONSTANTE, (Cal. App. Dep't Super. Ct., Nov. 16, 2016, No. BV 031357) 2016 WL 7636897
Landlord filed a nonpayment UD, and tenant was granted summary judgment because his unit lacked of certificate of occupancy. Distinguishing *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, the Appellate Division affirmed, finding that since the rental agreement was void, the plaintiff could not use unlawful detainer procedures to enforce it, and defendant was entitled to judgment. Congratulations to Andrew Kazakes of LAFLA, who represented the tenant.

Tenant may establish CC 1942.4 liability and entitlement to fees in post-trial motion, Appellate Division holds
Active Properties, LLC v. Cabrera (Cal. App. Dep't Super. Ct. 2016) 211 Cal.Rptr.3d 152
The Appellate Division reversed the trial court, holding that a tenant may establish liability for violation of Civil Code §1942.4 in a post-trial motion, thereby establishing entitlement to attorney fees under Civil Code §1174.21. Congrats to Claudia Medina of BASTA, who represented the tenant.

Mobilehome tenants granted writ reversing Palo Alto's decision approving park closure; federal court denies park owner's takings claims
After the City of Palo Alto approved closure of Buena Vista Mobilehome Park, tenants (who own their mobilehomes but not the ground under them) filed suit in state court, alleging that the relocation benefits proposed by the park owner were inadequate. The park owner subsequently filed a separate suit in federal court alleging that the relocation benefits were an unconstitutional condition on closure. The state trial court granted the tenants' writ on December 21, 2016, reversing the closure decision and allowing the tenants to remain in their homes. Meanwhile in federal court Palo Alto's motion to dismiss the park owner's suit was granted (***Jisser v. City of Palo Alto***, No. 5:15-CV-05295-EJD, 2016 WL 3456696 (N.D. Cal. June 24, 2016)) and the owner, represented by the Pacific Legal Foundation, appealed to the Ninth Circuit. At the same time, the City of Palo Alto, the County of Santa Clara, and the Housing Authority of the County of Santa Clara have initiated efforts to purchase the park or take it by eminent domain. The tenants are represented by Law Foundation of Silicon Valley, Western Center on Law & Poverty, and Sidley Austin.

Evicted tenant need not file cross-complaint to preserve restitution rights
Beach Break Equities, LLC v. Lowell, 6 Cal.App.5th 847 (2016)
After foreclosing on a tenant's landlord, Beach Break obtained a UD judgment and evicted the tenant while his appeal was pending. The Appellate Division reversed and ordered that the tenant was entitled to seek restitution. Beach Break transferred the case to regular civil court, and the court denied the tenant restitution, finding that he waived his rights by failing to file a cross-complaint. Held: the tenant was entitled to restitution, regardless of filing a cross-complaint. The opinion contains helpful language about the broad right to restitution. Congratulations to Richard Steiner of Legal Aid Society of San Diego, who represented the tenant.

Tenants besieged by sewage and bed bugs get fees, landlords should write better briefs, Court of Appeal finds

Hjelm v. Prometheus*,* 3 Cal. App. 5th 1155 (2016)

Tenants displaced by bedbugs and raw sewage won a lawsuit against their landlord and were awarded fees. Landlords appealed. Held: the one-sided attorney fee provision in the tenants' lease was properly interpreted to mandate an award of fees under Civil Code § 1717. The court also provides a detailed description of how *not* to write an appellate brief.

Land Use

Court of Appeal holds Density Bonus Act is subordinate to Coastal Act

Kalnel Gardens, LLC v. City of LA, 3 Cal.App.5th 927 (2016), *review denied* (Dec. 14, 2016)

After developer received initial approval for a project that included affordable units and height and set back variations pursuant to density bonus law, the developer's permits were rescinded when neighbors challenged the development under the Coastal Act. The developer sued and lost in trial court. Held: the Coastal Act takes precedence over the Density Bonus Act and Mello Act. The Court of Appeal also dismissed developer's appeal of its Housing Accountability Act claims, finding that the only route to challenge the trial court decision was a writ.

Berkeley's affordable housing preservation ordinance survives Constitutional challenge

OPHCA LLC v. City of Berkeley**,** 2016 WL 6679560 __ Cal. Rptr. 3d __ (Nov. 14, 2016)

Berkeley passed an ordinance that imposes a fee for demolition of certain residential buildings to offset the loss of affordable housing. Plaintiff OPHCA alleged that the ordinance violated due process, worked an unconstitutional taking, and violated various other laws. The District Court rejected all of OPHCA's arguments, finding that the fee approximated the effects of the proposed demolition and was distinguishable from the relocation ordinance struck down in *Levin v. City of San Francisco,* 71 F.Supp.3d 1072 (N.D. Cal. 2014).

San Francisco's Ellis Act abuse ordinance struck down

San Francisco Apt. Assc. v. City and County of SF, 3 Cal.App.5th 463 (2016)

The Court of Appeal upheld the trial court decision granting a writ of mandate and enjoining enforcement of a San Francisco ordinance that attempted to rein in Ellis Act abuses. The California Apartment Association and other landlord groups filed the writ challenging the City's imposition of a 10-year waiting period on landlords seeking to merge units after Ellis Act evictions, successfully arguing that the ordinance was preempted by state law.

Fair Housing

Tenants with summary judgment in fair housing suit against Santa Clara Housing Authority

Huynh v. Harasz 2016 WL 2757219 (N.D. Cal. May 12, 2016)

The Santa Clara Housing Authority denied 100% of reasonable accommodation requests where the tenants requested an additional bedroom for anything other than medical equipment or a live-in aide. Tenants with disabilities filed a class action alleging FHA, ADA, and Section 504 claims. In

granting plaintiffs' motion in part, the court found that defendants' blanket reasonable accommodation policy violated fair housing and disability discrimination laws.

Landlord attorney's fair housing claims dismissed

Creason v. Singh, 2013 WL 6185596 (N.D. Cal. Nov. 26, 2013), *aff'd*, 2016 WL 2961589 (9th Cir. May 23, 2016)

Kimball Tirey attorney Jane Creason settled a UD by allowing the tenant to remain in her home. She didn't want to take the case to trial because the tenant had a valid defense to the UD; the incident that led to the eviction was domestic violence against the tenant. Although the landlord agreed to the settlement, Kimball Tirey fired Creason for allowing the tenant to stay. Creason filed suit, alleging retaliation under the Fair Housing Act. The Ninth Circuit affirmed the district court's decision dismissing the case for failure to state a claim.

City violated FHA by refusing to rezone to allow higher density housing, Ninth Circuit holds

Avenue 6E Investments LLC v. City of Yuma Arizona, 818 F.3d 493 (9th Cir. 2016), *cert. denied* (2016) 137 S.Ct. 295.

The City of Yuma ignored its own planning experts and denied plaintiff developers' request for higher density zoning, acquiescing to racially charged NIMBY opposition. In reversing the district court's dismissal of plaintiffs' disparate treatment claim, the court discusses racial code words and finds that "the presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views." The fact that the City did not completely bar all higher density housing or restrict its development to one area did not immunize it from liability; the zoning decision's *contribution* to making housing unavailable to members of a protected class was enough (emphasis in original). The court also found that the City "cannot defeat a showing of disparate impact on a minority group by simply stating that other similarly priced and similarly modelled housing is available in the general area." Great decision, worth a read. Elizabeth and Chris Brancart represented the plaintiffs.

Second Circuit holds that City's zoning decision constituted disparate treatment under the FHA and HUD's disparate impact rule is entitled to deference

MHANY Management Inc. v. County of Nassau, 819 F.3d 581 (2nd Cir. 2016)

Garden City rezoned public land for sale to a private developer. Rather than rezone it for multifamily housing as its own planning experts recommended, the City rezoned for single family dwellings in response to NIMBY public comments. Plaintiffs' expert demonstrated that the lower density zoning would result in a reduced number of minority residents. The district court ordered the City to rezone. Held: 1) plaintiffs had standing even if they could not definitively prove that housing for a larger number of minority residents would be built but for the zoning decision; 2) the City could not moot plaintiffs' claims with a feigned plan to build a courthouse at the site; 3) the City was liable for intentional discrimination because it "knowingly acquiesced to race-based citizen opposition" and 4) the district court should have applied the burden shifting analysis from HUD regulations in determining liability for disparate impact.

Landlords' policy banning tenants with criminal records may still have an impact on African-American tenants, even if nearly all current tenants are African-American

Alexander v. Edgewood Management Corp., No. CV 15-01140 (RCL), 2016 WL 5957673 (D.D.C., Jul. 25, 2016)

Tenant sued subsidized housing landlords for wrongfully denying him admission based on a seven-year-old misdemeanor conviction and fifteen-year-old felony convictions that were later overturned, alleging that the landlord's criminal records policies have a discriminatory effect on African-Americans. The District Court denied landlords' motion to dismiss, finding that even if the landlords' other tenants are all African-American, the policy still has a disparate impact on individual African-Americans applying for housing.

Class Actions

SCOTUS holds that rejected offer to named plaintiff does not moot class claims

Campbell-Ewald Co. v. Gomez**,** ___U.S.___, 136 S. Ct. 663 (2016)

Defendant marketing company offered the named plaintiff complete relief for his claims in a putative class action alleging violations of the Telephone Consumer Protection Act. Plaintiff rejected the offer. The District Court granted defendant summary judgment, finding that where no class had been certified, the unaccepted offer to the named plaintiff deprived the court of jurisdiction and no controversy remained between the parties. The Ninth Circuit reversed. Held: the unaccepted offer had no legal effect on plaintiff's claims. The Court left open the question of whether a defendant could moot putative class claims by depositing full relief in an account payable to the plaintiff.

Cases to watch in 2017

U.S. Supreme Court to decide consolidated FHA cases on predatory lending

Wells Fargo & Co. v. City of Miami, Fla., No. 15-1112, 2016 WL 853263 (U.S. June 28, 2016) & ***Bank of Am. Corp. v. City of Miami, Fla.,*** No. 15-1111, 2016 WL 853246 (U.S. June 28, 2016)

SCOTUS will review these two 11th Circuit decisions addressing standing and causation under the FHA. The City of Miami filed suit against both banks alleging discriminatory lending practices resulting in excessive numbers of foreclosures against Latino and African American homeowners. More information is available at the SCOTUS blog at http://www.scotusblog.com/case-files/cases/bank-of-america-corp-v-city-of-miami/

California Supreme Court to review decision denying relief to indigent defendant on grounds that "civil justice is not free"

Jameson v. Desta, 241 Cal.App.4th 491 (2015)(*review granted* Jan. 27, 2016)

An indigent prisoner sued a prison doctor for negligence and appealed when the trial court entered judgment against him, alleging he was denied due process because he could not afford a court reporter. After noting that "civil justice is not free" and declaring itself "sympathetic" to plaintiff's situation, the Court of Appeal concluded the plaintiff had no right to a court reporter and declared itself unable to reverse the trial court's orders in the absence of a transcript.

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