WESTERN CENTER ON LAW & POVERTY

2017 Tenants' Rights Cases

Landlord Tenant

Appellate Division holds that tenants have statutory right to jury trial on habitability defense
Guttman v. Chiazor, 15 Cal.App.5th Supp. 57 (2017)
The Appellate Division of the Los Angeles Superior Court held that defendants in unlawful detainer cases have a right to a jury trial on the issue of breach of the warranty of habitability. Citing clear legislative history, the court rejected the landlord's argument that references to determinations by "the court" in Civil Code §1174.2 were intended to carve out an exception to the right to jury trial under Civil Code §1171 and Code of Civil Procedure §592. The court further held that denial of a jury trial is reversible error per se. Congratulations to Joshua Johnson of LAFLA on a published decision on this critical issue.

Vague lease references in termination notice are insufficient to raise criminal activity as grounds for eviction, Appellate Division holds
The CBM Group, Inc. v. Llamas, 12 Cal. App. 5th Supp. 34 (2017)
The Appellate Division of the Fresno County Superior Court held that the trial judge improperly allowed a landlord to present evidence of criminal activity as an alternative ground for eviction. The trial court had concluded that the allegations were within the scope of a 60-day notice regarding failure to recertify, because the notice mentioned lease covenants related to criminal activity. The Appellate Division roundly rejected this approach, explaining that "it would not be fair to require a tenant to guess as to the underlying reasons for the termination of the lease, especially where the notice refers to only one specific ground for termination and mentions others only by a vague and ambiguous citation to the lease." The Appellate Division also held that the evidence could not support the trial court's finding that the tenant failed to complete the recertification. Congratulations to Marcos Segura at CCLS on an excellent result.

Appellate division affirms tenants' right to demur after denial of motion to quash
Butenschoen v. Flaker, 16 Cal.App.5th Supp. 10 (2017)
Tenants filed a motion to quash, which was denied with an order permitting the tenants to "answer" within 5 days. Tenants demurred to the complaint, and the court entered a default judgment against them. On appeal, the Appellate Division of the Los Angeles Superior Court held that the trial court was not permitted to restrict the tenant from filing a demurrer.

Class certified in late fee case against Equity Residential
Munguia-Brown v. Equity Residential (N.D. Cal., Oct. 23, 2017, No. C 16-01225 JSW) 2017 WL 4838822.
Tenants' motion for class certification in this late fee case was granted by the district

court. With 36,000 units in California, Equity Residential is a massive corporate landlord, and this case has the potential to afford relief to a large number of California tenants. Congratulations to Jason Tarricone and Margaret McBride at Community Legal on this decision. Equity has appealed to the Ninth Circuit.

California Supreme Court to review decision allowing post-foreclosure owner to serve eviction notice before recording title
Dr. Leevil, LLC v. Westlake Health Care Center, 9 Cal.App.5th 450 (2017)(*review granted* June 14, 2017)
The Court of Appeal held that a post-foreclosure owner could serve an eviction notice before perfecting title, and that the eviction was proper under Code of Civil Procedure section 1161a as long as the owner perfected title before actually removing the tenant. The decision expressly overrules *U.S. Financial, L.P. v. McLitus*, 211 Cal.Rptr.3d 149 (Cal. App. Dep't Super. Ct. 2016), *as amended* (Dec. 2, 2016), which held that service of the three-day notice marks the start of an unlawful detainer action and therefore owners must have recorded title prior to serving a notice. The California Supreme Court granted the petition for review; the respondent's brief is due January 31, 2018.

Bankruptcy court holds that lease signed after landlord filed for bankruptcy is void, leaving tenant with no rights
In re Shay (Bankr. C.D. Cal., Jan. 13, 2017, No. 2:12-BK-26069-RK) 2017 WL 150043
After filing for bankruptcy, landlord leased rooms to tenant. The bankruptcy trustee ordered the rented property sold, and the tenant filed a motion in bankruptcy court asserting her right to possession. The Court held that during bankruptcy proceedings the trustee has sole authority to administer assets of the bankruptcy, so the property owner had no authority to enter into a lease with the tenant. Tenant's lease was therefore void and unenforceable, and tenant had no due process or other rights to the property.

Appellate Division holding that landlord bears risk of loss of rent in the mail stands after Court of Appeal remand
Sleep EZ v. Mateo, 13 Cal. App. 5th Supp. 1 (2017)
In Housing Update No. 92, we reported that the Court of Appeal had taken up an unlawful detainer case in which the tenants' money order was lost in the mail. On July 12, 2017, the Court of Appeal remanded the case to the Appellate Division of the Los Angeles Superior Court without directions. The Court of Appeal's action means that the Appellate Division's decision in favor of the tenants stands. The Appellate Division 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."

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

Supreme Court to review "lying landlords" case
Hart v. Darwish, 12 Cal.App.5th 218 (2017)(*review granted* Sept. 13, 2017)
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. The California Supreme Court granted review of the decision, but has delayed further action pending the outcome of another malicious prosecution case, *Parrish v. Latham & Watkins*, 3 Cal.5th 767 (2017)

Recitation in confidential settlement agreement insufficient to allow court to retain enforcement jurisdiction under CCP §664.6
Sayta v. Chu, 17 Cal.App.5th 960 (2017)
After a subtenants' suit against landlords resulted in a confidential settlement agreement and dismissal, the tenant filed a motion under CCP §664.6 to enforce the agreement. The parties' agreement stated that "[a]ll parties shall dismiss their entire claims… subject to the parties' express agreement and request that the Court retain jurisdiction to enforce…" The agreement was not submitted to the court. The Court of Appeal held that the trial court lacked jurisdiction to enforce the agreement under §664.6 because the parties failed to communicate any request for retained jurisdiction to the court.

Tenant wins $350K punitive damages in wrongful eviction suit
Fernandes v. Singh, 16 Cal.App.5th 932, 938, *as modified on denial of reh'g* (Nov. 2, 2017), *review denied* (Jan. 10, 2018)
Wrongfully evicted tenant's award of $87,894 in compensatory damages and $350,000 in punitive damages, plus costs, prejudgment interest, and attorney fees was upheld on appeal.

Subsidized Housing

Landlord may not evict Section 8 tenants for failure to pay abated rent
Scott v. Kaiuum, 8 Cal.App.5th.Supp. 1 (Jan. 4, 2017)
Fresno Housing Authority abated Section 8 payments for Candy Scott after her landlord failed multiple housing quality standards inspections. After the Housing Authority suspended payments, the landlord demanded that Ms. Scott pay the Housing Authority's portion of the contract rent and filed an unlawful detainer. The trial court entered judgment for the landlord. The Appellate Division reversed, finding that federal regulations prohibited the owner from evicting the tenant for nonpayment of the Housing Authority's portion of the rent. The Court further found that since the tenant only owed her portion of the rent, the three-day notice overstated the amount of rent due, and the landlord was prohibited from demanding rent under Civil Code §1942.4 because of ongoing habitability issues in the unit. Congratulations to Marcos Seguro of CCLS, who represented the prevailing tenant.

Section 8 landlord's extra charges for laundry machines violate HAP contract
United States ex rel. Terry v. Wasatch Advantage Group, LLC, No. 2:15-CV-00799 KJM DB, 2017 WL 3116940 (E.D. Cal. Jul. 21, 2017)
In a putative class action lawsuit alleging improper charges by a large Section 8 landlord, a federal district court determined that the landlord's monthly charges for washer and dryer machines constituted illegal rent. The Section 8 HAP contract requires owners to pay for appliances provided unless otherwise specified, and laundry machines were not listed as a tenant responsibility in the HAP contract. Advocates defending Section 8 non-payment evictions should check for similar, potentially illegal charges.

Fair Housing

Tenants challenging gentrification on fair housing grounds survive motion to dismiss
Martinez v. Optimus Properties (S.D. Cal., Mar. 14, 2017, No. 2:16-cv-08598-SVW-MRW) 2017 WL 1040743
Plaintiff tenants and community organizations filed this fair housing suit against landlords for engaging in a campaign to displace tenants in protected classes, including Latinos, families with children, and people with disabilities, and market newly renovated units to young, wealthy whites. The facts are familiar; landlords failed to address rampant habitability issues and harassed tenants to force them to vacate despite local eviction protections. The district court denied the landlords' motion to dismiss, allowing tenants to proceed on their fair housing, UCL, habitability, retaliation, and various other claims. The case is now proceeding to discovery. Kudos to Public Counsel and Brancart & Brancart, who represent the tenants.

Housing Choice Vouchers: Local anti-discrimination ordinance not preempted by FEHA, still constitutional
AAGLA v. City of Santa Monica
A Los Angeles Superior Court judge upheld the City of Santa Monica's local ordinance prohibiting landlords from discriminating against tenants who use rental assistance vouchers (primarily from the federal Section 8 program). The Apartment Association of Greater Los Angeles and a group of landlords had filed a lawsuit against the City, alleging that the Ordinance was preempted by the Fair Employment and Housing Act, was an unconstitutional impairment of contract pursuant to the federal and state constitutions, and interfered with the freedom to contract. The court granted summary judgment in favor of the City and Interveners, holding that the plain language of FEHA's express preemption provision excluded the Ordinance from its purview, and that the Ordinance was constitutional. Legal Aid Foundation of Los Angeles and Western Center on Law and Poverty represented interveners, Tenants Together and individual tenants. The Apartment Association has appealed.

City of Yuma subject to disparate impact liability for refusal to rezone
Avenue 6E Investments, LLC v. City of Yuma, Arizona 217 F.Supp.3d 1040 (D. Ariz. 2017)
On remand from the Ninth Circuit, the City of Yuma renewed its motion for summary judgment on plaintiff developer's disparate impact claim. The developer 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 development account for "91% of rape, murder" and other criminal activity. The district court denied the City's motion, finding that the developer met its prima facie burden, and that 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.

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 issuing predatory mortgages to African-Americans and Latinos 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. However, the Court also ruled that the City could not prove that the banks' 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 what must be established in addition to foreseeability to prove such a case.

Ninth Circuit affirms district court's restrictive interpretation of *Inclusive Communities;* 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.

Fair Housing organization has standing to bring familial status discrimination claims, district court holds
Jimenez v. Tsai (N.D. Cal., Oct. 30, 2017, No. 5:16-CV-04434-EJD) 2017 WL 4877442
Project Sentinel and individual Latino tenants brought fair housing claims against landlords. In an earlier decision, the district court granted a motion to dismiss in part, finding Project Sentinel did not have standing. The landlords' subsequent motion to dismiss the amended complaint was denied, where the court found the organization had shown a significant diversion of resources and frustration of mission. Congratulations to everyone at Law Foundation and Scott Chang at Housing Rights Center on this decision.

Disparate impact FHA claim based on refusal to insure Section 8 properties survives motion to dismiss, satisfies "robust causality requirement"
Nat'l Fair Hous. Alliance v. Travelers Indem. Co., 261 F.Supp.3d 20 (D.D.C. Aug. 21, 2017)
A fair housing agency brought an FHA challenge to an insurer's refusal to provide insurance policies to landlords that rent to Section 8 tenants. A federal district court denied the insurance company's motion to dismiss, holding that the plaintiff's allegations were sufficient to satisfy *Inclusive Communities*' "robust causality requirement" for disparate impact claims. The court emphasized that the plaintiff had pled "facts that show that voucher recipients are significantly more likely to be members of a protected class than is true for the D.C. population as a whole."

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 routinely

raise, and illustrates an effective use of testing. Congratulations to Scott Chang, who litigated the case with Relman, Dane and Colfax, and joined Housing Rights Center in Los Angeles last year.

Land Use

Charter cities may avoid housing element obligations, Court of Appeal holds
Kennedy Commission v. City of Huntington Beach, 16 Cal.App.5th 841 (2017)
Advocates seeking to enforce cities' obligation to build affordable housing use Housing Element law, which requires jurisdictions to accommodate their share of the Regional Housing Need Allocation (RHNA "reena"). The Housing Element is one required part of a city's "general plan," where the city lays out a detailed plan for providing housing for all segments of the community. Charter cities have frequently argued that they are exempt from various aspects of planning laws, and the Court of Appeal handed them a big victory in this case.

The trial court granted the petition for writ of mandate invalidating the City's amendment to its development plan, because the amendment reduced the number of affordable units built and was inconsistent with the City's Housing Element and general plan. The Court of Appeal reversed, finding charter cities are exempt from the requirement that amendments to specific plans and zoning be consistent with the general plan, unless the city has adopted a consistency requirement by ordinance. Our policy team is exploring a legislative fix to this issue.

Supreme Court denies cert in inclusionary zoning case
616 Croft Ave., LLC v. City of West Hollywood, Cal. (2017) 138 S.Ct. 377 (*case below* Cal.App.5th 621 (2016))
Developer challenged the City's inclusionary housing ordinance, alleging facial and as-applied takings claims. The Court of Appeal found the City's inclusionary ordinance requiring payment of an in-lieu fee constitutional as applied, and ruled the facial challenge was time-barred. The decision relies on the reasoning set out in the California Supreme Court's decision in *California Bldg. Indus. Assoc. v. City of San Jose*, 61 Cal.4th 435 (2015), summarized in our 2015 tenants' rights update.

SF's latest Ellis Act ordinance invalidated
Coyne v. City and County of San Francisco, 9 Cal.App.5th 1215 (2017)
San Francisco violated the Ellis Act, Gov. Code 7060, by requiring landlords to pay tenants relocation expenses equal to the difference between their current rents and market rents for two years, the Court of Appeal held. The Ellis Act prohibits local governments from refusing to let landlords exit the rental business. Though the statute permits cities to mitigate the adverse effects of Ellis Act evictions, the court concluded that the ordinance imposed a prohibitive price on the ability of landlords to exercise their Ellis rights. In a later unpublished decision, the Court of Appeal denied the landlords' request for attorneys' fees under the private attorney general statute, CCP 1021.5.

Judgments requiring annual set-asides of tax increment cannot be funded, Court of Appeal holds
Cuenca v. Cohen, 8 Cal.App.5th 200 (2017)
The Court of Appeal held that while judgments are "enforceable obligations" under the Dissolution Law, a judgment requiring a redevelopment agency to set aside 20% of its tax increment for affordable housing cannot be funded. Since the Dissolution Law abolished tax increment financing, there is no pie to carve a 20% piece out of, the court reasoned.

More cases housers should know about

Consumer entitled to broad injunctive relief against bank despite arbitration clause, California Supreme Court holds
McGill v. Citibank, N.A., 2 Cal. 5th 945 (2017)
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. The California Supreme Court held that 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.

Property tax payment unnecessary to confer taxpayer standing, Supreme Court holds
Weatherford v. City of San Rafael, 2 Cal.5th 1241 (2017)
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." However, 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.

California Supreme Court holds that government employees cannot shield communications from disclosure by using personal accounts
City of San Jose v. Superior Court, 2 Cal.5th 608 (Mar. 2, 2017)
The California Supreme Court held that when a government employee uses a personal email account to discuss public business, those communications are subject to disclosure under the California Public Records Act. However, the Court left it to future cases to decide to what extent a communication must discuss public business in order to constitute a public record, and how a public agency may balance the privacy concerns of its employees with its obligations under the CPRA.