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2018 Tenants' Rights Cases

Landlord Tenant

Landlord cannot enforce late fee clause in lease unless it can show that damages would be impracticable to calculate
Del Monte Properties & Investments, Inc. v. Dolan, 26 Cal.App.5th Supp. 20 (2018)
Provisions in residential leases throughout California imposing late fees in set amounts are vulnerable to attack, thanks to a Humboldt County Superior Court Appellate Division opinion.
Civil Code §1671(d) prohibits liquidated damages clauses in contracts except when "from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage . . ." The court agreed with the tenant, represented by Greg Holtz at Legal Services of Northern California, that the landlord could not make that showing. The court thus not only invalidated the $50 late fee, but also reversed an unlawful detainer judgment, as the notice it was based on was defective. Congratulations to Greg on winning this case and convincing the court to publish an excellent decision.

New owner must perfect title before serving three-day written notice to quit, California Supreme Court holds
Dr. Leevil, LLC v. Westlake Health Care Center, 6 Cal.5th 474 (2018)
As reported in our 2017 update, the Court of Appeal previously held that a post-foreclosure owner could serve a 3-day notice before perfecting title, as long as title was perfected before the owner filed an unlawful detainer. The California Supreme Court happily reversed this decision, concluding "that an owner that acquires title to property under a power of sale contained in a deed of trust must perfect title *before* serving the three-day written notice to quit required by Code of Civil Procedure section 1161a(b)." The opinion contains helpful language on strict construction of unlawful detainer statutes.

Civil Code §1962(c) does not protect tenants where new owner executed a lease, Appellate Division holds
DLI Properties v. Hill, 29 Cal.App.5th Supp. 1 (2018)
A post-foreclosure owner executed a lease with the existing tenant immediately after acquiring the property. The new lease contained only a P.O. Box address for payment, and no phone number or physical address. The tenant requested repairs and stopped paying rent, and the owner initiated an unlawful detainer. At trial, tenant defended the case arguing that owner did not meet Civil Code §1962's disclosure requirements and therefore could not demand rent. The trial court held, and the Appellate Division affirmed, that even though the new owner was out of compliance with §1962, the prohibition against initiating an unlawful detainer before providing all required contact information did not apply because this owner executed a new lease and therefore was not a "successor owner" under section 1962(c).

Landlord must pay for damages caused by illegal water shutoff, bankruptcy court holds
In re Tejeda, No. 2:17-AP-01308-ER, 2018 WL 3814291 (Bankr. C.D. Cal. Aug. 7, 2018)
Landlord turned off the electricity, gas and water service in an attempt to force her tenants out, then called child protective services to tell them her tenant's children did not have water. The bankruptcy court found that the tenant sustained damages from the lack of utilities and multiple inspections by child protective services, and that this debt would not be discharged in the bankruptcy proceeding because it resulted from the landlord's willful and malicious behavior. Landlord has filed an appeal. Congratulations to Cassandra Riles and Paul Estuar of LAFLA on this excellent decision.

Unlawful detainer filing not premature when tenant could have paid by mail during the notice period, court holds
Hsieh v. Pederson, 23 Cal.App.5th Supp. 1, 5 (2018)
A landlord served tenants with a 14-day notice to pay rent or quit. When the tenant did not pay, the landlord filed an unlawful detainer action more than 14 days later. The trial court dismissed the action, agreeing with the tenants that because of an intervening weekend the tenants were only given 13 days to pay the rent in person, thus making the unlawful detainer premature. The Los Angeles Superior Court Appellate Division reversed, holding that Code of Civil Procedure §1161, subdivision (2) generally permits payment by mail as well as by person; the notice gave the landlord's mailing address and did not prohibit payment by mail; the tenants could have paid by mail during the 14-day period; and therefore the unlawful detainer was not premature.

Ellis Act-based eviction reversed because of improper exclusion of evidence concerning sham transaction
Coyne v. De Leo, 26 Cal.App.5th 801 (2018)
A tenant should have been permitted to show that a landlord had not gone out of the rental business, the Court of Appeal has held. The court thus reversed an eviction based on the Ellis Act, which permits landlords to leave the rental business but only if they do so entirely; the Act does not permit a landlord to withdraw from less than all of the accommodations in a building. Gov. Code §7060.7(d). In this case, the appellate court held, the trial court should have admitted evidence that a "sale" to a former tenant was really a sham agreement to permit that tenant to continue renting her apartment.

Court of Appeal holds forced arbitration clause unconscionable in tenant affirmative litigation
Cerneka v. Russell No. 8 Santa Monica Properties, LLC, 2018 WL 3154565 (Cal.App. 2018)
An arbitration clause existing tenants were forced to sign was procedurally and substantively unconscionable, the Court of Appeal has held, thereby permitting the tenants to continue litigation over habitability and relocation issues stemming from a fire and its aftermath. Among other unconscionable features, the agreement would have denied any relief at all to tenants if they could not afford steep arbitrator fees; denied tenants attorneys' fees if they prevailed; and contained a virtually unreadable 1200-word arbitration clause, almost all of it in ALL CAPS. Though the opinion is unpublished, it is worth reading for ideas on how to attack forced arbitration clauses. While unpublished opinions may not be cited in California state courts, they may be cited in federal litigation. Congratulations to Denise McGranahan at LAFLA who represented the tenants along with pro bono counsel.

Anti-SLAPP

First District Court of Appeal holds statutory retaliation claims not subject to litigation privilege
Winslett v. 1811 27th Avenue, LLC, 26 Cal.App.5th 239 (2018)
Winslett complained to her landlord about uninhabitable conditions in her apartment and called County Services regarding the conditions. The landlord still refused to make repairs and she withheld rent. Landlord filed an unlawful detainer, which the parties settled. Winslett then sued the landlord for retaliation under Civil Code §1942.5 and violation of Oakland's Just Cause Ordinance. Landlord filed an Anti-SLAPP motion, which the trial court granted. The Court of Appeal reversed, holding that §1942.5 creates an exception to the litigation privilege. This holding is consistent with the Second District Court of Appeals decision in *Banuelos v. LA Investment, LLC*, 219 Cal.App.4th 323 (2013). The Court further held that Winslett's Just Cause claims did not arise out of protected activity, but rather from the landlord's conduct prior to the filing of the unlawful detainer. Congratulations to Caleb Rush, Andrew Wolff and their colleagues who represented the tenant. Centro Legal de La Raza, East Bay Community Law Center, Western Center on Law & Poverty, National Housing Law Project and Tenants Together were amici.

Tenant loses on Anti-SLAPP motion despite jury finding that landlord acted with malice in filing eviction
Aron v. Holdings, 21 Cal.App.5th 1069 (2018)
A Santa Monica tenant prevailed in an unlawful detainer where the jury found that the tenant violated the lease by renovating the apartment, but that the landlord maliciously brought the action. The landlord appealed. A local anti-harassment ordinance imposes criminal and civil liability on landlords that try to evict tenants in bad faith, and, while the landlord's appeal of the unlawful detainer judgment was pending, the tenant brought an affirmative suit against the landlord under the ordinance. The trial court granted the landlord's Anti-SLAPP motion in the affirmative suit, and the tenant appealed. After several procedural twists, the Court of Appeal upheld the grant of the Anti-SLAPP motion, finding that the tenant's suit arose from the filing of the unlawful detainer, which was protected activity. The court reasoned that the landlord's conduct was not illegal as a matter of law, because of the jury's mixed findings.

Kimball Tirey's Anti-SLAPP granted against tenant seeking to enforce debt collection protections
Picazo v. Kimball, Tirey & St. John, LLP, No. 17CV1437 JM (BGS), 2018 WL 1583228 (S.D. Cal.Apr.2, 2018)
Kimball Tirey represented a landlord who sought to evict a HOME tenant for failure to report income. The landlord dismissed the unlawful detainer after learning that the income inaccuracy was due to a mistake on recertification paperwork, possibly resulting from a language barrier. The tenant then sued Kimball for violations of the Rosenthal Act and Fair Debt Collection Practices Act. The court found that the Rosenthal Act prevails over the litigation privilege. However, the court granted Kimball's Anti-SLAPP motion, finding that the litigation arose from Kimball's protected litigation activity and that the tenant could not meet her burden to demonstrate likelihood of success because the unlawful detainer was not an attempt to collect a consumer debt. The court then granted Kimball's motion for summary judgment on tenant's FDCPA claims, finding that Kimball is not a debt collector under the Act.

Appellate Division rules that Anti-SLAPPs may not be brought in limited civil cases
1550 Laurel Owner's Association, Inc. v. Appellate Division of Superior Court of Los Angeles County, 28 Cal.App.5th 1146 (2018)
But don't panic - the holding should not impact unlawful detainers. The decision interprets the Economic Litigation Rules set out in Code of Civil Procedure section 90 *et seq.*, to prohibit the filing of an Anti-SLAPP. The economic litigation procedures do not apply to unlawful detainers, but landlords may try to use this holding anyway.

Challenges to City's Efforts to Protect Tenants Meet with Mixed Results

Landlords' challenge to San Jose rental ordinance dismissed
Hotop v. City of San Jose, No. 18-CV-02024-LHK, 2018 WL 4850405 (N.D. Cal., Oct. 4, 2018)
Landlords challenged San Jose's rental ordinance on various constitutional grounds, alleging that provisions requiring them to register with the City and provide information about buy-out agreements and termination notices violated the 4th, 5th, and 14th amendments. The district court granted the City's motion to dismiss without prejudice, finding that the landlords failed to state a claim.

City may not impose 10-year waiting period for altering non-conforming properties on landlords who exercise Ellis Act rights
Small Property Owners of San Francisco Institute v. City and County of San Francisco, 22 Cal.App.5th 77 (2018)
San Francisco allows landowners to receive permits to modify housing that previously could not be altered. But the City imposed a 10-year waiting period to make such alterations for landlords who exercised their Ellis Act right to leave the rental business. The Court of Appeal held that the ordinance was preempted by the Ellis Act for imposing a "prohibitive price" on going out of business.

Land Use

Local voters can veto a zoning ordinance enacted to achieve compliance with general plan, California Supreme Court holds
City of Morgan Hill v. Bushey, 5 Cal.5th 1068 (2018)
The California Supreme Court has held that a city's voters can challenge by referendum a zoning ordinance enacted to bring zoning into compliance with the general plan for land use. Even when defeat of the ordinance temporarily continues inconsistency between the zoning ordinance and the general plan, the referendum may still be valid if the local government has other reasonable means to achieve consistency, the Court concluded.

Motel residents reach settlement in two lawsuits against the City of Costa Mesa
In July, long-term motel residents and affordable housing organization Kennedy Commission entered into an agreement settling two cases against the City of Costa Mesa. The first case, *Dadey v. Costa Mesa,* challenged the City's enactment of an ordinance prohibiting people from living in motels for more than 28 days. The ordinance was part of an effort to push low-income residents out of the City. The second lawsuit, *Kennedy Commission et al. v. Costa Mesa et. al.*, challenged the City's approval of a project to convert a motel into high-density luxury housing, in violation of state density bonus law. After four years of contentious litigation, the parties settled both cases with the City's agreement to, among other things, include very low-income units in the new development, initiate redevelopment of 8 affordable housing projects, pay $900K to motel residents, and pay $1.4 million in attorneys' fees. Plaintiffs in *Dadey* were represented by Public Law Center, Legal Aid Society of Orange County, Western Center on Law & Poverty, and pro bono counsel Haynes & Boone. Plaintiffs in *Kennedy Commission* were represented by Public Law Center, Legal Aid Society of Orange County, Western Center on Law & Poverty, Public Interest Law Project and pro bono counsel Bird Marella.

Homelessness

Two Federal Appeals Courts deliver victories for homeless individuals and advocates
In *Martin v. City of Boise,* 902 F.3d 1031 (9th Cir. 2018), the Ninth Circuit held that "the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to." Judge Berzon wrote the Court's opinion, which was joined by Judge Watford. Judge Owens concurred in part and dissented in part. The City has requested en banc review.

In *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale,* __F.3d__, No. 16-16808, 2018 WL 4000057 (11th Cir. Aug. 22, 2018), the Eleventh Circuit held that a nonprofit's provision of food to homeless individuals was expressive conduct protected by the First Amendment, reversing the district court decision granting judgment to the City, which had enforced a local food sharing ordinance against the group.

Subsidized Housing

Supreme Court to decide whether IHSS benefits are income for Section 8
Reilly v. Marin Housing Auth., 23 Cal.App.5th 425 (2018), *review granted* (Aug. 29, 2018)
The California Supreme Court has agreed to decide whether a parent's receipt of IHSS payments to take care of her child in their home can increase the rent or potentially disqualify a family from the Section 8 program. A federal regulation, 24 C.F.R. § 5.609(c)(16), exempts from countable income payments from a state agency "to offset the cost of services and equipment needed to keep [a] developmentally disabled family member at home." The Court of Appeal held that the regulation only applied to reimbursement for out-of-pocket expenses. The parent, represented by Disability Rights California, successfully petitioned for review. National Housing Law Project and Western Center on Law & Poverty have filed an amicus brief. The Court has also requested an amicus brief from HUD.

Class cert granted to Section 8 tenants in side payments case
United States v. Wasatch Advantage Group, LLC, (E.D. Cal. 2018) 327 F.R.D. 395, *leave to appeal denied sub nom. United States v. Wasatch Advantage Group, LLC* (9th Cir., Oct. 17, 2018, No. 18-80091) 2018 WL 6118456
Plaintiffs' motion to amend the complaint and for class certification was granted in this ongoing Section 8 case, where tenants allege the landlords' monthly charges for washer and dryer machine constitute illegal rent.

Trial court grants preliminary injunction enjoining landlords from proceeding with no fault evictions in multifamily housing
Thomas et al v. California Municipal Finance Authority, BC 671103 (L.A. Super. Ct. Jan. 29, 2018)
Corporate landlord's purchase of a multifamily property was financed by a $17.5 million tax-exempt bond. In order to secure the bond, landlord promised the City of Oxnard that all or nearly all tenants could remain in place, and that any displaced tenants would be relocated to comparable properties. Landlord then initiated eviction proceedings against multiple tenants without offering relocation. Tenants successfully defended multiple unlawful detainers and landlord kept filing more. The court granted a preliminary injunction enjoining the landlord from initiating further no-fault evictions, finding that the tenants were likely to prevail on their claims of negligent misrepresentation, fraud and unfair business practices. Kudos to Los Angeles Center for Community Law & Action for this win!

Fair Housing

Landlord's policy requiring proof of immigration status violates the FHA, Fourth Circuit holds
Reyes v. Waples Mobile Home Park Limited Partnership, 903 F.3d 415 (4th Cir. 2018)
Four Latinx couples challenged a mobilehome park's policy requiring all tenants to provide proof of legal immigration status, alleging that the policy had a disparate impact on Latinx tenants in violation of the Fair Housing Act. The district court held that the policy did not violate the FHA because the tenants were harmed due to their lack of legal status, not due directly to their race or national origin. The Fourth Circuit found that the district court committed a "grievous error" in applying this reasoning, and held that plaintiffs' statistical evidence showing that Latinx tenants were 10 times more likely than others to be harmed by the policy was sufficient to make a prima facie case for disparate impact liability.

Petition to SCOTUS on decision holding operator of senior community violated FHA by permitting harassment against tenant based on sexual orientation
Wetzel v. Glen St. Andrew Living Community, LLC, No. 17-1322, 2018 WL 4057365 (7th Cir. Aug. 27, 2018)
The Seventh Circuit ruled in favor of an older adult who suffered harassment and violence from other residents because of her sexual orientation. The court held that the duty not to discriminate in housing conditions under the Fair Housing Act "encompasses the duty not to permit *known* harassment on *protected* grounds," and that the housing provider's lack of discriminatory animus was not a defense. Defendant living facility has filed a petition for certiorari.

Court of Appeal decision upholding Section 8 anti-discrimination ordinance will not be reviewed
City and County of San Francisco v. Post, 22 Cal.App.5th 121 (2018), *review denied* (July 11, 2018)
The First District Court of Appeal upheld San Francisco's ordinance protecting Section 8 voucher holders from discrimination in a published decision earlier this year. The California Supreme Court denied review of that decision on July 11, 2018, leaving the Court of Appeal decision in place. This is great news for those advocating for similar ordinances across California. Please contact Navneet Grewal at **ngrewal@wclp.org** for technical assistance in drafting an ordinance that will survive challenge.

Settlement brings broad relief for Koreatown tenants against gentrifying real estate firm
In *Martinez v. Optimus Properties LLC*, tenants alleged widespread housing discrimination in L.A.'s Koreatown neighborhood. The suit asserted that a real estate investment firm targeted Spanish-speaking tenants, tenants with mental health disabilities, and other members of protected classes for harassment in an effort to force them from affordable units. After two years of contentious litigation, tenants and two nonprofit organizations secured broad relief including reserving future vacancies for Section 8 tenants, $2.5 million in damages, and a substantial attorneys' fees award. Congratulations to Deepika Sharma, and the whole team from Public Counsel, the Housing Rights Center, Public Advocates Inc., Skadden, Arps, Slate, Meagher & Flom LLP, and Brancart & Brancart, on this great case.

Jury verdict for Latinx tenants fighting displacement
Baltazar v. Winstar Properties Inc., No. 2:16-cv-04697—ODW-KS (C.D. Cal. Aug. 3, 2018)
Landlord acquired a building in unincorporated East Los Angeles occupied primarily by Latino immigrants and immediately raised the rent by 63% on everyone except the only white family in the building. Tenants sued, alleging that the rent increase had a disparate impact on immigrants in violation of fair housing laws. Jury found fair housing violations and awarded over a million dollars in damages, including $500,000 for each plaintiff in punitive damages. Congratulations to LA Center for Community Law & Action on this victory!

District Court denies summary judgment to discriminating City, again
*Avenue 6E Investments, LLC v. City of Yuma, Arizona (*D. Ariz., Jan. 29, 2018, No. 2:09-CV-00297 JWS) 2018 WL 582314
This case arises out of a City's denial of a developer's request to upzone a parcel of land to build moderately priced housing. Back at the district court after the Ninth Circuit's excellent and well worth reading decision (*Avenue 6E Investments, LLC v. City of Yuma, Ariz.,* 818 F.3d 493 (9th Cir. 2016)), the City again moved for summary judgment on plaintiff's disparate impact claim and was again denied. Rejecting the City's argument that disparate impact liability cannot attach to a single zoning decision, the court distinguished the factual scenario from Inclusive Communities and reasoned that "zoning decisions such as the one at issue appear to fall within what Justice Kennedy described as the "heartland of disparate-impact liability." This "heartland" includes cases that challenge "zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification." Cheers again to the Brancarts for their excellent work in this important case.

Landlord must accommodate tenant with disability by admitting him to housing despite criminal conviction, VA district court holds
Simmons v. T.M. Associates Management, Inc., 287 F.Supp.3d 600 (W.D. Va. 2018)
Landlord refused to allow tenant to add her son to the lease, citing a misdemeanor conviction for indecent exposure and rejecting son's reasonable accommodation request. The conviction resulted from an incident where the son removed his clothing in public when he was not taking medication for his schizoaffective disorder. He then received mental health treatment and had no further incidents. The district court denied the landlord's motion to dismiss, finding that the Fair Housing Act required an accommodation. The landlord should have made an exception to its criminal record policy where the criminal conduct resulted from the disability and the son did not present a direct threat. Congratulations to Eric Dunn for great advocacy in this case!

Fair Housing and Foreclosure

Fair housing groups' suit against Fannie Mae for failure to maintain REO properties survives motion to dismiss
National Fair Housing Alliance v. Federal National Mortgage Association ("Fannie Mae"), 294 F.Supp.3d 940 (N.D. Cal. 2018)
Fair housing groups sued Fannie Mae for failing to maintain foreclosed properties in minority neighborhoods. Plaintiffs conducted an extensive investigation of Fannie Mae's maintenance of REO properties over a four-year period, showing that homes in white neighborhoods were adequately maintained, while those in communities of color were allowed to deteriorate, causing various harms. The court found that plaintiffs established organizational standing based on frustration of mission and diversion of resources, and that plaintiffs adequately alleged a policy of delegation of discretion and failure to supervise that caused discriminatory impact. Congratulations to Scott Chang, Casey Epp, and the Relman, Dane & Colfax team.

Philadelphia's reverse redlining claims survive *ICP* challenge, Cook County's claims do not fare as well
City of Philadelphia v. Wells Fargo & Co. (E.D. Pa., Jan. 16, 2018, No. CV 17-2203) 2018 WL 424451
Local governments' fair housing claims against banks continue to make their way through the courts, with varying degrees of success. The City of Philadelphia sued Wells Fargo for reverse redlining, a practice where people of color are targeted for predatory loans. The City presented data showing that the bank issued high numbers of predatory loans in neighborhoods with significant African American and Latino populations, and that more than 1000 of those loans resulted in foreclosure. Citing the Supreme Court's decision in *Bank of Am. Corp. v. City of Miami*, the bank argued that the City's claims were barred by the statute of limitations and failed to show proximate cause. 137 S. Ct. 1296, 1305 (2017). The district court found that City adequately alleged noneconomic injury to its goal of promoting fair housing and an integrated community because discriminatory lending negatively impacts the ability of minority buyers to purchase homes. The court also rejected the bank's *ICP* argument that no specific policy caused the racial disparity, finding that employee discretion in implementing bank policies did not bar the disparate impact claim.

County of Cook v. Bank of America (N.D. Ill., Mar. 30, 2018, No. 14 C 2280) 2018 WL 1561725
Cook County alleged it suffered various economic harms because of Bank of America's many Fair Housing Act violations, including predatory lending and servicing in a discriminatory manner that increased the likelihood that black and Latino borrowers would default. The Bank argued that the County could not meet the causation standard set out in the Supreme Court's *Bank of America* decision, and the district court agreed, finding that only the costs connected directly to foreclosures- such as expenses for sheriffs to remove people from their homes – were attributable to the bank's discriminatory practices under the Supreme Court standard. However, the court did hold that the County adequately alleged a specific policy that caused the harm, meeting the *ICP* standard.

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