



Landlord Tenant

Surveilling landlord denied preliminary injunction but allowed to proceed with federal eviction suit

640 Octavia, LLC v. Pieper, No. C-18-01047 WHA, 2018 WL 4468495 (N.D. Cal., Sept. 18, 2018)

A San Francisco landlord hired two private investigators to conduct surveillance on his tenants, including posing as a customer at tenant's workplace and installing a security camera in front of tenants' door. Landlord then filed suit in federal court, to evict tenants and for damages suffered from alleged illegal activity by tenants and guests. The court denied the landlord's request for preliminary relief and held tenant's motion to dismiss in abeyance until trial.

Civil Code section 1962(c) does not protect tenants where new owner executed a lease, Appellate Division holds

DLI Properties v. Hill, ___ Cal.App.5th Supp. ___ 2018 WL 6192245 (Sept. 17, 2018)

Landlord lost home to foreclosure, and new owner executed lease with tenant. 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 section 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 section 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). Advocates' efforts to transfer the case to the Court of Appeal or depublish the decision were not successful.

Appellate Division rules that Anti-SLAPPs may not be brought in limited jurisdiction 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.

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.

Land Use

Motel residents reach settlement in two lawsuits against the City of Costa Mesa

In July, several low-income long-term motel residents and affordable housing organization Kennedy Commission entered into an agreement settling two cases against the City of Costa Mesa (and a real-party-in-interest developer). The first case, *Dadey v. Costa Mesa*, was filed in 2014, to challenge the City's enactment of an ordinance prohibiting people from living in motels for more than 28 days at a time. The ordinance was part and parcel of an effort by the City to push its low-income residents out of its borders. The second lawsuit, *Kennedy Commission et al. v. Costa Mesa et al.*, was filed in 2016, when the owners of the largest motel – home to over 60 families – applied for and received approval to convert the motel into a high-density luxury development, in violation of state density bonus law (and Housing Element law). After four years of contentious litigation, the parties agreed that:

- **\$650K would be distributed to former motel residents**
- **\$250K would be distributed to named plaintiffs**
- **The motel redevelopment would be scaled down and include 9 very low income units (restricted for 55 years), in accordance with Density Bonus Law.**
- **The city would issue an RFP to redevelop 8 scattered site affordable housing projects that were foreclosed on; asking for increased density with more extremely low income units than currently exist (with a provision that there will be, under no circumstance, less affordability).**
- **The city would use best efforts to redevelop a plot of land that should revert to them in 2019 into affordable housing.**
- **The city would re-evaluate its long-term occupancy ordinance.**
- **Attorneys' fees would be paid in the amount of \$1.4 million.**

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.

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.

City requests review of Ninth Circuit ruling in favor of homeless residents

In *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), the Ninth Circuit held that the 8th Amendment ban against cruel and unusual punishment prohibits the City of Boise from imposing criminal penalties on homeless individuals for sitting, sleeping, or lying outside when those individuals could not obtain shelter. The City has filed a petition for rehearing en banc. We will report developments in this case in the next *Housing Update*.

Petition for review of decision holding assisted living facility liable for failing to prevent third party harassment

Wetzel v. Glen St. Andrew Living Community, LLC, 901 F.3d 856 (7th Cir. 2018)
As reported in [our previous update](#), the Seventh Circuit recently held that the FHA incorporates a duty to protect residents from harassment by other residents on protected grounds. The defendant assisted living facility filed a petition for certiorari, which hopefully will not be granted.

Responding to receipt request by brandishing a gun constitutes a threat under Bane Act; landlord vicariously liable

Morrison v. Pal, No. 117CV00776AWIJLT, 2018 WL 6460038 (E.D. Cal., Dec. 10, 2018)

Tenants brought various claims against their Bakersfield landlord, whose employees used racial slurs against black tenants and suggested that one tenant “go back to where she came from.” When another tenant requested receipts, the landlord’s employee responded by taking out his gun and placing it on the desk in front of the tenant. The court denied landlord’s request for summary judgment against that tenant for his Bane Act (Civ. Code section §52.1) claims, finding that landlord’s employee interfered with the tenant’s “exercise of legal rights by actionable threats or intimidation,” and that the landlord could be held vicariously liable for this conduct. However the court also granted summary judgment against some of the tenants on their Civil Code section 1942.4 claims, and ordered landlords to file a memorandum of fees and costs.

Update From Our Policy Team

The second year of the 2017-18 legislative session wrapped up on August 31st and the deadline for Governor Brown to sign or veto all bills passed in the 2017-2018 session was September 30th. We are pleased to report that all bills sponsored by Western Center and CRLA Foundation passed the legislature and were signed by the Governor. We also worked to support a number of successful bills, and to make sure that bills that would be detrimental to clients did not move forward. Click [here](#) for a list of housing bills relevant to our work that were signed into law.

The Legislature reconvenes on January 7th, and Gavin Newsom will be sworn in as California’s Governor on the same day. We look forward to working with the new governor and to advancing our client’s interests in the new legislative session. We anticipate that housing will continue to be a “hot topic,” and many members as well as the incoming Governor have expressed interest in working to solve our homelessness and affordable housing crises. We expect to see proposals to address issues of housing production and preservation, exclusionary jurisdictions, overly rent burdened individuals and families, discrimination, and barriers to housing access for populations with specific challenges. As always, we will work to advance proposals that meet the needs of the most vulnerable Californians, and to ensure that proposals which could be harmful to our clients are changed or do not move forward.

Research and Resources:

A group of pediatricians released [research](#) showing that children born to mothers who experienced homelessness while pregnant suffer more developmental delays and are more likely to be hospitalized than other otherwise similar children. See the link above for the full article and video abstract.

Non-white same-sex male couples experienced the most discrimination of any same-sex couples according to a study by David Schwegman published in *Housing Policy Debate*. The study, “[Rental Market Discrimination Against Same-Sex Couples: Evidence From a Pairwise-Matched Email Correspondence Test](#),” examined more than 6400 landlord responses to prospective renters seeking housing through Craigslist in 94 cities across the U.S.

[Small Area Income and Poverty Estimates: 2017](#), a report from the Census

Bureau, finds that most counties nationwide have the same rate, or an increased rate of poverty than 10 years ago.

Upcoming Trainings:

[Advocates' Guide for Protecting Tenants' Rights: Advanced Unlawful Detainer Defense 2019](#), March 6, 2019, PLI San Francisco and webcast.

Tenant Lawyer Network Conference, Saturday January 26, 2019, 8:30 AM – 5 PM, UC Berkeley

[Fair Housing For Our Future](#) (aka the San Diego Fair Housing Conference) February 13-15, San Diego

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