WESTERN CENTER ON LAW & POVERTY

Housing Update No. 102
2023 Case Summaries

LANDLORD-TENANT

Payment of rent by tenant's partner did not constitute an unlawful assignment of the tenancy.

Sleep E-Z, LLC v. Lopez, 88 Cal.App.5th Supp. 18 (2023)
Plaintiff, Sleep E-Z, LLC owns a residential apartment complex in which Defendant, rented a rent-controlled unit. In October 2019 the defendant traveled to Mexico to care for her ailing brother and "always intended to return to the unit." The defendant's partner remained in the unit and tendered rent. In March of 2020, amidst the declaration of the COVID-19 pandemic, the defendant was delayed from returning to the United States because of her immigration status. On March 22, 2020, Plaintiff served a three-day notice to quit alleging an unauthorized assignment of interest. At trial the Plaintiff contended that the Defendant's absence and her partner's payment of rent in her absence "triggered a presumption of assignment." Additionally, Plaintiff argued that "although intent is not an element to establish a presumption of assignment, defendant's actions clearly reflect an intent to assign, and defendant failed to rebut this presumption." The trial court found that "plaintiff did not meet its burden to prove an unauthorized assignment of interests by defendant."

On appeal, the court affirmed judgment for the defendant. The court reasoned that case law suggests payment of rent by a third-party occupant creates a permissive inference rather than mandatory presumption of intent to assign or convey. Furthermore, "a reasonable trier of fact could find that defendant's actions did not manifest a "clear and positive" intent to assign her leasehold interests. The court found that the trial court's determination should be upheld because it was supported by evidence including testimony that defendant did not intend to assign or abandon her leasehold interest, did not move her belongings out of the unit, had no other place to live, and that she was stranded in Mexico during the COVID-19 pandemic due to her immigration status.

Court holds that "tenant at sufferance" is protected by LA Rent Stabilization Ordinance's just cause protections.

Roxbury Lane LP v. Harris, 88 Cal.App.5th Supp. 9 (2023)
Plaintiff-Appellant, Roxbury Lane LP filed an unlawful detainer action after the expiration of a 30-day notice of intent to terminate the lease and vacate which had been delivered by the Defendant. Defendant alleged several affirmative defenses asserting failure to state cause to evict under the Los Angeles Rent Stabilization Ordinance (LARSO). Defendant moved for summary judgment, arguing the property was subject to LARSO and that the landlord did not have a legal basis under LARSO to evict. Plaintiff argued LARSO did not apply because the defendant was a "tenant at sufferance" instead of a "tenant" under LARSO. Plaintiff contended since there was no landlord-tenant relationship between the parties, the unlawful detainer action was outside of the scope of LARSO. Defendant provided testimony that he had a lease agreement that had coverted into a month-to-month tenancy and that the landlord had continued to accept his rent after the lease expiration. The trial court granted the defendant's motion for summary judgment.

On appeal, the superior court's appellate division affirmed the trial court's ruling. While the Court did not reach the issue as to whether the defendants was indeed a tenant, it reasoned that "the authorization to bring an eviction action under LARSO requires, not a particular type of tenancy, but the existence of a qualifying "rental unit."" The court found that the term "tenant at sufferance," while not explicitly included in the statute, is "presumably covered under the language 'any other person

entitled to use or occupancy of a rental unit.'" The court held that the Plaintiff cited "no authority for its position that a tenant at sufferance loses the protection of LARSO, even though he rented and resides in a rental unit as defined under LARSO."

Victory for Pasadena tenants defending newly won protections.
CAA v. City of Pasadena, 22STPC04376 (L.A. Superior Ct. 2023)
Public Counsel's Community Development Project supported local organizing groups, including the Pasadena Tenants Union, with crafting the strongest rent control measure possible starting back in 2017. Unfortunately, the groups fell short in their signature drive and didn't qualify for the 2018 ballot. However, Pasadena Tenants Union came back stronger and gathered enough signatures to qualify for the 2022 ballot, eventually winning the campaign with almost 54% of the vote. In December, CAA filed a challenge to the Measure, aiming to prevent its implementation and invalidate it altogether by arguing the Measure was a **revision** to the charter, not an amendment, and thus was invalid in its entirety. Thanks to the quick work of pro bono counsel Strumwasser Woocher, the proponents of the Measure were able to intervene in short order and advance a trial date to March in order to resolve the matter before the new Rent Board is installed next month. Judge Strobel struck down almost of CAA's arguments, rejecting the revision argument and upholding the structure of the Rent Board which ensures tenants have a significant say in the implementation and administration of the new measure. In addition Judge Strobel upheld the measure's relocation assistance policy as not preempted by Costa Hawkins.

HOMELESSNESS

Ninth Circuit declines petition for rehearing en banc in *Grants Pass.*
Johnson v. City of Grant Pass, 72 F.4th 868 (2022), opn. mod. 72F.4th 868, 874 (2023), *cert. granted Jan. 12, 2024,* 2024 WL 133820 (S.Ct. 2024)
In September 2022, the Ninth Circuit Court of Appeals affirmed the unconstitutionality of city ordinances that criminalize people experiencing homelessness for sleeping on public sidewalks, streets, or alleyways at any time of day. The Ninth Circuit affirmed the district court's ruling on the issue of constitutionality, however it also remanded the case to district with instructions to narrow the scope of the injunction "to the anti-camping ordinances and enjoin enforcement of those ordinances only against involuntarily homeless person for engaging in conduct necessary to protect themselves from the elements when there is no shelter space available." On July 5th, 2023, the Ninth Circuit declined to rehear the case. The case is currently pending review before the U.S. Supreme Court.

California Supreme Court rejects challenge to CARE Courts.
Disability Rights California v. Newsom, No: S278330 (Cal. App. 2023)
DRC, PILP and WCLP filed *Disability Rights California v. Newsom* as an original writ in the California Supreme Court, challenging the constitutionality of the statute creating CARE Courts. The statute singles out unhoused people diagnosed with schizophrenia, and subjects them to court orders imposing involuntary treatment. While Newsom's signature legislation was billed as a solution for homelessness, it does not appropriate any money to build or preserve affordable housing or for increased mental health services. Instead, it threatens to take away the liberty of unhoused people based on a judge's speculation that they are "likely" to become a danger to themselves or others. The petition argued that this violates the due process and equal protection clauses of the California Constitution. Unfortunately, the California Supreme Court summarily denied the petition. This denial does not preclude later challenges to CARE Courts as the program moves forward.

COVID-19 EMERGENCY EVICTION PROTECTIONS

District Court denies summary judgment in case challenging Alameda County's COVID-19 Eviction Protection Ordinance as facially invalid.
Williams v. Alameda County, 642 F.Supp.3d 1001 (2022)
Plaintiffs, representing individual landlords and landlord groups, brought actions against Alameda County and the City of Oakland, challenging local COVID-19 eviction protection ordinances. Cases were consolidated. Plaintiffs moved for summary judgment on the grounds that the ordinances were facially invalid as a per se taking under the U.S. Constitution and was an inverse-condemnation in violation of the state Constitution. The plaintiffs also asserted due process claims, contract claims, and claims that the ordinances violated various state regulatory schemes that regulate evictions, including the Ellis Act.

The appellate court denied summary judgment. The court held that the ordinances did not represent a facial per se taking nor a due process violation of the 14th Amendment as the ordinances are of a temporary duration, they did not absolve tenants from paying back rent, they allowed some exceptions for certain evictions, like Ellis Act evictions, and the ordinances did not require landlords to open their property to any individual, such as squatters. The court also denied summary judgment for the Contracts Clause claim, finding that the ordinances were neither a substantial impairment of private contracts nor were they unreasonable or unnecessary policies in response to the pandemic. Finally, the court denied summary judgment on preemption grounds, holding that the state has not fully occupied the field of COVID eviction protections with various state laws, including the Ellis Act, nor do the local ordinances conflict with general state eviction protections.

LAND USE

Court of Appeal grants writ of mandate to enjoin San Diego ordinance approved by ballot proposition exempting the Midway-Pacific Highway Community Plan Area from CEQA.
Save Our Access v. City of San Diego, 92 Cal.App.5th 819 (2023)
Save Our Access filed a writ of mandate challenging the City's approval of a 2020 ballot measure. The ballot measure proposed amendments to the San Diego Municipal Code and a City ordinance to exclude the Midway-Pacific Highway Community Plan Area from the 30-foot height limit for construction of buildings within the City's Coastal Zone without first conducting environmental review required by the California Environmental Quality Act (CEQA). The Superior Court of the County of San Diego granted the writ in favor of petitioners and issued a writ of mandate directing the City to set aside its approvals of the ordinance that submitted the ballot measure to the voters and enjoined the City "from taking any steps to further the Project until lawful approval is obtained from the City."

The court affirmed judgment for petitioners, holidng that the city failed to adequately consider the environmental impacts of removing the height limit and that the evidence suggested that such removal could have adverse impact. The court held that "[b]ecause the record supports a fair argument that there are potential unexamined environmental impacts related to the ballot measure …, the City must conduct further analysis to comply with CEQA."

Court of Appeal upholds constitutionality of municipal ordinance banning short-term rentals.
South Lake Tahoe Property Owners Group v. City of South Lake Tahoe, 92 Cal. App. 5th 735 (2023)
A local neighborhood association filed a challenge to voter approved ballot measure, Measure T, to ban short term rentals of homes in residential areas of the City of South Lake Tahoe. Measure T amended the current vacation home rental ordinance to prohibit issuance of new short term rental permits, and to phase out existing permits over a three-year period. Measure T also included an exception that allowed primary residence homeowners to rent out their homes for a 30-day period or less every year. The neighborhood association challenged Measure T on constitutional grounds, including interference with vested property rights and the creation of an unconstitutional residency requirement. Finally, the association argued that the ban

impermissibly conflicted with regional planning documents. The trial court granted summary judgment to the City on all counts.

The Court of Appeal affirmed in part and reversed in part the trial court's grant of summary judgment for the City. The court found the short-term rental permits were not automatically renewable, but instead a "revocable license issued annually," thus limiting the permit holder's vested interests to the one-year permit term. The court further found no triable issues of fact regarding members' claimed vested interest (i.e. inability to recoup investments) or the alleged unreasonableness of the City's three year phase-out period. However, the court found that the trial court improperly granted summary judgment regarding the residency requirement on dormant Commerce Clause grounds. The court held that "[b]ecause Measure T's permanent resident exception facially discriminates against interstate commerce, it is *per se* invalid unless the City can justify the discrimination by showing that the resident exception 'advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.'" The court differentiated its ruling from the Ninth Circuit's ruling in *Rosenblatt v. City of Santa Monica*, 94 F.3d 439 (2019), which upheld Santa Monica's short term rental ordinance, because that ordinance did not require the permanent resident living on the premises to be the property owner. Finally, the court found that Measure T does not conflict with the Tahoe Regional Planning Agency planning documents, as they explicitly allow local jurisdictions to "adopt more strict or narrow permissible uses than those authorized by TPRA."

Court of Appeal finds that trial courts' ruling on additional claims not reached by appeals court does not exceed scope of remand order.
Ruegg & Ellsworth v. City of Berkeley, 89 Cal. App. 5th 258 (2023)
Plaintiff-Petitioner developer challenged City's denial of a permit for an affordable housing mixed-used project under both SB 35 and the Housing Accountability Act (HAA). The Court of Appeal had previously reversed trial the court decision to deny writ under SB 35 and remanded with an order to issue the writ (*Ruegg I,* 63 Cal.App.5th 277 (2021)). On remand, the trial court granted the writ and additionally found that the City violated the HAA. Cthe City of Berkeley filed a second appeal, challenging the trial court's ruling on the HAA violations, arguing that the trial court exceeded the scope of the remand in *Ruegg I.*

The Court of Appeal denied the appeal, holding that the developer's original petition raised the HAA claim, along with the SB 35 claim, and the ruling on the HAA claim "would not change the result we ordered, [but] only inform the relief Ruegg would be entitled to under the writ we directed the trial court to issue." The Court of Appeal further held that although in *Ruegg I* it did not address the HAA issue, which had not yet been decided by the trial court, that the ruling in *Ruegg I* left the issue "open for determination by the trial court." Finally, the court held that the developer did not forfeit its right to further litigate the HAA claims by not requesting rehearing, nor was the HAA claim moot because there were additional remedies available to the developer that are not available under SB 35.

Court of Appeal affirms $3.5 million fee award in Housing Element case.
Kennedy Comm'n v. City of Huntington Beach, 91 Cal. App. 5th 436 (2023); *City of Huntington Beach v. California*, No. G061184, 2023 WL 3992125 (2023), unpub.
In this long-running litigation begun in 2015, the trial court issued a writ of mandate ordering Huntington Beach to fix its Housing Element. The Court of Appeal reversed, holding that certain affordable housing laws did not apply to charter cities. After the Legislature reacted by requiring all cities to comply with the laws, plaintiff Kennedy Commission continued to litigate, and the City amended its Housing Element to set aside land for low-income housing in various areas of Huntington Beach. The trial court awarded $3.5 million in attorneys' fees under Code of Civil Procedure § 1021.5 , and the Court of Appeal affirmed, agreeing with the trial court that the litigation acted as a catalyst in inducing the City to change its policies. The $3.5 million included a 1.4 multiplier; and hourly rates ranging up to $910 per hour for public interest counsel and $1,125 for pro bono private attorneys. *Id.* at 450. In related litigation, the City unsuccessfully challenged the constitutionality of the legislation specifying that charter cities must comply with all affordable housing laws. The trial court awarded attorneys' fees to intervenor Kennedy Commission, and the order was affirmed in an unpublished opinion.

FAIR HOUSING

Pacific Legal Foundation takes aim at Seattle's fair chance housing ordinance.
Yim v. City of Seattle, 63 F.4th 783 (2023)
Yim is yet another Pacific Legal Foundation challenge to a progressive tenant protection policy- this time the landlord plaintiffs sued over Seattle's 2017 fair chance housing ordinance, which prohibits landlords from inquiring about tenants' criminal records or taking adverse actions based on criminal records, with exceptions. The landlords brought First Amendment and substantive due process claims and the district court upheld the Constitutionality of the ordinance on cross motions for summary judgment. The Ninth Circuit reversed in part.

The Court found that landlords do not have a fundamental right to exclude, therefore there was no substantive due process violation because the ordinance passed rational basis scrutiny. But the Court held that the inquiry provision violated landlords' First Amendment rights. Obviously not the result we would like to see, but the Clinton appointee that authored the opinion included a lot of great language in the opening about the discriminatory impact of using criminal records to exclude people from housing, and discussing how landlords also use criminal records policies to intentionally discriminate against people of color. The opinion also provides a lot of very citable quotes on discrimination against people with criminal records. While the opinion's references to other ordinances is troubling, it leaves plenty of room for most ordinances to survive scrutiny and advocates should not be discouraged from continuing to push for more. Kudos to NHLP, Shriver, ACLU, and the other groups that submitted amicus briefs that the Court used to accomplish this.

SCOTUS to examine standing for "testers" who challenge discriminatory policies.
Acheson Hotels, LLC v. Laufer, 143 S.Ct. 1053 (2023)
SCOTUS granted cert in this fair housing case involving a "tester" that could potentially have far-reaching harmful impacts. Under the Americans with Disabilities Act, hotels are required to provide information about accessible rooms in enough detail to allow a person with a disability to make a reservation just as easily as someone who does not require an accessible room. The case involves whether a plaintiff with a mobility disability who sought to book a room as a tester has standing to challenge the hotel's failure to meet this standard on its own website and through third-party booking websites. There is a Circuit split over whether testers who do not intend to visit the hotel have suffered a sufficient injury to have Article III standing. The Circuits adopting the informational injury standard rely on *Havens Reality Corp v. Coleman*, which held that Fair Housing Act testers had standing because of the statutory provision that prohibits misrepresenting the availability of housing. Testers play an extremely important role in enforcing fair housing laws and depending on how SCOTUS approaches this case, it could impact a broad range of civil rights claims. Fair housing and disability rights organizations have filed amicus briefs in the case.

Big win for advocates challenging the City of Clovis's exclusionary zoning practices results in first published decision interpreting California's affirmatively furthering fair housing mandate.
Martinez v. City of Clovis, 90 Cal.App.5th 193 (2023), *review den. July 19, 2023*
Congratulations to PILP, CCLS and Petitioner Desiree Martinez in this big win for fair housing. The Court of Appeal upheld the trial court's finding that the City's failure to rezone sites to accommodate its fair share of low-income housing violated Housing Element Law and multiple fair housing laws. The Court found that Clovis's failure to zone for multi-family housing violated the City's duty to Affirmatively Further Fair Housing. In this lengthy decision the Court further ruled that a violation of Government Code section 65008's prohibition on discrimination against affordable housing could be established through the disparate impact method of proof. The City did not like this great result and sought review and depublication from the California Supreme Court – the Court denied both requests.

As always, please let us know if you or your colleagues worked on one of these cases so that we can credit you in future versions.
Thank you!

Western Center on Law & Poverty

3701 Wilshire Blvd., Suite 208

Los Angeles, CA 90010