WESTERN CENTER ON LAW & POVERTY

Housing Update No. 103 2023 Supplemental Case Summaries

LANDLORD-TENANT

Tenant prevails against Dennis Block's shady efforts to evict based on increased security deposit
Runnymede Holdings, LLC, v. Foster, 96 Cal. App. 5th Supp. 1 (2023)
Tenant lost unlawful detainer based on failure to pay increased security deposit. Landlord argued COVID protections did not apply in cases where payment of rent was not at issue and that tenant's failure to raise affirmative defenses in pro se general denial barred court from considering them in ruling on landlord's motion for summary judgment. The Court of Appeal reversed, finding multiple triable issues of fact remained, including that landlord's counsel posted a blog on how to evict tenants by increasing the security deposit and was evicting the tenant in bad faith to circumvent COVID eviction moratorium protections. The Court of Appeal also found that tenant's failure to raise affirmative defenses in the answer did not bar asserting those defenses on summary judgment – the plaintiff had adequate notice and opportunity to respond in the summary judgment papers. Congrats to Ben Barnett and the team at Inner City Law Center on this win and getting this decision published! Also condolences to Dennis Block for losing, again.

A landlord is liable under the Ellis Act to all displaced tenants if any unit within the building is re-rented for residential purposes within two years
Maarten v. Cohanzad, 95 Cal. App. 5th 596 (2023)
A tenant initiated a class action suit alleging Ellis Act violations and other causes of action against their former landlord. The trial court sustained a demurrer on the class allegations and tenant appealed. Landlord evicted the tenant declaring that the apartment building would be removed from the rental market. The landlord subsequently listed other units within the same apartment building for rent on Airbnb. The Court of Appeal held that relisting *any single* unit in the building within the statutory timeframe after evicting the tenants violated the Ellis Act and provided a cause of action for *all* the evicted tenants.

The Superior Court did not abuse its discretion by disallowing evidence of retaliatory intent in unlawful detainer action under the Ellis Act because it was unrelated to landlord's bona fide intent to withdraw from the market
640 Octavia, LLC v. Pieper, 93 Cal. App. 5th 1181 (2023)
Residential landlord filed unlawful detainer action, seeking to withdraw property from rental market under Ellis Act and city residential rent stabilization ordinance. The trial court granted summary judgment in favor of landlord and tenants appealed after evidence of the landlord's retaliatory intent was precluded from the record. The Court of Appeal held that the trial court did not abuse its discretion because evidence of prior conflict did not contradict landlord's bona fide intent to withdraw from the rental market. The Court reasoned that an eviction under the Ellis Act is permitted even if the landlord has a retaliatory motive so long as the landlord *also* has the bona fide intent to go out of business.

Lease cap did not limit post-judgment attorney fees
Nash v. Aprea, 96 Cal. App. 5th 21 (2023), *reh'g denied* (Oct. 19, 2023), *review denied* (Jan. 17, 2024)
Tenant sued the landlord of mold-infested home for breach of contract based on a residential lease for $8,000/month which included a $1,000 attorney fee cap. Landlord failed to respond to the suit and tenant obtained a default judgment including a $1,000 fee award. Landlord then tried to set aside the default judgment,

which was denied, and then refused to pay the judgment, forcing tenant to take various steps to enforce it. Tenant was awarded post-judgment attorneys' fees of $27,000 on a Code of Civil Procedure section 685.040 motion. The Court of Appeal held that "the terms of the lease, including the $1,000 limitation on fees, were merged into and extinguished by the judgment." Since the default judgment included a fee award under the contract, section 685.040 allowed the court to award reasonable fees incurred in enforcing the judgment. The tenant was also awarded costs on appeal.

A tenancy arising from a hiring, even a tenancy at will, is governed by Civil Code section 1934 and terminates by notice to the other of death. Whether section 1946.2 applies to tenancy at will remains unresolved.
Borden v. Stiles, 92 Cal. App. 5th 337 (2023)
Deceased landlord permitted tenant to live at the property rent-free in exchange for work performed by the tenant. After the landlord passed away, the administrator of the estate served the tenant with a 30-day notice to quit. The parties agreed that the tenant had a tenancy at will and tenant argued the landlord failed to state a just cause for eviction under the Tenant Protection Act, Civil Code section 1946.2. The Court of Appeal reasoned that despite the agreement of the parties, triable issues of fact remained as to whether the tenancy was obtained through hiring. If so, the tenancy would terminate at notice of death by operation of law. Accordingly, the case was remanded and the issue of whether section 1946.2 applies to a tenancy at will was not addressed.

Landlords' second attempt to avoid a $2.7M wrongful eviction judgment fails
Duncan v. Kihagi, 96 Cal. App. 5th 703 (2023)
Tenants sued landlord for harassment, and landlords filed an unlawful detainer. Tenants vacated and sued the landlord again for initiating an unlawful owner move-in eviction. Ultimately, the tenants won a $2.7 million judgment. In a second attempt to overturn this judgment, landlord argued that tenants' claims lacked subject matter jurisdiction under a "primary right theory" because the tenants surrendered possession. The Court of Appeal rejected this argument and affirmed the trial court's order denying landlord's motion, reasoning that unlawful detainer actions are limited to the narrow issue of possession of the property and therefore the primary right theory is inapplicable.

California Supreme Court denies landlord's petition for review of Anti-SLAPP ruling, leaving tenant to pursue malicious prosecution claims
Divine Food & Catering, LLC v. W. Diocese of the Armenian Church of N. America, 92 Cal. App. 5th 1048 (2023), *as modified on denial of reh'g* (July 18, 2023), *review denied* (Oct. 18, 2023)
Commercial landlord lost an unlawful detainer when tenant proved the existence of a written lease that landlord had tried to hide. Tenant then filed malicious prosecution action and landlord responded with an anti-SLAPP motion, asserting that the filing of the unlawful detainer was protected activity and the tenants' claims were meritless. The Court of Appeal reversed the trial court's decision granting the anti-SLAPP motion, finding that the tenant's claims could proceed. The California Supreme Court denied landlord's petition for review.

Costa Hawkins does not shield landlords from rent control where units newly certified for occupancy were previously rented as housing
NCR Properties, LLC v. City of Berkeley, 89 Cal. App. 5th 39 (2023), *reh'g denied* (Mar. 28, 2023), *review denied* (June 21, 2023)
Costa Hawkins exempts units that have certificate of occupancy issued after 1995 from local rent control. Landlord sued the City of Berkeley, challenging a rent board decision finding that newly renovated units carved out from space rented as housing before 1995 were not exempt from rent control despite only recently being certified for occupancy. The Court of Appeal rejected the landlord's challenge, finding that the City's resolution was consistent with Costa Hawkins.

City Council resolution granting land to nonprofit was not enforceable via writ of mandate
Childhelp, Inc. v. City of Los Angeles, 91 Cal. App. 5th 224 (2023), *as modified* (May 5, 2023)
Childhelp leased land from the City of LA with an agreement that they would use the property to provide services to victims of child abuse and that the City would consider conveying the land to them for that purpose. The City passed a resolution directing various steps be taken to convey the land to Childhelp, but ultimately did not transfer the property and filed an unlawful detainer. Childhelp sued, alleging that the City should be estopped from refusing to transfer the property. The Court of Appeal

affirmed the trial court's refusal to issue a writ of mandate, holding that, because a resolution is nonbinding and significant discretion remains in the governing body, the City could not be compelled to transfer the property. Nor was promissory estoppel available where no contract had been executed.

Pacific Legal Foundation drags out its ongoing challenge to Alameda County's now expired eviction moratorium
Williams v. Alameda County, 657 F. Supp. 3d 1250 (2023);
In landlords' ongoing challenge to Alameda's now expired COVID-19 eviction moratorium, the County's and intervenor defendant ACCE's motions to dismiss and landlords' motion to dismiss intervenors are now pending before the district court. While the eviction ordinance has since expired, landlords now seek damages against the County and argue ACCE no longer has standing to defend the ordinance.

Pacific Legal Foundation and landlords filed this Section 1983 action alleging that Alameda County violated their due process and equal protection rights, effected a taking, and violated the contracts clause by prohibiting evictions during the height of the pandemic. ACCE intervened to defend the ordinance. The landlords lost their Constitutional arguments, their efforts to file an interlocutory appeal were rebuffed, and they are now attempting to salvage the action by claiming they are entitled to damages. Kudos to the ACCE legal team and pro bono counsel at Susman Godfrey for staying in this fight.

Landlords mostly lose in a host of other constitutional challenges to COVID eviction moratoria

- *Iten v. Los Angeles* 81 F.4th 979 (9th Cir. 2023) (finding that commercial landlord had standing to pursue Contracts Clause claims based on county eviction moratorium);
- *El Papel, LLC v. City of Seattle*, No. 22-35656, 2023 WL 7040314 (9th Cir. Oct. 26, 2023), *cert. denied sub nom. El Papel, LLC v. Seattle*, No. 23-807, 2024 WL 674882 (U.S. Feb. 20, 2024) (finding that *Yee v. City of Escondido* controls and forecloses landlords' claim that Seattle's eviction restrictions constitute per se physical takings);
- *California Rental Housing Ass'n v. Newsom*, No. 22-16675, 2024 WL 277459 (9th Cir. Jan. 25, 2024), (rejecting landlords' challenge to expired COVID eviction moratorium, finding that the issue was moot);
- *Valley Investments-Redwood LLC v. City of Alameda*, No. 22-CV-06509-DMR, 2023 WL 8039803 (N.D. Cal. Nov. 20, 2023) (dismissing with prejudice landlord's claims based on the Contracts Clause, the prohibition against bills of attainder and ex post facto laws, the Equal Protection Clause, and due process)
- *Bols v. Newsom*, No. 22-56006, 2024 WL 208141 (9th Cir. Jan. 19, 2024) (affirming summary judgment against landlord's challenge to San Diego's eviction moratorium).

CONSUMER LAW

Tenants' Fair Debt Collection Practices Act claims against landlord's attorney for unfair costs memorandum in unlawful detainer can proceed in federal court, Ninth Circuit rules
Brown v. Duringer Law Group PLC, 86 F.4th 1251 (9th Cir. 2023)
Landlord won an unlawful detainer against tenants and then levied tenants' bank account nine years after judgment to collect. The trial court denied tenants' claim of exemption despite their limited income and excess medical expenses. The judgment levied included more than $5,000 in post-judgment fees and costs. After collecting the first judgment, landlord's attorneys went after the tenants for even more, filing a second memorandum of costs for expenses from litigating the first memorandum of costs. No judgment was entered on the second memorandum, and tenants filed a Fair Debt Collection Practices Act case in federal court, alleging that they were never served. The district court ruled against the tenants, finding their suit was essentially an improper appeal of a state-court judgment and barred by the *Rooker-Feldman* doctrine. The Ninth Circuit reversed, finding that the tenants' claims were properly interpreted only to attack the second memorandum of costs on which no judgment

was entered in state court, meaning that *Rooker Feldman* did not apply.

Diverting staff time constitutes injury for standing purposes under the Unfair Competition Law
California Med. Assn. v. Aetna Health of California Inc., 14 Cal. 5th 1075 (2023)
One of the tricky things about using the UCL is that you need to show injury-in-fact for standing, which can be difficult when representing a community group or tenant organization. Even if the individual tenants have suffered financial injury, it can be demanding to show that the group also has standing to assert its own claim based on its own injuries. Here, the California Supreme Court found that diversion of staff time could qualify as "injury in fact" and loss of "money or property" under the UCL standing provision, Bus. And Prof. Code § 17204. While the Court specified that an organization may not manufacture injury by counting time spent in preparation for the litigation, this decision provides a framework for an organizational plaintiff to demonstrate a loss of "money or property" for standing under UCL.

HOMELESSNESS

Pro se litigant experiencing homelessness wins TRO against Caltrans
Tassey v. California Dep't of Transp., No. 23-CV-05041-AMO, 2023 WL 6466205 (N.D. Cal. Oct. 4, 2023), *order dissolved sub nom. Tassey v. California Dep't of Transp.*, No. 23-CV-05041-AMO, 2023 WL 7003258 (N.D. Cal. Oct. 24, 2023)
Pro se litigant requested a temporary restraining order prohibiting Caltrans from removing him from the embankment where he had been living for the previous eight months. The district court granted his request, finding that the plaintiff "has no other shelter and has not been offered any other shelter." Noting plaintiff's physical disabilities, the district court found it was proper to give him more time to move his belongings and for Caltrans to provide storage for those belongings. The request for a preliminary injunction to extend this relief was denied, however, and the TRO was dissolved.

2024 CASES AND CASES TO WATCH

Measure ULA, a ballot initiative that created a permanent funding source for housing and homelessness programs, upheld against landlord challenges
Howard Jarvis Taxpayers Association v. City of Los Angeles, 22STCD39662 (L.A. Sup. Ct. 2023)
Newcastle Courtyards, LLC v City of Los Angeles, 2:23-CV -00104-JAK-AS (C.D. Cal. 2023)
Measure ULA, the largest affordable housing ballot measure in LA history, created **a real estate transfer tax on property sales over $5 million**, establishing a **permanent funding source** for affordable housing development and preservation, tenant protections, and income support for seniors at risk of homelessness. The measure was conceived of and drafted by a coalition of housing advocates. In December 2022, the Howard Jarvis Taxpayers Association and the Apartment Association of Greater Los Angeles challenged the measure. Newcastle Courtyards LLC and the Mani Benabou Family Trust then brought a second state and federal challenge in January 2023. The state court actions were consolidated, and Public Counsel and pro bono partners at Irell & Manella represented the Southern California Association of Nonprofit Housing, Koreatown Immigrant Workers Alliance, and SEIU 2015 in joining the City to defend the constitutionality of the measure in all of the actions. In state court, the City's and coalitions' motions for judgment on the pleadings were granted. And the district court dismissed the federal case, finding it lacked jurisdiction under the Tax Injunction Act. Of course the landlords are appealing in both cases, so stay tuned for updates from the Ninth Circuit and the state Court of Appeal. Kudos to lead counsel Greg Bonett and the team at Public Counsel for defending the measure on multiple fronts simultaneously, and to the coalition of

housing advocates who have worked so hard for these victories!

LA's new minimum rent threshold and relocation requirements survive in the trial court, now pending in the Court of Appeal
AAGLA, Inc. v. City of LA, et al., 23STCP00720 (L.A. Superior Ct. 2024)
In March 2023, AAGLA filed a writ of mandate seeking to invalidate two City of LA ordinances establishing a minimum threshold for nonpayment evictions and relocation assistance for non-RSO tenancies where a large rent increase would result in economic displacement of tenants. In January 2024, the trial court denied AAGLA's petition, finding that the relocation requirement did not conflict with Costa Hawkins. The Court further found that the minimum threshold protection was a valid exercise of the City's police powers to regulate the substantive grounds for eviction. Of course AAGLA has filed an appeal, so stay tuned for updates on this one. Congrats to the legal team of Bet Tzedek, LAFLA, Public Counsel, and Susman Godfrey who represented Community Power Collective and Inner City Struggle as intervenors in AAGLA's petition against the City of Los Angeles!

Court of Appeal finds federal HOME program tenants have standing to pursue UCL claims against landlord that served three-day non-payment notices, even though they were able to stay in their homes through the 30-day required period
Campbell v. FPI Mgmt., Inc., 98 Cal. App. 5th 1151 (2024)
Tenants living in subsidized housing brought class action alleging landlord violated the Unfair Competition Law by evicting them without providing 30-day notice. Some of the tenants lived in HOME housing, and others lived in unsubsidized units with Section 8 housing choice vouchers. The trial court granted landlord's summary judgment motion as to both classes, finding that the tenants did not suffer injury in fact because they were not physically removed from their homes following the three days provided by the notice. The Court of Appeal reversed for the HOME program tenants, holding that their "loss of property rights and exposure to legal peril amount to an injury in fact sufficient to confer standing under the UCL," even if they remained in their homes after the three days elapsed. While the Court of Appeal focused on the specific limitation of rights for holdover tenants, this portion of the decision could be helpful as courts rarely acknowledge that being threatened with eviction is a harm unto itself.

The Court of Appeal also rejected landlord's arguments that the HOME program protections "silently" preempt state law requiring only 3-day notice in nonpayment cases, finding that tenancies may be subject to a longer notice period. Finally, the Court of Appeal found that the tenants could be entitled to restitution based on unspecified monetary harms, even if they could not be restored to possession by landlord. The result was not so good for the Section 8 voucher tenants: the Court of Appeal held they were not entitled to 30-day notice and therefore summary judgment was proper.

SCOTUS denies cert on New York City rent control cases, avoiding catastrophe for now
74 Pinehurst LLC v. New York, No. 22-1130, 2024 WL 674658 (U.S. Feb. 20, 2024)
The Supreme Court denied cert on a pair of cases challenging New York City's rent control laws. In 2019, the state tightened loopholes in the rent stabilization system limiting landlords to being able to claim only one unit for their family's use and also permitting delays of evictions in some cases. Landlord alleged that these changes were an unconstitutional taking. SCOTUS denied cert without comment, but in a separate statement, Justice Thomas indicated he'd like to address this issue in a future case where the briefing is better.

Mobilehome Park owner's claimed fear of prosecution does not justify discriminatory anti-immigration policy
Reyes v. Waples Mobile Home Park Limited Partnership, 91 F.4th 270 (4th Cir. 2024)
The district court is not taking direction well in this long running anti-discrimination case, where mobilehome residents sued the park for a policy requiring tenants to provide proof of legal immigration status. After the district court granted the park owner's motion for summary judgment, the residents appealed and the Fourth Circuit vacated and remanded, ordering among other things that park residents could proceed under a disparate impact theory. On remand, the district court granted summary judgment again, finding the park owner's claimed fear of being prosecuted for harboring undocumented immigrants justified the policy. The residents appealed again, and earlier this year the Fourth Circuit reversed and remanded again. The Court of Appeal found that the owner's claimed fears were implausible, and notes that if they were actually afraid of being prosecuted, they would evict noncompliant

tenants instead of just charging them fees. The Court of Appeal therefore held that the park owner failed to establish a “business necessity” justifying the discriminatory policy. Kudos to the litigation team here!

Big thanks to our law clerk Derek Matthews for his assistance with these case summaries.

If we missed any cases, or failed to give a shout out in a case you or your colleagues worked on, please reach out and let us know!

Western Center on Law & Poverty

3701 Wilshire Blvd., Suite 208

Los Angeles, CA 90010