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PRANA NINE PROPERTIES, LLC, Plaintiff and Appellant, v. YUE CHANG YE, Defendant and Respondent.

A116673

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

2007 Cal. App. Unpub. LEXIS 9322

November 20, 2007, Filed

PRIOR HISTORY: [*1]
San Francisco County Super. Ct. No. 450857.

CORE TERMS: rent, Costa-Hawkins Act, ordinance, declaratory relief action, apartment, arbitration, actual controversy, tenant, alternative remedy, rent increase, reside, occupant, landlord, declaratory relief, residential, rental, speedy', respondent's demurrer, cross-examination, declaration, sublessee, occupancy, demurrer, assignee, tenancy, lawful, notice, arbitration provisions, process rights, Board Rules

JUDGES: Ruvolo, P.J.; Sepulveda, J., Rivera, J. concurred.

OPINION BY: Ruvolo

OPINION

I.

INTRODUCTION

Appellant Prana Nine Properties, LLC (appellant) appeals from the dismissal of its declaratory relief action seeking a judicial determination that appellant is entitled to raise the residential rent of respondent Yue Chang Ye (respondent) under the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq. (the Costa-Hawkins Act)). The trial court sustained respondent's demurrer to the first amended complaint (FAC) on several grounds, including that appellant had an adequate remedy at law by which to seek the determination, and therefore, a declaratory relief action was unnecessary and inappropriate. We affirm the dismissal on that ground.

II.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellant is a California limited liability company that owns residential property in San Francisco, including a 19-unit apartment building located at 752 Stockton Street, which it purchased in January 2005. Respondent resides in an apartment located in the Stockton Street building (the apartment).

On April 11, 2006, appellant filed its FAC requesting declaratory judgment of its legal rights **[*2]** and obligations with respect to the amount of rent it may properly charge respondent. Appellant alleges that the original tenants of the apartment, respondent's father and mother, first occupied the apartment in 1985, and later died in 1993 and 2001, respectively. Appellant further alleges that respondent moved into the apartment in or about 2001, and has received the benefit of rent control measured by the rent originally paid by his parents. Because the original occupants no longer reside at the apartment, appellant asserts that it is entitled to raise the rent to prevailing market rent pursuant to the Costa-Hawkins Act (Civ. Code, § 1954.53, subd. (d)(2)). [1]

1 The Costa-Hawkins Act provides in part: "If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996." (Civ. Code, § 1954.53, subd. (d)(2).)

On May 11, 2006, respondent filed a demurrer which challenged appellant's request for declaratory relief for failing **[*3]** to plead an actual controversy, and because of the availability of an adequate alternative remedy. The demurrer further asserted that respondent has lived in the apartment since approximately 1993. If true, this fact would negate appellant's claim by rendering Civil Code section 1954.53, subdivision (d)(2) of the Costa-Hawkins Act inapplicable.

On June 16, 2006, the trial court sustained respondent's demurrer without leave to amend. Appellant filed a timely notice of appeal from the resulting judgment.

III.

LEGAL DISCUSSION

A. Standard of Review

" 'The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.'. . ." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79, italics omitted; 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 817, p. 273.) While ordinarily review of rulings on demurrers is determined de novo (*Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1006), "in *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433 [], our Supreme Court made clear that whether declaratory relief is 'necessary or proper' is subject to review under the abuse of discretion standard." (*DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 545, fn. 3.)

B. [*4] Presence of an "Actual Controversy" Between the Parties

Respondent first contends that appellant has failed to allege facts sufficient to establish an actual controversy. We disagree.

Under Code of Civil Procedure section 1060, "Any person interested under a written instrument, . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. . . ."

" 'The "actual controversy" referred to in [Code of Civil Procedure section 1060] is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon

a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. [Citations.]' [Citation.]" (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1722.)

The **[*5]** case of *Hess v. Country Club Park* (1931) 213 Cal. 613 is illustrative. There, an owner of a lot in a tract of land claimed that certain restrictive covenants were no longer enforceable due to a change in the character of the neighborhood. (*Id.* at p. 616.) The owners of the other lots disagreed, maintaining that the violation of the covenants would constitute grounds for injunctive relief and the forfeiture of the lot owner's title. (*Ibid.*) The court confirmed that an "actual controversy" exists in such a case. (*Ibid.*) If declaratory relief is refused, the owner "is put in the hazardous position of being obliged to violate the terms of the restrictions before he can know whether or not he must suffer the penalties mentioned. It is inconceivable that he must run the risk of forfeiting any further investment, or even his title to the land, in order to obtain an adjudication of his rights. It seems clear that the declaratory relief statute was intended to relieve a party from exactly such a dilemma." (*Ibid*.)

Here, appellant seeks a determination of whether respondent is subject to the Costa-Hawkins Act in order to ascertain if a rent increase would be lawful. Were appellant to impose a **[*6]** rate increase without this determination, appellant would risk exposing itself to the civil and criminal liability provisions of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (the Rent Ordinance). [2] (S.F. Admin. Code, §§ 37.10A, 37.11A.) The Rent Ordinance is a "vacancy decontrol" law that permits landlords to raise the rent on a unit to market rate only upon new tenancies and thereafter controls rent increases for the duration of the tenant's occupancy. (*Cobb v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351 (*Cobb*).) On the other hand, because the Costa-Hawkins Act supersedes local rent ordinances, if applicable to respondent's tenancy, it would be permissible for appellant to set rent for respondent's unit at market rate notwithstanding the Rent Ordinance. (Civ. Code, § 1954.53, subd. (a).)

2 All subsequent undesignated section references are to the San Francisco Administrative Code.

Appellant's FAC alleges sufficient facts regarding respondent's and his parents' occupancy of the apartment to establish an actual, current controversy concerning whether respondent is subject to the Costa-Hawkins Act. According **[*7]** to the FAC, respondent maintains that appellant has no right to raise the rent beyond the increases permitted by the Rent Ordinance. The value of the property is being significantly affected by respondent's position, and appellant should be able to determine the validity of its claim without exposing itself to civil or criminal penalties. (See, e.g., *DeLaura v. Beckett*, *supra*, 137 Cal.App.4th at p. 546 ["If Beckett does not claim to be a protected tenant, he can easily say so and avoid the entire controversy. However, if as the complaint alleges he does make such a claim, DeLaura should be able to determine its validity without assuming the risks either of an unlawful eviction or selling the property for less than its fair value."].)

Therefore, there was and is an actual controversy between the parties to justify invoking the court's equitable power to make a judicial declaration of their respective rights with regard to the Rent Ordinance and the Costa-Hawkins Act.

C. Trial Court Did Not Abuse Its Discretion in Sustaining Respondent's Demurrer

Even where there is an actual controversy present between the parties, declaratory relief has been found to be unnecessary or improper where **[*8]** there exists the availability of an adequate alternative relief. (*California Ins. Guaranty Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1624 ["The availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief."].) But, before a court may properly exercise its discretion to refuse relief based on the availability of alternative remedies, " 'it must clearly appear that the asserted alternative remedies are available to the plaintiff and that they are speedy and adequate or as well suited to plaintiff's needs as declaratory relief. [Citations.]' " (*Siciliano v. Fireman's Fund Ins. Co*. (1976) 62 Cal.App.3d 745, 755 [quoting

Maguire v. Hibernia Sav. & Loan Soc. (1944) 23 Cal.2d 719, 732].) " 'Any doubt should be resolved in favor of granting declaratory relief. [Citation.]' " (*Siciliano, supra*, Cal.App.3d at p. 755.)

First, we comment briefly on appellant's argument that a declaratory relief action may be dismissed only if the alternative remedy is found to be *more effective* than would be a declaratory relief action. In support of this position, appellant relies on the following language in *Filarsky v. Superior Court*, *supra*, 28 Cal.4th 419: **[*9]** "Even if the trial court possesses subject matter jurisdiction in a declaratory relief action filed pursuant to Code of Civil Procedure section 1060, however, the court properly may refuse to grant relief where an appropriate procedure has been provided by special statute and the court believes that more effective relief can and should be obtained through that procedure. (*Holden v. Arnebergh* (1968) 265 Cal.App.2d 87, 91-92 . . .; see 5 Witkin, Cal. Procedure [4th ed. 1997] Pleading, §§ 822, 824, pp. 278, 280.)" (*Filarsky, supra*, 28 Cal.4th at p. 433.)

We do not read the court's comment in *Filarsky* as expansively as does appellant. In context, the Supreme Court was simply restating the timeworn test that the alternative remedy must be speedy and must meet the needs of the parties for it to be "adequate." For example, the Supreme Court cites *Holden v. Arnebergh*, *supra*, 265 Cal.App.2d 87, which states as follows: "Having sought declaratory relief, plaintiffs are now confronted with the recognized principle that the granting of such relief rests in the sound discretion of the court. (*People v. Ray* [1960] 181 Cal.App.2d 64, 67 . . . .) *Ray* holds [citation] that the court does not abuse its **[*10]** discretion in refusing to entertain that type of action where otherwise plaintiff has a speedy and adequate remedy. . . . [C]ases have described the procedures to which plaintiffs have not resorted as 'speedy' and 'expeditious' means of redress; under the circumstances, we do not believe that plaintiffs have made any showing that the present proceeding should be considered an exception to the general rule above stated." (*Holden v. Arnebergh, supra*, 265 Cal.App.2d at pp. 91-92.)

Therefore, we reject appellant's preliminary argument that a trial court abuses its discretion in dismissing a declaratory relief action unless the alternative remedy is more effective than the equitable remedy of declaratory relief.

In response to appellant's contention, respondent points to the Rent Ordinance arbitration provisions, claiming this procedure provides an adequate administrative remedy for determining whether appellant may lawfully increase the rent pursuant to the Costa-Hawkins Act. Appellant claims that this remedy is inadequate for three reasons: (1) the Rent Ordinance arbitration provisions do not apply to Costa-Hawkins Act determinations; (2) requiring appellant to seek permission from the **[*11]** City and County of San Francisco Residential Rent Stabilization and Arbitration Board (the Rent Board) to increase respondent's rent violates the Costa-Hawkins Act; and (3) requiring appellant to adjudicate its claim through arbitration would violate its due process rights due to the relaxed evidentiary procedures employed by the Rent Board. We find appellant's arguments to be unpersuasive for the following reasons.

1. The Rent Ordinance Arbitration Provisions Apply to Costa-Hawkins Act Determinations

Section 37.8 of the Rent Ordinance provides that "[l]andlords who seek to impose rent increases which exceed the limitations set forth in Section 37.3(a) above must request an arbitration hearing as set forth in this Section. The burden of proof is on the landlord." The Rent Ordinance delegates authority to the Rent Board to arbitrate rental increase adjustments. (§ 37.8, subd. (a).)

Appellant's first contention is that the Rent Ordinance's arbitration scheme is not equipped to handle Costa-Hawkins Act determinations. It argues that arbitration is only available to determine rent increases that occur within the normal course of a tenancy that are greater than the statutorily authorized increase, **[*12]** and are primarily due to excessive or unusual operating costs. This argument is without merit. Section 37.8 expressly states that arbitration is not limited to such determinations. Case authority confirms that the Rent Board has made such determinations, and this appellate district has reviewed that body's finding. (*Cobb, supra*, 98 Cal.App.4th 345.)

Moreover, the Rent Ordinance was written specifically to ensure that any decision of the Rent Board is in compliance with the Costa-Hawkins Act. Section 37.3 of the Rent Ordinance, entitled the Costa-Hawkins Rental Housing Act,

specifically incorporates Civil Code section 1954.53, subdivision (d)(2) of the Costa-Hawkins Act. (§ 37.3, subd. (d)(1)(B)(ii); see Rent Board Rules and Regulations, § 6.14, subd. (f) ["This Section 6.14 is intended to comply with [the Costa-Hawkins Act] and shall not be construed to enlarge or diminish rights thereunder"].) [3]

3 We also find appellant's reliance on *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, misplaced. *Apartment Association* dealt with an ordinance that directly conflicted with Costa-Hawkins by conferring greater protections upon the tenant by freezing **[*13]** the tenant's payment beyond the 90-day time period set forth in the state law. (*Ibid*.) Here, there is no such conflict between the Rent Ordinance and the applicable provisions of the Costa-Hawkins Act beyond appellant's hyperbolic attack on the Rent Board as having a bias towards tenants' rights.

2. A Determination by the Rent Board Does Not Violate the Costa-Hawkins Act

As previously noted, the Costa-Hawkins Act provides that a landlord may increase the rent by any amount to the lawful sublessee or assignee of the original occupant when the original occupant no longer resides in the unit permanently and the sublessee or assignee did not reside in the unit prior to January 1, 1996. (Civ. Code, § 1954.53, subd. (d)(2).) Relying on an intimation of tenant bias expressed in a decades old opinion, [4] appellant argues that the Rent Board's arbitration remedy is inimical to the rights bestowed upon landlords by the Costa-Hawkins Act; and violates state law.

4 In *Campbell v. Residential Rent Stabilization & Arbitration Bd.* (1983) 142 Cal.App.3d 123, 129-130 and footnote 3, the court criticized the procedures of the Rent Board and suggested that the agency's decision " 'was based in part on passion **[*14]** or prejudice.' " (*Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1092, & fn. 10.)

We are not persuaded that this single anecdotal comment about the Rent Board's pro-tenant bent in that case at that time, constitutes evidence that appellant cannot get a fair hearing before that body as to its entitlement to a rent increase under the Costa-Hawkins Act. We note, too, that any decision of the Rent Board is subject to judicial review pursuant to the board's Rent Ordinance section 37.8, subdivision (f)(9). (See also Code Civ. Proc., § 1085 et seq.)

3. A Determination by the Rent Board Would Not Violate Appellant's Due Process Rights

Appellant lastly asserts that the Rent Board's arbitration procedure does not afford it the same procedural safeguards as would a suit for declaratory relief, and therefore it violate appellant's due process rights. [5] Specifically, appellant claims that the information needed to prove its claim is within respondent's control, and that the Rent Board procedures, which lack subpoena power, formal discovery, and cross-examination under oath, would prevent appellant from satisfying its burden of proof.

5 Appellant does not specify whether its **[*15]** claim is based on the state or federal due process clause. (Cal. Const., art. I, § 7, subd. (a); U.S. Const., Amend. XIV.) Because both clauses have the same scope in this case, for convenience, "we will simply refer to the 'due process clause' in the singular." (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 285, fn. 16; *Sandrini Brothers v. Voss* (1992) 7 Cal.App.4th 1398, 1405, fn. 2 ["The state provision has been considered to be co-extensive with the federal . . . ."].)

" 'Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest.' [Citations.] 'However, there is no precise manner of hearing which must be afforded; rather the particular interests at issue must be considered in determining what kind of hearing is appropriate. A formal hearing, with full rights of confrontation and cross-examination is not necessarily required.' [Citation.]" (*Mohilef v.*

Janovici, supra, 51 Cal.App.4th at p. 286.)

"As the United States Supreme Court has explained: 'The ultimate [question] involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative **[*16]** action to assure fairness. We reiterate the wise admonishment of Mr. Justice Frankfurter that differences in the origin and function of administrative agencies 'preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience of courts.' . . . The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decisionmaking in all circumstances. The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.' . . . All that is necessary is that the procedures be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard' . . . to insure that they are given a meaningful opportunity to present their case. *In assessing what process is due . . ., substantial weight must be given to the good-faith judgments of the [agency] that [its] procedures . . . assure fair consideration of the . . . claims of individuals*.' [Citation.]" (*Mohilef v. Janovici*, *supra*, 51 Cal.App.4th at p. 289, italics in original.)

The Rent Board's Rules and Regulations **[*17]** provide that if a party fails to appear at a properly noticed hearing, the administrative law judge may continue the case, decide the case on the record in accordance with these rules, dismiss the case with prejudice, or proceed to a hearing on the merits. (Rules and Regulations, § 11.14, subd. (a).) If respondent appears at the hearing, but does not testify in his own behalf, he "may be called and examined as if under cross-examination." (*Id.* at § 11.17, subd. (b).) The rules also provide that "[o]ral evidence shall be taken only on oath or affirmation" at the hearing, and that each party may call and examine witnesses. (*Id.* at § 11.17, subds. (a), (b).) Furthermore, "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and relevant hearsay evidence is admissible for all purposes. (*Id.* at § 11.17, subd. (c).)

We are not persuaded that the Rent Ordinance arbitration scheme presents obstacles of due process proportion to appellant's ability to present its case for a rent increase. While the Rent Board cannot require respondent's attendance at the hearing, his absence would only **[*18]** validate appellant's claim and the administrative law judge is free to decide the case accordingly. If respondent does appear, appellant is entitled to cross-examine him under oath. Furthermore, appellant's assertion that it is incapable of collecting any evidence regarding respondent's occupancy of the apartment is suspect. Appellant could presumably interview other tenants from the building, the building manager, neighbors, or the previous owner to gather more information regarding respondent's residency. [6]

6 While ostensibly the Rent Board has discretion whether to hear this dispute (§ 37.8, subds. (e)(3), (f)(3)), there is nothing in the record suggesting that it would decline to do so. However, should the Rent Board refuse to hear this dispute, then plainly there would be an absence of an adequate alternative remedy, thereby making declaratory relief appropriate.

IV.

DISPOSITION

The judgment of the trial court is affirmed. Costs on appeal are awarded to respondent.

Ruvolo, P.J.

We concur:

Sepulveda, J.

Rivera, J.