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Court of Appeal, First District, Division 5, California.

Ellis Anthony BREAUX,
Plaintiff and Appellant,

v.

SAN FRANCISCO RESIDENTIAL
RENT STABILIZATION BOARD,
et al., Defendants and Respondents;

[John Gall](#), Real Party in
Interest and Respondent.

A147815

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Filed 10/31/2017

(San Francisco County Super. Ct. No. CPF-15-514118)

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Opinion

[NEEDHAM, J.](#)

*1 A tenant filed a petition for writ of mandate seeking
to set aside a rent board determination that his unit is not

protected by the city's rent ordinance. ([Code Civ. Proc.](#),
[§ 1094.5.](#)) Instead of opposing the petition, the landlord
conceded the rent control ordinance *did* apply. The trial court
granted the writ based on the concession by the landlord and
remanded the matter to the rent board for further proceedings.
Notwithstanding this victory, the tenant appeals. Because the
tenant is not an aggrieved party, we dismiss the appeal. ([Sabi](#)
[v. Sterling](#) (2010) 183 Cal.App.4th 916, 947-948 ([Sabi](#))).

I. BACKGROUND

The instant action involves a landlord-tenant dispute
under the San Francisco Rent Stabilization and Arbitration
Ordinance, San Francisco Administrative Code, chapter 37.
(Rent Ordinance). Among other things, the Rent Ordinance
establishes permissible rent increases for residential units
within the City and County of San Francisco. ([Baychester](#)
[Shopping Center, Inc. v. San Francisco Residential Rent](#)
[Stabilization & Arbitration Board](#) (2008) 165 Cal.App.4th
1000, 1005.) Disputes are adjudicated by respondent the San
Francisco Residential Rent Stabilization & Arbitration Board
(Rent Board).

Section 1.17 of the Rent Board's Rules and Regulations
exempts certain units from the provisions of the Rent
Ordinance, including:

“(e) newly constructed rental units for which a certificate
of occupancy was first issued after June 13, 1979.

....

(g) Live/work units in a building where all of the following
conditions have been met: (1) a lawful conversion to
commercial/dwelling use occupancy has occurred; (2) a
Certificate of Occupancy has been issued by the San
Francisco Department of Building Inspection after June 13,
1979; and (3) there has been no residential tenancy in the
building of any kind between June 13, 1979 and the date of
issuance of the Certificate of Occupancy.

(h) commercial space where there is incidental and
infrequent residential use.”

1049 Market Street is a six-story building in San Francisco's
Mid-Market District that was constructed in 1907. It contains
at least 60 rental units, some of which are occupied as
residences. Some of the units were converted to live/work
units in 1992. Appellant Ellis Anthony Breaux (tenant) moved

into one of those units on July 1, 2004, paying an initial rent of \$890 per month. Breaux's written rental agreement stated that the unit was to be used for commercial purposes only and was not subject to the Rent Ordinance. Respondent and real party in interest John Gall (landlord) purchased 1049 Market Street in 2012.

Between July 2004 and June 2013, tenant's rent was raised incrementally to \$1,095 per month. On February 5, 2014, tenant filed a petition with the Rent Board, seeking a determination that his rental unit was subject to the Rent Ordinance and the monthly rent of \$1,095 was unlawful under the Ordinance. A hearing was held before an administrative law judge (ALJ) for the Rent Board.

The ALJ issued a written decision on June 10, 2014, ruling that tenant's unit was a rental unit subject to the Rent Ordinance and was not exempt as a newly constructed unit, a live/work unit, or a commercial unit. With respect to the live/work unit exemption, the ALJ noted the landlord had not submitted a certificate of occupancy for the converted units in the building, as is required for the exemption to apply. Because the unit was not exempt from rent control, annual rent increases were permissible only on the tenant's "anniversary" date and were limited to an annual percentage set by the Board each year plus any "banked" amounts, i.e., amounts by which the rent could have been increased in previous years but was not. (S.F. Admin. Code, § 37.3(a) (1); S.F. Rent Board Rules and Regs., § 4.12(a).) The ALJ concluded the incremental rent increases made from the inception of tenant's lease through June 1, 2012, were lawful, but the most recent increase from \$970 to \$1,095 on June 1, 2013 (12.89 percent), was null and void because it exceeded the annual percentage rate plus the "banked" amount available as of that date. Accordingly, the correct base rent for the unit remained \$970 and landlord owed tenant \$1,625 for rent overpayments made between June 2013 and through June 2014.

*2 Landlord filed an appeal with the Board, submitting additional evidence of a certificate of occupancy to show the unit was exempt from the Rent Ordinance as a live/work unit. The Board granted the appeal and remanded the case to the ALJ for a hearing to consider the new evidence.

A hearing was held on October 7, 2014. This time the ALJ ruled in favor of landlord, concluding the evidence showed the unit was a live/work unit exempted from the Rent Ordinance because it had been converted from commercial

space to live/work dwelling units in 1992, a certificate of occupancy had been issued after 1979, and there was no evidence of residential tenancy between 1979 and the completion of the conversion in 1992. Tenant's petition was therefore denied. Tenant appealed the second ALJ decision to the Board, and the appeal was denied on November 25, 2014.

On March 23, 2015, tenant filed a first amended petition for writ of mandate in superior court, asserting causes of action for mandamus and declaratory relief. (*Code Civ. Proc.*, § 1094.5.) The petition alleged that tenant's unit was not exempt from the Rent Ordinance as a live/work unit because the certificate of occupancy necessary for that designation had not issued until June 17, 2014, and the evidence clearly showed the unit had been used for residential purposes between that date and June 13, 1979.¹

Tenant filed a motion seeking issuance of the writ. On August 27, 2015, landlord's counsel sent a letter to tenant's counsel stating that landlord was conceding the unit was protected by rent control and had "decided to accept the initial findings made by [the ALJ] by way of the Order dated June 10, 2014," i.e., the first decision by the ALJ, which concluded the Rent Ordinance did apply. The letter was accompanied by a check for \$6,500 payable to tenant, reflecting the \$1,625 that the ALJ had initially determined was owed to tenant as a result of rent overpayments, plus \$4,875 for excess rent since paid by tenant since the date of that order.

On August 31, 2015, Landlord filed written opposition to tenant's motion for issuance of the writ and urged the court to dismiss the writ petition, arguing the matter was moot in light of his concession that the Rent Ordinance applied. The Board agreed the case was moot as to landlord and tenant, but argued the case should be remanded to the Board for reconsideration because: "if the unit in question is subject to and not exempt from the Rent Ordinance, as the landlord has agreed, then the Rent Board's final administrative determination on that issue should be consistent with that fact, so that all present and future landlords and tenants at the unit have a clear and uniform understanding of the unit's status."

The trial court's tentative written ruling on tenant's motion for issuance of the writ was to grant the writ based on landlord's concession that the unit was subject to rent control. At the hearing on the motion, tenant's counsel argued the writ petition should not be granted based on the landlord's concession because "there are still issues outstanding concerning whether or not there were due

process violations, whether or not the [B]oard exceeded its jurisdiction in certain respects.”

*3 The trial court granted tenant's writ petition. In its proposed statement of decision, it relied on landlord's concession but also reached the merits of the petition and concluded the Board had abused its discretion in ruling tenant's unit was exempt from rent control as a live/work unit. The Board objected to the statement of decision to the extent it reach the merits, arguing (1) reaching the merits was unnecessary in light of landlord's concession; (2) the court should not address moot issues; and (3) due to the concession, the merits of the issue had not been briefed by landlord. Landlord objected on the same grounds and additionally argued his concession was the product of an economic decision to end the litigation and the court's resolution of the merits was erroneous.

In its final statement of decision, the court declined to address the merits of the petition, stating, “[Landlord]’s acknowledgment that the Unit is subject to rent control is sufficient, without more, to warrant granting the writ.” The court entered a judgment vacating the second ALJ’s decision dated October 23, 2014, which had denied tenant’s petition to the Board, as well as the Board’s denial of the appeal of that decision. The judgment remanded the case to the Board for further proceedings in light of landlord’s acknowledgment that the unit is not exempt from rent control.

II. DISCUSSION

“An appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional. [Citation.] Only a party who is aggrieved has standing to appeal. [Citation.] A party is aggrieved only if its ‘rights or interests are injuriously affected by the judgment.’ [Citation.]” (*Sabi, supra*, 183 Cal.App.4th at p. 947.) The judgment in this case did not injure tenant in any way; to the contrary, it was an unequivocal victory.

Tenant’s purpose in filing his petition with the Board was to obtain a determination that his unit was governed by the Rent Ordinance. When the Board ruled against him, he filed the instant writ petition. The trial court granted the writ petition based on the landlord’s concession that the Rent Ordinance applied. Tenant is not in any way aggrieved by the trial court’s order granting his petition and he consequently lacks standing

to pursue the instant appeal from that order. (*Sabi, supra*, 183 Cal.App.4th at p. 947.) The appeal must be dismissed.

Tenant argues the trial court’s judgment was interlocutory, rather than a final, appealable judgment. We disagree. Although the trial court remanded the case to the Board for further proceedings, it ruled that the Rent Ordinance applied to tenant’s unit and did not reserve jurisdiction to consider any other issues. (See *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1112, 1117 [issuance of writ of mandate remanding the case to the administrative board was a final, appealable order because while it did not definitively resolve the dispute between the parties, it did mark the end of the writ proceeding in the trial court].) Moreover, were we to conclude the judgment was interlocutory, as tenant suggests, we would dismiss the instant appeal in any event as having been taken from a nonappealable order. (See *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1107–1108; *Olmstead v. West* (1960) 177 Cal.App.2d 652, 654–655.)

Nor are we persuaded that the trial court should have ruled on the merits of the claim that tenant’s unit was not exempt from the Rent Ordinance as a live/work unit. Landlord conceded in his court filings that the Ordinance applied, and the concession was accepted by the trial court as a basis for granting the writ petition. The court was not required to delve into a legal analysis that was rendered unnecessary by landlord’s concession regarding the ultimate issue in the case. “ ‘ ‘A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. ... [As] a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition. ... ’ ’ ” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.)

III. DISPOSITION

*4 The appeal is dismissed. In the interests of justice, the parties shall bear their own costs. (Cal. Rules of Court, rule 8.278, subdivision (a)(5).)

We concur.

JONES, P.J.

SIMONS, J.

All Citations

Not Reported in Cal.Rptr., 2017 WL 5143299

Footnotes

- 1 In the second hearing before the ALJ, landlord took the position that the certificate of occupancy was not issued when the conversion to live/work units was completed in 1992 due to an administrative oversight. The ALJ agreed the delay in issuing the Certificate was not the fault of the landlord.

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