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

PAGE MILL MANAGEMENT, LLC, et al., Plaintiffs and Respondents,

v.

CITY OF EAST PALO ALTO et al., Defendants and Appellants.

No.
A121631
.
|
(San Mateo County Super. Ct. No. CIV 469315).
|
Aug. 31, 2009.

Attorneys and Law Firms

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Opinion

SIMONS, J.

***1** The Rent Stabilization and Eviction for Good Cause Ordinance (RSO) was adopted by popular vote in 1988 in the City of East Palo Alto.[1] The RSO requires the Board[2] to issue annual "Certificate[s] of Maximum Legal Rent" (hereafter Certificate or Certificates) stating the maximum allowable rent, or rent ceiling, landlords may charge tenants. (RSO, § 8.G.) The principal method of calculating annual rent increases is set forth in section 11 of the RSO[3] and rule 1601 of the Board Rules and Regulations (hereafter Rule or Rules).[4] The Board computes the rent increases and informs landlords and tenants of the new maximum allowable rent in the annual Certificates. (RSO, §§ 8.G., 11; Rules 1600-1601.)

At the end of November 2007, Landlords gave notices of rent increases to their tenants in units subject to the RSO. In January 2008, after receiving numerous complaints from Landlords' tenants, the City Council enacted Ordinance No. 308 (Urgency Ordinance) that limited permissible rent increases as to every residential rental unit registered in the RSO program, including Landlords' units.

The parties' dispute focuses on how rent increases are to be calculated in those situations where the rent charged is less than the maximum legal rent specified in the Certificate. According to City, the amount that rent can be increased is added to the amount of rent actually being charged. Landlords disagree, contending the maximum allowable rent is calculated by adding the amount of the rent increase to the rent ceiling provided in the previous year's Certificate. Landlords filed a petition for writ of mandate and complaint for declaratory relief challenging the Urgency Ordinance. The trial court agreed with Landlords, concluding the Urgency Ordinance violated Elections Code section 9217, the Petris Act,[5] and the Costa-Hawkins Rental Housing Act (Costa-Hawkins).[6] The trial court granted Landlords' petition for writ of mandate compelling City to set aside the Urgency Ordinance and take no action to enforce the Urgency Ordinance or any action contrary to that court's statement of decision.

On appeal, City argues the trial court erred in its interpretations of the RSO and the Petris Act, and also challenges that court's reasoning in concluding the Urgency Ordinance violated Costa-Hawkins. We reject these arguments and affirm the trial court's order on those issues. City further contends that the language enjoining City from taking any action contrary to the statement of decision is unwarranted and so vague it will lead to future disputes and hinder the Board's ability to promulgate rules and regulations. We find there was no substantial evidence to support injunctive relief and vacate that portion of the order commanding City take no action contrary to the statement of decision.

BACKGROUND[7]

In October and November 2007, City issued the 2007 Certificates for rent-controlled units owned and operated by Landlords. The parties agree these Certificates calculated the new rent ceilings by adding the amount of allowable rent increases to the prior year's rent ceilings. At the end of November 2007, Landlords issued notices of rent increase to its tenants, in some cases raising the rent to the rent ceiling as stated on the applicable Certificate for the unit. The increases averaged 9 percent, ranging from zero to a high of 47 percent. The rent increases were going to become effective on January 1, 2008, but at the requests of many tenants and City, Landlords extended the effective date to February 1, 2008.

***2** In the City Council and the Board meetings during the month of December 2007, Landlords' tenants complained of the rent increases. The East Palo Alto City Attorney's Office recommended the City Council intervene in the matter by enacting an urgency ordinance prohibiting rent increases with certain exceptions. At a meeting on January 8, 2008, the City Council unanimously approved the Urgency Ordinance.[8] The Urgency Ordinance applied to all units subject to the RSO and froze rents to the amount charged on December 1, 2007. In pertinent part, the Urgency Ordinance limited rent increases to 3.2 percent of the rent being charged as of December 1, 2007. The Urgency Ordinance became effective on January 8, 2008, and by its terms expired on June 30, 2008.

On January 16, 2008, Landlords filed a petition for writ of mandate and complaint for declaratory relief challenging City's Urgency Ordinance on the grounds it violated the Elections Code, the Petris Act, Costa-Hawkins, Government Code section 36937, the California Constitution, and the RSO. Landlords sought alternative and peremptory writs of mandate ordering City to set aside the Urgency Ordinance, take no further action to freeze rents, and allow Landlords to collect the noticed rent increases. On the same day, the trial court entered an order directing issuance of alternative an writ of mandate. City filed its answer on February 8.[9]

After a hearing on February 21, 2008, the trial court issued an oral ruling on February 25 granting the writ of mandate on the grounds the Urgency Ordinance violated the Elections Code, the Petris Act, and Costa-Hawkins. The trial court found the Urgency Ordinance did not violate Government Code section 36937 and declined to rule on the constitutional issues. On March 11, the trial court entered a statement of decision and an order directing issuance of a writ of mandate (Order). The Order commanded City to set aside the Urgency Ordinance and "take no action to enforce [the Urgency Ordinance] or otherwise contrary to [the s]tatement of [d]ecision in this matter."

City did not set aside the Urgency Ordinance, instead stating in its return to the writ that the City Council had adopted a resolution providing it would not enforce the ordinance while the writ was in effect and that it was appealing the Order. On May 5, 2008, City sought a writ in this court to stay and review the trial court's decision, and the petition was summarily rejected. (*City of East Palo Alto et al. v. Superior Court* (May 9, 2008, A121415) [nonpub. order denying writ].) Landlords brought a motion for enforcement of the writ of mandate, arguing the City Council's resolution did not comply with the writ. City filed a motion for judgment on the pleadings as to the fifth and sixth causes of action for constitutional violations and the ninth cause of action for declaratory relief. At a hearing on May 7, 2008, the trial court denied Landlords' motion, finding City's actions complied with the writ. The trial court also granted City's motion as to the fifth and sixth causes of action, but denied the motion as to the ninth cause of action. On May 12, City filed its notice of appeal.[10]

DISCUSSION

I. *The Trial Court Correctly Interpreted the RSO and Rule 1601*

***3** The trial court found the Urgency Ordinance amended the formula for calculating rent ceilings under the RSO and therefore violated Elections Code section 9217, which requires substantive amendments to a voter-adopted ordinance to be approved by the electorate. (See Elec.Code, § 9217 ["No ordinance that is ... adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."].) City contends the trial court erred in construing the RSO's rent calculation provisions. The interpretation of statutes and ordinances presents questions of law we review de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 [statutes]; *Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 570 [ordinances].)

The interpretation of ordinances and voter initiatives is subject to the general rules of statutory construction.

(*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037 (*Professional Engineers*) [voter initiatives]; *County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1489 [ordinances].) Accordingly, we first turn to the pertinent language of the RSO, giving its words their ordinary meaning. This language must be construed in the context of the ordinance as a whole and its overall scheme. If there is no ambiguity, we presume the voters intended the meaning apparent on the face of the ordinance and we may not add to or rewrite it. (*Professional Engineers,* at p. 1037.) If there is an ambiguity, we may rely on maxims of statutory construction. (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582-583.) "Ultimately, the court must select the construction that comports most closely with the apparent intent of [the voters], with a view to promoting rather than defeating the general purpose of the [RSO]." (*In re Luke W.* (2001) 88 Cal.App.4th 650, 655.) We also must avoid any interpretation that would lead to absurd results. (*Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 975.)

Section 11 of the RSO[11] is entitled "ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS" and provides for a yearly adjustment of rents based on the percent change in the consumer price index (CPI). (RSO, § 11.A.) RSO section 11.A.3. dictates how rent increases are to be calculated. First, the April CPI of the previous year is subtracted from the current year's April CPI and the resulting number is the index point difference. The index point difference is then divided by the previous year's CPI, and the resulting number is the percentage change in the CPI for the year, expressed in decimal figures. Finally, the RSO states, "*Multiply the rent ceiling, by the allowable percentage rent increase. The resulting figure is the maximum allowable rent, or rent ceiling, which is required to be granted to landlords under this Section, expressed in dollars.*" (RSO, § 11.A.3., italics added.) The second italicized sentence suggests that the computation prescribed in the first sentence yields a new rent ceiling. In fact, the result of multiplying the rent ceiling by the allowable percentage rent increase yields only the amount rent can be *increased,* not the maximum amount of rent that may be charged. The RSO is ambiguous because section 11.A.3. does not specify to what amount the permitted dollar increase, or annual general adjustment (AGA), is added.

***4** According to Landlords, the AGA is added to the rent ceiling provided in the previous year's Certificate. City, on the other hand, argues the AGA is added to the amount of rent actually being charged. City relies on RSO section 11.A., which provides in its first sentence that "Once each year all landlords shall be permitted to charge rents in excess of that which they were *lawfully charging* the previous year based upon one hundred percent (100%) of the percent change in [CPI]." (Italics added.)

Under the rules of statutory construction, "a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (*Rose v. State of California* (1942) 19 Cal.2d 713, 723-724; accord, *Santa Barbara County Taxpayers Assn. v. County of Santa Barbara* (1987) 194 Cal.App.3d 674, 682.) The first sentence of RSO section 11.A. is a general statement allowing landlords an annual rent increase above the amount lawfully charged the prior year, based on the change in the CPI. This general statement does not inform the more specific issue of how the rent increases are to be calculated. Instead, that formula is specified, albeit incompletely, in RSO section 11.A.3.

Rule 1601 clarifies the ambiguity in the RSO by requiring the AGA to be added to the previous year's *rent ceiling,* as set out in the Certificates. That rule provides that as to units which have previously been issued a Certificate, review of the permissible rent level "begin[s] with the most recent certified rent." (Rule 1601.A.1.) Then, "The most recent *certified rent* shall be increased by the amount of subsequent [AGA's] for each year in which the property was in substantial compliance with the registration requirements if the Board has no information establishing that the landlord was otherwise ineligible for the [AGA's] in question." (Rule 1601.A.2., italics added.) City suggests that Rule 1601 can be interpreted to calculate the rent ceiling by adding the AGA to the *rent charged* in the previous year. But this interpretation conflicts with the plain language of Rule 1601 that clearly requires the AGA to be added to the previous year's *certified rent.* The Board promulgated this rule in accordance with its powers and duties on May 25, 1988, shortly after the voters adopted the RSO on April 12, 1988. Rule 1601 is therefore entitled to great weight in interpreting the RSO's method for calculating rent increases. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1388 ["The contemporaneous construction of a new enactment by the administrative agency charged with its enforcement, although not controlling, is entitled to great weight."].)

***5** Moreover, Rule 1601 is consistent with the title given to RSO section 11, "ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS." When interpreting an ordinance, "chapter and section headings cannot be resorted to for the purpose of creating ambiguity when none exists." (*City of Berkeley v. Cukierman* (1993) 14 Cal.App.4th 1331, 1340.) However, when there is an ambiguity, "section headings may properly be considered in determining intent, and are entitled to considerable weight." (*Crespin v. Shewry* (2004) 125 Cal.App.4th 259, 267; accord, *People v. Hull* (1991) 1 Cal.4th 266, 272; *Howard Jarvis Taxpayers Assn. v. County of Orange* (2003) 110 Cal.App.4th 1375, 1385.) By referring to rent ceilings specifically, the title of RSO section 11 indicates it was the intent of the voters to have the AGA added to the rent ceilings provided in the Certificates, rather than to the rent actually being charged.

City acknowledges that consistent with Rule 1601's directive, the Board, in fact, calculated the Certificates in 2006 and 2007 by adding the AGA to the prior year's rent ceiling. City nevertheless dismisses these Certificates, stating that they resulted from staff errors, and those errors should not be attributed to the Board or the City Council.[12] We are not persuaded. First, the so-called calculation "error" is identical to the method prescribed in the Board's Rules. Second, there is a rebuttable presumption that staff calculated these Certificates correctly. (Evid.Code, § 664 ["It is presumed that official duty has been regularly performed."].) Finally, City does not point to any evidence in the record to substantiate its claim of staff error that overcomes the Evidence Code section 664 presumption. Accordingly, we decline to view those Certificates as an aberration; they reflect the Board's practice of calculating rent increases. And the consistent interpretation of an ordinance by the administrative agency in charge of implementing it is highly significant in a subsequent judicial construction. (See *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 292.)

In addition, City's proposed calculation faces one major stumbling block. As discussed above, the annual Certificate contains an updated maximum allowable rent, or rent ceiling, for the upcoming year. (RSO, § 8.G.) One component of the City's proposed calculation of that amount is the rent actually being charged. But neither the RSO nor the Rules require that such information be provided to City. RSO section 8.A. requires landlords of rent-controlled units to file with the Board an annual registration statement containing: the address of each rental unit; name and contact information of the landlord and managing agent; the date on which the landlord received title to or an interest in the property; and any other relevant information. Similarly, nothing in Rules 801 to 887 regarding rent registration specifically requires a landlord to provide the amount of rent actually charged. Nothing in the record suggests the Board had available to it current information on the rents charged, and absent that information the calculation proposed by City cannot be made.

***6** City suggests the Board would have the necessary information if the Certificates are properly calculated because the rent ceiling for a particular year is the same as the rent actually being charged. Implicit in this argument is the unwarranted assumption that each and every year after the initial or base rent was established for a unit,[13] all landlords would increase the rent charged to the maximum level recited in the Certificate. However, neither the RSO nor the implementing regulations require the landlords to do so. RSO section 11.D., which City cites in support of its interpretation of rent ceiling computations, specifically contemplates a discrepancy between the amount of rent charged and the rent ceiling stated in a Certificate. The portion of RSO section 11.D. City relies on provides, "If the maximum allowable rent specified under [the RSO] for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires." Further, an administrative report prepared by the East Palo Alto City Attorney's Office for the City Council on January 3, 2008, states, "In recent years, landlords in East Palo Alto have not increased rents in a consistent fashion because the market could not accommodate increases. Even landlords in the [rent stabilization program] who had authority to increase rents through AGAs chose not to pass them on to tenants. Rather, landlords chose to maintain rents at lower levels in order to keep tenants."

In addition, allowing landlords to defer or "bank" permitted increases in the rent ceiling is not inconsistent with the intent of the voters who adopted the RSO. RSO section 3 states the RSO's purpose is "to protect residential tenants in the City [of East Palo Alto] from unreasonable rent increase[s] by discouraging speculation in rental property and stabilizing rent increases; to protect tenants from arbitrary, discriminatory or retaliatory evictions; and at the same time to assure landlords both a fair return and rental income sufficient to cover costs of maintenance and operating expenses as well as the costs of capital improvements to their rental properties." The RSO therefore is intended not only to protect tenants, but also to ensure landlords have

a fair return on their investment. The ballot argument in support of the RSO, presented to the voters prior to the April 12, 1988 election, emphasized that the ordinance was designed to be "fair to tenants and landlords."[14] And " '[b]allot summaries and arguments may be considered when determining the voters' intent and understanding of a ballot measure.' [Citation.]" (*Professional Engineers, supra,* 40 Cal.4th at p. 1037; accord, *Woo v. Superior Court, supra,* 83 Cal.App.4th at p. 976.) The RSO accomplishes these goals by limiting rent increases to changes in the CPI and allowing landlords to defer rent increases to retain tenants who can not afford them.

II. *The Petris Act and Costa-Hawkins*

***7** The Petris Act was enacted in 1986 and codified in Civil Code sections 1947.7 and 1947.8. (Stats.1986, ch. 1199, p. 4249 et seq.; *Sego v. Santa Monica Rent Control Bd.* (1997) 57 Cal.App.4th 250, 256.)[15] It provides that the maximum allowable rent reflected in a rent certificate "shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed." (Civ.Code, § 1947.8, subd. (c).) The trial court found the Urgency Ordinance violated the Petris Act because it contravened the statute's directive that Certificates be "binding and conclusive." City maintains that staff incorrectly calculated the rent ceilings in 2006 and 2007 (by adding the AGA to the prior year's rent ceiling instead of adding the AGA to the amount of rent actually charged) and that the Board can, under the Petris Act, correct these errors in future Certificates. We need not address this argument because of our conclusion that the staff calculations were not erroneous.

Prior to the enactment of Costa-Hawkins, certain local rent control ordinances, including the RSO, prohibited a landlord from increasing the rent on a unit when the unit was vacated and a new tenant occupied the premises. (*Cobb v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351.) Costa-Hawkins preempts those ordinances by establishing "vacancy decontrol," which allows a landlord to set the initial rent for vacant units when "the former tenant has voluntarily vacated, abandoned or been legally evicted," except in specified circumstances. (*Ibid.;* Civ.Code, § 1954.53, subd. (a).) According to City, it has recognized that "Costa[-]Hawkins is preemptive state legislation [that] impliedly amended the RSO [citation] and ... City has applied the RSO to allow the vacancy rent increases required by Costa[-]Hawkins." The trial court struck the Urgency Ordinance that, unlike the RSO, was enacted *after* Costa-Hawkins, because it did not provide for vacancy decontrol. City invites us to review the trial court's reasoning on this issue to "clarify that neither the RSO nor administrative rules adopted to ensure compliance with Costa[-]Hawkins will be actions in violation of the Order that ... City never do anything inconsistent with the [s]tatement of [d]ecision."

We decline this invitation. The trial court never ruled that Costa-Hawkins invalidated the RSO and nothing in its ruling suggests it approved or disapproved of the City's interpretation of the RSO *post*-Costa-Hawkins.

III. *The Order's Language Enjoining Future Conduct Was Not Warranted*

The Order not only commanded City to set aside and not enforce the Urgency Ordinance, but also ordered City to take no action contrary to the statement of decision. City challenges this portion of the Order, arguing there was no evidence to suggest City would not comply with the writ. City further contends the language is so broad it is not clear what actions are enjoined and the Board is hindered in its ability to promulgate amendments to rules to clarify ambiguities and conform to changes in the law.

***8** The parties do not address the standard of review. Insofar as the Order grants injunctive relief, it is well established that the trial court's decision "rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion." (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912 (*Shapiro*).) A reviewing court exercises its independent judgment when statutory construction is required, but "to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, an appellate court will review such factual findings under a substantial evidence standard." (*Ibid.*) In addition, we must also consider separation of powers principles when determining the propriety of injunctive relief against City. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464.) "[O]ur Supreme Court has emphasized that 'principles of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials. [Citations.] In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obligates the judiciary to respect the separate constitutional roles of the Executive and the Legislature.' [Citation.]" (*Ibid.*)

When issuing its oral ruling, the trial court did not include prospective injunctive relief, nor did it make any findings to support such relief. In a letter to the trial court accompanying the proposed Order, which Order was later signed by that court, Landlords argued the prohibitory language was necessary. In this correspondence, Landlords stated, "City has indicated that, despite the [c]ourt's order, it does not feel bound by the Certificates.... City employees have instructed tenants of [Landlords] that the noticed rent increases were illegal and should not be paid and have recently attempted to 'recalculate' certificates to correct the alleged errors which have already been rejected by [the trial c]ourt." On appeal, Landlords also argue that on February 8, 2008, 17 days before the trial court issued its oral ruling, the Board rendered a decision in an administrative proceeding in which the Board calculated rent increases in the manner City advocates. Landlords contend this evidence was sufficient to warrant the prohibitory language. We disagree.

There is a rebuttable evidentiary presumption that public officers will perform their official duties properly and act in accordance with the law. (See Evid.Code, § 664; *Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 782 [Evid.Code, § 664 presumption is rebuttable]; *Housing Authority of the City of Oakland v. Forbes* (1942) 51 Cal.App.2d 1, 9 ["There is a presumption, well recognized by the cases, that public officers will carry out their functions and exercise their powers in accordance with the law."]; *Ellis Landing & Dock Co. v. Richmond* (1925) 70 Cal.App. 720, 723 ["It is to be presumed that the council will do its duty and will not attempt to willfully violate the law"].) For example, in *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, a county's resolution showed its good faith willingness to perform its statutory obligations to provide dental services. (*Id.* at pp. 416-417, disapproved on other grounds in *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 106, fn. 30.) The petitioners argued a peremptory writ was nevertheless necessary to ensure the county would not rescind the resolution and return to its improper course of conduct. (*Id.* at p. 417.) The Third District declined to issue a writ, stating "we refuse to assume bad faith on the part of the [c]ounty or its [h]ealth [o]fficer. Instead, we presume official duty will be regularly performed and the [c]ounty will comply with the law. [Citations.]" (*Id.* at p. 418.)

***9** The record before the trial court when it issued the injunction did not contain sufficient evidence of City's recalcitrance to rebut the presumption and justify injunctive relief. As an initial matter, the February 8, 2008 administrative decision occurred before the trial court ruled on Landlords' petition. Certainly, before the trial court issued its ruling, City was free to advance its method of calculating rent increases. Landlords' other evidence consisted only of a letter; they did not submit any declarations to support their claim City would "simply set aside the Urgency Ordinance and continue to operate as it ha[d] in the past five months." "An injunction cannot issue in a vacuum based on the proponents' fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity. [Citations.]" *(Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084 (*Korean Presbyterian*).) No such evidence was submitted here.[16]

Relying on the quote "past actions may to some extent evince a relationship to present or future conduct" (*Shapiro, supra,* 96 Cal.App.4th at p. 916), Landlords suggest City's actions in the months preceding the trial court's ruling indicated City would continue to advance its proposed rent calculation method notwithstanding the trial court's order. Landlords further rely on *Shapiro* and *California Alliance for Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024 (*California Alliance*) for the proposition that " 'courts may presume that [a] municipality will continue similar practices in light of city attorney's refusal to admit violation.' " (*Shapiro,* at p. 916; see *California Alliance,* at p. 1030.) These cases, however, are inapposite.

In *California Alliance* and *Shapiro,* plaintiffs brought actions under Government Code section 54960, subdivision (a),[17] to enforce the city council's duties to disclose information regarding closed meetings as required by the Ralph M. Brown Act (Brown Act) (Gov.Code, § 54950 et seq.). (*Shapiro, supra,* 96 Cal.App.4th at pp. 912-913; *California Alliance, supra,* 56 Cal.App.4th at p. 1026). In *California Alliance,* the city argued that to obtain declaratory relief, the ripeness doctrine required plaintiffs to allege and prove a pattern or practice of past violations. The appellate court disagreed, stating it was "sufficient to allege there is a controversy over whether a past violation of law has occurred." (*Id.* at p. 1029.) The court then found the controversy was ripe, in part, based on the complaint's allegations that the city would engage in similar practices in the future and on "the city's failure to concede that the facts alleged by plaintiffs constitute a violation of the Brown Act or the city charter." (*Id.* at p. 1030.)

***10** In *Shapiro,* the parties disputed whether the city complied with its duties under the Brown Act when conducting closed discussions regarding a redevelopment project to create a ballpark. (*Shapiro, supra,* 96 Cal.App.4th at p. 906.) The appellate court analyzed earlier Brown Act decisions, including *California Alliance* (*Shapiro,* at pp. 914-917), and concluded "the Brown Act authorizes injunctive relief that is based on, in relevant part, a showing of *'past actions and violations that are related to present or future ones*.' " (*Id.* at p. 917.) The court upheld the trial court's injunction because the record demonstrated the city had engaged in past practices which violated the statute and the city continued to contend it could "interpret and adjust the requirements of the Brown Act as it [saw] fit." (*Ibid.*)

In sum, the discussions in *Shapiro* and *California Alliance* regarding the relevance of past violations to future conduct arose as part of statutory interpretation of available remedies under the Brown Act. (*Shapiro, supra,* 96 Cal.App.4th at pp. 914-917; *California Alliance, supra,* 56 Cal.App.4th at pp. 1029-1030.)[18] We are not persuaded the selected quotations from *Shapiro* and *California Alliance* compel us to deviate from the general rule that an injunction must be supported by actual evidence of a realistic prospect that City would engage in future acts inconsistent with the trial court's ruling. (See *Korean Presbyterian, supra,* 77 Cal.App.4th at p. 1084.) Here, there was no such evidence. We refuse to assume bad faith on City's part in the absence of evidence showing City had acted contrary to the trial court's ruling regarding calculation of rent increases after the ruling was issued or that it intended to do so in the future.

We find the evidence before the trial court was not substantial and did not rebut the presumption under Evidence Code section 664 that City would comply with the writ. Accordingly, the trial court abused its discretion in granting injunctive relief. We therefore vacate that portion of the Order commanding City to take no action contrary to the statement of decision.

DISPOSITION

The trial court's order is affirmed with the exception of the language prohibiting City from taking any action contrary to the trial court's statement of decision, and we therefore vacate that portion of the order. The parties shall bear their own costs on appeal.

We concur. JONES, P.J., and NEEDHAM, J.

All Citations

Not Reported in Cal.Rptr.3d, 2009 WL 2742795

Footnotes

1 The parties to this appeal are defendants and appellants City of East Palo Also, City Council of the City of East Palo Alto (the City Council), and City of East Palo Alto Rent Stabilization Board (the Board) (hereafter collectively City); and, plaintiffs and respondents Page Mill Management, LLC; 5 Newell, LLC; and, 15 Newell, LLC (hereafter collectively Landlords).

2 Section 6 of the RSO created the Board.

3 Section 12 of the RSO permits landlords and tenants to petition the Board to adjust rent ceilings either upward or downward. The only rent increases allowed under the RSO are those provided in sections 11 and 12. (RSO, § 10.A.)

4 As of August 31, 2009, complete sets of the RSO and the Rules can be found at <http://www. ci.east-palo-alto.ca.us/housingdiv/rent.html>.

5 Civil Code sections 1947.7 and 1947.8.

6 Civil Code section 1954.50 et seq.

7 The background facts are taken from the administrative record submitted to the trial court with Landlords' petition.

8 The City Council first discussed an urgency ordinance at a meeting on January 3, 2008, but it failed to obtain the necessary votes. At the start of the January 3 meeting, Councilmember Ruben Abrica stated he had identified a potential conflict of interest because he was one of Landlords' tenants and had received a notice of rent increase. This issue was

also discussed at the January 8, 2008 meeting. Landlords' petition and complaint argued that Abrica's participation in the deliberations constituted violations of Government Code section 87103, subdivision (c) (the Political Reform Act of 1974), and section 15 of article I of the California Constitution (the due process clause). The trial court held that Abrica's involvement did not violate the Political Reform Act of 1974, and declined to rule on the constitutional argument. The rulings regarding Abrica are not being challenged in this appeal.

9 Also on February 8, 2008, Lidia Barrett, one of Landlords' tenants, intervened in the action. She dismissed her complaint in intervention on May 19, 2008, and is not a party to this appeal.

10 When City filed its notice of appeal, the declaratory relief cause of action was still pending before the trial court. An order granting a writ of mandate is typically not an appealable order when other causes of action remain undecided. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743). Acknowledging this authority, City argues the Order is appealable under Code of Civil Procedure section 904.1, subdivision (a)(6), because it grants injunctive relief.

After City appealed the Order, the parties entered into a stipulation in which they agreed the statement of decision and order resolved all the issues raised by all causes of action, and that the writ of mandate "provided the same relief and [has] the same force and effect as that which could be obtained by a declaratory judgment ." In accordance with the stipulation, the trial court entered a final judgment in favor of Landlords, reflecting that the statement of decision and order resolved the declaratory relief cause of action. Accordingly, because the Order effectively disposed of the declaratory relief cause of action, it is appealable. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698-700 [finding the trial court's ruling as to one cause of action left no substantive issues for determination and therefore the order was final and appealable]; *Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1073-1074 [treating order denying issuance of a writ of mandate as a final judgment on all causes of action because the order determined an issue essential to remaining causes of action in a manner such that petitioners could not prevail on any of them]; *Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1097-1098 [same].)

This court hereby takes judicial notice of the stipulation and final judgment entered in the trial court. (Evid.Code, §§ 452, subd .(d), 459; *Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462, 464-465, fn. 2.)

Because we determine the Order is appealable, since it was dispositive of the remaining declaratory relief cause of action, it is unnecessary to determine whether, as City asserts, the Order is also appealable under Code of Civil Procedure section 904.1, subdivision (a)(6), as an order granting injunctive relief.

11 RSO section 11.A. states:

"A. Annual General Adjustment: Once each year all landlords shall be permitted to charge rents in excess of that which they were lawfully charging the previous year based upon one hundred percent (100%) of the percent change in consumer price index designated 'All Urban' or 'Shelter: Rent Residential', whichever is lower for the year period ending the month of April immediately preceding the rent adjustment date.

"1. As used herein, the term 'Consumer Price Index (CPI)' shall mean that portion of the Consumer Price Index published by the United States Department of Labor for the San Francisco/Oakland Metropolitan Area, designated as 'All Urban[']' or 'Shelter; Rent Residential, 1967-100', which ever is lower the year period ending the month of April immediately preceding the adjustment date.

"2. In May annually, the Board shall compute the annual general adjustment permitted. The Board will then notify each properly registered landlord of the percentage rental increase allowed, such that said notice will be received by said landlord no later than June 15, 1986 and June 30, of each subsequent year. Should the landlord desire to take advantage of the annual rent adjustment and/or any individual rent adjustment permitted her/him, he/she shall serve, in the manner prescribed by law, each tenant affected with written notice thereof thirty (30) days in advance of the first day for which such adjusted rent may be charged or collected.

"3. Computation of rent increases allowable under this Section shall be according to the following formulas.

"Subtract the previous April index number from the latest April index number. The resulting figure is the index point difference.

"Divide the index point difference by the previous April index figure. The resulting figure is the applicable percentage change in the CPI for the year, expressed in decimal figures.

"Multiply the rent ceiling, by the allowable percentage rent increase. The resulting figure is the maximum allowable rent, or rent ceiling, which is required to be granted to landlords under this Section, expressed in dollars.

"All rent increases or adjustments provided for in this Ordinance shall be rounded off to the nearest dollar or tenth of a percentage which is appropriate.

"To the extent any rental ceiling has been adjusted to cover the amortized cost of capital improvements as provided in Section [12.C.] herein, the amount of said adjustment shall not be included or considered in determining and fixing the annual adjustment provided herein."

12 The parties dispute when City became aware that the Certificates calculated rent ceilings by adding the AGA to the prior year's rent ceiling. We find it unnecessary to our analysis to resolve this debate.

13 Under RSO section 10.A., "The base rent is the lawful rent established as [of] April 1, 1985. The base rent is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 11 and 12. For such rental units where no rent was in effect on April 1, 1985, the base rent shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date, the base rent shall be a good faith estimate of the median rent [in] effect for comparable units in the City of East Palo Alto on April 1, 1985."

14 On December 26, 2008, City requested we take judicial notice of the ballot argument in support of the RSO. We grant the request. (See *People v. Snyder* (2000) 22 Cal.4th 304, 309, fn. 5 [taking judicial notice of ballot pamphlets and legislative history].)

15 The Petris Act requires rent control ordinances to "provide for the establishment and certification of permissible rent levels for the registered rental units, and any changes thereafter to those rent levels." (Civ.Code, § 1947.8, subds.(a).) Either the landlord or tenant may appeal the determination of the maximum legal rent reflected in the certificate. (*Id.,* § 1947.8, subd. (b).) In accordance with the Petris Act, the RSO and its implementing rules require the Board to issue annual Certificates stating the maximum allowable rent, or rent ceiling, a landlord may charge. (RSO, § 8.G.; Rule 1600(A).) A landlord or tenant can challenge the Certificate during a limited appeal period. (RSO, § 8.G.; Rule 1601B.4.)

16 In a footnote, Landlords cite other actions by City to support their contention that injunctive relief was proper. Landlords first contend City refused to vacate the hearing examiner's February 8, 2008 decision; however, they fail to show City's refusal was presented to the trial court to support the prohibitory language. Landlords also cite to events occurring *after* the trial court issued the challenged Order; in particular, City's decision to enact a resolution stating it would not enforce the Urgency Ordinance rather than set it aside, and the Board's issuance of revised rules. Landlords do not cite any authority indicating it would be appropriate for us to consider these acts which were not before the trial court at the time it issued the Order, and we decline to do so. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal .4th 434, 444, fn. 3 [an appellate court will generally only consider matters that were part of the record when the judgment was entered].)

17 Government Code section 54960, subdivision (a), provides in relevant part, "any interested person may commence an action ... for the purpose of stopping or preventing violations or threatened violations of [the Ralph M. Brown Act] by members of the legislative body of a local agency...."

18 We note *California Alliance* is also distinguishable procedurally in that it involved the sufficiency of a complaint's allegations (*California Alliance, supra,* 56 Cal.App.4th at p. 1026), whereas we are reviewing the propriety of injunctive relief.

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