Blogs
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Ellis Act preempts San Francisco ordinances requiring landlords to pay enhanced relocation payments

The Court of Appeal ruled that the Ellis Act preempted measures mandating relocation assistance payments of "the difference between the tenant's current rent and the prevailing rent for a comparable apartment in San Francisco over a two-year period" because such mitigation constituted a prohibitive price for landlords to exit the rental business. *Coyne v. City and County of San Francisco*, No. A145044, A14569 (1st Dist. (March 21, 2017)). Ordinance 54-14, enacted by the City and County of San Francisco entitled a tenant to an increased relocation payment in the amount of "the difference between the tenant's current rent and the prevailing rent for a comparable apartment in San Francisco over a two-year period" and contained provisions allowing property owners to seek relief from the local rent board. A trial court found Ordinance 54-14 to be preempted by the Ellis Act, Govt. Code 7060, which prohibits a city or county from "compel[ling] the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease." Following the trial court's invalidation of Ordinance 54-14, the City both appealed and enacted a new ordinance. The new Ordinance 68-15 capped the rental payment differential at $50,000 and conditioned receipt of the payout on a tenant's submission of a statement under penalty of perjury that such payment would be used solely for relocation costs. After the trial court invalidated Ordinance 68-15 in a separate action, and the City appealed, the court consolidated the two appeals. As a preliminary matter, the court ruled that a local law may not impose a "prohibitive price" on a landlord's exercise of the right under the Ellis Act to withdraw from the residential rental business. Reviewing the ordinances *de novo* under the "prohibitive price" test, the court concluded the ordinances both imposed a prohibitive price on a landlord's ability to exit the residential rental business and were thus preempted by the Ellis Act. Relying on prior caselaw, the court observed that the Ellis Act does not permit the City to condition a landlord's departure from the rental marked "on the payment of a ransom." The court concluded that the obligation of landlords to pay former tenants a payout over two years was a form of ransom that "interferes with and places an undue burden on landlords who seek simply to go out of business." Although the Ellis Act allows for municipalities to impose mitigation measures on landlords to alleviate "any adverse impact" from displacement, the court noted that such savings clauses are strictly construed. The court determined that a landlord's withdrawal of the unit does not cause the rent differential gap faced by the tenant because the gap arises from the City's policy decision to impose residential rent control. It stated that "a property owner's decision to withdraw from the residential market may not be frustrated by burdensome monetary exactions from the owners to fund the City's policy goals." Ultimately, the court held that there was no set of circumstances under which this type of payout obligation would be valid, and so it did not reach the issue of what particular relocation payment threshold imposed a "prohibitive price." The court also cautioned that the procedures enacted by the City for landlords to challenge assessed relocation payments might themselves constitute a "prohibitive price" because they "appear to delay the ability of landowners availing themselves of these procedures to leave the rental business and cloud their exits with uncertainty."