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Remodeled residential units converted from space long dedicated to residential use are not considered new construction and are not exempt from local rent control under the Costa-Hawkins Rental Housing Act. *NCR Properties, LLC v. City of Berkeley*, No. A163003 (1st Dist., March 9, 2023).



Appellant landlords purchased two derelict single-family homes and rehabilitated them, converting them into triplexes, obtaining certificates of occupancy after completion of construction. After the units were rented out, a dispute arose as to whether the properties were subject to the City's Rent Stabilization and Eviction for Good Cause Ordinance.

Appellants contended that the new units were exempt from local rent control under Costa-Hawkins, which provides an exemption for residential units that have a certificate of occupancy issued after February 1, 1995. The City disagreed as to four of the six units, noting that before appellants purchased the homes, the properties had been managed as rooming houses and two of the three units in each building were carved from space that had been rented for residential use before the current certificates of occupancy were issued.

The First Appellate District relied on prior caselaw holding that issuance of a new certificate of occupancy for conversion of an apartment to a condominium did not exempt the unit from rent control under Costa-Hawkins. It reasoned that Costa-Hawkins applied only to certificates of occupancy issued prior to residential use of the unit; hence buildings certified for residential occupancy prior to February 1, 1995, were not excluded.

Appellants argued that even if Costa-Hawkins applied only to certificates of occupancy that preceded residential use of a unit, the properties at issue qualified for an exemption because the renovations expanded and improved the living spaces, enabled the properties to house more people and created triplex units that had not previously existed. They pointed out that these renovations were no mere paperwork conversions and that the buildings were derelict and unoccupied before renovations began. The court acknowledged that the renovations were extensive and increased the ability to house more people, but ultimately rejected the appellants' argument, observing that the City had found one unit in each building exempt from rent control as new construction, and the square footage of residential space that was subject to rent control appeared to be less than the square footage of the two units the City had exempted.

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