

ENDORSED
FILED
San Francisco County Superior Court
DEC 07 2005
GORDON PARK-LI, Clerk
BY: RENE A. PASCUAL
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JIM BROUSTIS, IVY MCCLELLAND,
SARA KENNEDY,

Plaintiffs

v.

JOEL DROUET, SHEILA MARKO, and
DOES 1-20, inclusive,

Defendants.

No. 314166
**ORDER GRANTING DEFENDANT
DROUET'S SPECIAL MOTION TO
STRIKE (CCP § 425.16)**

Defendant Joel Drouet's special motion to strike came on for hearing in the above-entitled Court on October 31, 2005. James B. Kraus appeared for Defendant. William Simpich and Marc Janowitz appeared for Plaintiffs.

The Court of Appeal's January 20, 2005 remittitur instructed this Court to analyze the second prong of the SLAPP statute. Defendant objected to any further submissions of fact or law, contending that the hearing was a formality to the Court's determination of the existing record. Having considered the parties' positions in supplemental briefings, the Court does not rule that no further briefing or evidence may ever be submitted pending final outcome of a

1 SLAPP motion. In this case, however, the supplemental briefings did nothing to advance
2 either side's arguments.

3 Plaintiffs requested that the Court take judicial notice of the entire underlying file in
4 the case of Drouet v. Broustis, # 171534. Plaintiffs then narrowed their request to Drouet's
5 interrogatories to Broustis and McClelland and the responses thereto.

6 Plaintiffs were required to present evidence that would establish a probability that
7 plaintiffs will prevail on their claims of breach of quiet enjoyment, retaliatory eviction, and
8 intentional infliction of emotional distress. Pursuant to Drouet v. Sup.Ct. (2003) 31 Cal.4th
9 583, a landlord's bona fide intent to make an Ellis Act withdrawal will defeat the statutory
10 defense of retaliatory eviction. Thus, to bring an affirmative claim for retaliatory eviction,
11 Plaintiffs' burden is to present evidence of the defendant landlord's wrongful intent.

12 The interrogatory responses that Plaintiffs submitted did not meet this standard. These
13 responses contained merely conclusory statements by Plaintiffs that the landlord, Drouet, did
14 not have a bona fide intent to withdraw the property from the rental market; specifically, that
15 "[Drouet's] dominant motive is not to withdraw the building pursuant to the Ellis Act, but
16 rather to avoid the protections of the law giving to tenants..." There was no supporting
17 deposition testimony, and there were no declarations. There was nothing whatsoever that
18 would sustain such bare legal contentions. As a matter of law, Plaintiffs did not meet their
19 second-prong production burden.

20 The Court GRANTS defendant's § 425.16 motion in its entirety. The 5th, 6th, and 8th
21 causes of action are hereby stricken. Defendant to recover costs and fees pursuant to noticed
22 motion.

23
24 IT IS SO ORDERED.

25
26 Dated: 12/7/05

27 By: 

28 The Honorable Ronald E. Quidachay
Judge of the Superior Court

California Superior Court
City and County of San Francisco
Law & Motion Department • Room 302

JIM BROUSTIS, IVY MCCLELLAND,
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Plaintiffs

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**Certificate of Service by Mail
(CCP § 1013a(4))**

I, Gordon Park-Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

- 1) I am not a party to the within action;
- 2) On DEC 07 2005, I served the attached:

**ORDER GRANTING DEFENDANT DROUET'S SPECIAL MOTION TO STRIKE
(CCP § 425.16)**

by placing a copy thereof in a sealed envelope, addressed to the following:

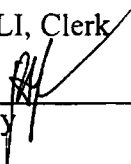
Wm Simpich
Law Office of Philip Rapier
1736 Franklin St 10th Flr.
Oakland Ca 94612

Andrew Zacks
Law Offices of Zacks
235 Montgomery St Ste 1130
San Francisco CA 94104

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: DEC 07 2005

GORDON PARK-LI, Clerk
By: 
deputy