NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ANDREY ZAVARZIN, Plaintiff and Respondent, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Appellant.	Case No.: A083172 (San Francisco Super. Ct. No. 994363)

The City and County of San Francisco appeals from a judgment in which the trial court ruled respondent Andrey Zavarzin was entitled to a conversion permit that would allow him to withdraw certain residential units from the rental market without complying with a local ordinance that would have required him to provide replacement housing. We conclude the trial court correctly ruled Zavarzin was entitled to the permit in question and will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1996, Zavarzin bought a 22 unit residential hotel located at 1901 Jackson Street in San Francisco. The property was vacant, and Zavarzin wanted to use it as a single family residence. However, a local ordinance presented an obstacle. Under San Francisco's Residential Hotel Unit Conversion and Demolition Ordinance (hereafter HCO), the property was classified as 22 residential hotel units. (See San Francisco Admin. Code, Ch. 41.) The ordinance states that before a property owner may "convert" a residential hotel unit, he must obtain a permit. (HCO § 41.12, subd. (a).) In order to obtain a permit, the owner must agree to provide "one-for-one

replacement of the units to be converted…" (HCO § 41.13, subd. (a).) The term "conversion" is defined to include "[t]he change or attempted change of the use of a residential unit…to a tourist use, or the elimination of a residential unit…" (HCO § 41.4, subd. (c).)

After the City's Rent Board filed Zavarzin's Notice Regarding Withdrawal of Rental Unit from Rent or Lease, Zavarzin submitted an application to the local department of building inspection (DBI) for a conversion permit under the HCO. Zavarzin believed the HCO's replacement unit requirement was unenforceable against him under California's Ellis Act, (see Gov. Code[1], § 7060, et seq.), which limits the power of local municipalities to regulate and control landlord's efforts to withdraw property from the rental market. Accordingly, Zavarzin stated, in his application, that he did not intend to comply with that requirement.

The DBI refused to process Zavarzin's application because he had failed to state how he would comply with the HCO's replacement unit requirement. Zavarzin sought relief by filing his petition for writ of mandate to compel the DBI to grant him a conversion permit. The trial court granted Zavarzin's petition, ruling that the DBI was obligated to grant Zavarzin a conversion permit even though eh did not intend to comply with the replacement requirement. This appeal followed.

II. DISCUSSION

The issue in this case is whether the trial court correctly ruled Zavarzin was entitled to a conversion permit under the HCO even though he did not comply with that ordinance's one-for-one housing replacement requirement. To resolve that issue some background is necessary.

In *Nash* v. *City of Santa Monica* (1984) 37 Cal. 3d 97, 101, 104-109 (*Nash*), the California Supreme Court ruled that a City could restrict the circumstances under which an owner of a residential rental property could evict his tenants in order to remove his property from the

---

[1] All statutory references are to the Government Code.

rental market. In response, the Legislature enacted the Ellis Act for the express purpose of overruling *Nash*. (See § 7060.7.) Section 7060, subdivision (a), provides, "No public entity…shall, by statute, ordinance, or regulation…compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease."

Cases interpreting the Ellis Act have consistently held that it grants property owners the absolute right to go out of the rental business and that local ordinances that impose conditions on that right are preempted and unenforceable. For example, in *First Presbyterian Church* v. *City of Berkeley* (1997) 59 Cal. App. 4th 1241 [hereafter *First Presbyterian*], the issues was the validity of a local ordinance that restricted a property owner's right to demolish a building containing residential units by conditioning that right on the housing needs of the affected neighborhood, and the construction of an equal number of replacement residential units. (*Id*. at pp. 1252-1253.) The court ruled those portions of the ordinance were invalid, reasoning as follows, "The goal of each of these conditions is to keep the affected residential units or their equivalents in the rental housing market if at all possible. By requiring as a condition of granting a permit for demolishing an existing residential structure a showing either that the existing property is unusable or that an equal number of rental housing units will be constructed, these provisions necessarily infringe on a landlord's decision to go out of the rental housing business…[¶]…[W]e conclude the trial court's judgment was correct in ruling that the Ellis Act preempts the [ordinance] insofar as it interferes with and restrains the ability of landlord's 'seeking to remove…rental units from the rental market.'" (*Id*. at p. 1253.)

Similarly, in *Bullock* v. *City and County of San Francisco* (1990) 221 Cal. App. 3d 1072 (*Bullock*), the court faced the same issue that is present in this case, i.e., the validity of the HCO's replacement unit requirement. After reviewing the case law discussing the Ellis Act, the *Bullock* court ruled that requirement was preempted because its "plain effect…is to compel the landlord to remain in the rental business at that particular location…" (*Id*. at p. 1101; internal punctuation &

citation omitted.) "The Ellis Act does not permit the City to condition plaintiff's departure upon the payment of ransom." (*Ibid*.)

We reach the same conclusion here. Zavarzin wanted t withdraw his property from the rental market, but because it had previously been used as a residential hotel, he was required to obtain a conversion permit under the HCO. However San Francisco refused to grant Zavarzin a permit because he refused to comply with the one-for-one housing replacement requirement. Since the plain effect of that requirement was to compel Zavarzin to remain in the rental business, we agree it was preempted under the Ellis Act and was invalid. The trial court ruled correctly.

The various arguments that San Francisco has advanced do not convince us otherwise. First San Francisco contends the Ellis Act does not apply in this case because Zavarzin had no tenants when he applied for his conversion permit. According to San Francisco, the Ellis Act only comes into play when property is occupied. We are unpersuaded. We are obligated to interpret statutes according to their plain meaning (*Lungren* v. *Deukmejian* (1988) 45 Cal . 3d 727, 735), and section 7060, subdivision (a) states that public entities may not :"compel the owner of any residential real property *to offer*, or to continue to offer" (italics added) property for rent. Since a person commonly "offers" property for rent when it is vacant, it would violate the plain meaning of the statute to rule that the Ellis Act applies only to property that is occupied. We decline to impose such a requirement in this case.

Next, San Francisco contends the HCO's replacement unit requirement was valid under the Ellis Act because it was simply a zoning ordinance that regulated Zavarzin's use of the property after he withdrew it from the rental market. San Francisco relies on those portions of the Ellis Act where the Legislature made clear that it did not intend to "[I]nterfere with local governmental authority over land use…" (§ 7060.7, subd. (1). See also § 7060.1 subdivision (b) which states that the Ellis Act was not intended to "[Diminish] or [enhance]…any power which

currently exists…in any public entity to grant or deny any entitlement of the use of real property, including but not limited to, planning, zoning, and subdivision map approvals.")

However, the HCO states that before a property owner may "convert" a residential hotel unit, he must obtain a permit (HCO § 41.12, subd. (a)), and that to obtain a permit, the owner must agree to provide "one-for-one replacement of the units to be converted…" (HCO § 41.13, subd. (a).) Since the HCO goes on to define the term "conversion" to include "the elimination of a residential unit" (HCO § 41.4, subd. (c)) it is apparent that a property owner, such as Zavarzin, who simply wants to withdraw a unit from the rental market must also obtain a permit and provide replacement housing. Indeed, as we read the HCO, it would be difficult, if not impossible, to go out of business without triggering the replacement unit requirement. We conclude the HCO cannot reasonably be interpreted as a zoning ordinance that simply regulates an owner's use of his property after he goes out of the rental business.

Next, San Francisco relies on a quote from *First Presbyterian* where the court stated that the local ordinance under review in that case was not preempted "to the extent that it is…based on considerations unrelated to the maintenance or preservation of rental housing." (*First Presbyterian, supra*, 59 Cal. App. 4th at p. 1253, fn. Omitted.) San Francisco contends the HCO's replacement unit requirement is not preempted under this test because the ordinance itself states that its purpose is to "benefit the general public *by minimizing adverse impact* on the housing supply and on displaced low income, elderly, and disabled persons resulting from the loss of residential hotel suites through their conversion and demolition." (HCO § 41.2, italics in original.) However, San Francisco fails to acknowledge that immediately after the sentence it has quoted, the HCO goes on to state that those goals will be *"accomplished by…regulating the demolition and conversion of residential hotel units to other uses…"* (HCO § 41.2, italics added.) Since the goals the HCO seeks to achieve are, in fact, related to maintenance and preservation of rental housing, the principles set forth in *First Presbyterian* simply does not apply.

The final issue we must address had been raised by Zavarzin. As we have noted, the trial court ruled that Zavarzin was entitled to a conversion permit under the HCO. San Francisco appealed that ruling, and while the appeal was pending, a dispute arose over the type of permit to which Zavarzin was entitled. Zavarzin, for his part, apparently claimed he was entitled to a permit that would allow him to use his property as a single family residence. San Francisco, by contrast, apparently argued Zavarzin was required to go further administrative procedures before he would be entitled to such a permit.

We need not and do not take a position on this dispute. The only issue before us is the validity of the trial court's judgment on the petition for writ of mandate. The validity of postjudgment orders that are not the subject of this appeal is an issue that must await another day.

III. DISPOSITION

The judgment is affirmed.

Jones, P.

We concur:

Haning, J.

Stevens, J.