

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

MARTIN J. COYNE ET AL VS. CITY AND COUNTY OF SAN FRANCISCO, A
CALIFORNIA ET AL

001C05101445

Instructions:

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10 MARTIN J. COYNE,
11 HOWARD WESTON,
12 EDMUND A. CHUTE, and
13 SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE,
14 a California non-profit corporation,

FILED
San Francisco County Superior Court

OCT 02 2015

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 CITY AND COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

14
15 MARTIN J. COYNE, HOWARD WESTON,
16 EDMUND A. CHUTE, and SMALL
17 PROPERTY OWNERS OF SAN
18 FRANCISCO INSTITUTE, a California non-
19 profit corporation,

20 Plaintiffs and Petitioners,

21 vs.

22 CITY AND COUNTY OF SAN
23 FRANCISCO, a California municipal
24 corporation, and DOES 1 – 25,

Defendants and Respondents.

Case No.: CPF-15-514382

**ORDER GRANTING PETITION FOR
WRIT OF MANDATE**

Date: September 24, 2015

Dept.: 501

Time: 9:30 a.m.

Judge: Hon. Ronald E. Quidachay

25 On September 24, 2015, at 9:30 a.m., in Department 501 of the San Francisco Superior
26 Court, the Petition of Plaintiffs/Petitioners MARTIN J. COYNE, HOWARD WESTON, EDMUND
27 A. CHUTE, and SMALL PROPERTY OWNERS OF SAN FRANCISCO INSTITUTE

1 (“Plaintiffs/Petitioners”) came on regularly for hearing, the Honorable Ronald E. Quidachay
2 presiding. Andrew M. Zacks and Justin A. Goodman of Zacks & Freedman, P.C. appeared for
3 Plaintiffs/Petitioners, and Christine Van Aken of the Office of the San Francisco City Attorney
4 appeared for Defendant/Respondent CITY AND COUNTY OF SAN FRANCISCO (“City”).

5 The Court, having read the moving papers and supporting documents and the opposition
6 papers and supporting documents, and having heard oral arguments of counsel at the hearing, and for
7 good cause shown, the Court hereby finds as follows:

8 1) The Court takes judicial notice of its prior ruling in *Jacoby, et al. v. CCSF*, San Francisco
9 Superior Court Case No. CGC-14-540709 (“*Jacoby*”), invalidating San Francisco Ordinance 54-14;

10 2) The Court finds that the retroactive applicability of San Francisco Ordinance 68-15 to
11 landlords who initiated the Ellis Act process prior to its enactment is improper;

12 3) The fact that the City had previously enacted Ordinance 54-14 (found improperly retroactive
13 in *Jacoby*) did not put San Francisco landlords on notice of future laws, like Ordinance 68-15, even
14 to the extent Ordinance 68-15 *amended* Ordinance 54-14. If anything, the retroactive applicability of
15 Ordinance 68-15 is *more* problematic, for instituting an effective date from the earlier date of
16 Ordinance 54-14;

17 4) The Court finds that the facial challenge is successfully and sufficiently alleged under *Larson*
18 *v. CCSF* (2002) 192 Cal. App. 4th 1263;

19 5) As in *Jacoby*, the Court finds the standard for determination of the propriety of the amount of
20 relocation assistance, owed to tenants displaced by the Ellis Act, is whether the payment is
21 “reasonable”, not whether it is “prohibitive”. (See, *Pieri v. CCSF* (2006) 137 Cal. App. 4th 886
22 (“*Pieri*”).) The Court in *Pieri* concluded that “a requirement of *reasonable* relocation assistance
23 compensation for displaced tenants does not violate the Ellis Act”. *Pieri, supra*, 137 Cal. App. 4th at
24 893-4 (emphasis added);

25 6) Ordinance 68-15 is not directed at the adverse impacts caused by a landlord’s decision (i.e.,
26 the need to pay first/last months’ rent and a security deposit and to incur moving expenses), but is
27 instead *explicitly* implemented to subsidize the payment of rent that a displaced tenant will face on
28

1 the open market, regardless of income, and it requires this subsidy for two years. As these payments
2 have no relationship to the adverse impact *caused* by a landlord's decision to exit the rental market,
3 and because they call for a more than *300% increase* over the prior lawful relocation assistance
4 scheme, they are not "reasonable" under *Pieri*;

5 7) Ordinance 68-15 places several impermissible and unauthorized obstacles before a landlord
6 who seeks to invoke the Ellis Act to exit the rental market, and it is therefore preempted by the Ellis
7 Act:

- 8 a. A landlord must tender one-half of the enhanced relocation payment "upon receipt" of a
9 required "tenant declaration". The landlord must serve the tenant declaration "on or
10 before" the service of the notice of termination of tenancy;
- 11 b. The enhanced relocation payment amount is based on the number of rooms used "for
12 sleeping." However, a landlord has no certain way of determining the number of rooms
13 used "for sleeping" prior to initiating the Ellis Act withdrawal process. A landlord who
14 guesses incorrectly upon mere "belief" will have her Ellis Act process frustrated. *See,*
15 *Johnson v. CCSF* (2006) 137 Cal.App.4th 7;
- 16 c. For those landlords for whom the enhanced relocation payment constitutes a financial
17 hardship, they can petition the Rent Board for a hardship adjustment. However, unless
18 landlords complete this petition *prior* to invoking the Ellis Act and serving the notice of
19 termination of tenancy, a tenant can demand the full payment before a hardship
20 determination is made. If the landlord (who cannot afford the full payment) fails to pay
21 the entire amount "upon receipt" of the tenant declaration, the withdrawal process is
22 defective.
- 23 d. None of these procedures are contemplated, authorized or allowed by the Ellis Act and
24 they are therefore preempted on their face. (*Channing Properties v City of Berkeley*
25 (1992) 11 Cal.App.4th 1988, ; and

26 8) Ordinance 68-15 is also invalid as-applied to the individual Petitioners, each of whom
27 initiated the Ellis Act prior to its effective date, and did everything that was required of them to
28

1 invoke the Ellis Act, but who became subject to new obligations that did not exist when they
2 irreversibly committed their properties to exiting the residential rental market.

3 IT IS HEREBY ORDERED that Ordinance 68-15 is preempted by the Ellis Act (Cal. Gov.,
4 §§7060, et seq.) and is invalid as-applied to the individual Petitioners and on its face, and it is
5 unenforceable. Accordingly:

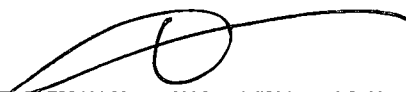
6 (a) A writ of mandate shall issue commanding Respondent City to set aside the actions
7 approving and enacting Ordinance 68-15; and

8 (b) Respondent City is enjoined from enforcing Ordinance 68-15, consistent with the findings
9 set forth above.

10
11 IT IS SO ORDERED:

12 Dated:

10/2/15



13 THE HONORABLE RONALD EVANS QUIDACHAY
14 JUDGE OF THE SUPERIOR COURT