

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco  
APPELLATE DIVISION

JUL 15 2016

CLERK OF THE COURT  
BY: CARLOS MURILLO  
Deputy Clerk

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

DANGER PANDA LLC, A CALIFORNIA	)	App. No. CUD-15-652161
LIMITED LIABILITY COMPANY,	)	
	)	Court No. CUD-15-652161
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	<b>JUDGMENT ON APPEAL</b>
NANCY ANN LAUNI, et al.,	)	
	)	
Defendant/Respondent.	)	
_____	)	

We heard this matter on April 1, 2016. Counsel for both parties appeared and argued. On April 13, 2016, we issued an order inviting supplemental briefing on the issue of whether we should apply *Borsuk v. Appellate Div. of the Superior Court of Los Angeles County* (2015) 242 Cal.App.4th 607 retroactively to this matter and, if so, what impact such application would have on the appeal. Both parties filed supplemental briefing on May 13, 2016, agreeing that we

should not apply *Borsuk* retroactively here. We agree and dispose of the matter as originally briefed on its merits.

After considering the evidence, arguments, and applicable law, the June 1, 2015 order granting the motion to quash is AFFIRMED.

### DISCUSSION\*

On appeal, Danger Panda argues that the trial court erred by granting the Launiu Family's motion to quash because (1) David Launiu is a minor and not a tenant entitled to relocation payments and (2) equitable estoppel bars the Launiu Family from quashing the complaint.

**A. The trial court did not err by granting the motion to quash on the basis that a minor is a tenant who is due relocation expenses under the Ellis Act.**

The issue based on the trial court's order is not whether the correct amount was paid under the Ellis Act, but rather whether the amount was properly distributed between the tenants. Given the San Francisco Rent Ordinance's ("SFRO") definition of a tenant under section 37.2(t), as well as the fact that David Launiu was listed on the Notice of Termination of Tenancy, we are convinced that David Launiu is a tenant as defined in the Ellis Act, and thus was owed a portion of the relocation payments.

San Francisco Rent Ordinance § 37.2(t) defines a tenant as "[a] person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others." Despite Danger Panda's reliance on the common law definition of a tenant, the definition in section 37.2(t) clearly states that a person is a tenant so long as they are entitled to occupy the premises. Neither party disputes that David Launiu was living in the apartment, especially since he was listed on the Notice of Termination.

---

\* This short form opinion is designed to provide the parties with a brief explanation of the reasons for the disposition, and assumes familiarity with the facts and arguments of the parties.

Danger Panda also argues that since David Launiu is the child or grandson of all of the tenants, there is no difference in whether there were three checks divided between the three adults or four checks divided between all four family members living in the household, because the same statutory amount was paid to the tenants either way. We are sensitive to the fact that this is a very technical distinction. However, there is no reason a minor cannot receive a check, and had Danger Panda properly divided the relocation payments in to four checks, David and his parents would have received an additional \$650. The division of the payment is intended to cover all possible roommates living in an apartment, which happens to be a family member in this case.

Danger Panda also argues that the legislative history of the SFRO proves tenants are only those people who are required to pay rent, and thus cannot be minors. However, they point to a definition of “tenant” in the original enactment of the SFRO which is identical to today’s definition in section 37.2(t), requiring a tenant to be a legal occupant. On appeal, Danger Panda includes a 1979 memorandum from the City Deputy Attorney to the Clerk of the Board of Supervisors, titled Summary of Residential Rent Stabilization and Arbitration Ordinance. Danger Panda points to a section in the memorandum that defines the tenants that are covered as “[t]enants receiving a rent increase,” and argues that this shows the SFRO only applies to tenants that pay rent, which would not include minors. However, this memorandum is specific to rent increases, and is not on point to relocation payments under the Ellis Act.

Finally, Danger Panda argues that, even if the payments were not properly allocated to the tenants, the Ellis Act only requires substantial compliance, and since the correct total statutory amount was paid, Danger Panda substantially complied with the Ellis Act. This Court recently found that “[w]hile the notice provisions [of the Ellis Act] must be strictly complied

with, we are not required to stretch their language to include a notice provision not expressly stated.” (*Naylor v. Superior Court* (2015) 236 Cal.App 4th Supp. 1, 8.) We understand that the Ellis Act should not be considered violated because of a nuance, but since the relocation payments and the definition of a tenant owed those payments are expressly stated in the Ellis Act, the section must be strictly complied with.

Therefore, based on the above analysis, we conclude the trial court did not err by granting the motion to quash based on its determination that David Launiu was entitled to a relocation payment.

**B. Equitable estoppel does not bar the trial court from granting the motion to quash.**

The Sixth District Court of Appeal has defined the elements of equitable estoppel as follows:

(1) The party to be estopped has engaged in blameworthy or inequitable conduct; (2) that conduct caused or induced the other party to suffer some disadvantage; and (3) equitable considerations warrant the conclusion that the first party should not be permitted to exploit the disadvantage he has thus inflicted upon the second party.

(*City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 488.)

As a threshold issue, the Launiu Family has argued that Danger Panda cannot introduce a new theory such as equitable estoppel on appeal. However, Danger Panda has sufficiently shown that while new theories may not be brought after trial, this requirement is inapplicable at the pleading phase. (*Smith v. Common Wealth Land Title Ins. Co.* (1986) 177 Cal.App.3d 625, 629-30, citing *Barquis v. Merchant Collection Assn.* (1972) 7 Cal.3d 94, 103.) Additionally, Danger Panda has pointed out that the rule does not apply to undisputed facts. (*C9 Ventures v. SVC-West, L.P.* (2012) 202 Cal.App.4th 1483, 1492.) Since the motion to quash was granted at

the pleading phase, and the facts are undisputed, Danger Panda has properly introduced the theory of equitable estoppel.

The first element required for equitable estoppel is that the Launiu Family must have engaged in blameworthy or inequitable conduct. Since the Launiu Family did not take any action after receiving the payments, the issue is whether their inaction was blameworthy or inequitable. Although the Launiu Family did not take any action to correct the allocation when they received the payment, the Ellis Act does not create any duty on the party being removed from the premises to take affirmative action. Considering that the Launiu Family was likely caught off guard by the Notice of Termination and had little understanding of the Ellis Act, we do not believe their actions of depositing a check should be considered blameworthy or inequitable conduct.

The second element required for equitable estoppel is that Danger Panda must have been induced by the Launiu Family's actions. Danger Panda claims that they could have sent new checks if they were made aware of the issue. However, there is again insufficient evidence in the record to show that the Launiu Family deposited the checks and intentionally remained silent as to the relocation payments.

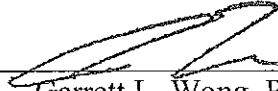
The final element required for equitable estoppel is that equitable considerations must not permit the Launiu Family from exploiting the relocation payments to the disadvantage of Danger Panda. However, this element is insignificant as the first two requirements of equitable estoppel have not been met. Therefore, we find Danger Panda has not carried its burden of proving the defense of equitable estoppel, and there is no bar to the motion to quash in this case.

**DISPOSITION**

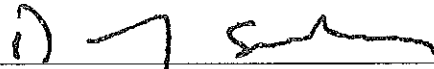
For these reasons, we affirm the trial court's order granting the motion to quash.

IT IS SO ORDERED.

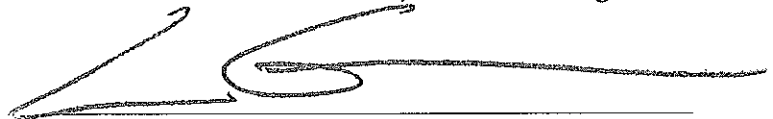
DATE: July 14, 2016



Garrett L. Wong, Presiding Judge



Donald J. Sullivan, Associate Judge



Linda H. Colfax, Associate Judge

**CERTIFICATE OF SERVICE BY MAIL**  
(Code of Civil Procedure § 1013a(4))

I, Carlos Murillo, deputy clerk of the Superior Court of California, County of San Francisco, certify that I am not a party to this action.

On July 15, 2016, I served the attached **JUDGMENT ON APPEAL (CUD-15-652161)** by placing a copy thereof in a sealed envelope addressed to each of the following:

Joseph K. Barber  
Tenderloin Housing Clinic, Inc.  
126 Hyde Street, 2<sup>nd</sup> Floor  
San Francisco, Ca. 94102

Jean Kong (Inter-Office)  
Appeals Clerk  
400 McAllister Street  
San Francisco, Ca. 94102

Paul J. Katz  
Law Offices of Paul J. Katz  
60 29<sup>th</sup> Street, #557  
San Francisco, Ca. 94110

Hon. Ronald E. Quidachay (Inter-Office)  
Judge of the Superior Court  
400 McAllister Street  
San Francisco, Ca. 94103

Andrew Zacks  
Michelle Scott  
Zacks & Freedman, P. C.  
235 Montgomery Street, Suite 400  
San Francisco, Ca. 94101

Hon. John K. Stewart (Inter-Office)  
Judge of the Superior Court  
400 McAllister Street  
San Francisco, Ca. 94102

and, I then placed the sealed envelope(s) in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102, on the date indicated above for collection with the postage thereon fully prepaid, and mailed on that date following standard court practices.

DATE: July 15, 2016

CLERK OF THE COURT

**CARLOS MURILLO**

Carlos Murillo, Deputy Clerk