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ORDER

TOM VS CCSF

001C00387720

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ANDREW M. ZACKS (# 147794)
JAMES B. KRAUS (# 184118)
LAW OFFICES OF ANDREW M. ZACKS

PAUL F. UTRECHT (# 118658)
LAW OFFICES OF PAUL F. UTRECHT
235 Montgomery Street, Suite 600
San Francisco, CA 94104
(415) 956-8100

BARBARA HERZIG (# 076762)
HERZIG & BERLESE
414 Gough Street, Suite 5
San Francisco, CA 94102
(415) 861-8800
Attorneys for Plaintiffs/Petitioners

FILED
San Francisco County Superior Court

MAR 27 2002

GORDON PARKILL, Clerk
BY: [Signature] Deputy Clerk

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

JUN WAI TOM, WAI KUEN TOM,)
ROBERT HARRINGTON, CYNTHIA)
ARNOLD, JOE CAPKO, WILLIAM)
KANE, GREGORY WRIGHT,)
SMALL PROPERTY OWNERS OF SAN)
FRANCISCO, a California non-profit)
corporation, THE SAN FRANCISCO)
APARTMENT ASSOCIATION, a)
California non-profit corporation, and the)
SAN FRANCISCO ASSOCIATION OF)
REALTORS, a California corporation.)

Plaintiffs and Petitioners,)

v.)

CITY AND COUNTY OF SAN)
FRANCISCO, CITY AND COUNTY OF)
SAN FRANCISCO BOARD OF)
SUPERVISORS and)
DOES 1-100,)

Defendants and Respondents.)

SAN FRANCISCO TENANTS UNION)

Intervenors.)

CASE NO. 323591

ORDER GRANTING PETITION FOR
WRIT OF MANDATE

Date: February 13, 2002
Time: 3:30 p.m.
Dept: Law & Motion
Room: 302
Judge: Hon. A. James Robertson II
by challenge
Date Filed: August 8, 2001

1 The Petition for Writ of Mandate came on regularly for hearing, and was
2 continued several times to allow additional briefing and argument by the parties. Andrew
3 M. Zacks and Paul F. Utrecht appeared for Petitioners. Andrew Schwartz appeared on
4 behalf of Respondent City & County of San Francisco (the "City"). Steve Collier appeared
5 on behalf of Intervenor San Francisco Tenants Union (the "Intervenor"). The Court
6 carefully considered the briefs and oral arguments of the parties.
7

8 The Court finds as follows:

9 1. The provision of the Ordinance to Provide Tenant Home Ownership and to
10 Regulate the Formation of Certain Condominium-Type Ownership Structures (the
11 "Ordinance"), which adopts the amended definition of "Tenant" in San Francisco
12 Subdivision Code (the "Subdivision Code") § 1308(j) is preempted and unenforceable under
13 the Ellis Act (Government Code § 7060 et seq.).
14

15 2. The amended definition of "Tenant" expressly excludes owners. Therefore,
16 if the owners of a building invoke the Ellis Act and evict the tenants as required by that Act,
17 the owners cannot satisfy the provisions of the Ordinance allowing them to occupy
18 particular dwelling units in the building to the exclusion of others. The owners cannot
19 satisfy the amended definition of "Tenant", and the owners cannot rent units in the
20 building to tenants because that would violate Government Code § 7060 et seq., and San
21 Francisco Residential Rent Stabilization and Arbitration Ordinance § 37.9A et seq.
22

23 3. The purpose and effect of the amended definition of "Tenant" is to prevent
24 owners from exercising their rights under the Ellis Act and to compel them to remain in the
25 residential rental business. (First Presbyterian Church v. City of Berkeley (1997) 59
26 Cal.App.4th 1241, 1256) Moreover, as a practical matter, the Ordinance would leave those
27
28

1 owners with an empty building, which the Court of Appeal held to be an "absurd" reading
2 of the Ellis Act. (Javidzad v. City of Santa Monica (1988) 204 Cal.App.3d 524, 530-531)

3 4. The Court is unable to sever the provision of the Ordinance that amends the
4 definition of "Tenant" from the remainder of the Ordinance because the requirements for
5 severance have not been met. If the portion of the Ordinance amending the definition of
6 "Tenant"¹ were deleted, that would reinstate the pre-existing definition of "Tenant" in
7 Subdivision Code § 1308(j)².

8 5. The pre-existing definition of "Tenant", which included any person (even an
9 owner) who occupies a dwelling unit to the exclusion of others, directly conflicts with the
10 other provisions of the Ordinance, particularly § 1316, which prohibits exclusive rights of
11 occupancy. The use of the pre-existing definition of "Tenant" results in the same infirmity
12 that the amended definition has, i.e., that an owner who has invoked the Ellis Act cannot
13 qualify as a "Tenant" under the Subdivision Code.

14 6. The Court declines the invitation of the City and Intervenor to impose by
15 Court order a specific interpretation of the pre-existing definition on the Department of
16 Public Works. Such an order would be beyond the Court's authority and would be
17 tantamount to rewriting the Subdivision Code.

18 ~~7. The Court having found that the Ordinance is preempted and unenforceable~~

19 ~~7. Accordingly Court finds Ordinance is~~
20 ~~ineffective and void where Ellis Act Application~~
21 ~~is involved.~~

22
23
24 ¹ "Tenant", for purposes of the San Francisco Subdivision Code shall mean a person or
25 persons entitled under a lease, rental agreement or other agreement with the owner of record
26 of the property or his or her agent to occupy a dwelling unit to the exclusion of others,
27 except that a "Tenant" cannot be an owner of record of the property or a shareholder of the
28 owner of record.

² "Tenant" shall mean a person or persons entitled under a lease, rental agreement or other
agreement with the property owner or his or her agent to occupy a dwelling unit to the
exclusion of others.

1 due to its conflict with the Ellis Act cannot limit its ruling to those property owners who
2 have invoked their rights under the Ellis Act. Section 1316(h) of the Ordinance expressly
3 provides that "if any part of this Section 1316 is held invalid, the remainder of the Section
4 shall automatically terminate and shall be of no force and effect." Since the Ordinance,
5 including § 1316, is invalid as applied to property owners who have invoked their rights
6 under the Ellis Act, that section is partially invalid and the anti-severability provision in
7 § 1316(h) precludes the Court from finding partial invalidity. Therefore, this Court is
8 required to find that the entire Ordinance is of "no force and effect".
9

10 8. As a result of the foregoing findings, the Court is not required to reach, and does
11 not make any findings on, the other issues raised by the parties, including but not limited to
12 the following:

13 (a) Petitioners' claims that the Ordinance violates the California
14 constitutional right to privacy, and the California and federal constitutional
15 right to equal protection of the laws.
16

17 (b) The City's and Intervenor's claims that: The City has general
18 police power authority to require a tenancy in common to record an exclusive
19 right of occupancy and otherwise regulate tenancies in common for the
20 general health, safety and welfare. A mere limit on the number of
21 subdivisions per year does not unduly restrict a landlord's right to go out of
22 the rental business. The California Supreme Court has established that a city
23 has broad powers to restrict the number of condominium conversions to
24 "preserve[] an adequate supply of rental housing", and otherwise regulate
25 subdivisions. (See Griffin Develop. Co. v. City of Oxnard (1985) 39 Cal.3d 256,
26 264) Moreover, the Ellis Act does not grant landlords a right to a subdivision.
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Therefore, the remainder of the Ordinance, including Section 1316 which regulates tenancies in common with an exclusive right of occupancy under the City's Subdivision Code, is not separately preempted.

C. The effectiveness of the Ordinance where Ellis Act Application is not involved
Therefore, the Court finds that the remaining claims and defenses asserted by the parties regarding the Petition are moot.

9. The Court finds that Petitioners are the prevailing parties, and may seek an award of attorneys' fees and costs as allowed by law.

For the foregoing reasons, it is hereby ORDERED that:

A. The City's demurrer to the Petition's claim that the Ordinance is preempted by the Ellis Act is overruled. The remainder of the City's demurrer is denied as moot.

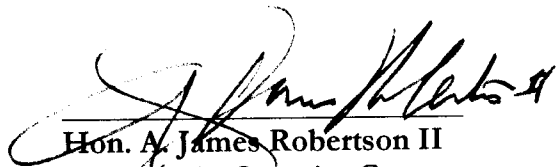
B. The Petition, to the extent that it is based on the Ellis Act, is granted. The remainder of the Petition is denied as moot.

C. Judgment should be entered in favor of Petitioners as follows:

- i. Ordering a writ of mandate to issue from this Court commanding respondent City and County of San Francisco not to enforce the Ordinance; and
- ii. Awarding costs of suit to Petitioners.

Let judgment be entered accordingly.

Dated: March 27, 2002.


Hon. A. James Robertson II
Judge of the Superior Court