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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALVIN SOLOMON, Plaintiff and Appellant, v. ISABELLA DOMINGUEZ-KONOPEK, Defendant and Appellant.	B269408 (Los Angeles County Super. Ct. No. SC123737)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Stone and Lawrence H. Cho, Judges. Reversed and remanded with directions.

Rosario Perry for Plaintiff and Appellant.

Sonya Bekoff Molho for Defendant and Appellant.

Before us are the cross-appeals of a landlord, plaintiff and appellant Alvin Solomon (Solomon), and his tenant, defendant and appellant Isabella Dominguez-Konopek (Dominguez-Konopek). Litigation between Solomon and Dominguez-Konopek arose in multiple adjudicatory fora concerning whether Dominguez-Konopek had been charged rent in excess of that allowed by Santa Monica's rent control law during her 15-year tenancy. Solomon argued he owed Dominguez-Konopek nothing, and Dominguez-Konopek contended she was entitled to withhold rent until she recouped 15 years of overpayments. The litigation eventually took the form of a declaratory judgment action brought by Solomon. The trial court found a "conflict" between the authority cited to support each party's position and exercised its "broad powers" to fashion a remedy that reflects something of a compromise. We consider whether the court exceeded the scope of its authority in fashioning that remedy.

I. BACKGROUND

A. The Santa Monica Rent Control Charter Amendment

In 1979, Santa Monica voters amended their city charter to provide for a system of rent control. The Santa Monica Rent Control Charter Amendment (Santa Monica City Charter, art. XVIII, hereafter Charter Amendment) required landlords to register units covered by the law. (Charter Amendment, § 1803(q).)[1] Each rent-controlled unit was assigned a "base rent ceiling," which was subject to adjustment upward and downward. (§ 1804(b).) The Charter Amendment also established a Rent

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[1] Undesignated section references that follow are to the Charter Amendment.

Control Board (the Board) (§ 1803(a)) which was authorized to determine, on an annual basis, the percentage by which landlords could adjust rental rates (§ 1805(a) & (b)). The Board was also empowered to establish rules and regulations (hereafter Rent Control Regulations) to further the purpose of the Charter Amendment. (§ 1803(g).)

Landlords who overcharge tenants in violation of the Charter Amendment may not raise rents pursuant to the Board's annual general adjustment. (§ 1805(h); Rent Control Regs., § 8024(e)(1).) The Rent Control Regulations "establish certain administrative remedies" for violations of the Charter Amendment (Rent Control Regs., § 8000), and a tenant who is charged excess rent can file an administrative complaint or bring a civil action against his or her landlord (§ 1809(a) & (b)). The Rent Control Regulations provide that they "are not intended and should not be applied as administrative constructions of the [Charter Amendment] to be relied upon by a court of law in construing the [Charter Amendment] in any civil proceeding." (Rent Control Regs., § 8000.5.)

If a tenant fails to bring an administrative or civil action within 120 days after paying a landlord excess rent, the Board itself may "settle the claim arising out of the violation or bring such action." (§ 1809(c).) An administrative complaint for excess rent may only seek to recover overpayments made in the three years before the complaint was filed unless circumstances exist that "would operate in a civil proceeding to toll or otherwise avoid the bar of a statute of limitations . . . ." (Rent Control Regs., § 8023(e).) The filing of an administrative complaint does not "prevent a tenant from raising an equitable defense of setoff or

other defense in an unlawful detainer proceeding." (Rent Control Regs., § 8021(b).)

"Landlords" are defined under the Charter Amendment to include successors in interest. (§ 1801(e); Rent Control Regs., § 8021.5.) If a landlord is adjudged liable in an administrative proceeding for charging excess rent to a tenant and the tenant obtains an order authorizing withholding of rent as a remedy, the Charter Amendment provides that order "shall survive the sale or other transfer of the property and shall be binding upon successors of the landlord against whom the order was made." (§ 1809(b)(2).) A successor owner, however, is "deemed conclusively to be in compliance" with the Charter Amendment at the time he or she acquires the rental property unless there is an outstanding decision or judgment requiring restitution of excess rent, a pending administrative complaint for excess rent, or an outstanding citation or notice of a housing, safety, or health code violation pertaining to the property. (Rent Control Regs., § 8024(h).)

Administrative complaints for excess rent are tried before a hearing examiner, who is authorized to determine the existence and amount of any overpayments, whether the tenant is entitled to interest on excess rent paid, and whether the landlord should pay a penalty for willful receipt of excess rent. (Rent Control Regs., § 8029.) Decisions by the hearing examiner can be appealed to the Board; if no appeal is taken within 20 days after the hearing examiner's decision, his or her decision becomes the decision of the Board. (Rent Control Regs., § 8052.) A party may seek review of a Board decision via a writ petition for administrative mandate pursuant to Code of Civil Procedure section 1094.5. (Rent Control Regs., §§ 8021(b) & (d), 8070(c).)

A landlord who is found liable for receiving excess rent "shall not be deemed in compliance with the [Charter Amendment] with respect to the subject unit until the entire period of withholding of rent by the complainant has been completed, or the entire amount of liability is otherwise discharged." (Rent Control Regs., § 8070(f).) The landlord may not implement any rent increases until that time. (Rent Control Regs., § 8070(f).)

B. Factual and Procedural History[2]

1. Solomon acquires noncompliant rental property

Solomon's parents, Martha Solomon (Martha) and David Solomon (David),[3] owned a four-unit residential property at 1912 Euclid Street in Santa Monica. Dominguez-Konopek rented unit 1914 in the building, which was covered by the Charter Amendment, for $580 per month starting in November 1996. David died in December 1996, and ownership of the property was transferred from Martha individually to Martha as trustee of the Martha Solomon Trust (the Trust) in 2000. Martha lived at the residential property until she died in September 2011. Martha increased Dominguez-Konopek's rent from time to time over the years, including by giving notice on forms provided by the Board.

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[2] In summarizing the facts, we rely in part on a decision of a Board hearing examiner (described in further detail *post*). The record includes no transcript of the hearing, but the examiner's decision contains detailed summaries of the witnesses' testimony and arguments made by the parties.

[3] Because Martha and David share the same last name, we refer to them by their first names.

At the time of Martha's death, Dominguez-Konopek was paying $767 per month in rent, pursuant to a notice of rent increase Martha provided Dominguez-Konopek in 2008.

Solomon, who did not reside in California, began helping Martha manage the property in the year or two before her death. When Martha died in September 2011, Solomon, who was the Trust's sole beneficiary, took over the property. Solomon soon learned Dominguez-Konopek might have paid excess rent to Martha in violation of the Charter Amendment. In November 2011, Walberto Martin (Martin), whom Solomon had hired in July 2011 to manage the property, sent Dominguez-Konopek a letter informing her she may have overpaid rent. Martin enclosed a check with the letter for $767, which was the amount of Dominguez-Konopek's November rent, and instructed her not to pay her December rent. Dominguez-Konopek never cashed that check. A few days later, Solomon sent Dominguez-Konopek a check for $4,000, along with a note stating he and his legal counsel had determined she had been overcharged $3,998 over the past three years. Dominguez-Konopek deposited the check approximately one month later.

In January 2012, Dominguez-Konopek sent Solomon a letter, through counsel, asserting she had been overcharged $35,473.16 in rent since beginning her tenancy. Dominguez-Konopek demanded Solomon reimburse her for the excess rent paid. Failing that, she stated she would use the overpayment to withhold rent for the next 68 months. Dominguez-Konopek stopped paying rent as of January 2012.

2. Solomon receives Board verification of the permissible rental rate for Dominguez-Konopek's apartment

In early 2012, Solomon registered the unit as required by the Charter Amendment and sought a certificate of the permissible rent from the Board pursuant to Civil Code section 1947.8, subdivision (c).[4] In March 2012, the Board issued a "verification" that the Maximum Allowable Rent (MAR) when Dominguez-Konopek began her tenancy was $530 per month and the current MAR was $760 per month. Neither party appealed this determination.

3. The Board files an administrative complaint for excess rent

In April 2012, the Board filed an administrative complaint against Solomon to recover excess rent paid by Dominguez-Konopek.[5] A hearing examiner held a hearing on the complaint and issued a decision later that summer.

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[4] Civil Code section 1947.8, subdivision (c) requires local rent control boards to issue a "certificate of the permissible rent levels of the rental unit" to a requesting landlord or tenant within five business days of the request. "The permissible rent levels reflected in the certificate shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed." (Civ. Code, § 1947.8, subd. (c).) A landlord or tenant who wishes to appeal the Board's determination must do so within 15 days from the certificate's issuance. (Civ. Code, § 1947.8, subd. (c).)

[5] Solomon had filed his own administrative excess rent complaint earlier that month, but the Board dismissed it because

At the hearing, Dominguez-Konopek testified she did not want to participate in the administrative proceeding because she did not want to be bound by the three-year statute of limitations applicable to administrative complaints. Dominguez-Konopek contended *Minelian v. Manzella* (1989) 215 Cal.App.3d 457 (*Minelian*) gave her the option, as an alternative to filing an administrative complaint, to withhold rent beyond the three-year limitations period.

After considering the testimony, arguments, and documents presented by the parties, the hearing examiner determined Dominguez-Konopek had been overcharged since she began her tenancy in November 1996. The examiner took "administrative notice" of the fact that the Board sent property owners a determination of the correct MAR for their rental properties each year. On that basis, the examiner concluded Martha had knowingly collected excess rent from Dominguez-Konopek, which meant she could not legally be compelled to pay the annual percentage rent increases allowed by the Board during the years 1997–2011. The MAR for Dominguez-Konopek's unit when she began her tenancy—i.e., the maximum lawful rent Martha could have charged her pursuant to the Charter Amendment—was $530.

Solomon argued he should not be held responsible for excess charges imposed before Martha died. The hearing examiner rejected his argument after finding the Trust had continuously owned the property since 2000 and there was no transfer of ownership to Solomon upon Martha's death.

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the Charter Amendment does not permit landlords to initiate such complaints.

Considering the three-year limitations period applicable to administrative complaints, the examiner concluded the maximum lawful rent for May 2009 through April 2012 (when the complaint was filed) was $543, consisting of a MAR of $530 plus $13 permitted as a pass-through of registration fees based on evidence such fees were timely paid and notice requirements were met. The examiner determined Dominguez-Konopek overpaid rent by $224 per month through December 2011, totaling $7,168. After crediting the $4,000 Solomon previously paid Dominguez-Konopek and the rent Dominguez-Konopek withheld from January through April 2012, the examiner ruled Solomon owed Dominguez-Konopek $996. The examiner also awarded Dominguez-Konopek an additional $500 in interest.

The hearing examiner authorized Dominguez-Konopek to withhold rent until she had recouped the total award but said it was beyond her authority to determine whether *Minelian* allowed Dominguez-Konopek to withhold excess rent paid more than three years prior to the complaint. The examiner also gave Solomon the option of complying with the decision by paying the amount due to Dominguez-Konopek.

4. The Board affirms the examiner's decision, and issues a proposed addendum

Two days after the examiner issued her decision, Solomon sent Dominguez-Konopek a check for $1,496, the total amount due according to the hearing officer. Although Solomon paid that amount, he also appealed the examiner's decision to the Board.

In August 2012, the Board upheld the hearing examiner's decision (the First Board Decision). The Board's decision concluded: "The Board affirms the hearing examiner's decision

determining that the Martha Solomon Trust is administratively liable to [Dominguez-Konopek] for an unreimbursed rent overcharge, inclusive of interest but not inclusive of any penalty, in the amount of $1,496. This determination of liability is limited to administrative remedies provided by the [Charter Amendment] and does not affect any legal or equitable rights or responsibilities of the landlord or tenant under *Minelian v.* [*Manzella*] 215 Cal.App.3d 457." Solomon notified the Board he intended to petition for a writ of mandate.

Later that month, the Board issued a "Notice of Proposed Addendum to Decision of Hearing Officer" in which it found Solomon was "in compliance with the Board Decision as of July 13, 2012" and stated "[a]ll general adjustments for Unit 1914 are hereby unblocked." The notice further stated the current MAR for Dominguez-Konopek's unit was $760, which included annual adjustments from 1997–2011, and the MAR following the Board's September 2012 adjustment would be $772 (excluding pass-through registration fees and surcharges), provided Solomon gave proper notice.

5. Solomon brings an unsuccessful unlawful detainer action

Dominguez-Konopek continued to withhold rent. In September 2012, Solomon filed an unlawful detainer action against her. The notice to quit that preceded the unlawful detainer action demanded Dominguez-Konopek pay $760 per month from May through August 2012 and $800.09 for September. In her answer to Solomon's complaint, Dominguez-Konopek contended the notice sought more rent than was legally

allowed and the excess rent she previously paid to Martha could be applied, pursuant to *Minelian,* against future rent demanded.

The court held a hearing on Solomon's unlawful detainer action in January 2013 and issued a judgment in Dominguez-Konopek's favor in February (the Unlawful Detainer Decision). The judgment states: "The basis for the Court's judgment is that the notice to pay rent or quit overstated the amount of rent due and owing. The Court finds that the MAR was still $530.00 per month as of September 11, 2012, and that the rent was only $530.00 for each of the months listed on the notice to pay rent or quit. The Court did not rule on the other defenses raised by [Dominguez-Konopek]."[6] Solomon did not appeal the Unlawful Detainer Decision.

6. Solomon successfully petitions for a writ of administrative mandate

At the time the superior court issued the Unlawful Detainer Decision, the First Board Decision was still subject to further review. After losing his unlawful detainer action, Solomon petitioned for a writ of mandate to reverse the First Board Decision. Dominguez-Konopek and the Board filed demurrers to Solomon's writ petition, both of which the superior court overruled.

The appellate record in this case does not contain the filings supporting and opposing the demurrers, but the court's written rulings reveal the substance of the dispute. In addressing the Board's demurrer, the court stated in a minute

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[6] The $530 amount was the same amount calculated as the maximum allowable rent in the First Board Decision.

order: "[Solomon] is correct that jurisdiction to set the MAR is vested in the Board in the first instance. Indeed, it may have been appropriate for the court which tried the unlawful detainer proceeding to adjudicate possession and defer any ruling on issues committed in the first instance to the Rent Control Board to that board for adjudication. See CCP 1094.5 and *Eureka Teachers Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 361." With regard to Dominguez-Konopek's demurrer, the court stated: "As [Solomon] points out in his Opposition, the proper means to review or contest a rent determination by the Santa Monica Rent Control Board is via writ of mandate, and the court which tried the unlawful detainer matter had limited jurisdiction which does not extend to upending writ of mandate proceedings."

After a one-day trial in March 2014, the court hearing Solomon's writ petition granted the petition, set aside the First Board Decision, and remanded the matter for the Board to reconsider its prior decision "in the manner required by law." In its decision (hereafter the Writ Decision), the court concluded the First Board Decision suffered from three weaknesses. First, the court determined that by the express terms of the Trust, ownership of the property was automatically transferred to Solomon upon Martha's death and the hearing examiner erred in concluding otherwise. Second, the court reasoned, relying on Rent Control Regulation 8024(h),[7] that "at the time of [Solomon's] acquisition of the property on the date of his mother's death,

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[7] As described earlier in this opinion, the regulation states that "[e]very person who acquires an interest in rental property shall be deemed conclusively to be in compliance [with maximum allowable rent rules] at the time of acquisition," unless one of three exceptions is applicable.

[Solomon] was entitled to the conclusive presumption that he was in compliance with the [Charter Amendment] as none of the three exceptions to that conclusive presumption then existed." It accordingly followed there was "no substantial evidence to support the Board's conclusion that rent adjustments were 'blocked' from and after . . . September 20, 2011," which was the date Solomon took ownership of the property. Third, the court concluded there was nothing in the record to support the examiner's reliance on "administrative notice" to find Martha knowingly collected excess rent. Without that finding, there was insufficient evidence to either block general annual adjustments to the MAR for Dominguez-Konopek's unit or determine the MAR to be $530. Dominguez-Konopek did not appeal the trial court's issuance of a writ requiring the Board to reconsider its earlier decision.

7. The Board issues a new decision

On remand, the Board vacated the First Board Decision and issued a new decision (the Final Board Decision) that incorporated the following factual findings and legal conclusions.

Solomon acquired the property on September 20, 2011, and was deemed to be in compliance with the Charter Amendment at that time. The Board's determination of whether Dominguez-Konopek paid excess rent was therefore limited to the period from September 20, 2011, to April 25, 2012, when the Board filed the administrative complaint. During that period, the maximum lawful rent for Dominguez-Konopek's unit was $760 (the MAR) plus a $13 registration fee Solomon could pass through to Dominguez-Konopek if he provided proper notice. Dominguez-Konopek paid $767 per month from September through

December 2011 and no rent from January through April 2012. Thus, Dominguez-Konopek did not pay excess rent to Solomon. The Board said the Unlawful Detainer Decision had "no impact" on its revised decision. The Board also stated its decision was "limited to the administrative remedies provided by the [Charter Amendment] and [did] not affect any legal or equitable rights or responsibilities of the landlord or tenant under *Minelian v. Manzella* (1989) 215 Cal.App.3d 457." Neither party filed a writ petition challenging the Final Board Decision.

8. Solomon files a declaratory judgment action

Dominguez-Konopek began paying rent again, in the amount of $800.07 per month, in March 2013.[8] After the Board issued the Final Board Decision, Solomon demanded Dominguez-Konopek pay $11,002.54 in unpaid rent (for amounts pertaining to various months between October 2011 and March 2013) plus the $5,496 Solomon had previously paid to Dominguez-Konopek. Dominguez-Konopek refused to pay anything, asserting Solomon owed her "far more" than what he demanded.

In February 2015, Solomon sued Dominguez-Konopek, seeking (1) a declaration he owed her nothing, (2) restitution of the $5,496 he previously paid her, (3) damages of $11,002.54 in unpaid rent, and (4) possession of the premises. The parties filed trial briefs in which they addressed *Minelian* and the preclusive effect of the decisions in the prior administrative and court proceedings.

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[8] Dominguez-Konopek resumed paying rent after Solomon provided, in January 2013, a 60-day notice increasing her rent.

In August 2015, the court held a trial on stipulated facts and heard argument from the parties. The court ruled Solomon was not entitled to evict Dominguez-Konopek and calculated the following permissible monthly rental rates for Dominguez-Konopek's unit since Solomon took ownership of the property: $767 for October 2011–April 2012, $530 for May 2012–September 2012 (based on the Unlawful Detainer Decision), $767 for October 2012–January 2013,[9] and approximately $800 from February 2013 through the date of the court's ruling.

With regard to Dominguez-Konopek's alleged overpayments to Martha, the trial court found "a conflict" between Rent Control Regulation 8024(h), which, in the court's view, exempted Solomon from liability for any prior noncompliance by Martha, and *Minelian*. The court believed the regulation meant "a subsequent landlord is not bound by the misdeeds of the prior owner," while *Minelian* held a "tenant is not limited to the offsets available." Because Solomon sought declaratory relief (i.e., relief equitable in nature), the court asserted it had "broad equitable powers to fashion appropriate remedies capable of providing complete relief to the parties."

Exercising that authority, the court ruled as follows: "The issue before the Court is the fairness of imposing the obligations of the receipt of excess rent on the new owner consistent with *Minelian* which would be for 15 years from 11/96 - 9/11 when [Dominguez-Konopek] was a tenant in the unit owned by [Martha]. With the broad powers afforded trial courts to fashion

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[9] The minute order states this is the rental rate through February 2013 (rather than January 2013), but this appears to be a typographical error that was corrected in the judgment.

the appropriate remedies in a declaratory relief action, the Court will set the MAR for the time before [p]laintiff took over the building at $530. This, of course, is based on the prior owner's charging [Dominguez-Konopek] excess rent and not acting in substantial compliance with the [Charter Amendment]. However, the Court will only allow an offset for the excess rent received for three years consistent with the limitations period outlined in *Minelian* pursuant to CCP 338. The Court is well-aware that *Minelian* allowed an off-set against future rent as an affirmative defense in an unlawful detainer action. However, an offset for 15 years being assessed against a new owner is simply unfair, and inconsistent with the ruling of the Santa Monica Rent Control Board, and the aforementioned regulation. On the other hand, no offset when the new owner took by inheritance from his mother, the noncompliant landlord, is also unfair."

The trial court ruled Solomon was "entitled to an offset for payments already made to [Dominguez-Konopek] in the amount of $5,496.00." Based on calculations submitted by Dominguez-Konopek, the court entered judgment for Solomon in the amount of $6,517, which included the $5,496 Solomon previously paid. Both parties noticed appeals from the trial court's decision.

II. DISCUSSION

The trial court believed the issue before it was one of fairness after finding what it thought was a conflict between Rent Control Regulation 8024(h), pursuant to which Solomon bore no liability for noncompliance with the Charter Amendment prior to his acquisition of Dominguez-Konopek's unit, and *Minelian*, which Dominguez-Konopek relied upon to argue she could withhold rent from Solomon until she had recouped all

overpayments since 1996. The court's identified conflict, however, was a false one. The proper resolution of this case does not depend on an exercise of equitable powers to promote fairness but rather on application of issue preclusion principles. Applying those principles, we conclude Solomon may not be held liable for any conduct preceding his acquisition of the property and Dominguez-Konopek is not permitted to withhold rent.

A. The Issues Determined in the Final Board Decision Were Entitled to Preclusive Effect

Our decision is driven by whether, and to what extent, the trial court was bound by issues decided in the prior administrative and judicial adjudications when deciding whether a declaratory judgment should issue in this case. The applicability of issue preclusion is a question of law, which we review de novo. (*Duarte v. Cal. State Teachers' Retirement System* (2014) 232 Cal.App.4th 370, 389, fn. 11.)

Collateral estoppel, or issue preclusion, prevents a party from relitigating an issue determined in a previous action. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) The doctrine applies "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or in privity with that party." (*Id.* at p. 825.) Under California law, a decision is final for purposes of the doctrine when "an appeal from the trial court judgment has been exhausted or the time to appeal has expired." (*Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1174, citing *Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 910-911.)

Agency decisions in administrative proceedings can also have preclusive effect so long as the agency acts "in a judicial or quasi-judicial capacity." (*Murray v. American Airlines, Inc.* (2010) 50 Cal.4th 860, 867.) "Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: (1) the decision must be final with respect to action by the administrative agency [citation]; and (2) the decision must have conclusive effect [citation]." (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 168-169.) The first step is complete when the agency no longer has power to reconsider or rehear the decision. (*Id.* at p. 169.) The second step is complete when the decision is no longer subject to direct attack through a petition for administrative mandate. (*Ibid.*)

As a technical matter, the Unlawful Detainer Decision, Writ Decision, and Final Board Decision all meet the criteria for issue preclusion. We conclude, however, that only the Final Board Decision, which was informed by the Writ Decision that no party appealed, should be given preclusive effect under the circumstances.

Because neither party challenged the Final Board Decision that issued pursuant to the Writ Decision, the parties are bound by the issues necessarily decided by the Board. Thus, the parties were not free to re-litigate (1) whether Solomon was liable for any noncompliance with the Charter Amendment before he acquired ownership of the property (he wasn't), or (2) the MAR applicable to Dominguez-Konopek's unit from the date Solomon acquired the property to April 25, 2012, when the Board filed its administrative complaint against him ($760, exclusive of any passed-through fees).

But that raises the question of what effect should be given to the Unlawful Detainer Decision. It nominally satisfies the elements for issue preclusion because in order to decide whether Solomon was entitled to possession, the court in that action necessarily determined the maximum lawful rent Dominguez-Konopek could be charged for the months referred to in the notice to pay rent or quit. (See *Levitz Furniture Co. v. Wingtip Communications, Inc.* (2001) 86 Cal.App.4th 1035, 1038 ["A notice that seeks rent in excess of the amount due is invalid and will not support an unlawful detainer action"].) The unlawful detainer court was not bound by the First Board Decision because that decision was not then final (as established by Solomon's subsequent writ proceeding). Furthermore, even if the Unlawful Detainer Decision was incorrect in some respect, or beyond the court's jurisdiction to decide, the determinations reached therein became binding once the time to appeal elapsed. (See, e.g., *Pacific Mut. Life Ins. Co. of Cal. v. McConnell* (1955) 44 Cal.2d 715, 725-726 [final decision in contravention of statute not open to collateral attack as long as court had jurisdiction over subject matter and parties].)

There are limited exceptions to the operation of issue preclusion, however, and we conclude one applies to prevent the Unlawful Detainer Decision from having preclusive effect: "Neither res judicata nor collateral estoppel was ever '"intended to operate so as to prevent a re-examination of the same question between the same parties where, in the interval between the first and second actions, the facts have materially changed or new facts have occurred which have altered the legal rights or relations of the litigants."' [Citation.]" (*Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134,

179; see also *United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 616 ["Collateral estoppel does not apply where there are changed conditions or new facts which did not exist at the time of the prior judgment, or where the previous decision was based on different substantive law"].) A material change in the facts, which altered the parties' legal rights, occurred in this case after the Unlawful Detainer Decision.

The record before us in this appeal does not infallibly identify the unlawful detainer court's rationale for concluding that Dominguez-Konopek's monthly rent was limited to $530. But that finding almost certainly stems from a determination, consistent with the *First* Board Decision, that the initial MAR for Dominguez-Konopek's unit was ineligible for general annual increases while Martha was her landlord. The court that heard Solomon's administrative writ petition found to the contrary after a full presentation of the issues, and the Board subsequently determined the MAR for Dominguez-Konopek's unit was $760 when Solomon became her landlord. Those determinations constituted a material change in the factual basis underlying Solomon's liability to Dominguez-Konopek, and a resulting change to the parties' legal rights, which rendered invocation of issue preclusion based on the Unlawful Detainer Decision no longer appropriate. (See *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1517 ["where the previous decision rests on a 'different factual and legal foundation' than the issue sought to be adjudicated in the case at bar, collateral estoppel effect should be denied"].)

The Unlawful Detainer Decision was consistent with and almost certainly predicated on the outcome of the First Board Decision but, as we noted above, the First Board Decision was

still subject to review at the time of the Unlawful Detainer Decision. When the Writ Decision became final and the Board issued the Final Board Decision, there was no longer a reason to treat the Unlawful Detainer Decision's calculation of the MAR for Dominguez-Konopek's unit (for only the months listed on the notice to quit) as binding.

B. The Court Erred by Not Applying Issue Preclusion When Determining the Extent of Solomon's Liability and Calculating Permissible Rent

We now consider the effect of the foregoing decisions on the declaratory judgment action. In resolving that action, the trial court relied on its equitable authority to construct a remedy incorporating various components of the prior proceedings. The court's decision, while a commendable effort to resolve the convoluted issues before it, is inconsistent with issue preclusion principles.

Courts hearing equitable claims have "the authority to fashion an equitable remedy appropriate to the circumstances of [the] case" (*Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 648), but their power to fashion relief is constrained. "Although a court of equity may employ broad powers in the application of equitable remedies, it cannot create new rights under the guise of doing equity. (*Rosenberg v. Lawrence* (1938) 10 Cal.2d 590, 594-[595] [75 P.2d 1082].) . . . . Equity follows the law and when the law determines the rights of the respective parties, a court of equity is without power to decree relief which the law denies. (*Shive v. Barrow* (1948) 88 Cal.App.2d 838, 844 [199 P.2d 693].)" (*Marina Tenants Assn. v. Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 134.)

The Writ Decision, and the Final Board Decision that implemented the Writ Decision's directions, established Solomon was in compliance with the Charter Amendment when he became Dominguez-Konopek's landlord. The legal import of that determination is that Solomon bore no liability to Dominguez-Konopek for any noncompliance predating his ownership of the property. Indeed, the court in the Writ Decision further concluded there was insufficient evidence to show Martha knowingly failed to comply with the Charter Amendment, meaning Dominguez-Konopek's rent was subject to general annual adjustments throughout her tenancy. The Final Board Decision relied upon that conclusion to calculate Dominguez-Konopek's permissible rent. Because the court in the declaratory judgment action was bound by those determinations, it should not have adjudged Solomon liable to Dominguez-Konopek for the three years predating Solomon's ownership (and the court further erred by calculating such liability on the basis of a $530 MAR that did not include annual adjustments).

Not only was the court in the declaratory judgment action bound by the prior decisions, so too was Dominguez-Konopek. Thus, the determination that Solomon had no liability for excess rent charged during Martha's ownership barred Dominguez-Konopek from withholding rent pursuant to *Minelian*.

In that case, the Board determined a landlord had overcharged his tenant for more than seven years, a decision that became final when no appeal was taken. (*Minelian*, *supra*, 215 Cal.App.3d at pp. 460-461.) The tenant began withholding rent, and the landlord brought an unlawful detainer action against her. (*Id*. at p. 461.) The trial court denied relief to the landlord on various grounds, including that the tenant could offset her

rent obligations until she had recouped all excess rent paid over the past seven-plus years, notwithstanding the three-year statute of limitations applicable to actions brought under the Charter Amendment. (*Id*. at pp. 460-462.) The Court of Appeal agreed no statute of limitations applied when a tenant used excess rent paid as a defense to an unlawful detainer action (*Id*. at p. 463.) The court reasoned that "the affirmative defense for excess rent paid is a setoff in the nature of an equitable defense," meaning "that 'as long as [the tenant's] obligation to pay rent exists, her right to claim setoff against [the landlord], whose wrongful conduct resulted in her overpayment of rent, will continue.'" (*Id*. at p. 467.) The court advised landlords in similar situations to seek declaratory relief to determine exactly how much excess rent had been paid (and could accordingly be withheld by the tenant). (*Ibid*.)

In order for *Minelian's* self-help remedy to be available, the landlord from whom the tenant withholds rent must be liable for it. Because the Final Board Decision finds Solomon was not responsible for any conduct during Martha's ownership of the property, Dominguez-Konopek may not withhold rent based on her payments to Martha from 1996–September 2011.

Dominguez-Konopek relies heavily on Rent Control Regulation 8000.5, which provides that the regulations as a whole—including Rent Control Regulation 8024(h) that is central to the rationale in the Writ Decision and the Final Board Decision—are "not intended and should not be applied as administrative constructions of the [Charter Amendment] to be relied upon by a court of law in construing the [Charter Amendment] in any civil proceeding." Dominguez-Konopek

contends this provision should forestall giving either the Writ Decision or Final Board Decision preclusive effect.

Dominguez-Konopek's invocation of Rent Control Regulation 8000.5 does not affect our disposition of this appeal. We do not rely on Rent Control Regulation 8024 to construe the Charter Amendment. Rather, we rely on issue preclusion principles that accord preclusive effect to the Final Board Decision, and it is that decision that applied Rent Control Regulation 8024(h).[10] Indeed, if there is any provision of the Rent Control Regulations that were relevant to our analysis, it is not Regulation 8000.5 but rather Regulation 8070(c). That provision states a "Board decision imposing liability in a specific amount and authorizing the withholding of rent shall, unless stayed or until vacated by a court of competent jurisdiction, be given collateral estoppel effect in any judicial proceeding, other than a proceeding under Code of Civil Procedure Section 1094.5 challenging the specific decision of the Board." (Rent Control Regs., § 8070(c).)

In addition, Dominguez-Konopek's reliance on *Baychester Shopping Center, Inc. v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2008) 165 Cal.App.4th 1000 (*Baychester*) for the proposition that a landlord is liable for his or her predecessor's overcharges is misplaced. *Baychester* was based on San Francisco's rent control ordinance which, as discussed in that decision, makes successor landlords liable for

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[10] If Dominguez-Konopek disputed the correctness of the Writ Decision, or of the Final Board Decision that ensued, her remedy was to appeal the former or file a petition for writ of mandate to challenge the latter. She did neither.

the noncompliance of their predecessors. Critical to the *Baychester* decision was the fact that the San Francisco ordinance, in contrast to the Board's reading of the Charter Amendment in light of the Rent Control Regulations, contained no provision that deems a successor landlord to be automatically in compliance with the rent control law at the point of succession. (*Baychester*, 165 Cal.App.4th at p. 1005.) *Baychester* does not foreclose the operation of issue preclusion here.

Furthermore, the fact that Dominguez-Konopek "opted" to rely on *Minelian* rather than initiate an administrative complaint for excess rent paid does not give her license to avoid the determination of Solomon's non-liability. *Minelian* is a remedy limited to defending against unlawful detainer actions brought by a landlord who has received excess rent. (*Minelian*, *supra*, 215 Cal.App.3d at p. 467 ["'as long as [the tenant's] obligation to pay rent exists, her right to claim setoff against [the landlord], *whose wrongful conduct resulted in her overpayment of rent*, will continue'"], emphasis added.) If the landlord did not receive excess rent, *Minelian* simply does not apply. In *Minelian*, a final Board decision determined the landlord overcharged the tenant. (*Id*. at p. 461.) Here, the Final Board Decision established Solomon did not receive excess rent and, further, that there was insufficient proof to block annual rent increases pertaining to Dominguez-Konopek's unit before Solomon became her landlord. *Minelian* does not allow Dominguez-Konopek to disregard that decision and to withhold what she believes—in contrast to what the Board actually decided—she overpaid.

The trial court incorrectly calculated Dominguez-Konopek's maximum lawful rent at $530 for May 2012 to September 2012, which was the amount determined in the unlawful detainer

action. For the reasons we have discussed, the declaratory judgment court was not bound by the Unlawful Detainer Decision. The court was bound, rather, by the determination in the Final Board Decision that Solomon was in compliance with the Charter Amendment when he acquired the property in September 2011 and the MAR at that time was $760, to which $13 could be added with proper notice. Thus, the rent for May 2012 to September 2012 must be recalculated on remand, consistent with the Writ Decision and the Final Board Decision.

We see no error, on the other hand, in the court's determinations of Dominguez-Konopek's maximum lawful monthly rent from September 2011–April 2012 and from October 2012 onward. When the Board decided Dominguez-Konopek's permissible monthly rent for September 2011–April 2012, it stated Solomon could add a $13 registration fee to the MAR of $760 "as long as he provided proper written notice . . . ." The trial court found Solomon did not provide adequate notice and determined the maximum lawful rent was $767 because that was Dominguez-Konopek's rent when Solomon acquired the property. The court's determination is supported by the record, as are the monthly rents the court calculated for October 2012 forward.[11]

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[11] There is a discrepancy between the minute order and the judgment describing the appropriate monthly rent for October 2012–January 2013. The minute order states that rent is $767, based on the reasoning identified above. The judgment, however, states the rent for that period is $760. The amount stated in the judgment appears to be a typographical error because the total award to plaintiff was calculated using the $767 number in both the minute order and the judgment.

In conclusion, Solomon owes nothing to Dominguez-Konopek for the period preceding his acquisition of the property and, accordingly, Dominguez-Konopek is not entitled to withhold rent based on alleged overpayments during that period. We will remand the case to the trial court to redetermine the relevant permissible rent amounts.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court for further proceedings consistent with the views expressed in this opinion, including recalculating the maximum lawful rent applicable to Dominguez-Konopek's unit from May 2012 to September 2012 and the total award to Solomon. Solomon is to recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J. DUNNING, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.