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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

GOLDEN STATE VENTURES, LLC, Plaintiff and Respondent, v. CITY OF OAKLAND RENT BOARD, Defendant and Appellant.	A151421 (Alameda County Super. Ct. No. RG16834166)

This appeal involves the interpretation of an exception to the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq. (Costa-Hawkins)),[1] a statute that, among other things, generally exempts condominiums from local rent control. The exemption, however, does not apply to apartments that have undergone condominium conversion until such time as the units have "been sold separately by the subdivider to a bona fide purchaser for value." (§ 1954.52, subd. (a)(3)(B)(ii).) Here, in a single day, plaintiff Golden State Ventures, LLC purchased each of the four condominiums contained in a recently converted apartment building, utilizing four individual sales contracts. The building's existing tenants were then subjected to a 125 percent rent increase. After the tenants successfully challenged the rent increase before the City of Oakland Rent Board (Rent Board), plaintiff filed a petition for writ of administrative mandamus in the trial court, seeking to overturn the decision on the grounds that the

[1] All further statutory references are to the Civil Code except as otherwise indicated.

condominiums fell within the Costa-Hawkins exemption because they had been "sold separately." The lower court ruled in favor of plaintiff and the Rent Board appealed. We now affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Kenneth Kolevzon owned the building located at 840 55th Street in Oakland. The building had five apartment units, including two studio units that could be converted into a single unit by means of a pass-through door in a shared wall.

In December 2009, Kendashi Haley moved into 840 55th Street #3. Criselda Cruz moved into 840 55th Street #1 in April 2012. They each paid $600 per month in rent to Kolevzon.

Between 2010 and 2013, Kolevzon converted the five apartment units into four condominiums, with the two apartments having the shared wall being designated as a single condominium unit.[2]

On July 10, 2013, Kolevzon recorded the declaration of covenants, conditions and restrictions (including a condominium plan) with Alameda County.

On February 13, 2015, plaintiff purchased the four condominiums from Kolevzon in four individual sales transactions. Each of these transactions had a separate grant deed, escrow number, and purchase price. The four transactions were processed on the same day, over the span of approximately 90 minutes.

On February 19, 2015, plaintiff sent Cruz and Haley a notice regarding the change in ownership, notifying them that their monthly rent would increase by $850 from $600 to $1,350 effective May 1, 2015.[3]

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[2] In connection with her administrative petition challenging the rent increase, Haley alleged that the condominium conversion was approved based on Kolevzon's fraudulent representations. For purposes of this appeal, the Rent Board does not challenge the validity of the condominium conversion process.

[3] We note that although these are the figures given in the letters to Cruz and Haley, the correct result of adding $850 and $600 is $1,450.

On July 13, 2015, Cruz and Haley filed amended tenant petitions with the City of Oakland's Rent Adjustment Program. The petitions alleged plaintiff was attempting to raise their rent beyond that allowed by Oakland's Rent Adjustment and Evictions Ordinance (Oakland Mun. Code, ch. 8.22). Plaintiff opposed the petitions, claiming that the property was exempt from rent control under Costa-Hawkins.[4]

On September 21, 2015, the Rent Adjustment Program (through a hearing officer), ruled that the condominium units were not exempt from the Rent Adjustment and Evictions Ordinance under Costa-Hawkins because they were "not sold separately by the subdivider. Rather, the owner purchased the entire building. The fact that the owner paid with 4 separate checks does not change the fact that he purchased the entire building."

On October 9, 2015, plaintiff appealed the hearing officer's decision to the Rent Board, contending Costa-Hawkins applied because plaintiff had purchased the condominium units by means of separate escrows/transactions.

On June 9, 2016, the Rent Board held a hearing on plaintiff's appeal, voting to affirm the hearing officer's decision.

On October 6, 2016, plaintiff filed a petition for writ of administrative mandamus in the trial court, challenging the Rent Board's decision. Plaintiff contended the term " 'sold separately' within [Costa-Hawkins] merely means that the condominium's title remained separate from any other property's title through the sales transaction." It further asserted "[t]he fact that [plaintiff] bought several condominiums within a single physical structure is irrelevant."

On March 23, 2017, the trial court granted plaintiff's writ petition. The court ruled that the "plain meaning" of the "sold separately" exception is that a subdivider cannot collect market-rate rent; only a subsequent purchaser can. That meaning "is

[4] Oakland Municipal Code chapter 8.22.030, section A.7 provides that dwelling units exempt pursuant to Costa-Hawkins are not covered by the Rent Adjustment and Evictions Ordinance.

consistent with the legislative intent" of that provision, "which was to close a loophole in Costa-Hawkins that allowed landlords to raise rents by 'preparing' to convert a rental unit to a condominium." Disagreeing with the Rent Board's position, the court concluded "[n]othing in the statute or legislative intent suggests that the condominiums in a building are not sold separately if they are sold at the same time to the same buyer." The Rent Board has filed an appeal from the court's order.

DISCUSSION

I. Standard of Review

"When reviewing a decision issued by an administrative agency, the appellate court's 'task . . . is the same as that of the trial court: that is, to review the agency's actions to determine whether the agency complied with procedures required by law.' [Citation.] 'The appellate court reviews the administrative record independently; the trial court's conclusions are not binding on it.' " (*Kern, Inyo & Mono Counties Plumbing, Etc. v. California Apprenticeship Council* (2013) 220 Cal.App.4th 1350, 1357.) On appeal, we also are not bound by any legal interpretation made by the agency or the trial court. Instead, we make an independent review of any questions of law necessary to the resolution of this matter. (See *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) Statutory interpretation is a clear question of law for our determination anew on appeal. (*People ex rel. Lockyer v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 432; *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1349–1350.)

II. Principles Governing Statutory Interpretation

" 'When we interpret a statute, "[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal

interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." ' " (*Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505, 512.)

III. Does The Costa-Hawkins Exception Apply to Plaintiff's Condominiums?

A. Issue on Appeal

This case turns on the interpretation of an exception to Costa-Hawkins' rent control exemption. The exception provides that an apartment converted to a condominium remains subject to local rent control until such time as it has "been *sold separately* by the subdivider to a bona fide purchaser for value." (§ 1954.52, subd. (a)(3)(B)(ii), italics added.)

Here, it is undisputed that plaintiff acquired the entire physical structure of the tenants' apartment building by means of four separate transactions, one for each of the building's four condominium units. The Rent Board asserts that plaintiff "planned to circumvent the plain meaning *as well as* the *spirit*, *purpose*, and *legislative intent* of the phrase 'sold separately' when it strategically designed the purchase of the *entire* building at 840 55th Street, Oakland, California, and served the existing tenants with an astronomical rent increase." The Rent Board contends plaintiff "should not be rewarded for crafting a loophole in the Costa-Hawkins exemption." Plaintiff counters that the Rent Adjustment and Evictions Ordinance no longer applies because "the subdivider here sold separately the condominiums at issue to a bona fide purchaser . . . ."

B. Costa-Hawkins

"The Costa-Hawkins Act was enacted in 1995 to ameliorate the impact of local rent control efforts, and specifically vacancy control, through which rent controls in a few locales remained in place even when an apartment was voluntarily vacated and a new tenancy began. The legislation was billed by proponents as a 'moderate approach to

overturn extreme vacancy control ordinances which unduly and unfairly interfere into the free market.' [Citation.] The Act preempts local rent control ordinances in some circumstances. 'Its overall effect is to preempt local rent control ordinances in two respects. First it permits owners of certain types of property to adjust the rent on such property at will, "[n]otwithstanding any other provision of law." [Citation.] Second it adopts a statewide system of what is known among landlord-tenant specialists as "vacancy decontrol," declaring that "notwithstanding any other provision of law," all residential landlords may, except in specified situations, "establish the initial rental rate for a dwelling or unit." ' " (*T & A Drolapas & Sons, LP v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2015) 238 Cal.App.4th 646, 651–652.) We are concerned here with the first preemption aspect of Costa-Hawkins.

C. Exemptions from Local Rent Control Laws

This case concerns one of the three classes of properties that have been made entirely exempt from local rent control. "Section 1954.52, subdivision (a), provides three exemptions from local rent control laws, any of which allow an owner to establish the initial and subsequent rental rates for a unit. The first exemption is for a unit that has 'a certificate of occupancy issued after February 1, 1995.' [Citation.] The second exemption is for units already exempt from rent control 'pursuant to a local exemption for newly constructed units.' [Citation.] The third exemption is for a unit that is '*alienable separate from the title to any other dwelling unit* or is a subdivided interest in [a community apartment project, a stock cooperative project, or a limited equity housing cooperative].' [Citation.] Condominium units are included in the third exemption, *because they are alienable separate from the title to any other dwelling unit*." (*Burien, LLC v. Wiley* (2014) 230 Cal.App.4th 1039, 1044–1045 (*Burien*), italics added, fn. omitted.)

Effective January 1, 2002, the Legislature amended section 1954.52's third exemption to exclude "[a] condominium dwelling or unit that has *not been sold*

separately by the subdivider *to a bona fide purchaser for value*." (§ 1954.52, subd. (a)(3)(B)(ii), italics added.) This exclusion, however, does not apply to condominiums that fall within the first or second exemptions set forth above. It also does not apply "if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred . . . ." (*Ibid.*)

As noted by the appellate court in *Burien*, "[t]he legislative history of the [2002] amendment is instructive. As explained in the analysis by the Assembly Committee on the Judiciary . . .: 'According to the sponsors, this amendment is necessary to close a loophole in law that allows landlords to avoid local rent control laws. The exemption was originally created to spur construction of condominiums, seen as an affordable housing alternative, and in recognition that condominiums were built with the same purpose as apartment units. [¶] However, the language was broadly written and, as a consequence, some apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. In the meanwhile, the property owners continue to rent the apartment units, free from local rent controls because of the Costa-Hawkins exemption. In some cases, proponents assert, the condo-conversion permits were pulled up to eight years ago, but the owners are still renting the unit to tenants. *This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value*. Thus, apartment units that have remained rentals would be subject to local rent control laws.' [¶] 'After the Legislature passed the bill and sent it to Governor Davis for signature, its author (Senator Sheila James Kuehl) wrote the Governor: "[T]he bill closes a loophole in Costa-Hawkins that allows landlords to . . . raise rents by falsely 'preparing' to convert a rental unit to a condominium. Under [Senate Bill No.] 985, in cities that have rent control, *the landlord would be required to actually sell a unit*, rather than

merely initiate the conversion paperwork, in order to have rent controls removed." ' " (*Burien, supra,* 230 Cal.App.4th at pp. 1046–1047, italics added.)

The Rent Board contends the "sold separately" exception does apply under our facts because plaintiff "admits that it has control of and owns the entire building at 840 55th Street, Oakland, California." The Rent Board also notes the building's four units are all connected within the structure, there are no units in the building that were not converted to condominiums, plaintiff negotiated to purchase all the units together, none of the units were sold to new occupants, and the complaining tenants continued to reside in their units just as they had prior to the conversion. Essentially, the Rent Board asserts plaintiff did not meet the "sold separately" requirement because it purchased the entire apartment building, regardless of how the transaction was structured. Plaintiff counters that the "sold separately" exception "applies rent control only to condominium subdividers [like Kolevzon], not to subsequent purchasers like Golden State." Plaintiff is correct.

D. The Rent Board's Interpretation Goes Too Far

The Rent Board concedes that the condominium titles for the units at issue are " 'alienable separate from the title to any other dwelling unit.' " It also admits Costa-Hawkins does not explicitly state that "sold separately" means sold to *individual purchasers,* and it acknowledges that plaintiff has separate titles and paperwork for the units. Notwithstanding these concessions, the Rent Board contends the phrase "sold separately" does not apply to condominium units that are sold together to a single buyer who, like the prior owner, controls an entire building with tenants who continue to reside in their units as they did prior to the conversion. It asserts plaintiff merely " 'stepped into the shoes' " of Kolevzon, continuing Melendre"to operate the building as an apartment—though the units were legally titled as condominiums." It also claims the units were not sold separately because Kolevzon "sold the entire building to [plaintiff] at one time."

In support of its position, the Rent Board first notes that in order to be covered under Costa-Hawkins, section 1954.52, subdivision (a)(3)(A) requires a unit to be "alienable *separate* from the title to any other dwelling unit." (Italics added.) The next subsection, however, section 1954.52, subdivision (a)(3)(B)(ii), "explains that Costa-Hawkins does not apply unless the unit has been 'sold *separately* by the subdivider' " (italics added), leading the Rent Board to posit that "[t]here is no reasons for the [L]egislature to repeat 'separate' if the word has the same meaning in both subsections." From this supposition, the Rent Board concludes that " 'sold separately' is further describing the unit that *must already be* 'alienable separate from the title to any other dwelling unit.' " Because the entire building involved here was sold "at one time," the Rent Board asserts the units do not fall within the exemption."[5] The Rent Board acknowledges, however, that section 1954.52, subdivision (a)(3)(B)(ii) "does not explicitly state that 'sold separately' means sold to individual purchasers . . . ."

We agree with plaintiff that the Legislature most likely used the word "separately" in the exception merely to reiterate the requirement that the unit's title must be separate from that of other dwelling units. If the Legislature had intended that in order to qualify for the exemption each condominium in a building must also be sold separately to individual purchasers, it could have plainly stated that requirement. In our view, the interpretation that the Rent Board advocates does not flow naturally from the statutory language, instead adding a requirement that the Legislature, for whatever reason, did not see fit to include.

The Rent Board also cites to the second part of section 1954.52, subdivision (a)(3)(B)(ii), pertaining to the circumstance in which the prior owner continues to reside in one unit of a building after the building's other units have been "sold separately." In

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[5] Technically speaking, of course, the building's four units were not sold "at one time," in that it is undisputed there were four separate transactions that occurred at four distinct points in time, albeit on the same day.

that situation, the statute arguably appears to contemplate the units having been sold to individual owners: "[I]f all the dwellings or units except one have been sold separately by the subdivider to bona fide *purchasers* for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit." (§ 1954.52, subd. (a)(3)(B)(ii), italics added.) From this language, the Rent Board concludes "that the plain meaning of 'sold separately' does not encompass [plaintiff's] transaction." We are not persuaded.

As the Rent Board acknowledges, the Legislature enacted the 2002 amendment to stop apartment owners from exploiting a particular loophole in Costa-Hawkins by falsely initiating condominium conversions. At that time, subdividers were charging market-rate rent by " 'obtaining a permit to convert to condominiums, but never completing the process.' " (*City of West Hollywood v. 1112 Investment Co* (2003) 105 Cal.App.4th 1134, 1143 (*City of West Hollywood*).) To address this conduct, the exception was amended to require *the subdivider* " 'to actually sell a unit, rather than merely initiate the conversion paperwork, in order to have rent controls removed.' " (*Id*. at p. 1144.) The Rent Board concedes this Legislative intent is "not specifically at issue in this case because Mr. Kolevzon completed the condominium conversion."

Significantly, before the exception at issue "took effect, there was no requirement that the unit be sold." (*City of West Hollywood, supra,* 105 Cal.App.4th at p. 1148.) The entire point of the exception was to exclude from Costa-Hawkins *subdividers who did not sell* their units, not to exclude *purchasers who did not buy the unit separately from other purchased condominium units*. We also approach the task of statutory interpretation mindful that "[t]he function of the court in construing a statute 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . .' " (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 492.) Here, the Rent Board asks us

to extend an exception that applies to all condominium *subdividers* to cover a limited class of condominium *purchasers*, namely, those who buy multiple condominium units in a single building. We are not inclined to expand the scope of the statute to address a circumstance that the Legislature, in all likelihood, failed to foresee.

E. Public Policy Determinations Are for the Legislature to Make

The Rent Board also stresses that public policy supports its interpretation because the exception was intended to prevent owners from using a loophole that had allowed them to strategically avoid local rent control laws. It observes the purpose of the exemption also was "to spur condominium construction which was seen as an affordable housing alternative." While it notes the loophole addressed by Legislature is not at issue here, the Rent Board asserts "the *reasoning behind closing the loophole* applies equally and forcefully in this case." As noted above, the stated purpose of the 2002 amendment was to prevent existing landlords from strategically avoiding rent control laws by merely obtaining a permit to convert to condominiums. The Rent Board argues the same problem is raised here in that the condominiums are not being used to increase affordable housing, but instead have been acquired to strategically avoid rent control at the expense of the property's existing tenants.

In support of its argument, the Rent Board cites to *Burien*. The *Burien* court was focused on the first of the three exemptions listed under section 1954.52, subdivision (a), pertaining to the timing of the issuance of a certificate for occupancy. The court noted that "[w]hen a building is constructed, added on to, or altered, a certificate of occupancy is generated at the conclusion of all inspections to certify that the building meets local building code requirements for occupancy." (*Burien, supra*, 230 Cal.App.4th at p. 1047.) The court found "[a] commonsense interpretation of section 1954.52, subdivision (a)(1), is that it excludes buildings from rent control that are certified for occupancy after February 1, 1995. Buildings that were certified for occupancy prior to February 1, 1995, are not excluded." (*Ibid*.)

In *Burien*, the landlord, "reading section 1954.52, subdivision (a)(1) in isolation," had contended "the plain language does not limit the exemption to the initial certificate of occupancy and instead applies broadly to *any* certificate of occupancy issued after February 1, 1995" (*Burien, supra*, 230 Cal.App.4th at p. 1047, italics added), including the certificate of occupancy issued in 2009 when he completed a condominium conversion (*id*. at p. 1043). The court found "[a]lthough the language is susceptible of this construction, the result does not further the purpose of the statute. A certificate of occupancy based solely on a change in use from one type of residential housing to another does not enlarge the supply of housing." (*Id*. at p. 1047.) The *Burien* court found that under its interpretation, "the purpose of the exemption" was furthered "by encouraging construction and conversion of buildings which add to the residential housing supply." (*Ibid*.)

In the present case, a "commonsense interpretation" of section 1954.52, subdivision (a)(3)(B)(ii) is that the "sold separately" exception applies to subdividers and not to subsequent purchasers. The subdivision on its face applies to "an *owner* of residential real property" (italics added), not a purchaser. At this point, plaintiff is the "owner" of the four condominiums in the building, each of which is presently "alienable separate from the title to any other dwelling unit" and therefore not subject to local rent control laws. (§ 1954.52, subdivision (a)(3)(A).) The exception set forth in 1954.52, subdivision (a)(3)(B)(ii) also has no application to plaintiff because the units have already been converted to condominiums.

We are not unsympathetic to the tenants' plight in this case. There is little doubt that plaintiff understood the impact of the condominium conversion on the property's rental status. In a blog posting discussing the acquisition of the building, plaintiff's principal, Arlen Chou, stated: "The best part of the property is that as they are condominiums, they are EXEMPT from rent control! I will soon own a little island of

rent control free property in a rising neighborhood in Oakland. [¶] . . . [¶] Who said there are no deals in the Bay Area???"

The trial court found plaintiff had not acted "strategically": "People are permitted to structure their actions and transactions to comply with the letter of the law and maximize the benefits to themselves under the law. By analogy, persons are permitted to structure transactions to take lawful advantage of how the tax code is written. (*Ferguson v. C.I.R.* (9th Cir. 1999) 174 F.3d 997, 1006 ('there is a distinction between tax evasion (i.e., choosing an impermissible path) and tax avoidance (i.e., choosing the least costly permissible path)'); *In re Schlesinger* ([Bankr.] E.D.Pa. 2002) 290 B.R. 529, 539 (similar)." Of course, before the 2002 amendments to Costa-Hawkins, the same could have been said of landlords who converted their apartments into condominiums without selling them in order to exempt the units from rent control. They also were "comply[ing] with the letter of the law" to maximize the benefits to themselves. Such conduct was entirely legal at that time. The same is true of plaintiff's conduct here.

While, from the tenants' perspective, the circumstances of this case arguably present another "abuse that [is] permissible" under Costa-Hawkins (*Burien*, *supra*, 230 Cal.App.4th at p. 1048), it is an abuse that, it appears, the Legislature did not contemplate in 2002 when it amended the statute to close the loophole for false condominium conversions.[6] It is not the function of this court to amend statutes or to

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[6] In discussing the 2002 exception to the condominium exemption, the appellate court in *City of West Hollywood* observed: "A loophole is defined as '[a]n ambiguity, omission, or exception (as in a law or other legal document) that provides a way to avoid a rule without violating its literal requirements; esp., a tax-code provision that allows a taxpayer to legally avoid or reduce income taxes.' [Citation.] By amending the statute to close the loophole, the Legislature sought *to change* the law to prevent landlords from taking advantage of an exception which the supporters of the bill concluded did not further the policy behind the law. In addition, the fact the opponents characterized the amendment as an expansion of the scope of the rent control law that would deprive a property owner of a rent to which he or she was otherwise entitled under current law

define the public policy that these statutes should serve. Those matters are best left to the Legislature. Insofar as a loophole currently exists, it is for the Legislature to address.

In crafting the 2002 amendments, the Legislature doubtless sought to balance the benefit of condominium conversions against "the legitimate goals of maintaining adequate and affordable rental housing." (*Danekas v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2001) 95 Cal.App.4th 638, 652.) We invite the Legislature to consider this opinion and evaluate whether further amendments to the condominium exemption are warranted.

III. Bona Fide Purchaser Issue Has Been Forfeited

The Rent Board claims the trial court improperly prevented it from exercising its administrative jurisdiction and discretion to adjudicate whether plaintiff qualifies as a "bona fide purchaser" under section 1954.52, subdivision (a)(3)(B)(ii).[7] As the Rent Board acknowledges, neither the hearing officer nor the Rent Board addressed this issue. Nor at any time did the parties submit any evidence on this point. Plaintiff argued below that the tenants had the opportunity to present this alternative argument during the administrative proceedings and should not be allowed to reopen the record. The lower court agreed, directing the Rent Board to not reopen the underlying case to consider whether plaintiff was a bona fide purchaser.

Numerous cases are in accord that a party must present its factual and legal claims to the administrative agency before it can obtain review of them in the courts. (See, e.g., *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198; *City*

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indicates the purpose of the amendment was to amend and change the law, not merely to clarify it." (*City of West Hollywood, supra,* 105 Cal.App.4th at p. 1145.)

[7] A bona fide purchaser is generally defined as one who, in good faith, pays value for a property, without " ' "actual or constructive notice of another's rights. " ' " (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251, citing *Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364, italics omitted.) A bona fide purchaser takes title to the property free of an unknown or unrecorded interest. (*Melendrez v. D & I Investment, Inc.*, at p. 1251.)

of Walnut Creek v. County of Contra Costa (1980) 101 Cal.App.3d 1012, 1019–1020; *Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1115; *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 549.)[8] To remand the case to allow the Rent Board to address the issue at this stage of the proceedings would circumvent this doctrine. Moreover, we agree with the trial court that "there is no showing in this record" that plaintiff was not a bona fide purchaser. As the court noted, there is no indication that Kolevzon and plaintiff had agreed that he would subdivide the building into four units before selling them. Nor is there any indication that plaintiff and Kolevzon had any preexisting business relationship. In sum, the Rent Board has not demonstrated that a remand would be proper.[9]

DISPOSITION

The order is affirmed.

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[8] We note that issue preclusion applies not only to claims or defenses presented in the administrative hearing, but also to claims or defenses which were *not* raised in the administrative proceeding. (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 871.) "[U]nless a party to 'a quasi-judicial administrative agency proceeding' exhausts available judicial remedies to challenge the adverse findings made in that proceeding, those findings may be binding in later civil actions." (*Id.* at p. 876.)

[9] We decline plaintiff's invitation to direct the Rent Board to enter an order declaring the units exempt from rent control, as we believe our ruling is sufficiently clear. We also decline plaintiff's invitation to "set an expedited timetable by which the Rent Board must resolve any remaining issues." Code of Civil Procedure section 1094.5, subdivision (f) states: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent." This section "expressly limits the remedies a court may order when reviewing administrative orders and decisions. The court can deny the writ or grant it and set aside the decision. If it sets aside the decision, the court can order the agency to take further action, but it cannot 'limit or control in any way the discretion legally vested in' the agency." (*County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 933.) The trial court's order comports with this provision.

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Dondero, J.

We concur:

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Humes, P. J.

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Margulies, J.