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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

CITY OF WEST HOLLYWOOD, Plaintiff and Respondent, v. ANNA KIHAGI et al., Defendants and Appellants.	B244072 (Los Angeles County Super. Ct. No. SC100392)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gerald Rosenberg, Judge. Reversed.

Zfaty|Burns, Isaac R. Zfaty and Ryan N. Burns for Defendants and Appellants

Michael Jenkins, City Attorney, Alison Regan and Jonathan Holub, Deputy City Attorneys for Plaintiff and Respondent.

Defendant Anna Kihagi (Kihagi) appeals judgment entered in favor of the City of West Hollywood (City) enforcing the parties' prior settlement in which Kihagi, the owner of an eight-unit apartment building located in the City and subject to the City's Rent Stabilization Ordinance, agreed she would not rent her withdrawn units for the time period the units were subject to the provisions of the Ellis Act.[1] We reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant 1263 North Crescent LLC owns an eight-unit apartment building located at 1263 to 1267-1/2 North Crescent Heights Boulevard in West Hollywood. Kihagi is the managing member of 1263 North Crescent LLC and Aquat 009 LLC. The property is subject to the City's Rent Stabilization Ordinance (RSO), West Hollywood Municipal Code section 17.040.010 et seq.

On July 17, 2008, Kihagi notified the City that the property would be withdrawn from the rental market. At the time Kihagi notified the City, four of the units were occupied and the other four units were vacant.[2] Kihagi notified the tenants in the four occupied units their tenancies would be terminated as of November 14, 2008.

On August 8, 2008, Kihagi rented one of the vacant units, unit 1263-1/2, to Moshe Stratz for $500 per month. Kihagi did not notify the City she was renting the apartment. When Stratz learned that Kihagi had withdrawn the units from the rental market, he went to the City to get further information. When Kihagi discovered Stratz had gone to the

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[1] The Ellis Act (Gov. Code, § 7060 et seq.) permits landlords to withdraw their rent-stabilized units from the rental market, provided that should the landlord return to the rental market within 10 years, the landlord must comply with certain specified conditions, including offering the units at the previous rental. The City's RSO, at section 17.520.010, subdivision (15)(d), tracks the provisions of the Ellis Act relating to penalties applicable to withdrawn units that are re-offered for rent within 10 years.

[2] The notice provided the vacant units were units Nos. 1263-1/2, 1265, 1265-1/4, and 1267-1/2. The occupied units were unit Nos. 1263, 1265-1/2, 1265-3/4, and 1267, which were being rented at $631.88, $376.28, $434.52, and $555.21, respectively. See attachment A to this opinion. The record does not indicate whether Kihagi completed withdrawal of all of the units from the rental market, and if so, when.

City, she told him he must move immediately, and if he did not, she would make his life miserable. As part of her rental agreement with Stratz, Kihagi agreed to pay the utilities; however, Kihagi shut off the electricity in Stratz's unit, obstructed the gas company and electricity company's attempts to turn on the utilities in the apartment, and failed to connect the hot water line to Stratz's apartment. Kihagi also failed to deliver a lease to Stratz and refused to accept his rent check for October 2008.

On October 23, 2008, the City inspected the unit and discovered there was no electricity or hot water in Stratz's unit, and found unpermitted plumbing work in the bathroom. The City informed Kihagi she needed to restore electricity to the unit immediately, but she refused to do so. The City issued three citations against Kihagi for failing to properly maintain the unit.

On October 30, 2008, the City filed an action seeking a temporary restraining order and permanent injunction against Kihagi to enjoin Kihagi from further violations of the RSO. On October 30, 2008, the court issued a temporary restraining order enjoining Kihagi from refusing to restore electricity and hot water to 1263-1/2, performing any plumbing work on the unit, and proceeding with the termination of the four remaining tenancies.

In January 2009, the City and Kihagi reached a settlement of the matter. The settlement provided that the notice of termination of tenancy would be extended for an additional 90 days from November 14, 2008 for occupied units 1263 and 1265-1/2. In addition, "[t]he vacant or vacated units at the property will not be rented during the notice period or during the period in which restrictions apply under the Ellis provision of the RSO." If Kihagi violated these terms, the City would be entitled to a permanent injunction and $10,000 in liquidated damages. Kihagi would be given no opportunity to cure her breach. The parties agreed that the City would dismiss the complaint, but the trial court would retain jurisdiction under Code of Civil Procedure section 664.6 to enforce the terms of the settlement agreement.

With respect to interpretation, the parties agreed that both the City and Kihagi participated in the drafting of the agreement such that the agreement was not to be construed against either of the parties.

On February 4, 2009, the trial court dismissed the City's complaint. The parties entered into a stipulation providing for retained jurisdiction.

On March 1, 2012, Kihagi notified the City she would be renting units 1263-1/2, 1265, and 1265-1/2. In April 2012, Elisabeth Dillon rented the unit at 1265 North Crescent Heights for $1,800 per month; Kihagi told her there were other units in the building for rent. In April 2012, Kihagi rented the unit at 1263-1/2 North Crescent Heights to two tenants for $1,895 per month.

On May 16, 2012, the City moved to enforce the settlement agreement, contending that Kihagi had violated it by renting the units during the period in which restrictions applied under the Ellis provisions of the City's RSO. The City sought entry of judgment according to the terms of the settlement agreement, as well as attorney fees. The City argued that the RSO, section 17.52.010, subdivision (15)(d) contained restrictions that applied to rental units for 10 years after their withdrawal; under those restrictions, Kihagi was prohibited from renting the units until after July 18, 2019.[3] The City sought to enjoin Kihagi from renting or offering for rent the remaining vacant units at the property until July 18, 2019; charging more than the historic maximum allowable rents (MAR) for unit Nos. 1265-1/2, 1265-3/4, 1267, and 1263; and failing to offer the former tenants the right of first refusal to return to their units at the MAR in effect at the time of their occupancy.

Kihagi argued in opposition that she did not violate the settlement agreement because she did not agree to keep the units off the rental market for 10 years. Rather, the agreement required her to comply with the Ellis Act, which she had done; further, the settlement agreement could not legally require a 10-year moratorium on renting the units.

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[3] Apparently, because one of the tenants was disabled, he was given a one-year extension from the original notice date of July 17, 2008. Thus, the effective date of withdrawal of all of the units was July 17, 2009.

In her declaration, Kihagi stated that when units 1263-1/2 and 1265 were withdrawn from the market, they were vacant, and "as [those units] were unoccupied, there were no notices of interest to re-rent submitted to me" and further that "as [those units] were vacant when they were withdrawn from the market, there was no maximum allowable rent set." Kihagi stated that Units 1263-1/2 and 1265 were being rented at reasonable market rates, and that she did not understand the settlement agreement to prohibit rental of the property's units for any time during which the Ellis Act imposed any type of regulation. If Kihagi had interpreted the settlement agreement in that fashion, she would not have entered into it.

In reply, the City asserted that the agreement's rental restrictions began to apply when the units were withdrawn from the market on July 17, 2009. Further, the settlement agreement reflected the requirements of the Ellis Act, which was to insure that landlords do not evict tenants in order to re-rent the units at higher market rates. As a result, the units from which Kihagi evicted the tenants should be offered first to re-rent to those tenants.

The trial court found Kihagi in breach of the settlement agreement, and entered judgment enjoining Kihagi "from proceeding with the termination of tenancies at 1263-1267-1/2 N. Crescent Heights Blvd. under the Notice to the City of Intent to Withdraw Rental Units from the Market" filed July 17, 2008.[4] The trial court further ordered Kihagi to pay the City liquidated damages in the sum of $10,000 and the City's attorney fees.

DISCUSSION

Kihagi contends she never breached the settlement agreement because it only provides she would comply with the Ellis Act, not that she would not return the units to

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[4] As noted above, it is unclear from the record whether Kihagi completed the withdrawal of all eight units from the rental market. Thus, this provision in the judgment would appear to enjoin Kihagi from further violations of the Ellis Act as originally sought in the City's complaint, and as provided for in the temporary restraining order issued October 30, 2008.

the rental market for 10 years. She contends the City's interpretation that she cannot rent the units for 10 years is more onerous than the Ellis Act and hence is unlawful; further, it is unreasonable in light of the fact the property has no use other than as residential apartments. The City argues the plain language of the settlement agreement establishes Kihagi agreed to keep the units off the market for 10 years; further, there is no prohibition on agreements that restrict a landlord's reentry into the rental market because nothing in the settlement agreement precludes Kihagi from leaving the rental market—the essential purpose of the Ellis Act.

1. The Ellis Act

The Legislature enacted the Ellis Act to supersede the decision in *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, in which the California Supreme Court upheld the constitutionality of a provision of the Santa Monica City Charter prohibiting the removal of rental units from the housing market by conversion, demolition or other means without a removal permit from the Santa Monica Rent Control Board. Government Code section 7060, subdivision (a) states: "No public entity, . . . shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease."[5]

In order to prevent abuses by landlords who would falsely remove rent-controlled units from the market and then attempt to return them to the rental market at current market rates, the Ellis Act uses a three-tiered timeline, during which a landlord who

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[5] Government Code section 7060.7 specifically states the legislative intent as follows: "It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business. However, this act is not otherwise intended to do any of the following: "(a) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests."

returns previously withdrawn units to the market suffers a penalty for doing so. (Gov. Code, § 7060.2.)

Thus, if the landlord offers the previously withdrawn rental units for rent within two years of their withdrawal, the landlord must offer the unit for rent or lease to the displaced tenant at the previous rental plus any intervening annual adjustments, the landlord is liable to the displaced tenant for actual and exemplary damages, and the landlord is liable to the local public entity (here, the City) for exemplary damages. (Gov. Code, § 7060.2, subd. (b).)

If the landlord offers the previously withdrawn rental units for rent within five years of their withdrawal, the landlord must offer the unit for rent or lease to the displaced tenant at the previous rental plus an intervening annual adjustments, and the landlord is liable to the displaced tenant for exemplary damages (not to exceed six months' rental) for failure to offer the rental to the displaced tenant. (Gov. Code, § 7060.2, subd. (a)(1) & (c).)

If the landlord offers the previously withdrawn rental units for rent within 10 years of their withdrawal, the landlord must offer the unit for rent or lease to the displaced tenant, and the landlord is liable to the displaced tenant for exemplary damages (not to exceed six months' rental) for failure to offer the rental to the displaced tenant. (Gov. Code, § 7060.2, subd. (a)(1) and (c).)

2. Principles of Contract Interpretation

"The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. (Civ. Code, § 1636; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible. (Civ. Code, § 1639.) 'The words of a contract are to be understood in their ordinary and popular sense.' (Civ. Code, § 1644; see also *Lloyd's Underwriters v. Craig & Rush, Inc*. (1994) 26 Cal.App.4th 1194, 1197–1198 ['We interpret the intent and scope of the agreement by focusing on the usual and ordinary meaning of the language used and the circumstances under which the

agreement was made'].)" (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc*. (2003) 109 Cal.App.4th 944, 955.) California recognizes the objective theory of contracts under which the objective intent of the parties, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, controls interpretation. (*Founding Members*, *supra*, 109 Cal.App.4th at p. 956.) We seek a common sense interpretation which avoids absurd results. (*Cold Creek Compost, Inc. v. State Farm Fire & Casualty Co*. (2007) 156 Cal.App.4th 1469, 1479.) The """"[l]anguage in a contract must be construed in the context of [the] instrument as a whole, [considering] the circumstances of [the] case; [it] cannot be found to be ambiguous in the abstract.""""" (*Nava v. Mercury Casualty Co*. (2004) 118 Cal.App.4th 803, 805.) Finally, "[we] . . . consider the circumstances under which [the] agreement was made, including its object, nature, and subject matter." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 800; Civ. Code, § 1647.)

"'The ultimate construction placed on the contract might call for different standards of review. When no extrinsic evidence is introduced, or when the competent extrinsic evidence is not in conflict, the appellate court independently construes the contract. [Citations.] When the competent extrinsic evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction will be upheld if it is supported by substantial evidence. [Citations.]'" (*Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 554.) Here, we review the trial court's interpretation of the settlement agreement de novo because the parties did not dispute the underlying facts concerning Kihagi's removal of the units from the rental market. (See *Southern Pacific Land Co. v. Westlake Farms, Inc*. (1987) 188 Cal.App.3d 807, 817.)

3. Analysis

Here, given the parties' expressed intent, to adopt the City's interpretation would lead to absurd results. The purpose of the Ellis Act is to permit landlords to leave the rental market, and if they desire to return after withdrawing units from the market within two years, five years, or 10 years, to suffer a penalty for doing so. The Ellis Act

contemplates that landlords who leave the rental market but desire to return can do so on specific terms and conditions. The parties' intent was to have Kihagi comply with the Ellis Act by preventing Kihagi from entering the rental market again with respect to displaced tenants unless she complied with the Ellis Act. Thus, the settlement agreement's provision that "[t]he vacant or vacated units at the property will not be rented during the notice period or during the period in which restrictions apply under the Ellis provision of the RSO" must be given a reasonable interpretation to mean that Kihagi can return units where tenants were displaced to the rental market if she complies with the Ellis Act.

The facts establish that Kihagi has complied with the terms of the Ellis Act and therefore was not in breach of the settlement agreement. More than two years had elapsed when Kihagi sought to return units 1263-1/2, 1265, and 1265-1/2 to the rental market in 2012; thus the Ellis Act's five-year provisions would apply. However, the units actually rented in 2012—units 1263-1/2 and 1265—were voluntarily vacated in 2008 at the time of Kihagi's notice of withdrawal and thus would not need to be offered to the former tenants or offered at their former rents. (See Gov. Code, § 7060.2., subd. (a)(1) & (c).) With respect to unit 1265-1/2, which was occupied at the time of the notice of withdrawal, the record indicates this unit was not re-rented in 2012 at the time the City sought enforcement of the settlement agreement; thus Kihagi could not be in breach of the Ellis Act with respect to this unit because no rental had occurred.

DISPOSITION

The judgment is reversed. Appellant is to recover costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

Attachment "A"

UNIT NO.	VACANT As of July 2009	OCCUPIED As of July 2009
1263		X
1263-1/2	X (rented 2012)	
1265	X (rented 2012)	
1265-1/4	X	
1265-1/2		X (offered for rent but not rented 2012)
1265-3/4		X
1267		X
1267-1/2	X	