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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ACTION APARTMENT
ASSOCIATION, INC.,

Plaintiff and Appellant,

v.

SANTA MONICA RENT
CONTROL BOARD,

Defendant and
Respondent.

B293182

(Los Angeles County
Super. Ct. No. SC125857)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mitchell L. Beckloff and Lawrence Cho, Judges. Vacated.

Donald F. Woods, Jr., for Plaintiff and Appellant.

J. Stephen Lewis and Rebecca F. Sherman for Defendant and Respondent.

ACTION Apartment Association (Action) sought declaratory relief against the Santa Monica Rent Control Board (Board) challenging Action’s characterization of the Board’s interpretation of the term “rent” in the Santa Monica Rent Control Charter Amendment (RCCA). (Santa Monica City Charter, art. XVIII, § 1801(f).) By its second amended complaint, Action requested a judgment declaring that “utilities, including water in a master metered building, are housing services that landlords can exclude in a new rental housing agreement under vacancy de-control,” and that “the [Board] has no authority under the RCCA to regulate or prohibit landlords from entering into rental housing agreements with new tenants that provide for separate billing of utilities using a ratio utility billing system”¹

The Board filed a motion for summary judgment, and after briefing and two hearings, the parties stipulated that a trial court determination of a *different* issue would dispose of the case. Over the course of the litigation, Action withdrew its claims in the second amended complaint regarding the Board’s authority to regulate ratio utility billing. The question the trial court ultimately adjudicated on summary judgment was whether the Board may interpret “rent” under the RCCA to include a tenant’s payment for ratio billed water when the Board calculates maximum allowable rent. The trial court concluded that the RCCA’s definition of rent included payments to the landlord of master metered buildings for water. On that basis, the trial court entered judgment for the Board. Because the record

¹ We refer to the term “ratio utility billing system” interchangeably as ratio utility billing, ratio utility billing system, or RUBS.

establishes the absence of a ripe controversy, we vacate the judgment and remand to the trial court for dismissal.

BACKGROUND

Action filed this declaratory relief action on May 16, 2016. Action filed the second amended complaint, upon which these proceedings are based, on April 3, 2017.

Action sought two declarations in its second amended complaint: “(1) That utilities, including water in a master metered building, are housing services that landlords can exclude in a new rental housing agreement under vacancy de-control; [and] [¶] (2) [t]hat the [Board] has no authority under the RCCA to regulate or prohibit landlords from entering into rental housing agreements with new tenants that provide for separate billing of utilities using a ratio utility billing system (RUBS).” Among other responses, the Board demurred to the second amended complaint on the ground that the case did not present a justiciable controversy.

The trial court overruled the Board’s demurrer on July 14, 2017. In doing so, the trial court concluded that the “heart” of the second amended complaint “alleg[ed] that ‘the [Board] has promulgated a policy set forth on its website, repeated many times by its Information Analys[ts], and enforced through Legal Staff designed to intimidate landlords into compliance with its unauthorized and ultra vires pronouncement that ratio utility billing is not allowed’” The trial court concluded that “[t]he matter is sufficiently concrete such that it is not a matter resolving abstract differences of opinion; it is a specific legal dispute capable of resolution. The matter seeks a declaration as to whether defendant’s policy concerning ratio utility billing systems is consistent with law. It is a dispute that ‘touch[es] the

legal relations of parties with actual adverse legal interests.’ ” The trial court based its conclusion on allegations in the complaint stating that the Board had a “policy” that “[i]t is never permissible for an owner of a master-metered building to simply pass on actual utility costs to tenants . . . ,” and that the Board had taken actions “designed to expand the control of the [Board] by intimidating landlords into compliance even though the informal pronouncements are unauthorized and ultra vires.”²

On January 25, 2018, the Board moved the trial court for summary judgment on Action’s second amended complaint or, in the alternative, summary adjudication of three issues: “(1) Is a RUBS payment necessarily rent under the Santa Monica City Charter? [¶] (2) Does the Charter limit the degree to which rents may increase—whether as the result of RUBS payments or anything else? [¶] (3) Does the Charter vest the Board with the authority to enforce rent limitations, which includes the authority to remedy, whether the violations arise as the result of RUBS or otherwise?”

In its opposition to the motion for summary judgment Action conceded that if “rent” includes amounts charged for water at a master metered building, “the Board would have the power to limit the ‘rent’ increases and the power to prevent any violation of the ‘rent’ limit. The sole and exclusive issue in dispute in this entire lawsuit,” Action wrote, “is whether the [Board] may interpret the RCCA to include a tenant’s payment for water as ‘rent’ for purposes of calculating the maximum allowable rent.” The trial court confirmed Action’s concessions at

² As we discuss below, these allegations in the second amended complaint were not borne out by the evidence on summary judgment.

a hearing on April 3, 2018. On June 14, 2018, the trial court held a second hearing on summary judgment, again confirming Action's concessions. Implicitly in its answer to the second amended complaint and expressly in its summary judgment papers, the Board explained that it has no authority to regulate ratio utility billing.³

On July 9, 2018, the trial court issued a written ruling on the Board's motion for summary judgment. The trial court concluded that the "entire controversy turns on one determination" that it characterized as "whether the [Board] may interpret the RCCA to include a tenant's payment for water as "rent" for purposes of calculating the maximum allowable rent.'" Based on its interpretation of the RCCA, the trial court concluded that the cost of water billed via ratio utility billing to tenants in a master metered building is "rent" as that term is defined in the RCCA. The trial court acknowledged that the Board had repeatedly and consistently raised the question of justiciability in its papers to and through summary judgment. In its written ruling, the trial court incorporated by reference its

³ The parties' dispute stems, at least in part, from the Board's refusal to affirmatively permit ratio utility billing. Paragraph 35 of Action's second amended complaint details the Board's "refus[al] to permit" ratio utility billing, characterizing the refusal as a "policy" that "forces [landlords] to pay for the water used by the tenants and subject[ing landlords] to civil and criminal penalties for excessive use of water by their tenants." The Board explains that its "silence in the face of a landlord's request to engage in [ratio utility billing] isn't a reflection of some overarching Board policy on the subject, but of the simple fact that it has no authority to act on the request."

justiciability ruling on the Board's demurrer to the second amended complaint.⁴

The trial court entered its order granting the motion for summary judgment and judgment in the Board's favor on August 21, 2018. Action filed a timely notice of appeal.

No party raised the ripeness of the parties' controversy in their initial briefing. But because "a basic prerequisite to judicial review of administrative acts is the existence of a ripe controversy," *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169 (*Pacific Legal Foundation*), we requested supplemental briefing from the parties regarding the justiciability of their dispute.

DISCUSSION

A. The Dispute

Apartment buildings can be plumbed and metered in a variety of ways for water to reach individual units. The building may have individual meters so that tenants may be billed directly for the water they use. The landlord may have a master meter and may install submeters in a building with plumbing that will allow for submeters.⁵ Or, as is at issue here, water can be supplied only through a master meter with no submeters. In that case, the utility bills the landlord for all water routed through the master meter.

⁴ In its ruling on summary judgment, the trial court did not reconsider its ruling on the Board's demurrers to the second amended complaint in light of the evolution of either the factual record or Action's theory of the case.

⁵ Multi-family residential dwellings built in Santa Monica after 1990 must have individual meters or submeters. (Santa Monica Mun. Code, pt. 7.12.150.)

Ratio utility billing is one means by which landlords seek to recoup the cost of water used by tenants in master metered buildings. “Under a RUBS system, the owner of a master-metered building devises a formula—which could be based on unit size, number of occupants, number of bathrooms, or some other factor—as a stand-in for actual data about how much water each unit might use. This hypothesized relationship between the amount of water used by the entire building and that used by each unit is the ‘ratio’ of ‘ratio utility billing system.’ The water bill is then divided, according to this ratio, among the units. If, for example, one apartment in a three-unit building covers 50% of the structure’s floor area, with the other two units covering 25% each of the remainder, the water bill would be split accordingly, with 50% of the bill being passed through to the larger unit, and 25% to each of the smaller units, on the theory that the larger apartment uses half the water consumed at the property and the other two units evenly consume the rest—regardless of how many tenants occupy the units or how much water they actually use.” (City of Santa Monica Rent Control Board letter dated Feb. 10, 2017 addressed to the Hon. Ted Winterer, Mayor, entitled Recommendation by the Rent Control Board to prohibit RUBS billing citywide.)

Action contends the parties’ dispute turns on the RCCA’s definition of the term “rent.” The RCCA defines rent as “[a]ll periodic payments and all nonmonetary consideration including but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises including all payment and consideration demanded or paid for parking, pets, furniture, subletting and security deposits for

damages and cleaning.” (Santa Monica City Charter, art. XVIII, § 1801(f).) If water billed to tenants using ratio utility billing is “rent” under the RCCA, the amount a tenant is billed may or may not cause a tenant’s rent payment to be higher than the maximum allowable rent. And landlords who charge excess rent in Santa Monica *may* be liable to tenants under the RCCA in either a civil action or an administrative action under rules created by the Board. (Santa Monica City Charter, art. XVIII, § 1809(a) & (b).) The Board agrees that it interprets “rent” to include water billed to tenants in master metered buildings.

B. Ripeness

“ ‘The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.’ ” (*Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1427.) “The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when

there is widespread public interest in the answer to a particular legal question.” (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170.)

When the trial court decided the justiciability question in this case, it understood the parties’ dispute to be something different than what the dispute evolved into: “Plaintiff’s action seeks a determination that any new housing agreements under vacancy de-control may exclude utilities, such as water, and that a landlord may negotiate with tenants subject to new housing agreements for those utilities under a ratio utility billing system. *The judicial determination sought would clarify whether defendant has authority to regulate the issue. . . .* If the court determined defendant does not have such authority, landlords and tenants entering into new housing agreements under vacancy de-control would be free to negotiate based on the circumstances unique to that landlord and that tenant. *Plaintiff seeks nothing more than that.*”⁶ (Italics added.)

The record on summary judgment and here, however, leaves us with a very different understanding both of the question Action wants the court to answer and the facts relevant to ripeness. The question the parties ultimately agreed would resolve their lawsuit is whether money paid for water billed to tenants using ratio billing in master metered buildings in Santa Monica is rent under the RCCA. That, of course, is a very different question than whether the Board has authority to regulate or prohibit ratio billing.

⁶ We note again that the Board has repeatedly disclaimed having the authority to regulate whether landlords engage in ratio utility billing.

Resolution of the parties' disagreement in the Board's favor would not finally dispose of the parties' dispute. That is because the injury Action alleges in this case *may or may not* occur if ratio billed utilities in master metered buildings are counted as rent. While Action seeks a ruling regarding whether water billed to tenants in master metered buildings using ratio utility billing is rent under the RCCA, it gives no indication how that water bill would be calculated or what water usage would be included in the bill. As noted earlier, ratio utility billing could be done in a multiplicity of ways and not all properties have the same configuration. For example, some occupy hardscape and others have landscaping requiring watering.

Even if we ignore that the facts about the contemplated ratio utility billing have not "sufficiently congealed to permit an intelligent and useful decision to be made" (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 (*Stonehouse*)), it is still possible that the total amount of rent charged on any given unit in any given master metered building in Santa Monica could not exceed the maximum allowable rent under the RCCA.

Resolution of the issue posited in the Board's summary judgment motion thus still depends on individual facts and circumstances that are not before us and that were not before the trial court. That consideration alone renders the parties' dispute unripe: "The plaintiff must establish facts which give rise as a matter of law to an existing or imminent invasion of his rights by the defendant which *would* result in injury to him.'" (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 663, *italics added*.) Action has not established those facts here; Action has not established any more than a *possibility* of injury to its

members in a very specific and narrow set of potential circumstances.

Contrary to Action's allegations, the Board has never adopted a regulation concerning ratio utility billing; indeed, it claims it has no authority to do so. The Board has never filed an enforcement action or referred anyone for criminal prosecution for using ratio utility billing. The Board has never issued a final administrative decision regarding the use of ratio utility billing in any context. And in the only situation where one of the Board's hearing officers issued a decision based on ratio utility billing in favor of a tenant, the Board reversed the hearing officer.

The Board concedes that it interprets the RCCA to include water in master metered buildings that use ratio billing to charge tenants for water. Absent an understanding of precisely how water charges would be ratio billed, or some evidence that the Board's interpretation has caused or imminently will cause injury, however, the question is premature. (*Stonehouse, supra*, 167 Cal.App.4th at p. 540.) Because any conclusion we reach would thus be advisory, the parties' dispute is not ripe.

DISPOSITION

The trial court's judgment is vacated. On remand, the trial court shall enter an order dismissing the case. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED

CHANEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

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