

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA



Date: July 25, 2017

Hon. **JUDGE KEVIN MURPHY**, Presiding Judge
JUDGE DON CLAY
JUDGE MICHAEL MARKMAN

DEPT. 01
Yasmin Singh, Deputy Clerk
Not Reported, Reporter

GABRIELA DEL HOYO,
EZEQUIEL DEL HOYO,
GABRIELA DEL HOYO,
JOANNA AGUILAR,
JESUS OCHOA ESPIONZA,
NANCY DEL HOYO,
DAVID DEL HOYO,

Counsel appearing
for Plaintiff

VS

Petitioner

Jesse Newmark, Esq

Michael S. Lawson, Esq

Counsel appearing
for Defendant

Superior Court of California, County of Alameda
Hon. Kimberly E. Colwell

Real Party In Interest: UPSIDE GRADING, LP

Respondent

Ryan Mayberry, Esq

NATURE OF PROCEEDINGS:

RULING RE:
ORDER BY THE COURT ON
PETITION FOR WRIT OF
MANDATE HEARING

Action No:
Trial Court
WRIT CASE NO.
RG17844740

3207
HG16808836/
HG16808840

The Court grants Petitioners' Writ of Mandate. The Court directs the trial court to vacate and set aside its December 8, 2016 order denying Petitioners' motions for summary adjudication and instead grant the motion.

After a de novo review of the Rent Ordinance, this Court agrees with the trial court's June 7, 2016 order and concludes that the Rent Ordinance exception is ambiguous. A city council's amendment clarifying the interpretation of its own ambiguous ordinance is a useful tool of statutory construction and is entitled to deference. See *Western Security Bank v. Superior Court* (1997) 15 Cal. 4th 232, 252.

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The Court finds that the Hayward City Council's July 19, 2016 amendment of the Rent Ordinance exception was a clarifying amendment attempting to resolve the ambiguity identified by the trial court. As between the two competing interpretations of the ambiguous ordinance discussed by the trial court in the June 7, 2016 order, the Hayward City Council clarified the interpretation by selecting one of them. Specifically, under the amendment, the exemption of multi-family housing projects financed or insured by a government agency if the units are subject to rent controls as a result applies only to multi-family housing "that are currently financed or insured" by a government agency and not also to former projects that were at one time but are no longer financed or insured by such an agency. The Hayward City Council thus clarified the ordinance and did not adopt some new substantive interpretation.

There is no indication in the record that the Hayward City Council's interpretation was "arbitrary, capricious, or without a reasonable or rational basis." See *Cole v. City of Oakland Residential Rent Arbitration Board* (1992) 3 Cal. App. 4th 693, 698. The unsigned October 17, 2012 unsigned letter purportedly from the Hayward Rent Review Office re-states Real Party in Interest's representations to that office. It provides no indication of any independent review of the Rent Ordinance or the legal issue concerning its ambiguity by the Rent Review Office or any representative of Hayward, let alone by the Hayward City Council.

Having resolved the question of statutory interpretation, there is no genuine dispute of material fact that the Rent Ordinance applies to the rental units at issue. The parties agree that the Real Party in Interest is not entitled to the amount of rent demanded and so summary adjudication is appropriate.

Remittitur to issue.

Copies of this minute order mailed this date: July 26, 2017

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APPELLANT'S ATTORNEY

RESPONDENT'S ATTORNEY

CC: Trial Court File