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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

PAGE MILL MANAGEMENT, LLC
et al.,

Plaintiffs and Respondents,

v.

CITY OF EAST PALO ALTO et al.,

Defendants and Appellants.

A125659

(San Mateo County
Super. Ct. No. CIV469315)

WOODLAND PARK MANAGEMENT,
LLC et al.,

Plaintiffs and Respondents,

v.

CITY OF EAST PALO ALTO RENT
STABILIZATION BOARD et al.,

Defendants and Appellants.

(San Mateo County
Super. Ct. No. CIV474682)

In 1988, the citizens of the City of East Palo Alto adopted by popular vote the Rent Stabilization and Eviction for Good Cause Ordinance (E. Palo Alto Ord. No. 76 (RSO)). We are asked here to determine whether the RSO permits recovery of attorney fees by a landlord in successful litigation against the City.¹ The trial court

¹ Appellants are the City of East Palo Alto, the City Council of the City of East Palo Alto, and the City of East Palo Alto Rent Stabilization Board (the Board) (hereafter collectively City). Respondents are Page Mill Management, LLC, Woodland Park

held that it does and awarded fees to Landlords. We hold that it does not and reverse the award by memorandum opinion.²

I. FACTUAL AND PROCEDURAL BACKGROUND

The arguments raised on appeal relate entirely to the award of attorney fees and do not require a detailed examination of the facts of the underlying litigation.³ In brief, Landlords managed residential rental properties subject to the RSO. In the consolidated cases below, Landlords filed petitions for writ of mandate, which challenged City's enactment of an urgency ordinance and the Board's adoption of new Board rules and regulations. Landlords argued, among other things, that these actions improperly attempted to alter the method of calculating annual rent increases under section 11 of the RSO. Ultimately, the trial court granted Landlords' petitions for writ of mandate on the grounds that both the urgency ordinance and the new regulations violated the RSO, the Petris Act (Civ. Code, §§ 1947.7, 1947.8), and the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq.). The trial court entered judgment in favor of Landlords.

Landlords then filed a motion for attorney fees, relying on section 15.A.5 of the RSO. City opposed Landlords' motion on the ground that section 15.A.5 only authorizes the award of attorney fees in actions between landlords and tenants. The superior court granted Landlords' motion and ordered City to pay \$472,061.90 in attorney fees. City appeals only from the order granting attorney fees, arguing that

Management, LLC, 5 Newell, LLC, and 15 Newell, LLC (hereafter collectively Landlords).

² This case presents a question that we have previously decided. (*Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd.* (2010) 181 Cal.App.4th 915 (*Woodland Park*.) Accordingly, a memorandum opinion is appropriate. (*People v. Garcia* (2002) 97 Cal.App.4th 847, 850–852.)

³ City separately appealed the trial court's rulings on the merits. (*Page Mill Management, LLC v. City of East Palo Alto* (Aug. 31, 2009, A121631) [nonpub. opn.]; *Page Mill Management, LLC v. City of East Palo Alto* (A123885, app. pending).)

section 15.A.5 does not authorize Landlords to recover their attorney fees from City. We agree with City.

II. DISCUSSION

City contends that the trial court erred in construing section 15.A.5 of the RSO to allow a prevailing landlord to recover fees in these circumstances. Interpretation of an ordinance presents a question of law that we review de novo. (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 570; *Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142.)

In *Woodland Park, supra*, 181 Cal.App.4th 915, we construed section 15.A.5 of the RSO. We concluded that the language of section 15.A.5 is ambiguous when read in the context of section 15 and the RSO as a whole. (*Id.* at p. __ [2010 D.A.R. 1801, 1804].) Relying on other indicators of intent, we determined that “the intent of the electorate was that section 15.A.5 of the RSO authorize the recovery of attorney fees only in civil proceedings between landlords and tenants to enforce their respective rights under the RSO.” (*Id.* at p. __ [2010 D.A.R. 1801, 1806].)

Applying our holding in *Woodland Park*, we conclude that the trial court erred by ordering City to pay Landlords’ attorney fees in this case.⁴

⁴ While this case was being briefed, Landlords filed a request for judicial notice, on which we deferred ruling. The request asks us to judicially notice City’s motion for attorney fees in another action. Landlords contend that City’s motion for attorney fees “constitutes an admission that the prevailing party in a civil action initiated by a landlord to enforce the landlord’s rights under the RSO may recover attorney’s fees.” However, Landlords’ argument is flatly contradicted by City’s actual position in its moving papers. The request for judicial notice is denied, as the document is irrelevant. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1 [material to be judicially noticed must be relevant].)

III. DISPOSITION

The order, dated April 7, 2009, is reversed to the extent that it ordered City to pay Landlords' attorney fees. City is to recover costs on appeal.

Bruiniers, J.

We concur:

Jones, P. J.

Simons, J.