ZACKS, FREEDMAN & PATTERSON
A PROFESSIONAL CORPORATION

235 Montgomery Street, Suite 400
San Francisco, California 94104
Telephone (415) 956-8100
Facsimile (415) 288-9755
www.zfplaw.com

Contact:
Andrew M. Zacks
Zacks, Freedman & Patterson, PC
(415) 956-8100
az@zfplaw.com

FOR IMMEDIATE RELEASE

COURT OF APPEAL RULES THAT CHILDREN ARE NOT "TENANTS" UNDER SAN FRANCISCO RENT ORDINANCE AND ARE NOT ENTITLED TO RELOCATION ASSISTANCE PAYMENTS UNDER THE ELLIS ACT

April 6, 2017 – San Francisco, California: This Tuesday, the California Court of Appeal ruled in favor of a San Francisco property owner who appealed the dismissal of an eviction lawsuit back in March 27, 2014 for failure to pay relocation assistance to a minor child. In doing so, it reversed two lower court rulings that minor occupants count as "tenants", under the San Francisco Rent Ordinance, who are entitled to heightened protections in Ellis Act evictions – including the payment of "relocation assistance" money.

A copy of the decision Danger Panda, LLC v. Launiu is available at:
http://www.courts.ca.gov/opinions/documents/A149062.PDF

Danger Panda, LLC is the owner of a residential property in the Mission District. Over three years ago, it begin the process of invoking the Ellis Act to terminate all residential tenancies in the building. The Ellis Act is a state law that allows property owners to "go out of the rental business" and evict their tenants, so long as they comply with local eviction control ordinances. San Francisco's ordinance requires property owners to pay "relocation assistance" (an inflation adjusted number, which is currently $6,286.03 per tenant), to help displaced tenants with moving expenses and deposits for their new home.

One unit in the property is occupied by a small family, including a minor child – "David". Danger Panda served notices of termination of tenancy under the Ellis Act and paid relocation assistance to each adult occupant. Following the notices, the tenants received a full year in their unit before the expiration of their tenancy. They nonetheless remained in possession and defended an eviction lawsuit, arguing that David should have received a relocation assistance check as well.

In the lawsuit, Danger Panda argued that San Francisco's Rent Ordinance only requires payments to "tenants", and David was not a "tenant". It also argued that the ordinance caps the dollar amount of these payments at three tenants per unit (currently $18,858.07 or three times the $6,286.03 payment per tenant). Had it also paid David, it would have shorted each other occupant.

The Superior Court agreed with the tenants, finding that David's "right to occupy the premises with his parents/grandmother" required that he receive a relocation assistance payment. Danger Panda sought review from the appellate division of the Superior Court, which echoed the trial court's reasoning to conclude that David had a right to occupy the unit, therefore he was a "tenant" - and tenants are entitled to relocation assistance payments.

The Court of Appeal reversed the lower court decision. First, it held that an occupant who does not have the right to exclusive possession and an obligation to pay rent is not a "tenant" under the Rent Ordinance. Every tenant is an occupant, but not every occupant is a tenant. Second, it concluded that only "tenants" are entitled to receive relocation payments under the Ellis Act. David could not be required to pay "rent", therefore he was not a tenant and he was not entitled to pay rent. More than three years after this lawsuit began, the Court of Appeal has now remanded to the trial court so the lawsuit can resume and proceed on the merits.

Andrew Zacks, the attorney for the landlord, was pleased with the result, noting "The City has an established pattern of making it difficult for landlords to use the Ellis Act stop being residential landlords so they can do something else with their property. Danger Panda did everything to the letter of the law, but it was still forced to keep its tenants. We're pleased that the Court of Appeal reached the right result."

Background

Danger Panda, LLC filed this unlawful detainer action against Nancy Launiu, Nancy's adult son Donn, and Donn's wife Olga. The Launius refused to vacate a unit in a building that Danger Panda withdrew from residential rental use pursuant to the Ellis Act. The trial court granted the Launius' "Delta motion to quash" the unlawful detainer complaint, finding that plaintiff failed to tender a required relocation payment to Donn and Olga's minor son David, as required by section 37.9A(e) of the San Francisco Rent Ordinance. The Appellate Division of the Superior Court affirmed the trial court's order, but then certified the matter for transfer to the Court of Appeal to settle the question of law: Whether a minor displaced by an Ellis Act eviction is a "tenant" under the San Francisco Rent Ordinance and, therefore, entitled to a relocation payment pursuant to section 37.9A(e)(3)(A) of the San Francisco Rent Ordinance.

The Court of Appeal examined the legislative intent to interpret the definition of "tenant" under the Rent Ordinance. Section 37.2(t) of the Rent Ordinance defines a "tenant" as a person who is entitled to occupy a residential unit (1) to the exclusion of all others and (2) pursuant to a written agreement; oral agreement; subtenancy approved by landlord; or sufferance. An occupant of a rental unit who does not have the right to exclusive possession and the concomitant obligation to pay rent does not fall within the Section 37.2(t) definition of a "tenant". Applying this principle to the case, the Court of Appeal found that even though David acquired an independent right to occupy the premises to the exclusion of others, he is a minor without capacity to enter into a rental contract or to incur an independent obligation to pay rent. Thus, David is not a tenant defined under Section 37.2(t).

Mr. Zacks also recently defeated a City amendment to the San Francisco Rent Ordinance that required Ellis Act-invoking property owners to subsidize their former tenants in their new market rate homes for two years. That case is Coyne v. City and County of San Francisco. A copy of that decision, Coyne v. City and County of San Francisco is available at: http://www.courts.ca.gov/opinions/documents/A145044.PDF

Zacks, Freedman & Patterson, PC is a law firm dedicated to advocating for the rights of property owners. With experience and knowledge in rent control issues, zoning, permitting, transactional disputes and other real estate matters, Zacks, Freedman & Patterson, PC has successfully advocated its clients' positions before local administrative tribunals and at all levels of the State and Federal courts, including the U.S. Supreme Court. For more information, call (415) 956-8100 or visit www.zfplaw.com.

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