

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. v. CITY OF LOS ANGELES

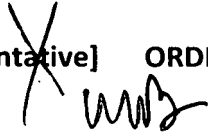
Case Number: 23STCP00720

Hearing Date: May 17, 2023

FILED
Superior Court of California
County of Los Angeles

MAY 17 2023

~~[Tentative]~~ **ORDER GRANTING MOTION TO INTERVENE**



David W. Slayton, Executive Officer/Clerk of Court
By: **F. Becerra, Deputy**

Petitioner, Apartment Association of Los Angeles County, Inc., initiated this proceeding to obtain an order compelling Respondent, the City of Los Angeles, to rescind Ordinance No. 187763 and Ordinance No. 187764. Petitioner contends the ordinances are preempted by state law.

Proposed Intervenors, Community Power Collective (CPC) and Inner City Struggle (ICS) (jointly, Proposed Intervenors) move for an order granting them leave to intervene in this proceeding. They do so pursuant to Code of Civil Procedure section 387, subdivisions (d)(1) and (d)(2).

Neither Petitioner nor Respondent oppose Proposed Intervenors' motion. In fact, Petitioner and Respondent previously agreed to allow intervention. The court rejected the stipulation.



The motion to intervene is GRANTED.

**TERMS ARE CONSISTENT
W/ THE PARTIES' STIPULATION.**

LEGAL STANDARD

"An intervention takes place when a non-party, deemed an intervenor, becomes a party to an action or proceeding between other persons by doing any of the following: [¶] . . . [¶] (3) Demanding anything adverse to both a plaintiff and a defendant." (Code Civ. Proc., § 387, subd. (b)(3).)

"Mandatory intervention is governed by . . . section 387 subdivision (d)(1)—which 'should be liberally construed in favor of intervention.' [Citation.]" (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 572.) "[T]o establish mandatory intervention under subdivision (d)(1)(B), [the proposed intervenor] must show (1) " 'an interest relating to the property [or] transaction which is the subject of the action' " [citation]; (2) 'he or she "is so situated that the disposition of the action may as a practical matter impair or impede' " his or her " 'ability to protect that interest' " [citation]; and (3) he or she is not " 'adequately represented by the existing parties' " [citation]." (*Id.* at 572-573 [fn. omitted].)

For permissive intervention, the nonparty must satisfy the following factors: "(1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action." (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386; Code of Civ. Proc., § 387, subd. (d)(2).)

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ANALYSIS

Proposed Intervenors seek both mandatory and permissive intervention in this proceeding.

Proposed Intervenors are community-based organizations comprised of thousands of tenants affected by the challenged ordinances. Specifically, CPC is a nonprofit organization comprised of community members, organizers, and artists who have historically advocated for tenants, street vendors, and affordable housing. (De Paz Decl., ¶ 2.) ICS is a nonprofit multi-issue organization that advocates for its community's right to live in a safe, healthy, and thriving neighborhood; ICS serves a membership of predominantly very low-income and extremely low-income people of color in the Eastside of Los Angeles, including the communities of Boyle Heights, El Sereno, and Lincoln Heights – areas with many tenants. (Rivera Decl., ¶¶ 2-5.)

Mandatory Intervention:

Intervention is mandatory under Code of Civil Procedure section 387, subdivision (d)(1)(B) where Proposed Intervenors demonstrate: (1) a protectable interest in the subject of the action; (2) the disposition of the action may impair or impede its ability to protect that interest; and (3) its interests are not adequately protected by the existing parties. (*Carlsbad Police Officers Assn. v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148.)

The court finds Proposed Intervenors cannot demonstrate their intervention is mandatory. They have not demonstrated that their interest will not adequately be represented by the City.

“Three factors determine whether a party will adequately represent a nonparty's interest: ‘(1) whether the interest of a present party is such that it will undoubtedly make all of [the nonparty's] arguments[,] (2) whether the present party is capable and willing to make such arguments[,] and (3) whether [the nonparty] would offer any necessary elements to the proceeding that other parties would neglect.’” (*Friends of Oceano Dunes v. California Coastal Commission* (Cal. Ct. App. April 20, 2023: Case No. B320491) 307 Cal.Rptr.3d 495.) Generally, the burden of satisfying this test is “minimal;” it can be satisfied if the nonparty “shows that representation of [their] interest ‘may be’ inadequate.” (*Trbovich v. United Mine Workers of America* (1972) 404 U.S. 528, 538, fn. 10.) If the nonparty's “interest is ‘identical to that of one of the present parties,’ ” however, “ ‘a compelling showing [is] required to demonstrate inadequate representation.’ ” (*Callahan v. Brookdale Senior Living Communities, Inc.* (9th Cir. 2022) 42 F.4th 1013, 1020-1021.)

Proposed Intervenors argue they are focused solely on their members and the interest of the tenant population while the City is purportedly interested in “exercising and maintaining their power to legislate in the areas of rent control and eviction.” (Motion 13:7-22.) According to Proposed Intervenors, the City is also focused on “avoiding financial liability, and are faced with the challenge of balancing the interests of all their constituents, which includes both tenants and landlords alike.” (Motion 13:9-11.)

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These purported differences are undeveloped and conclusory. Moreover, to the extent such “differences” exists, it is unclear how, if at all, these purported differences will manifest in the litigation such that Proposed Intervenors will not be adequately represented—the City’s interest and that of Proposed Intervenors is to uphold the ordinances. Despite (perhaps) different motivations, the City and Proposed Intervenors would make the same arguments about preemption—a purely legal issue. Proposed Intervenors are not better or uniquely situated to oppose Petitioner’s facial challenge to the ordinances.

Therefore, Proposed Intervenors have not demonstrated a conflict or misalignment between the City as to interests in litigation positions or interest in the outcome. (See e.g., *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 555 [movant’s interests were not adequately represented in underlying action where “the conflict between [the plaintiffs’] and [the movant’s] interests in the outcome of the . . . lawsuit [was] palpable and real”].) Proposed Intervenors have not demonstrated they are entitled to intervene as a matter of right.

Nonetheless, the court may permit Proposed Intervenors to intervene under Code of Civil Procedure section 387, subdivision (d)(2). To intervene, Proposed Intervenors must show a “direct and immediate interest” in the subject matter of the action—an interest “of such a direct and immediate nature that the moving party ‘ will either gain or lose by the direct legal operation and effect of the judgment.’ ” (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037.) Proposed Intervenors must also demonstrate that intervention will not enlarge the issues in the litigation, and the reasons for intervention outweigh any parties’ opposition. (*Carlsbad Police Officers Association v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148.)

Proposed Intervenors are organizations comprised of thousands of tenants affected by the ordinances. The court therefore finds Proposed Intervenors have a direct interest in the outcome of Petitioner’s challenge to the ordinances. That is, Proposed Intervenors are benefitted by the tenant-protection ordinances. If Petitioner is successful in this litigation, Proposed Intervenors will lose those protections.

It also appears allowing intervention will not enlarge the scope of this litigation. Petitioner’s issue is straightforward and legal—do the ordinances conflict with state law such that they are preempted? Nothing suggests Proposed Intervenors’ involvement in the litigation will result in new claims or legal theories.

Finally, Petitioner and Respondent have both stipulated to the intervention.

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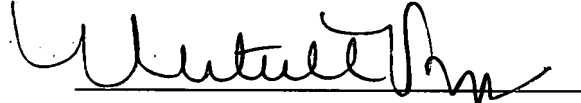
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CONCLUSION

Based on the foregoing, the motion to intervene is granted. Proposed Intervenors shall file their answer in intervention forthwith.

IT IS SO ORDERED.

May 17, 2023

A handwritten signature in black ink, appearing to read "Mitchell Beckloff", written over a horizontal line.

Hon. Mitchell Beckloff
Judge of the Superior Court

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