APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

JDW ASSOCIATION, LLC, Plaintiff and Appellant, v. SU YANG, Defendant and Respondent.	BV 032944 Central Trial Court No. 18STUD08900 **OPINION**

Plaintiff and appellant JDW Association, LLC filed an unlawful detainer action against defendant and respondent Su Yang based on a three-day notice to pay rent or quit, in which it demanded six months' back rent in the amount of $3,060 for the period from February 1 through July 31, 2018. In his answer to the complaint, defendant asserted a number of affirmative defenses, including: the three-day notice overstated the amount due; plaintiff breached the warranty of habitability; plaintiff's lawsuit was filed in retaliation for defendant's complaints to governmental agencies regarding his unit; plaintiff failed to provide a legally sufficient notice of change of ownership (Civ. Proc. Code, § 1162); and plaintiff failed to comply with various rent control requirements imposed by virtue of the property being subject to the Los Angeles Rent Stabilization Ordinance (LARSO) (L.A. Mun. Code, § 151.01 et seq.)[1]

Prior to trial, the parties stipulated that whether LARSO applied to the property and defendant's tenancy was an issue for the court to resolve. Defendant's motion for judgment on that issue was taken under submission, and a jury was selected to try the remaining issues,

[1]All further statutory references are to the Los Angeles Municipal Code unless otherwise stated.

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except for a determination by the court on the legal sufficiency of the notice of change of ownership. The court denied a motion for nonsuit following the presentation of plaintiff's case, ruling the notice of change of ownership was legally sufficient and that plaintiff did not fail to present evidence defendant owed the amount demanded. The jury rendered a special verdict in plaintiff's favor, determining the three-day notice did not overstate the rent due, plaintiff did not fail to provide substantially habitable premises during the time period for which defendant failed to pay rent, and plaintiff did not file the lawsuit in retaliation for defendant's complaints regarding his unit.

On the issue of LARSO applicability, the court found the probable original design as a "single family residence" of the structure in which defendant's premises were located had been modified to accommodate rooms rented to unrelated occupants so that it no longer qualified for the "dwelling, one family" exemption from LARSO (§ 151.02). The court thus concluded LARSO applied and awarded judgment for defendant. Plaintiff appeals the judgment, contending the property was exempt from LARSO.[2] We affirm the judgment.

FACTS[3]

Plaintiff owned a two-story structure located on West James M. Wood Boulevard in Los Angeles. The structure was originally designed as a "single-family residence." At the time of trial, four upstairs rooms were individually rented to unrelated tenants (one of which was defendant, who occupied Room 12). Each room was individually numbered, and the doors were separately keyed. The upstairs tenants shared a common bathroom and, in addition, had access to two bathrooms, a kitchen, and a living room which were located downstairs.

An on-site manager and his wife occupied a downstairs room. Mail to tenants of the structure was deposited in a single mailbox for the structure, then removed from the box by the

[2]On April 26, 2019 (after briefing was completed), the Court of Appeal decided *Chun v. Del Cid* (2019) 34 Cal.App.5th 806 (*Chun*). We invited the parties to file supplemental letter briefs addressing the applicability of that case. Briefs were received from both parties and considered. Relatedly, defendant's request for judicial notice of *Chun* is denied as unnecessary; we are aware of our obligation to follow the holding of the case (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455).

[3]The facts are undisputed by the parties and are taken from the trial court's ruling on the applicability of LARSO.

manager and placed in a clear plastic container on the front porch of the property. Tenants retrieved their personal mail from the plastic container. The manager was also responsible for an adjacent two-story structure owned by plaintiff in which a total of 10 or 11 tenants rented rooms. The manager cleaned, gardened and maintained both properties, and was available to collect rents from tenants who did not want to deliver rent directly to plaintiff's office, which was located several miles away.

DISCUSSION

This appeal turns on the applicability of LARSO and, more specifically, whether the structure owned by plaintiff, and defendant's tenancy in that structure, qualified for the "dwelling, one family" exemption from LARSO set forth under section 151.02. "[T]he interpretation and legal effect of the relevant Los Angeles Municipal Code ordinances . . . is a question of law, which we review de novo. [Citation.]" (*Chun*, *supra*, 34 Cal.App.5th at p. 815; see also *Carter v. Cohen* (2010) 188 Cal.App.4th 1038, 1046 [local ordinances are generally construed in light of the canons of statutory construction].) We review the trial court's factual findings to determine if they are supported by substantial evidence. (*Perez v. VAS S.p.A.* (2010) 188 Cal.App.4th 658, 683-684.)

All rental units in the City of Los Angeles are subject to LARSO, unless they fall within an exemption. (§ 151.02.) The so-called "single-family dwelling exemption" (§ 151.02) is created "by excepting from the definition of rental unit: 'Dwellings, one family, except where two or more dwelling units are located on the same parcel.' (§ 151.02.)" (*Chun*, *supra*, 34 Cal.App.5th at p. 816.) Combining several interlocking definitions from sections 151.02 and 12.03 of the Los Angeles Municipal Code, "the scope of the exemption for single-family dwellings applies only if the structure: (1) is a 'Dwelling[], one family, except where two or more dwelling units are located on the same parcel' (§ 151.02), and (2) is 'detached' and contains 'only one dwelling unit' (§ 12.03.) For purposes of the exemption, a 'dwelling unit' means '[a] group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes,' and 'family' means '[o]ne or more persons living

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together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit.' (§ 12.03.)" (*Id.* at pp. 816-817.)

The structure at issue in *Chun* was originally constructed in 1908 as a "dwelling, one-family," and expanded in 1946 to accommodate seven families in 10 rooms. (*Chun*, *supra*, 34 Cal.App.5th at p. 817.) Its configuration and occupation were described at trial as "nine bedrooms, at least two bathrooms, and one kitchen. Four of the bedrooms are being separately rented to four separate households." (*Ibid.*) The Court of Appeal noted in particular that "[t]he tenants share access to the bathrooms and kitchen, but they do not have access to each other's rooms. Rather, each tenant has exclusive use of his or her own bedroom, which is equipped with a lock to exclude others." (*Ibid.*)

With regard to whether the tenants of the property in *Chun* qualified as a family, the Court of Appeal opined: "[B]esides living in that group of rooms, those persons also must have 'common access to, and common use of all living, kitchen, and eating areas within' that group of rooms. [Citation.] [T]o be designed for occupancy by one family, the group of nine bedrooms, at least two bathrooms, and the kitchen contained in the [p]roperty must be designed to give the tenants common access to and use of not simply the kitchen, but also all living areas." (*Chun*, *supra*, 34 Cal.App.5th at p. 817.) Because this was not the case in *Chun* (all tenants did not have access to all bedrooms), the Court of Appeal concluded the tenants did not comprise one family within the meaning of section 12.03, and the property, "whatever its original design[,] no longer ha[d] a design for occupancy by one family, and [wa]s not occupied by one family." (*Ibid.*) In short, the configuration and occupation of the structure—including in particular the lack of access by tenants of the structure to all of its living areas—put the property outside the plain meaning of the single-family dwelling exemption.

The same is true in this case. The James M. Wood Boulevard structure that included four rooms separately rented to unrelated tenants, "whatever its original design[,] no longer ha[d] a design for occupancy by one family, and [wa]s not occupied by one family." (*Chun*, *supra*, 34 Cal.App.5th at p. 817.) This is particularly evident in each of the four rooms being individually numbered, and separately keyed to prevent access by other tenants of the structure.

Substantial evidence, as recounted in the trial court's ruling, supports finding the tenants who occupied the structure did not fall within the definition of a family and that the property, including the tenancies therein, were outside the single-family dwelling exemption.

Plaintiff argues under *Gabor v. Cox* (1994) 26 Cal.App.4th Supp. 16 (*Gabor*), "all rentals of units in single-family residences" are exempt from the application of LARSO and further, that the original design of the structure for occupancy by one family did not change simply because more than one family was using the premises. (*Id.* at p. Supp. 19.) However, not only do *Gabor* and *Chun* disagree with regard to the definition and scope of LARSO's single-family dwelling exemption, but *Chun* expressly "disapprove[d] the analysis and holding of *Gabor*" on this very point.[4] (*Chun, supra*, 34 Cal.App.5th at p. 821, fn. omitted.)

In its supplemental letter brief, plaintiff suggests the number of occupied bedrooms in the James M. Wood Boulevard structure has changed since the trial court decision, and that "[i]f there is only one tenant in the building, then the building should be exempt under the definition of dwelling, one family." But, the determination of LARSO's applicability to defendant's tenancy must be based on the facts in place at the time defendant was served with the notice to quit, not on any changes in the configuration or occupation of the structure that may have taken place since that time. Plaintiff's suggestion to the contrary is not supported by citation to authority.

Plaintiff also notes that *Chun* does not indicate whether its holding is retroactive. Plaintiff offers no argument or citation to legal authority in support of a particular position on this issue. (See Cal. Rules of Court, rule 8.883(a)(1)(A).) In any case, "'[t]o determine whether a decision should be given retroactive effect, the California courts first undertake a

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[4] *Chun* explained: "The analysis of the lead opinion in *Gabor* is unsupportable. The lead opinion declared an overarching intent to 'exclude [from the Ordinance all] rentals of units in single-family residence' [citation], and from that premise concluded the structure at issue was a 'single-family residence' based on criteria not listed in the relevant ordinance provisions. The majority ignored the relevant definitions that give meaning to the exemption for single-family dwellings. There is no exemption for a 'single-family residence' per se as that term is meant in common parlance but rather only for any 'Dwelling, one-family,' defined as a 'detached dwelling containing only one dwelling unit.' [Citation.] Thus, because it had two dwelling units, the building in *Gabor* did not qualify for the exemption for single-family dwellings." (*Chun, supra*, 34 Cal.App.5th at pp. 820-821.)

threshold inquiry: does the decision establish a new rule of law? If it does, the new rule may or may not be retroactive . . . ; but if it does not, "no question of retroactivity arises," because there is no material change in the law. [Citations.]' [Citation.] An example of a decision which does not establish a new rule of law is one in which we give effect 'to a statutory rule that the courts had theretofore misconstrued [citation] . . . .' [Citations.] 'Whenever a decision undertakes to vindicate the original meaning of an enactment, putting into effect the policy intended from its inception, retroactive application is essential to accomplish that aim. [Citation.]' [Citation.]" (*Woosley v. State of California* (1992) 3 Cal.4th 758, 794 (*Woosley*).)

Chun establishes no new rule of law but rather gives effect to definitions and provisions of LARSO that (as evidenced by its language in overruling *Gabor*) it clearly regarded as "misconstrued." It would presumably also regard retroactive application as essential to accomplishing any aim of putting "the intended definitions" into effect. (*Woosley*, *supra*, 3 Cal.4th at p. 794.)

DISPOSITION

The judgment is affirmed. Defendant is to recover his costs on appeal.

Kumar, J.

We concur:

P. McKay, P. J.

Ricciardulli, J.

C E R T I F I C A T E O F T R A N S M I T T A L

L.A. Superior Court Central

Appellate

JDW ASSOCIATION LLC VS. SU YANG	BV032944

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A copy of the following:

( ) Order of this Date	(✓) Opinion
( ) Memorandum Judgment	( ) Order Denying Rehearing/Certification
( ) Order Appointing Counsel	( ) Order RE Continuance
( ) Order Dismissing Appeal	( ) Remittitur
( ) Notice Fixing Brief Dates	( ) Notice Setting Cause for Hearing

has been transmitted to above named parties (✓) and trial court ~~appeal clerk~~.

Dated: JUL 01 2019

By _____, Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT

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Substantial evidence, as recounted in the trial court's ruling, supports finding the tenants who occupied the structure did not fall within the definition of a family and that the property, including the tenancies therein, were outside the single-family dwelling exemption.

Plaintiff argues under *Gabor v. Cox* (1994) 26 Cal.App.4th Supp. 16 (*Gabor*), "all rentals of units in single-family residences" are exempt from the application of LARSO and further, that the original design of the structure for occupancy by one family did not change simply because more than one family was using the premises. (*Id.* at p. Supp. 19.) However, not only do *Gabor* and *Chun* disagree with regard to the definition and scope of LARSO's single-family dwelling exemption, but *Chun* expressly "disapprove[d] the analysis and holding of *Gabor*" on this very point.[4] (*Chun*, *supra*, 34 Cal.App.5th at p. 821, fn. omitted.)

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Plaintiff also notes that *Chun* does not indicate whether its holding is retroactive. Plaintiff offers no argument or citation to legal authority in support of a particular position on this issue. (See Cal. Rules of Court, rule 8.883(a)(1)(A).) In any case, "'[t]o determine whether a decision should be given retroactive effect, the California courts first undertake a

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[4] *Chun* explained: "The analysis of the lead opinion in *Gabor* is unsupportable. The lead opinion declared an overarching intent to 'exclude [from the Ordinance all] rentals of units in single-family residence' [citation], and from that premise concluded the structure at issue was a 'single-family residence' based on criteria not listed in the relevant ordinance provisions. The majority ignored the relevant definitions that give meaning to the exemption for single-family dwellings. There is no exemption for a 'single-family residence' per se as that term is meant in common parlance but rather only for any 'Dwelling, one-family,' defined as a 'detached dwelling containing only one dwelling unit.' [Citation.] Thus, because it had two dwelling units, the building in *Gabor* did not qualify for the exemption for single-family dwellings." (*Chun*, *supra*, 34 Cal.App.5th at pp. 820-821.)

threshold inquiry: does the decision establish a new rule of law? If it does, the new rule may or may not be retroactive . . . ; but if it does not, "no question of retroactivity arises," because there is no material change in the law. [Citations.]' [Citation.] An example of a decision which does not establish a new rule of law is one in which we give effect 'to a statutory rule that the courts had theretofore misconstrued [citation] . . . .' [Citations.] 'Whenever a decision undertakes to vindicate the original meaning of an enactment, putting into effect the policy intended from its inception, retroactive application is essential to accomplish that aim. [Citation.]' [Citation.]" (*Woosley v. State of California* (1992) 3 Cal.4th 758, 794 (*Woosley*).)

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DISPOSITION

The judgment is affirmed. Defendant is to recover his costs on appeal.

Kumar, J.

We concur:

P. McKay, P. J.

Ricciardulli, J.

C E R T I F I C A T E O F T R A N S M I T T A L

L.A. Superior Court Central

Appellate

JDW ASSOCIATION LLC VS. SU YANG	BV032944

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Dated: JUL 01 2019

By _____, Deputy