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Landlord's Speech is Free, but Decision to Evict May Cost You

By Jill E. Fox

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A California landlord can't be sued for serving a notice terminating a tenancy, because the notice is considered free speech. But what about the underlying decision to terminate?

Last Monday, the Second District Court of Appeal clarified that a landlord's eviction decision is not constitutionally protected activity. Although that decision may lead to serving a termination notice or filing an eviction complaint, these protected acts do not shield a landlord from liability for the underlying decision to evict.

Ulkarim v. Westfield LLC (July 14, 2014, B247174) concerned a retail tenant's claims that her landlord breached their lease by evicting her without cause so he could lease her space to a competitor. After successfully evicting the tenant in an unlawful detainer action, the landlord asked the court to dismiss the tenant's claims based on California's "anti-SLAPP" statute. The statute (CCP § 425.16) precludes lawsuits arising from a person's exercise of his or her constitutionally protected right of free speech, which includes the right to petition in court. The landlord argued that the tenant's breach of contract and unfair competition claims were based on its termination notice and unlawful detainer action, protected activity for which it couldn't be sued.

The *Ulkarim* court disagreed. The Court found that the claims arose from the landlord's underlying business decision, not the notice or unlawful detainer action effectuating that decision. A landlord is not shielded from liability for a business decision, the court reasoned, simply because it used court process to

effectuate that decision: "a tenant's complaint filed against a landlord after the service of a notice of termination and the filing of a complaint for unlawful detainer does not arise from those particular activities if the gravamen of the tenant's complaint challenges the decision to terminate the tenancy."

The *Utkarim v. Westfield LLC* decision means a landlord needs more than the existence of an unlawful detainer action to invoke anti-SLAPP protection against wrongful eviction claims. Utkarim provides a sharp new tool to distinguish constitutionally protected conduct from actionable conduct that is merely perpetrated using protected activity, and therefore not entitled to constitutional protection.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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