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Martinez v. City of Clovis

Court of Appeal, Fifth District, California - April 7, 2023 - Cal.Rptr.3d - 2023 WL 2820092

Resident brought action against city, its manager, and city council for declaratory and injunctive relief and petitioned for writ of mandate claiming violations of Housing Element Law. She also alleged discrimination against lower income housing, violations of Fair Housing Act (FHA), California's Fair Employment and Housing Act (FEHA), and duty to affirmatively further fair housing.

The Superior Court overruled demurrer in part and sustained it in part, granted petition for writ of mandate in part, and entered judgment in favor of resident. City appealed, and resident filed cross-appeal.

The Court of Appeal held that:

- As a matter of first impression, overlapping densities in zoning did not comply with Housing Element Law;
- Resident stated claim of disparate impact in violation of FHA;
- Resident stated claim of disparate impact in violation of FEHA;
- Disparate income claims are cognizable for discrimination against development intended for lower income persons;
- As a matter of first impression, statute requiring public agency to affirmatively further fair housing does more than simply prohibit public agencies from discriminating in housing programs and zoning;
- As a matter of first impression, violations of Housing Element Law compelled finding that city violated statutory duty to affirmatively further fair housing;
- As a matter of first impression, practice with a discriminatory effect on persons of color or housing intended to be occupied by lower income households violates public agency's affirmative duty; and
- As a matter of first impression, the affirmative duty is enforceable in court by writ of mandate.

Overlapping density provisions after city attempted to bring its housing element into compliance by allowing approval of multi-family housing at density of 35 to 43 units per acre, but did not change base zoning that permitted development at densities below 20 units per acre, did not substantially comply with statute stating property "shall be" zoned with minimum density of 20 units per acre; base zoning allowed for development at a lower density, term "minimum density and development standards" required zoning with at least a density of 20 units per acre, and the statute imposed minimum density requirement when jurisdiction as required to rezone sites to accommodate a shortfall for current planning period or carryover from prior planning period.

Resident's allegations about city's violations of Housing Element Law to accommodate need for lower income housing identified with sufficient particularity the practice element of cause of action alleging disparate impact in violation of Fair Housing Act (FHA); resident alleged in detail that city failed to accommodate and to provide opportunities to develop lower income housing, and resident alleged a continuing failure to implement program by its deadline resulting in the Department of

Housing and Community Development's (HCD) written findings that the 2015-2023 housing element did not substantially comply with the Housing Element Law.

Resident's allegations detailing city's failure to comply with Housing Element Law to accommodate need for lower income housing adequately alleged that city's practice lacked a sufficient justification in action alleging disparate impact in violation of Fair Housing Act (FHA); city's violation of the Housing Element Law was not a valid government policy and thus could not be regarded at the pleading stage as necessary for achieving legitimate objectives.

Resident's causation allegations contained enough particularity to adequately allege that city's practice of noncompliance with Housing Element Law to accommodate need for lower income housing predictably resulted in a disparate impact on persons of color in violation of Fair Housing Act (FHA); in addition to allegations of discriminatory intent, resident alleged statistical facts about income and housing burden within city and county and facts about the city's persistent failure to comply with the Housing Element Law during planning cycles.

Resident's allegations that city's violations of Housing Element Law to accommodate need for lower income housing had adverse and disparate impact on people of color and the disparate impacts were predictable, statistically significant, and did not occur by chance satisfied requirement to plead disparate impact on a group of persons because of a protected characteristic in violation of Fair Housing Act (FHA); existence of a disparate impact, which was intertwined with the causation element, was supported by allegations of statistics about the racial and economic composition of city and county.

Resident's allegations of statistics about the racially and economic composition of city and county from a historical perspective were sufficient to adequately allege that city's practice of noncompliance with the Housing Element Law to accommodate need for lower income housing during planning periods perpetuated segregated housing patterns and, thus, stated a segregative effect claim under Fair Housing Act (FHA); even though fifth cause of action for violation of the FHA did not use the words "perpetuate," "segregation," or variants of those terms, seventh cause of action alleged the city's acts and omissions created barriers to overcoming patterns of segregation, rather than fostering inclusive communities free from barriers.

City resident adequately alleged disparate impact and a segregative effect of city's violations of Housing Element Law in suit under Fair Employment and Housing Act (FEHA); resident claimed that city's violations of Housing Element Law had adverse and disparate impact on people of color and the disparate impacts were predictable, statistically significant, and did not occur by chance, and she alleged statistics about the racially and economic composition of city and county from a historical perspective.

Word "discriminate" in Planning and Zoning Law making it illegal for city to discriminate against any residential development in the enactment or administration of ordinances encompasses practices with a discriminatory effect, which includes a disparate impact, and, thus, disparate income claims are cognizable for discrimination against development intended for lower income persons; legislature declared that discriminatory practices inhibiting the development of housing for persons and families of very low, low, moderate, and middle incomes, or emergency shelters for the homeless were a matter of statewide concern.

Statute requiring public agency to affirmatively further fair housing does more than simply prohibit public agencies from discriminating in housing programs and zoning.

City's violations of Housing Element Law with regard to lack of zoning for regional housing needs

allocation carryover for lower income housing compelled finding that city violated statutory duty to affirmatively further fair housing; city's acts and omissions related to amended housing element after effective date of statutory duty qualified as administration of "programs and activities relating to housing and community development" for purposes of duty to administer programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and one purpose of Housing Element Law and its requirement for zoning of sufficient sites to accommodate regional housing needs allocation is to further affordable housing for lower income households.

Practice with a discriminatory effect on persons of color or housing intended to be occupied by lower income households violates public agency's duty to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing.

Public agency's duty to affirmatively further fair housing is enforceable in court, and an ordinary writ of mandate is an appropriate mechanism for enforcing that duty.

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