

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALLISON BARTON RICE, an
individual,

Plaintiff.

v.

THE CITY AND COUNTY OF SAN
FRANCISCO; LONDON BREED, MAYOR
OF THE CITY OF SAN FRANCISCO;
KATE HARTLEY, DIRECTOR OF THE
SAN FRANCISCO MAYOR'S OFFICE
OF HOUSING AND COMMUNITY
DEVELOPMENT; MARIA BENJAMIN,
DIRECTOR OF HOMEOWNERSHIP &
BELOW MARKET RATE PROGRAMS
SAN FRANCISCO MAYOR'S OFFICE
OF HOUSING AND COMMUNITY
DEVELOPMENT; CISSY YIN,
HOMEOWNERSHIP & BELOW MARKET
RATE PROGRAMS COMPLIANCE
MANAGER SAN FRANCISCO MAYOR'S
OFFICE OF HOUSING AND
COMMUNITY DEVELOPMENT; DENNIS
HERRERA, SAN FRANCISCO CITY
ATTORNEY; KEITH NAGAYAMA, SAN
FRANCISCO CITY DEPUTY ATTORNEY
and DOES 1 through 50,

Defendants.

Case No. 19-cv-04250-LB

San Francisco, California
Thursday, December 22, 2022

ZOOM WEBINAR PROCEEDINGS

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LAUREL BEELER
UNITED STATES MAGISTRATE JUDGE

[Counsel Listed on the Following Page]

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

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1 SAN FRANCISCO, CA THURSDAY, DECEMBER 22, 2022 12:28 P.M.

2 --oOo--

3 THE CLERK: Calling Civil Action 19-4250, Rice v. City
4 and County of San Francisco, et al. Counsel, if you could please
5 state your appearances for the record.

6 MS. JIAM: Hannah Jiam on behalf of the Plaintiff from
7 Durie Tangri LLP.

8 MR. FISHER: Ramsey Fisher for the Plaintiff
9 (indiscernible).

10 THE COURT: The audio is glitchy on both of your sides.

11 MR. FISHER: How about now? Is now better?

12 THE COURT: It is.

13 MR. FISHER: Okay.

14 MS. JIAM: Your Honor, can you hear me as well?

15 THE COURT: Yes. That's better.

16 MS. JIAM: Okay.

17 MS. MURPHY: Kaitlyn Murphy for Defendants.

18 THE COURT: Great. All right. Thanks for your papers.
19 Thanks for being available. Sorry the calendar's so long,
20 although that's not actually something I can control. We had tons
21 of add-ons on the criminal calendar and we also had an in-person
22 hearing -- in-person civil court today, too, so it is what it is.

23 So thank -- so as to the summary judgment -- so there
24 are two issues. There's the summary judgment motion brought by
25 the CCSF. Obviously, we've traveled a good long way with this at

1 the motion to dismiss stage. Mr. Rice did a very able job
2 himself. You know, he really did. I know it was highly stressful
3 for him. I appreciate your folks coming in and representing him
4 and doing your typical good job on the papers. I'm mindful of the
5 Ninth Circuit context. I spent a lot of time in the case at the
6 motion to dismiss phase. I'm very mindful of the -- of --
7 because, obviously, with a case involving somebody who's
8 representing himself, it's an extra -- that's an extra lift. And
9 I can't do what I can do with lawyers, which is rely on their
10 accounting of the facts. I have to do my own independent
11 assessment. CCSF is always very good about giving a full record
12 to enable me to do that, so I understood the case very well in the
13 confines of the claim that survived and what the Ninth Circuit did
14 with it.

15 You know that I took the position essentially at the
16 motion to dismiss phase that I -- I -- this sort of interplay
17 between the -- what a municipality can fairly implement as rules
18 that govern low-income housing versus the interplay with the
19 statutes that Mr. Rice advanced. I had a specific view on that,
20 as reflected in the underlying orders.

21 I think the Ninth Circuit disagreed with it. In looking
22 at the Ninth Circuit's analysis and rethinking it, that was right.
23 I mean, you know, of course it's right. It's the Ninth Circuit.
24 But I -- but I mean it quite -- quite sincerely, you know. And so
25 when I looked at the Ninth Circuit's guidance -- and you guys --

1 well, at least the CCSF knows it, but you guys may or may not know
2 it on the Durie Tangri side of the -- I spent a lot of time with
3 my facts. I do that with all of my cases. Facts guide decisions.

4 And I think as a matter of fact disputes, a fact
5 precludes summary judgment. And I've gone through everything. I
6 unpacked it. I understand the perspective is -- I mean, it's --
7 it's very interesting from how that plays before a jury because I
8 think the CCSF has very good arguments that it can advance. And
9 it's a complicated landscape we inhabit; right? -- quite literally
10 with the word "inhabit." But I think that the Plaintiffs are
11 right here and I think it accords with how the Ninth Circuit --
12 and I have very deliberately -- as I know you know -- that's how
13 I look. I very deliberately unpack the facts.

14 Now, as to the -- and then I'm happy to hear whatever
15 argument you guys want to advance. As to the motion for judgment
16 of the pleadings on equitable defenses, you know, I have two
17 reactions. And part of it's sort of a joke and part of it's not.
18 One, I like that the CCSF has said, "Right, right, right. None of
19 this is at play." I think -- you know, thinking about how this
20 case -- I recognize that it's unlikely that the case will settle
21 because of the kinds of -- I'm aware of the sort of demands that
22 were at play in the case.

23 I mean, if you guys have a different perspective on
24 that, I'm happy to hear it. But I'm not in the business in the
25 context of this case for forcing unfruitful mediation on anyone

1 that won't meaningfully advance the ball. It's okay. Some cases
2 exist to be tried. And I think it's an interesting one, so I do
3 defer to you as to what you want to do on that. So we don't have
4 to discuss that today at all.

5 I did think to myself, oh, my goodness. You guys have
6 kind of seen from my calendar today that I am so very busy -- so
7 very busy that the entertainment value that criminal case dumped
8 on me was substantial because it's a lot of work just to manage it
9 all. I'm handling it all. But I thought to myself, Oh, boy, you
10 know, all this stuff will shake out at trial. All of it will
11 shake out at trial. And -- because the way the defenses go in,
12 the reasons bleed into the equities and I don't see, you know --
13 in limine motions can confine how a case looks. But I don't think
14 that the absence of equitable defenses -- and this she says in a
15 vacuum -- preclude the CCSF for essentially advancing a theory of
16 why it's not viable. It's not really a defense. It's a context.

17 So I think that on this record, I think the Plaintiffs
18 are right. The equitable defenses don't apply. But I would also
19 say that every order's interlocutory until it's not. And this is
20 one of those situations that I just -- you know, my view is, Yeah,
21 you're right. You're right from the Plaintiff's side. I think
22 you're right. I've written my draft that says that. But I really
23 mean it when I say every order's interlocutory until it's not, and
24 I don't think the CCSF's ability to explore -- I don't think it
25 goes to the jury instruction the way the defense typically does,

1 so that's why I think the Plaintiffs are right. But I do think it
2 informs the CCSF's explanation of what happened here.

3 So those are my preliminaries, and I want to give you
4 guys -- the CCSF particularly -- I mean, I'm mindful of the
5 opportunity that this provides the Plaintiffs, too, to have
6 argument in federal court dealing with a busy calendar, but I do
7 think it goes the Plaintiffs' way.

8 So, Ms. Murphy, thank you for your typically good job.
9 But that's my reaction. And I did, as I said, spend a ton of time
10 unpacking every fact argument you advanced and every fact response
11 that the Plaintiffs countered with.

12 MS. MURPHY: Thank you, Your Honor. I don't have any
13 more to say about the Plaintiffs' motion. And I think if we do
14 get to a phase where the Court's considering further settlement
15 discussions, my proposal would be to give Plaintiffs' counsel an
16 opportunity to discuss with their client whether or not that's
17 something they think would be productive, and then to revisit once
18 they've had a chance to get that information.

19 With respect to Defendants' summary judgment motion, the
20 only point that I would raise for the Court is Ms. Benjamin's
21 testimony. I think the City did offer Mr. Rice an alternative
22 accommodation, that he could have someone pay for groceries or
23 utilities, just not rent. And under *Wartschmer* (ph), the Third
24 Circuit case which was decided in 2018, which was -- it's cited
25 favorably by the Ninth Circuit in 2021 -- I do think that

1 that's -- it's undisputed she made that offer. Mr. Rice certainly
2 didn't submit a declaration stating he didn't recall her making
3 that offer to him. And that it is an alternative accommodation
4 which would have satisfied the goal Mr. Rice puts forward as
5 needing the accommodation for, which was depression and loneliness
6 that needed to be accommodated by a roommate who contributed
7 equitably or equally to the relationship.

8 THE COURT: Yeah. I think it's -- you know, it's an
9 interesting case to read. I'll let the Plaintiffs respond in a
10 sec, but just so you know, I did think about it. I always think
11 about all of your arguments and read the cases. And, you know,
12 the woman with the walker and four different ways where she could
13 do it herself does seem a little different from the -- but she
14 wanted to do it her way. The movie version of that was
15 interesting to contemplate. You know, I see the parking spot in
16 front, you know, the valet parking option below. So I just think
17 it's at least disputed that the roommate that pays for food and
18 utilities is equivalent to, you know, sharing an equitable burden.
19 I think that that's -- you know, was advanced and I think it's at
20 least disputed. I think it's an -- it's an argument of
21 accommodation. It's a fact argument that I don't think it
22 precludes summary judgment as a matter of -- I don't think it
23 militates in favor of granting summary judgment as a matter of
24 law.

25 I'm happy to have the Plaintiffs weigh in with whatever

1 you say, but I've already thought about it and that's the opinion
2 I have.

3 MR. FISHER: Yeah. I -- Your Honor, this is Randy
4 Fisher. Obviously, we agree with that. It's in dispute whether
5 that would serve and treat it as a disability. And also the offer
6 was made, you know, three or four months after the request was
7 denied. So -- but I think those are all facts that should go to
8 the jury and they can weigh what they will with it.

9 THE COURT: So -- so I'll issue an order. I mean, I
10 wrote -- the order's finished, but I have a process where every
11 cite and record check has to be knitted. And whether that happens
12 until the new year, I don't know. But that goes off to somebody
13 else to do, to fact-check and cite-check my -- the order that I
14 have here.

15 So -- but that's -- that will be the order. I -- I have
16 reached that conclusion and formed my of course argument today.
17 I cannot remember -- I'm just going to switch to our -- you know,
18 to the Government's point about -- let me just see -- my
19 scheduling order does not -- this is the wrong case. That would
20 explain why my scheduling order's not there. Let me look here.
21 You know, to the -- to the ADR point, you know -- and I don't --
22 didn't look to see whether Mr. Rice is in the audience. He
23 typically does attend these. I know it was -- and I know, again,
24 how grateful he was for your assistance in the case. I know he
25 wrote me a very nice letter after I appointed counsel. I think it

1 said, you know, "Thank you for doing that." And -- and so I --
2 what is -- I don't have -- what is our trial date? I just have
3 too many pieces of paper in front of me.

4 MS. MURPHY: June 9th.

5 MR. FISHER: It's in June -- yes, June 9th.

6 THE COURT: Yeah. So if you're going to -- I don't know
7 whether it makes sense just to put on an interim CMC date just so
8 if you do want an ADR option, you have time to talk about it with
9 your client. I don't have anything else on my agenda other than
10 that.

11 So I think that, you know, this is a -- I know how hard
12 this was on Mr. Rice and I know that it is a wonderful opportunity
13 to secure good housing in San Francisco. It looked to me -- I'll
14 just say this from the papers, you know, I -- he was always very
15 respectful in court. He did a really good job on his papers on
16 his own. His email correspondence reflects that, you know -- I
17 read him as a guy who wanted to comply with the rules, brought up
18 the issue, and then even went to the apartment and building and
19 constructing the interior compartment in his -- in his apartment;
20 right? So he -- he looks like he wants to -- wanted to abide by
21 the rules.

22 That said, you know, if he is in the audience, you know,
23 it's complicated, this interplay with, you know -- and I mean this
24 mildly. You know, the process that attends to bureaucratic
25 rulemaking -- decisionmaking is a tough one under the best of

1 circumstances. You know, institutions tend to like bright-line
2 rules. It's run by people who are not necessarily adept at, you
3 know, different contexts. And then there's the issue about -- and
4 then what's the end result even, though, of course, it was a big
5 deal to be able to have the opportunity for this kind of a
6 housing. I don't know -- and I -- somehow in the papers that were
7 publicly filed, I got some whiff maybe in a CMC statement of the
8 overall demand, which is not realistic; right? And so -- and I'm
9 sure Mr. Rice probably knows that.

10 I don't know whether there are any creative outcomes.
11 I remember that Mr. Rice moves to Austin. I just don't know
12 whether there's anything that can be accomplished by settlement.
13 I would suggest that you guys as lawyers talk first and then just
14 to see -- just to kind of -- there's the issue about what the
15 client wants, but that's why you guys on the Plaintiff's side have
16 the counselor that that you -- right? -- about what's achievable.

17 The CCSF may have thought about whether there's
18 something that could be done to address Mr. Rice's interests.
19 There may or may not be something. I don't think anyone has any
20 interest in wasting anybody's time in a mediation, including if
21 what you want is a magistrate judge. I am fine with trying the
22 case. Just, you know, I'm not that, you know -- I -- I'm fine
23 with it.

24 So I would suggest we put it on a CMC either in late
25 January or early February so that if there's an ADR option you

1 want, that we can get it to you at a time that makes sense before
2 you start prepping for trial. Does that seem -- and that will
3 give you guys an opportunity to talk with each other and then talk
4 -- Ms. Jiam and Mr. Fisher talk to their client and decide what
5 you guys want to do.

6 So does that seem like a good plan?

7 MR. FISHER: Yes, Your Honor.

8 MS. JIAM: Yes, Your Honor.

9 MS. MURPHY: Yes.

10 THE COURT: So third week in January, fourth week in
11 January, first week in February; what do you think?

12 MS. MURPHY: I'd prefer the first week in February
13 because I believe Ms. Rosenblit will be back from leave at that
14 point.

15 THE COURT: Perfect. That's great. So let's -- let's
16 put it on that first Thursday at 9:30 for a CMC.

17 THE CLERK: February 2nd at 9:30.

18 THE COURT: February 2nd with a short update due seven
19 days before.

20 MR. FISHER: Great.

21 THE COURT: It will be very short. All right. Thanks,
22 you guys.

23 MR. FISHER: Thank you.

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(Proceedings adjourned at 12:41 p.m.)

I, Peggy Schuerger, certify that the foregoing is a correct transcript from the official electronic sound recording provided to me of the proceedings in the above-entitled matter.

Peggy Schuerger
Signature of Approved Transcriber

January 9, 2023
Date

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