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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LUIS J. CACHO et al., Plaintiffs and Appellants, v. LOUIS J. BOUDREAU et al., Defendants and Respondents.	D043396 (Super. Ct. No. GIS007670)

APPEAL from a judgment of the Superior Court of San Diego County, Luis R. Vargas, Judge. Affirmed.

Bruce Cornblum for Plaintiffs and Appellants.

Law Offices of Ron A. Stormeon, Ron A. Stormeon and Lori L. Krupa for Defendants and Respondents.

At issue in this case is whether mobilehome park owners in a rent control jurisdiction may charge their individual mobilehome residents for a proportional share of the costs of a particular governmental assessment (real property taxes assessed on the

park as a whole), by way of a monthly pass-through charge that is excluded from rent, as defined by the municipal ordinance requiring mobilehome park space rent review. (Chula Vista Municipal Code, Chapter 9.50 (the Ordinance), § 9.50.030, subs. (A), (H).) We hold this portion of the Ordinance, apparently allowing such pass-through charges for real property taxes, is in direct conflict with certain provisions of the Mobilehome Residency Law (MRL) (codified at Civ. Code,[1] § 798 et seq.) and is therefore preempted. Mobilehome park owners in this jurisdiction are precluded from requiring such property tax payments from their residents under the definitions of "rent" and "fee" as used in section 798.31,[2] as read together with section 798.49 (mandating rent control jurisdictions to allow owners to charge certain fees, but excluding others; specifically, subd. (d)(4) of § 798.49 expressly *excludes* from the separately chargeable fees "*any tax imposed upon the property*" by a local governmental entity; italics added).

On de novo review, our reading of the statutory scheme and its terminology requires us to confirm the trial court's rejection of the park owners' novel contention that the Ordinance may permit what state law forbids. This argument by the park owners may be generally summarized as follows: Since, under the express terms of the Ordinance, the municipal rent review commission can consider a park owner's property tax increase when it adjusts a resident's space rent in administrative procedures, the park owners and

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1 All further statutory references are to the Civil Code unless noted.

2 In relevant part, section 798.31 reads: "A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered."

residents should also be able to pass on or share in the cost of a park owner's property tax increase, outside of the Ordinance's rent review procedure, by entering into lease agreements which effectively pass on such a property tax increase, through the technique of incorporating local rent review law into the lease.

We therefore disagree with the park owners that this pass-through charge for property tax may be considered to be either a permissible component of rent or a rent adjustment that would be permitted by the MRL, by ordinance, or by the terms of the lease itself. Moreover, we find no error in the trial court's interpretation of this statutory scheme to assess statutory penalties on these park owners for willful violation of the MRL (under § 798.86), nor in the trial court's decision that making express rulings on certain evidentiary objections was not essential to its reasoning process in arriving at its summary judgment order and the amended judgment.

We accordingly affirm the amended judgment, which is adverse to plaintiffs/appellants Luis J. Cacho et al. and Don Luis Estates LLC (the successor to a family general partnership), who are the subject mobilehome park owners (referred to here as Owners). Like other property holders, Owners are subject to the usual property taxes and reassessment of taxes upon the park's real property parcel. The defendants/respondents are individual residents in their park, Don Luis Estates (the

park).[3] The park is located in the City of Chula Vista (the City), where the Ordinance requires mobilehome park space rent review.

This conflict arose in 1998, when Owners imposed upon Residents a pass-through charge to recoup recent increases in Owners' property taxes, as part of the Residents' overall monthly bill for rent and expenses. In 2001, Residents responded with a small claims action against Owners, and the matter was transferred to superior court, where Owners filed a complaint seeking declaratory relief regarding the application of the Ordinance permitting such pass-through charges for real property taxes. (Ord., § 9.50.030, subs. (A), (H).) Owners claimed they could properly recover proportional property tax payments from Residents under the MRL definition of "rent" in section 798.31, as read together with section 798.49 (mandating rent control jurisdictions to allow certain pass-through charges, but excluding others). Residents then filed a cross-complaint contending the Ordinance language permitting the monthly property tax pass-through was in direct conflict with state law and was preempted by sections 798.31 and 798.49, subdivision (d).

Owners brought a summary judgment motion and Residents filed a cross-motion. (Code Civ. Proc., § 437c.) The trial court granted summary judgment for Residents in the amount of $10,066.81 actual damages, as recovery for the property taxes they paid. The judgment as amended after further proceedings also found willful violation of the

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[3] There are 30 named homeowner/respondents, representing 23 residences in the park (of its 129 total spaces). We refer to them collectively as Residents.

MRL and imposed $23,000 as statutory penalties under section 798.86 ($1,000 per residence involved), as well as attorney fees and costs.

In Owners' appeal, they chiefly contend the trial court erred as a matter of law in its statutory construction of the MRL on the preemption question and in its statutory penalties ruling. We affirm for the reasons stated above and explained below.

FACTUAL AND PROCEDURAL BACKGROUND

A

Nature of Action

Owners lease spaces in the park to Residents who live in their own mobilehomes located there. Owners provide a standardized lease which includes a paragraph referencing a base monthly rent, which can be changed upon notice pursuant to the MRL, which is incorporated by reference. This paragraph further provides "the amount of rent and any increases in rent are governed by the City of Chula Vista."[4]

In 1994, one of the partners in Owners' family general partnership died, triggering a significant increase (over $18,000) in Owners' county property taxes on the parcel as a whole. In 1998, Owners inquired of staff members of the housing department at the City, who were charged with administering the City's rent control ordinance, whether they could recover property tax payments from Residents on a monthly basis. The City director of housing consulted the city attorney's office and wrote to Owners stating that

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4 Numerous leases applicable to the individual residents' spaces are included in the record. Although a few individual leases are missing, there is no dispute that each resident was party to a similar standardized lease.

the proposed property tax pass-through charge did not appear to be in violation of the City's rent control ordinance, but should be listed separately from the base rent on the bill. (Ord., § 9.50.030, subs. (A), (H).)[5]

Beginning January 1, 2000, Owners added to the monthly space rent charge a separate automatic property tax pass-through charge of $12.31 per month for each resident. This additional monthly charge increased slightly over the next two years, and was separately designated in various ways on the bill (rent tax, rent adjustment, adjustment, or other). Although City officials advised Owners to obtain their own legal counsel to analyze the propriety of the property tax pass-through, Owners did not do so. Following further dealings with the City, beginning in 2002, Owners notified Residents the monthly rent would still include the property tax adjustment dating from 1998, but it would no longer be separately billed. In May 2002, the City rent review commission (the "Commission") notified Owners they should no longer bill Residents for increased property taxes, as those amounts had already been considered in the rent review procedure.

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[5] By "pass-through" we refer to charges that are additional to the monthly charges that are labeled "rent." The pass-through terminology is used under rent-control ordinances, to enable park owners to impose certain types of costs on their residents through separate monthly charges, without the necessity of a formal application for rent review. (See, e.g., § 798.49, subd. (a).) Leases in nonrent-control jurisdictions may also use this terminology to refer to charges that are distinct from "rent." (See, e.g., *Vance v. Villa Park Mobilehome Estates* (1995) 36 Cal.App.4th 698, 705 (*Vance*) ["[p]ass-through" used as "a convenient label to describe increased operating costs," which are described as rent under the terms of those particular leases rather than as "fees" within the meaning of § 798.31].)

In August 2001, 30 individual residents (representing 23 spaces) sued Owners in small claims court requesting refund of this monthly charge. Those matters were transferred to superior court to be heard with Owners' declaratory relief action. Residents were contending that the City Ordinance permitting automatic real property tax pass-throughs was in direct conflict with and was therefore preempted by section 798.49, subdivision (d). Residents also argued this monthly pass-through charge was not "rent" as defined in section 798.31.

In contrast, Owners requested that the court declare these amendments to the Ordinance relating to mobilehome park space rent review were valid and not in violation of section 798.49, subdivision (d)(4). (Ord., § 9.50.030, subs. (A), (H).) Owners amended their complaint to add an additional party, Don Luis Estates, LLC, the successor to the family partnership which had originally imposed the property tax pass-through charges.

Residents' cross-complaint, as amended, requested relief for (1) damages for statutory violations, (2) injunction, (3) declaratory relief, and (4) breach of contract, alleging the contract was unenforceable as contrary to law.

Owners brought a demurrer to the cross-complaint, which was overruled. The April 12, 2002 ruling stated that the relevant portions of the MRL (§§ 798.31 & 798.49) did not allow the pass-through of real property taxes and preempted the City Ordinance definition of allowable pass-through charges in its section 9.50.03, subsection (H). The court ruled that these charges could not be classified as rent and were therefore an impermissible fee.

B

Cross-Motions and Evidentiary Objections

Owners brought their motion for summary judgment or summary adjudication of issues, contending that City Ordinance section 9.50.030, subsection (H) was not preempted by the MRL, specifically, section 798.49, subdivision (d)(4). Owners requested judicial notice of the legislative history of section 798.49, which was granted. (See fn. 8, *post*.) Owners also sought a ruling that these property tax pass-through charges should not be deemed to be "willful" for purposes of imposition of civil penalties under section 798.86.

Residents brought a cross-motion for summary judgment seeking a ruling that the property tax pass-throughs violated the MRL, and that the subject leases were accordingly unenforceable. Residents also sought a ruling that Owners' violations of the MRL were willful within the meaning of section 798.86. Residents filed a number of substantially similar declarations stating that they were of limited means and physical abilities, and did not understand the nature of the charges imposed, and believed that they should not be enforced. Owners brought evidentiary objections to these declarations, contending they did not accurately reflect the individual circumstances of each and every Resident.[6]

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6 The trial court responded to these evidentiary objections only by stating in its ruling that it "disregards all evidence it considers to be incompetent and inadmissible and therefore declines to give a written ruling on the evidentiary objections. (See *Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419 [*Biljac*].)"

C

Substantive Ruling: Preemption

Following oral argument, the trial court issued its order July 28, 2003. Owners' motion for summary judgment or adjudication was denied, while Residents' was granted. Regarding Owners' request for declaratory relief, the court first applied the "plain meaning rule," dealing with statutory construction, to find that the language of section 798.49, subdivision (d) is clear and unambiguous with respect to the impropriety of charging Residents for property taxes, and that the legislative history was consistent with that language. The court ruled, "the Legislature's expression that mobilehome park owners should be entitled to pass-through 'government mandated costs' in rent control jurisdictions is not to say that the Legislature in any way intended to sanction the pass-through of taxes."

With respect to Residents' cross-complaint, the court denied Owners' motion for summary adjudication for the above reasons. Additionally, as to the cross-complaint's fourth cause of action for breach of contract, the court reasoned as follows:

> "Insofar as the fourth cause of action for breach of contract is based, in part, on allegations that the subject leases contained a provision whereby the parties 'agreed to adhere to the terms and provisions of the MRL' [citation], and insofar as the Court has found that Plaintiffs' actions did, in fact, violate the MRL [citation], summary adjudication of that cause of action is inappropriate and [Owners'] motion for summary adjudication . . . is denied."

Next, the court granted Residents' motion for summary judgment, noting that the same reasoning above also applied, that Owners had violated the MRL by charging unauthorized pass-through property taxes. The court additionally found, inter alia, the

leases were unenforceable because "the subject leases were both procedurally and substantively unconscionable. Additionally, because [Owners'] opposition memorandum addressed neither the factual nor legal arguments on this issue, the Court deems this argument to have been conceded."[7]

Separate proceedings were scheduled for Residents' request for statutory penalties, and the amount thereof, under section 798.86 for willful violations of the MRL. However, the court made a finding that Owners' violations were willful within the meaning of the statute. The court issued a judgment awarding damages (reimbursement of payments made) in the sum of $10,066.81, without specifying the costs of suit, attorney fees or statutory penalties. A petition for writ of mandate filed by Owners, challenging that procedure, was denied by this Court of Appeal on the basis that there was an adequate remedy by way of appeal. (*Cacho v. Superior Court* (Sept. 16, 2003, No. D042723).)

D

Statutory Penalties: Ruling and Judgment

In its original ruling, the trial court denied Owners' motion for summary adjudication that their conduct was not "willful" for purposes of any civil penalties being assessed in connection with section 798.86, and ruled as follows:

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7 In issuing its ruling, the court referred to a number of undisputed facts provided by the parties in their separate statements, to the effect that Owners had not explained these lease provisions to Residents, and Owners' managing agent was a real estate licensee. The trial court evidently relied on these facts to conclude that the leases were

> "While [Owners] contend that 'there is no evidence that [they] performed a "willful act" ' as contemplated by that section, the undisputed facts do not support that position. In *Patarak v. Williams* (2001) 91 Cal.App.4th 826 [*Patarak*], the appellate court, noting that no published case had yet construed the term 'willful' for purposes of the MRL, nevertheless rejected the defendant's position that the term be defined consistent with Civil Code section 3294 respecting punitive damages. . . . [¶] Under the standard suggested by *Patarak*, the Court finds ample evidence of 'willful' conduct in [Owners'] act of initiating the pass-throughs for property taxes. Cross-complainants need not show that in so doing, [Owners] intended to violate the law, but rather that their conduct in charging Cross-complainants for the increased property taxes was neither negligent nor accidental and was violative of the MRL."

In further proceedings held on the penalty issue, the court outlined as circumstances in mitigation that Owners had consulted City officials, who obtained the city attorney's opinion at the time that the pass-through for property tax was not in violation of statute. The trial court did not find it appropriate to award the maximum dollar amount or multiple penalties ($2,000 per occurrence), finding there was in essence a single violation flowing from Owners' initial determination to pass-through the property tax, which reflected their interpretation of statutes and the Ordinance. The court further noted it would be inappropriate to penalize Owners for the time period pending a judicial determination on their interpretation of the applicable rules.

Accordingly, the trial court assessed statutory penalties against Owners of $23,000 ($1,000 per residence). Additionally, the court awarded attorney fees in the sum of $87,321 and costs of litigation of $9,230.21. An amended judgment was entered

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unenforceable and unconscionable insofar as they appeared to impose real property tax pass-throughs.

accordingly. Owners timely filed their notice of appeal of the amended judgment (also having appealed the original judgment).

DISCUSSION

We first discuss the preemption issues under sections 798.31 and 798.49, then consider whether Owners' conduct was "willful" within the meaning of section 798.86, and finally, address the evidentiary objections argument.

I

APPLICABLE STANDARDS

Owners appeal the judgment representing the rulings on the cross-motions for summary judgment, which resolved solely issues of law on a factually undisputed record. "Because the issues before us are purely questions of law, we are not bound by the trial court's judgment. [Citation.] We independently evaluate the meaning of the Ordinance and the California Mobilehome Residency Law which are involved here. [Citation.]" (*Karrin v. Ocean-Aire Mobile Home Estates* (1991) 1 Cal.App.4th 1066, 1070 *(Karrin)*; *Robinson v. City of Yucaipa* (1994) 28 Cal.App.4th 1506, 1516 (*Robinson*); *Vance, supra,* 36 Cal.App.4th 698, 702; *Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1258.) Unconscionability of an agreement is also a question of law for the court. (*Vance, supra,* 36 Cal.App.4th at p. 709.)

" 'The fundamental rule of statutory construction is that the court should ascertain the intent . . . so as to effectuate the purpose of the law. [Citations.] ". . . [E]very statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." [Citation.] If possible, significance should be

given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. [Citations.]' [Citation.]" (*Karrin, supra,* 1 Cal.App.4th 1066, 1070.)

If local legislation is in conflict with general state law, it is preempted and void. (*Karrin, supra,* 1 Cal.App.4th at p. 1071.) " ' "Conflicts exist if the ordinance duplicates [citations], contradicts [citations], or enters an area fully occupied by general law, either expressly or by legislative implication [citations]. . . ." ' [Citation.] Conflicts also exist if the subject matter of the ordinance is partially covered by a general law which is couched in terms indicating that the state will not tolerate further or additional local action on the particular matter. [Citation.] [¶] We look to the language of the state law, its purpose and scope to see whether it indicates an intent to preempt local regulations on particular 'phases of the subject.' [Citation.]" (*Ibid*.)

II

SCOPE OF MRL AND PREEMPTIVE EFFECT

A

Statutory Scheme: Rent v. Fees

It is well established that the MRL is not a rent control scheme, but leaves that determination to local entities. The court in *Vance, supra,* 36 Cal.App.4th 698, 707 explained that the MRL "clearly distinguishes between rent and fees. It regulates fees but not rent." Section 798.31 is one such fee regulation, providing in pertinent part: "A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered."

As explained in *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888 (*Dills*), this legislative scheme, including section 798.31, shows the intent of the Legislature to prevent "a proliferation of service charges above and beyond rent or utilities. The unscrupulous park owner could lure mobilehome owners with a competitive rent, then 'nickel-and-dime' this relatively captive market with an array of unanticipated charges which when aggregated could render the tenant unable to afford to continue the tenancy. The Legislature first ensured that the charges must be for services actually rendered; it then required advance disclosure of the existence and amount of service charges in the rental agreement, proscribed particular fees it found odious, and required a 60-day notice period for any new charges for current tenants." (*Dills, supra*, 28 Cal.App.4th at p. 893, fn. omitted.)

Accordingly, some fees and charges "above and beyond rent" are allowed by the MRL. As relevant here, section 798.49, subdivision (a) authorizes a park owner to separately charge residents with certain fees, assessments, or other costs, in addition to rent (such as governmental fees or increases imposed upon a particular space). Where such separate charges are statutorily permitted, they may be implemented through the use of pass-throughs, as recognized by the City Ordinance at issue here. However, by the terms of section 798.49, certain other items are expressly excluded from the coverage of the statute regarding any separately chargeable fees, e.g., "*any tax imposed upon the*

property" by a local governmental entity. (§ 798.49, subd. (d)(4); italics added.)[8] To avoid having the Ordinance impermissibly duplicate, contradict, or enter "an area fully occupied by general law" (*Karrin, supra*, 1 Cal.App.4th at p. 1071), we read this Ordinance as primarily creating a procedural pass-through mechanism for those fees and charges otherwise allowed by the substantive scope of the MRL. We seek to determine the propriety of the property tax pass-through under state law, which in this case requires us to examine the coverage and exclusions in sections 798.31 and 798.49.

Accordingly, we consider Owners' contention that this pass-through charge for property tax is a permissible component of rent or a rent adjustment under section 798.31. Owners alternatively claim this property tax pass-through is consistent with the nature of the inclusions of section 798.49, subdivision (a) (the separate charges Owners are allowed to assess), because they all represent operating costs for the park.

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8 Under section 798.49, subdivision (a): "Except as provided in subdivision (d), the local agency of any city . . . which administers [a rent control ordinance] shall permit the management to separately charge a homeowner for any of the following: [¶] (1) The amount of any fee, assessment or other charge first imposed by a city . . . , a county . . . , the state, or the federal government on or after January 1, 1995, upon the space rented by the homeowner . . . ." Other such separate charges expressly permitted by this section include "(2) The amount of any increase . . . in an existing fee, assessment or other charge imposed by any governmental entity upon the space rented by the homeowner;" and "(3) The amount of any fee, assessment or other charge upon the space . . . pursuant to any state or locally mandated program relating to housing . . . ." Under subdivision (d), it is expressly stated that the section as a whole "*shall not apply to* any of the following . . . ," including: "(4) *Any tax imposed upon the property by a city, including a charter city, county, or city and county*." (Italics added; the other three items *excluded* under subd. (d) include *management and administrative fees, and court-imposed management fees*.)

If, however, Residents are correct that the nature of this charge squarely falls within the scope of the exclusions of section 798.49, subdivision (d), the Ordinance seeking to allow it will be preempted by state law, and the lease incorporating the terms of the Ordinance will similarly be ineffective to create such an obligation upon Residents.

Our task is first, to define our terms, and then to read the applicable statutes, Ordinance, and lease provisions together in order to determine the preemption question.

B

Definitions of Terms

A traditional definition of rent was set forth by the court in *Vance, supra*, 36 Cal.App.4th 698, as follows: "Rent is 'the consideration paid by the tenant for the use, possession, and enjoyment of the demised premises. "Rent" does not include other payments of money by a tenant for other purposes . . . .' [Citation.]" (*Id.* at p. 707.)

In *Vance, supra*, 36 Cal.App.4th 698, 705, footnote 2, the court further outlined the use of the term "rent" within the statutory context of the MRL:

> "The term 'rent' is not specifically defined in the Mobilehome Residency Law. In the Mobilehome Parks Act, rent is defined as 'money or other consideration given for the right of use, possession, and occupation of property.' [Citation.] [¶] The Mobilehome Residency Law contains the following additional definitions: ' "Rental agreement" is an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy. A lease is a rental agreement.' [Citation.] ' "Homeowner" is a person who has a tenancy in a mobilehome park under a rental agreement.' [Citation.] ' "Tenancy" is the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park.' [Citation.]"

For purposes of defining rent within the statutory context of the MRL, it is important to read the case law with attention to whether it arose in a rent-control jurisdiction or in a nonrent-control jurisdiction. Where there is no local rent control regulation on mobile home residency, the amount of rent is left up to the agreement of the parties, in their lease agreement. (*Vance, supra,* 36 Cal.App.4th at pp. 705-708.) For example, in *Vance,* the leases were interpreted as using a pass-through charge "as a convenient label to describe increased operating costs," and "[i]n the absence of rent control, the parties may agree on future rent increases based on increased operating expenses. In the leases, the pass-throughs operate as rent, not as fees." (*Id.* at p. 705.) Similarly, in *Dills,* the lease agreement provided for a capital improvement charge to residents as part of the "annual rent adjustment" component of rent. (*Dills, supra,* 28 Cal.App.4th at pp. 892-893.) Thus, "the breakdown of rent into separately calculated base-rent and capital improvement components does not invalidate the capital component" with respect to a challenge under section 798.31. (*Id.* at p. 892.)[9]

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9 In some cases, a lease may include a covenant by the tenant to pay property taxes, which is separate from the covenant to pay rent. (7 Miller & Starr, Cal. Real Estate (3d ed. 2002) § 19:145, pp. 456-458.) These leases do not include such a covenant. As noted in *Vance, supra,* 36 Cal.App.4th 698, where rent control is not in effect, the MRL does not prohibit the landlord charging additional rent for the payment of taxes where those charges may properly be described as rent in the rental agreement. (11 Miller & Starr, Cal. Real Estate, *supra,* § 31:21, p. 32.) However, in our case, we are required to interpret the leases in the context of the rent control ordinance in effect.

However, pursuant to the MRL, in rent control jurisdictions such as the City in this case, the permissible components of rent are limited by their local ordinances, rather than being subject to open negotiation in the leases. (Cf. *Vance*, *supra*, 36 Cal.App.4th at pp. 707-708 [MRL regulates fees, not rent, and lease agreements are negotiable regarding rent rates when not otherwise regulated].) "Fees" other than those authorized by section 798.31 (i.e., rent, utilities, and incidental reasonable charges for services actually rendered) cannot be permitted by a local ordinance. For example, the court's decision in *Robinson, supra,* 28 Cal.App.4th 1506, arose in the procedural context of mandamus review of an administrative decision. There, it was dispositive that the relevant parts of that City's ordinance did not distinguish between rent and assessments for capital improvements; thus, it was permissible to "treat capital improvement adjustments as one of the components of the rental rate formula." (*Id.* at p. 1514.) This was accomplished by the local rent administrator and commission as part of the rent review procedure. It was also important that that City's ordinance "defines rent to include the consideration paid not only for use of a space on which to place a mobile home but also for related housing services. [Citation.] [¶] Reading the ordinance as a whole, it is clear that a capital improvement adjustment is a rent adjustment, not a fee. We conclude that Civil Code section 798.31 does not preempt the ordinance." (*Robinson*, *supra*, 28 Cal.App.4th at p. 1514.)

However, in *Karrin, supra,* 1 Cal.App.4th 1066, an owner's monthly capital assessment for road improvements was held to violate section 798.31. The city of Oxnard's rent control ordinance defined rent as being exclusive of pass-throughs for

capital expenditures. (*Karrin, supra,* 1 Cal.App.4th at pp. 1068-1069.) The court concluded that to the extent the ordinance purported to authorize such a pass-through, it was invalid as conflicting with section 798.31. (*Karrin, supra,* 1 Cal.App.4th at p. 1071.) By enacting section 798.31, "The Legislature intended 'to [limit strictly] the ability of park management to collect fees from any source except . . . for services performed.' [Citation.] The assessment at issue was neither a charge for utilities nor for services rendered. [Citation.]" (*Karrin, supra,* 1 Cal.App.4th 1066, 1071, as cited in *Dills, supra,* 28 Cal.App.4th at p. 891.) As such, the ordinance could not permit these capital assessment provisions due to state preemption under section 798.31. (*Karrin, supra,* 1 Cal.App.4th at p. 1073.)

C

Contentions

Owners primarily contend that the City Ordinance apparently permitting automatic pass-through of property tax charges was not preempted by section 798.31, because such pass-throughs should not be considered to be prohibited "fees" in excess of rent. Their position is that they are not charging a "fee" other than rent, because rent is an elastic concept which can include items other than the base or space rent owing by a homeowner, and that the local Ordinance, as incorporated into the leases, recognizes this.

Owners further contend the trial court erred in determining that the Ordinance was preempted by section 798.49, subdivision (d), in its finding based on that language stating, "taxes imposed by a city or county are excluded from the amount management may separately charge a tenant." Owners claim that the purpose of section 798.49 as a

whole (to protect the right of owners to pass on certain locally imposed governmental costs to residents) demonstrates that local entities should be allowed to enact ordinances permitting such property tax pass-throughs, and the lease agreements involved here should be so interpreted. Owners would interpret the exclusion in section 798.49, subdivision (d)(4), regarding property tax, as permitting the City to take this affirmative action to delete that item from the rent review procedure, because this exclusion merely indicates that property tax cannot, under this section, amount to the kind of mandatory allowable pass-through outlined by this statute, which may be assessed *outside of* the base rent amount. Owners' theory seems to be that if this particular charge is not "outside" the base rent, it must be deemed to be included within the rent definition.

Further, Owners argue it is persuasive that the Commission can, under the Ordinance, consider property tax as one of the many factors that can be taken into account in allowing a rent increase pursuant to an owner's application to the Commission. (Ord., § 9.50.073.)[10] For example, under the Ordinance, the Commission can consider an owner's "other operating and maintenance costs" when deciding on a rent increase application. (*Ibid*.) (It is not disputed that Owners never went through this

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10 The Ordinance at section 9.50.073 lists a number of factors the Commission may consider in fixing space rent through the hearing process, to determine a rent that is "fair, just and reasonable." Similarly, the Ordinance at section 9.50.063 allows Owners to increase space rent above the applicable consumer price index by giving notice to the affected Residents. As previously noted, the definitions portion of the Ordinance, section 9.50.030, subsection (A) defines space rent as inclusive of certain payments, fees and charges for the use and occupancy of the mobile home space, but "exclusive of other allowable pass-throughs as defined in subsection (H) below."

administrative procedure regarding this pass-through charge for the property taxes, as they did not believe it was necessary.)[11] Owners would extend this reasoning to say that property tax can be a permissible component of rent, as an "other operating and maintenance cost," even outside this rent review procedure.

In other words, Owners rely on the terms of the *Ordinance* to argue that property tax pass-through charges outside of space rent are authorized here. On the other hand, they rely on the *lease* terms to argue that the property tax pass-through charge is a proper component of rent (or a proper rent adjustment), because the lease incorporates the terms of the City Ordinance which in turn allows for a property tax pass-through charge. Specifically, the lease includes a paragraph referencing a base monthly rent, and further provides, "the amount of rent and any increases in rent are governed by the [City]." (See Ord., § 9.50.030, sub. (H).) This is a somewhat circular argument. In any case, Owners have taken inconsistent positions between 1999 and the present on whether the property tax pass-through should properly be considered part of the aggregate "rent" or as an excluded pass-through charge. Similarly, the position of City officials has also changed over the years. (See fn. 12, *post*.)

Residents defend the trial court ruling, arguing this property tax charge represents the kind of "fee" barred by section 798.31, and which does not fall within the scope of the

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11 Although Owners make arguments on appeal regarding certain Internal Revenue Code sections to support their claim that property tax is properly considered to be an operating expense for income property, and therefore should fall within the rent definition, those arguments were apparently not made to the trial court and should not be considered on appeal.

exceptions to this bar found in section 798.49, for governmental assessments upon an individual space. They contend that when section 798.49 is read in its entirety, rather than allowing local entities to permit this type of pass-through, it instead ensures that the enumerated mandatory allowable pass-throughs guaranteed by this state law shall not include property tax (i.e., § 798.49, subd. (a)(1), (2), (3) [only governmental fees assessed upon a space are allowed as separate charges]; see fn. 8, *ante*). Residents therefore argue, "Appellant's argument that section 798.49(d)(4) means that a local government has the option of allowing the pass-through of real property taxes is disingenuous and not supported by the legislative history or common sense." Further, they contend it is irrelevant that the lease specifically references the power of the City to control rent increases, if the City does not have any such power to authorize the property tax item in the first place.

D

Analysis

To determine if this local legislation is in conflict with general state law, we look to whether " ' ". . . the ordinance duplicates [citations], contradicts [citations], or enters an area fully occupied by general law, either expressly or by legislative implication [citations]. . . . " ' [Citation.] [¶] Conflicts also exist if the subject matter of the ordinance is partially covered by a general law which is couched in terms indicating that the state will not tolerate further or additional local action on the particular matter. [Citation.]" (*Karrin, supra*, 1 Cal.App.4th 1066, 1071.) We will first outline the terms of the Ordinance, as incorporated into the lease, and read it in light of the MRL statutory

language and legislative history. Other considerations raised by the parties include Owners' correspondence with the City about whether this was an allowable pass-through charge to Residents.[12]

Owners would read the Ordinance as allowing rent to be composed of a number of discrete components, some applicable to each space and some applicable to the park as a whole (i.e., this property tax charge). The Ordinance at section 9.50.030, subsection (A) defines "space rent" as including a number of types of charges, although the Ordinance states that its definition of space rent is "exclusive of other allowable pass-throughs as defined in subsection (H) below." Section 9.50.03, subsection (H) lists among these "other allowable pass-throughs," some "governmental assessments such as real property taxes . . . ." The leases, at paragraph 2, include a reference to the City Ordinance as governing the amount of rent and any increases in rent.

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12 The City is not a party to this action, and no issue is raised here about whether the representations made by City officials should be considered to be binding upon it, as would be possible under the doctrine of equitable estoppel. (See 11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, §§ 185-187, pp. 867-870.) However, we will later discuss to some extent the reasonableness of Owners' conduct in dealing with the City on these issues in connection with the "willful conduct" issue under section 798.86. (Part III, *post*.) We also note that Residents sought and obtained a determination that the leases were unconscionable and unenforceable to the extent that they violated the MRL or imposed an impermissible charge upon Residents. We need not address the unconscionability argument as it relates to this preemption question, which deals only with general statutory interpretation questions. However, we will address it as necessary in parts III and IV, *post*.

We have indicated above that we read this Ordinance as creating a procedural mechanism for allowing pass-through fees or charges that are otherwise permitted by statute. There are several reasons why this property tax pass-through is not allowed by the statutory scheme. First, the traditional definitions of "rent" and the Ordinance's definition of space rent indicate that Residents' obligation to pay rent stems from their use and occupancy of their particular spaces and the common areas. This is equivalent to a local assessment for local purposes. For example, in *Vance*, *supra*, 36 Cal.App.4th 698, which arose in a jurisdiction that did not have rent control, the lease allowed the owners to charge fees in addition to rent that were payment for ancillary services related to occupancy and service needs for the tenants. (*Id.* at p. 708; see § 798.12, defining "tenancy" as the use of a site within a park.)

This distinction between the purpose of a local assessment upon a particular space and an overall property tax assessment for an entire parcel is outlined in cases such as *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, as follows: "The distinction between a property tax and a special [localized] assessment is that the former is levied to pay for general expenditures deemed to benefit all property owners within the taxing district while the latter 'is a charge imposed on particular real property for a local public improvement of direct benefit to that property . . . .' [Citations.]" (*Id.* at p. 1293, fn. 1.) As this principle is applied here, the very nature of this expense, i.e., a property tax that is assessed upon the park as a whole, points toward holding the park owners solely responsible for it as property owners. In contrast, the park residents are tenants who

benefit from the use and occupancy of their spaces at the property (and common areas), but not from the ownership of the property itself.

Next, Owners cannot rely on the terms of the lease to authorize these property tax pass-throughs, merely through the lease's incorporation of City provisions for rent increases. Owners are not justified in their heavy reliance on *Vance* for the proposition that the amount of rent is left up to the agreement of the parties, in their lease agreement. (*Vance, supra,* 36 Cal.App.4th at pp. 705-708.) That is true where there is no rent control ordinance in effect in a jurisdiction, but where there is a rent review procedure set up by the local entity, it includes a definition of rent to be administered by the responsible agency. Here, the Commission is delegated the power to apply the terms of that Ordinance, such as by considering property taxes and operating costs and expenses when conducting rent review of space rents. (Ord., § 9.50.073.) From a review of this Ordinance as a whole, it does not appear that the intention of the City was to allow owners and residents to negotiate lease terms and rents with respect to the creation of property tax pass-throughs, since that issue was specifically delegated to the Commission.

For example, under the Ordinance, section 9.50.030, subsection (H), it is expressly provided that "separately billed utility service fees and charges excluded from rent in accordance with the provisions of Civil Code section 798.41" (and such rate increases) are proper "allowable pass-throughs" (separate charges) under the Ordinance. This indicates a recognition the statutory scheme as a whole allows those particular expenses to be specifically exempted from the bar of section 798.31, because they pertain to the

Residents' individualized use of their own rental premises. Similarly, assessments for municipal services or improvements, as mentioned in the Ordinance, subsection (H), also pertain to the individuals' rights to use and occupancy of the premises. (Ord., 9.50.030, sub. (H).) However, "governmental assessments such as real property taxes" (*ibid*.) are not specific to the individual spaces and the tenant's individual use and enjoyment of the park premises and common areas. As such, we do not believe that the local entity in this rent control jurisdiction, under this Ordinance, has the power to authorize a pass-through charge for property tax, either as a rent component or as an additional fee.

This conclusion is consistent with the reasoning of *Robinson, supra,* 28 Cal.App.4th 1506. In that case, the rent control ordinance defined rent as including operating expenses above space rent**,** for purposes of administrative determination of rent by the City administrator and commission. Therefore, the owners' charge to residents for capital improvements as operating expenses (street improvements) was allowable as a rent adjustment and part of the related housing services provided to the residents. (*Id*. at pp. 1513-1514.) It was not an impermissible fee within the meaning of section 798.31. (*Ibid*.) In contrast, here, Owners seek to impose a separate pass-through charge, not for a housing service, independent of the rent review procedure. Thus, *Robinson* does not support the Owners' position on the applicability of section 798.31.

In *Karrin, supra,* 1 Cal.App.4th 1066, the subject rent control ordinance defined rent as excluding operating expenses. (*Id.* at pp. 1068-1069.) It was therefore improper under section 798.31 for those owners to create a pass-through charge for capital assessments (as operating expenses) as part of the rent charge. In *Dills, supra*, 28

Cal.App.4th 888, 893, which arose in a nonrent-control jurisdiction, the lease was interpreted as allowing certain pass-through charges as part of rent, for capital assessments. However, the court in that case did not have to consider a rent control scheme which contains definitions of space rent and procedures for raising it in light of certain enumerated factors. The Ordinance in this case (§§ 9.50.030, 9.50.073) provides just such procedures.

These cases teach us that the terms of any applicable rent control ordinance must be considered in deciding what charges may appropriately be included in an aggregate rent amount. Here, the Ordinance seeks to create a pass-through charge for property tax that is separate from rent. It does so, however, within the context of defining space rent and permitting other allowable pass-throughs that specifically pertain to the Residents' use and occupancy of their spaces. The court in *Robinson* allowed a new rent component to be charged through the administrative rent adjustment procedure. (*Robinson, supra,* 28 Cal.App.4th at p. 1514.) Here, however, Owners imposed the extra pass-through charge, unauthorized by the Ordinance or the statute. It is not justifiable for the Owners to impose a property tax pass-through attributable to the entire park parcel upon the Residents, even on a proportional space basis, because the obligations of the Residents to pay rent are traceable to their individual local occupancy interests, not to any collective ownership interests.

Moreover, the Ordinance can be interpreted two ways with respect to property tax: First, it treats it as excluded from space rent, which indicates that it is more like an additional fee or assessment than like rent. (Ord., § 9.50.030.) Second, the Commission

is empowered to consider property tax increases when setting space rent during the application process. (Ord., § 9.50.073.) This also indicates that property tax is not meant to be a component of rent subject to independent agreement by Owners and Residents in their leases, since it is treated differently in the Ordinance. Both of these interpretations indicate that Owners cannot pass on their own property tax liabilities to Residents as their tenants, either as rent or as a separate fee or charge permitted by the Ordinance.

Further, a plain reading of sections 798.31 and 798.49 together does not support the position taken by Owners. Section 798.49, subdivision (a) allows only certain enumerated charges and fees to be passed through to Residents, over and above the terms of section 798.31. The express exemption in section 798.49, subdivision (d)(4) of property taxes from the coverage of this section cannot be interpreted, alternatively, as an enabling section to the local entity to allow an additional pass-through for property taxes. Owners believe that, because the Commission can consider property taxes when it adjusts space rent, the parties should also be able to do so outside of the rent review procedure. However, this is not a reasonable reading of the Ordinance or the statutes.

The legislative history of section 798.49 is in accordance with the above conclusions. This section was introduced to the Legislature in 1992 as Senate Bill 1365. The author of the bill, Senator Tim Leslie, sent a letter to the Governor dated July 15, 1992, stating that the bill was intended to address an inequity in present rent control law, to relieve mobile home park owners from being liable for costs imposed by local governments on a per space basis "for benefits enjoyed by park residents." The author of the bill represented that the bill was not intended to allow park owners to pass through

increased local taxes. Similarly, the analysis prepared for the Senate Committee on Judiciary states that the bill was intended to continue to hold the park owner responsible for any increase in local taxes or rent control administration fees. (Sen. Com. on Judiciary, Analysis of Sen. Bill 1365 (1991-1992 Reg. Sess.) Apr. 21, 1992.) Owners have not presented any persuasive legislative history to the contrary.

In conclusion, the provision in the Ordinance, section 9.50.030, subsection (H), purporting to allow park owners to pass on "governmental assessments such as real property taxes" to residents, in addition to charging the space rent as defined in the Ordinance, is preempted by the MRL (specifically §§ 798.31 & 798.49, subd. (d)). The trial court correctly granted summary judgment to Residents on the preemption issue.

III

WILLFUL CONDUCT

Section 798.86, subdivision (a) provides: "If a homeowner or former homeowner of a park is the prevailing party in a civil action, including a small claims court action, against the management to enforce his or her rights under this chapter, the homeowner, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed two thousand dollars ($2,000) for each willful violation of this chapter by the management." This section has been interpreted in *Patarak, supra,* 91 Cal.App.4th 826, by reference to a criminal law pattern jury instruction which states, "[t]he word 'willfully' does not require any intent to violate the law, or to injure another, or to acquire any advantage." (*Id.* at p. 830.) The trial court here noted that the appellate court in *Patarak* compared that standard to the principle that "willful" conduct requires

"more than negligence or accidental conduct," and held that even though that landlord did not have any "specific intent to achieve septic system failures," her failure to maintain that system and also to allow the tenants access to the common areas of the park constituted willful conduct for the purposes of assessing penalties under the MRL. (*Id.* at pp. 828-831.)

To dispute the trial court's finding of willfulness sufficient to assess statutory penalties under section 798.86, Owners primarily contend that because they consulted the City on an ongoing basis about their proposed property tax pass-through charges, and then litigated the matter by seeking declaratory relief (after being sued in small claims court), their conduct in assessing these charges should be deemed lawful, such that no willful violations of statute occurred. In their view, their actions amounted to justifiable reliance upon an existing ordinance, in an unsettled area of the law. (See *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 829.) At the worst, Owners argue that no more than negligence or accidental conduct can be attributed to them, and their conduct is not as bad as that of the landlord in the *Patarak* case, involving ongoing sanitary violations on the premises and unreasonable withholding of use of common areas. (*Patarak, supra,* 91 Cal.App.4th at pp. 828-831.)

Residents defend the ruling of the trial court, arguing that Owners' "turning a blind eye to a state statute (prohibiting a property tax pass-through) after being warned the statute could be inconsistent with a local ordinance, is not a mistake." They also claim that Owners mischaracterized the property tax pass-through as "rent," "rent adj.," and

"other" over a period of a few years, and this should be relevant to the issue of Owners' willfulness.

Here, the ruling includes a finding that the leases were unconscionable and unenforceable, because they were contrary to the MRL. This finding appears to relate to the statutory penalties issue, because the supporting evidence cited by the trial court had to do with the lack of Owners' explanations to Residents of the meaning and purpose of the property tax pass-through charge, and the Owners' relative real estate expertise in the field. The record also included evidence that although City officials recommended to Owners that they consult their own attorney before implementing the property tax pass-through charge, Owners did not do so. In the further proceedings on the penalty request, the trial court considered as circumstances in mitigation that Owners had consulted City officials and obtained an opinion that the pass through for property tax was not in violation of statute. The court declined to award the maximum dollar amount or multiple penalties for multiple violations, concluding instead that there was in essence a single violation attributable to the initial determination to pass-through the property tax, which reflected a legal interpretation of the lease and governing law. The court also declined to penalize Owners for the period of litigation, because they were entitled to seek a judicial determination on their interpretation of the applicable rules.

As noted in *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 910-911 (*DeAnza*), section 798.86 gives the trial court discretion to award such penalties for willful violations of the MRL. "The term 'willful' is generally understood to mean deliberate or intentional conduct.

[Citations.] By providing a monetary penalty not tied to actual damages, and a relatively simple means of making the showing justifying such a penalty, the Legislature had a dual purpose: to promote effective enforcement of the provisions of the MRL by low-income tenants, and to punish 'willful' violators of the MRL." (*DeAnza, supra,* 94 Cal.App.4th at pp. 910-911; citing *Patarak, supra,* 91 Cal.App.4th at pp. 829-830.)

We agree with the above analyses of the term "willful" as involving deliberate or intentional conduct, rather than intentional infliction of harm or knowing violation of law. Even though these facts involved less egregious and offensive violations by Owners than in the *Patarak* or *De Anza* situations, the record nevertheless reveals that these Owners followed a pattern of purposeful conduct to assess over a four-year period certain charges that were not justified under the Ordinance or state statute, and that could have amounted to a significant burden on the Residents in question. (See *Dills, supra,* 28 Cal.App.4th 888, 892-893.) Owners' claim of reliance on an existing state of the law is not overly persuasive, when they did not seek their own legal counsel or declaratory relief at an earlier stage in this dispute, and when they were advised on an ongoing basis that the City could not act as their legal advisor.

In this case, the willfulness standard is satisfied by proof that these acts of purposeful charging of impermissible assessments took place on an ongoing basis. (*Patarak, supra,* 91 Cal.App.4th at pp. 829-830.) Certainly, Owners intended the act of passing through the property tax expense, and they do not dispute that they did so. Accordingly, the trial court was justified in assessing statutory penalties of $1,000 per space for the 23 spaces represented by Residents. The statute would have allowed $2,000

for each willful violation of this chapter by the management. The trial court did not assess the maximum penalty but clearly exercised its discretion to consider all the mitigating circumstances, including the difficulty in interpreting this statutory and municipal ordinance scheme. We find no error in the trial court's interpretation of the statute nor in its award of the statutory penalties in this manner.

IV

EVIDENTIARY OBJECTIONS

Owners next argue the trial court erroneously failed to rule upon their evidentiary objections to the Residents' declarations, instead using the approach outlined in *Biljac*, *supra*, 218 Cal.App.3d 1410, 1419. These many declarations outlined in an identical manner certain details with respect to the Residents' economic and physical conditions, as they affected their abilities to understand and comply with or challenge the pass-through charges for property tax. The evidentiary objections claimed these factual matters were irrelevant to the legal issues actually presented by the pleadings, since there were no allegations of fiduciary relationships or other basis for special duties on the part of Owners.

The summary judgment ruling on the merits included, in addition to findings that Owners had violated the MRL by charging unauthorized pass-through property taxes, a ruling that these leases were partially unenforceable because "the subject leases were both procedurally and substantively unconscionable. Additionally, because [Owners'] opposition memorandum addressed neither the factual nor legal arguments on this issue, the Court deems this argument to have been conceded."

In light of the trial court's conclusions of law that interpreted the Ordinance and leases in light of the MRL, and found preemption of the Ordinance language as well as willful violations of MRL provisions, we conclude it would have added nothing to the court's analysis to go through the subject declarations to rule upon Owners' extensive evidentiary objections about the accuracy of and factual basis for Residents' declarations. The trial court could properly make a foundational determination that it did not need to refer to this evidentiary material presented by Residents in order to resolve the subject legal issues, both as to preemption and as to the issue of willful violations under section 798.86. Although the evidentiary objections were made in a timely fashion under Code of Civil Procedure section 437c, subdivision (d), the trial court retained the discretion to determine the appropriate order of proof. (Evid. Code, § 320.) Evidence Code section 402, subdivision (c) provides that findings may be implied in support of an admissibility ruling. The court impliedly found here that it was not essential to these issues to resolve the evidentiary problems presented, and this finding was appropriate.

In any case, since the unconscionability of an agreement is a question of law for the court (*Vance, supra*, 36 Cal.App.4th 698, 709), the declarations presented about the respective or collective capacities of Residents were essentially surplusage on this record.

Accordingly, although we adhere to our previous criticisms of the *Biljac, supra,* 218 Cal.App.3d 1410, 1419 approach to dealing with evidentiary objections (as enunciated in *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 234-238), we nevertheless conclude that in this case, the trial court appropriately exercised its

discretion to determine that no further evidentiary objection rulings need be expressly made on this record. There was no reversible error in this respect.

DISPOSITION

The amended judgment is affirmed. Costs are awarded to Respondents.

CERTIFIED FOR PUBLICATION

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

AARON, J.