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Suit Challenging City's Interpretation of 20-Year-Old Affordable Housing Agreement Was Timely



The Court of Appeal ruled that a suit concerning an affordable housing fee that plaintiff had agreed to pay two decades earlier was still timely because the 90-day limitations period under the Subdivision Map Act did not begin to run until a dispute arose over the interpretation of provisions in the affordable housing agreement. *Schmeir v. City of Berkeley*, 76 Cal. App. 5th 549 (2022) In 1996, Kenneth Schmier converted an apartment in the City of Berkeley into a condominium. At the time, the City code required that an owner converting a unit to a condominium sign an agreement and record a lien on the property securing payment of an affordable housing fee upon sale of the unit. The lien agreement provided that its execution did not prejudice the right of the owner to challenge the validity of the affordable housing fee ultimately imposed. Schmier signed the agreement and recorded the lien.



Twenty years later, Schmier opened an escrow for sale of the condominium for \$539,000. The City responded with a request for payment of an affordable housing fee of \$147,202.66. Schmier protested and filed suit challenging the fee on multiple grounds, including that the code provision under which the fee was imposed had been repealed ten years earlier. Schmier pointed to language in the lien agreement stating that "[i]n the event that the Affordable Housing Fee is ... rescinded by the City of Berkeley, this lien shall be void and have no effect." The City contended that Schmier's suit was time-barred under the 90-day statute of limitations in the Subdivision Map Act -- which applied because a condominium conversion is a subdivision -- as the suit was not filed within 90 days after execution of the lien agreement. The appellate court rejected the City's argument. It relied on *Honchariw v. County of Stanislaus*, 51 Cal.App.5th 243 (2020), which held that a suit challenging a map condition imposed years earlier was still timely because the dispute did not concern the validity of the condition originally imposed but rather the city's later interpretation of that condition. The statute of limitations did not begin to run until plaintiff became aware of the city's interpretation being challenged in the case. The analysis in *Honchariw*, the appellate court found, was equally applicable to this case—the 90-day limitations period was not

triggered until the City effectively rejected Schmier's interpretation of language in the lien agreement that appeared to preclude imposition of the fee based on rescission of the code provision. Like the plaintiff in *Honchariw*, Schmier's suit did not challenge the reasonableness, legality or validity of conditions originally imposed on the condominium conversion. Rather, it alleged that the City misinterpreted language in the lien agreement providing that "this lien shall be void and have no effect" if the affordable housing fee is "rescinded by the City of Berkeley." Schmier's suit was filed within 90 days after he became aware of the challenged misinterpretation and was therefore timely.

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