

## **ZULPC Advances Cause of Property Owners**

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ZULPC recently won another major victory recently for small property owners when the California Court of Appeal ruled in favor of ZULPC's client in *Birkner v. Lam* (2007) 156 Cal.App.4th 275.

In *Birkner*, our client served an eviction notice so that the owner's mother, a disabled, senior relative could move into an apartment. The mother died before the eviction notice expired. The tenants sued the owner alleging that the eviction notice violated the Rent Ordinance. The San Francisco trial judge ruled in favor of the tenant and the Court of Appeal reversed. The Court of Appeal adopted ZULPC's argument that the tenants are required to prove that they are substantially likely to prevail in the case at the outset before they are allowed to proceed with discovery. The Court of Appeal held that the owner's service of an eviction notice is "protected" by California's Anti-SLAPP ("strategic lawsuit against public participation") statute. This decision was based on the California Supreme Court's recent decision in *Action Apartment Association v. City of Santa Monica* (2007) 41 Cal.4th 1232 that eviction notices are protected by the litigation privilege and may not be the basis for a law suit. The matter was sent back to the trial court for further hearing with the instruction that the trial court must scrutinize the tenant lawsuit as a SLAPP. If the suit is determined to be a SLAPP, the owners will not only win the suit without a trial but will be entitled to recover all of the legal fees they have incurred.

This case was another example where ZULPC has advocated for small property owners and vindicated two important rights: the right to speak out on a public issue and the right to use the legal system to protect one's property, including recovering possession of an apartment. In order to ensure that citizens do not have to defend frivolous lawsuits arising from the exercise of the right to use the legal process, California's SLAPP statute requires plaintiffs to prove at the beginning of the case that they have a good case that they can win, both on the law and facts.

Under the *Birkner* decision, the tenants must prove (not just allege) they have a legitimate case at the very beginning of a lawsuit. Tenants can no longer just sue and demand money to settle, as has been the case for years in San Francisco. *Birkner* holds that the entire eviction process is protected by what is known as the "litigation privilege," including activities leading up to an actual eviction lawsuit. With the SLAPP statute available, the property owner now has a powerful tool that requires the Court to scrutinize the law and the specific facts of the case at the beginning of a case, not months or years down the road after agonizing expense of litigation. And if the owner wins after a SLAPP motion, the tenant must pay all of the legal fees incurred by the owner in defending the suit.

To read the case, go to [www.zulpc.com/cases](http://www.zulpc.com/cases). ZULPC and its attorneys have been taking aggressive legal positions for years when others thought we could not prevail. However, as *Birkner* shows, ZULPC's aggressive advocacy has once again proven that landlords are entitled to legal protection, even in San Francisco.