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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHA LA MIRADA, LLC, Cross-complainant and Appellant; v. RED ROBIN INTERNATIONAL, INC., Cross-defendant and Respondent.	B277667 (Los Angeles County Super. Ct. No. VC064308)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lori Ann Fournier, Judge. Affirmed in part, reversed in part and remanded with directions.

Law Office of Andrew R. Wiener and Andrew R. Wiener; Law Offices of Martin N. Buchanan and Martin N. Buchanan; Haas & Najarian and Robert C. Nicolas for Defendant, Cross-complainant and Appellant CHA La Mirada.

Bryan Cave, John W. Amberg and Timothy L. Hayes for Cross-defendant and Respondent Red Robin International.

INTRODUCTION

CHA La Mirada, LLC (CHA) appeals from the summary judgment entered against it in its action against Red Robin International, Inc. (Red Robin). CHA, the owner of a Holiday Inn hotel, formerly leased restaurant space to a tenant who operated a Red Robin restaurant franchise. When the tenant breached the lease, CHA notified Red Robin it intended to take over the franchise. Four days later, Red Robin terminated the franchise on the ground that the tenant had breached the franchise agreement by failing to operate the restaurant for five consecutive days.

After the tenant sued CHA for breach of the lease, CHA cross-complained against Red Robin for breach of the franchise agreement and related claims.[1] Red Robin moved for summary judgment on the grounds that CHA had no rights under the franchise agreement and Red Robin did not wrongfully terminate the agreement. The trial court entered summary judgment for Red Robin.

On appeal, CHA argues that it was contractually entitled to assume the franchise when the franchisee defaulted on the lease, and that Red Robin wrongfully terminated the franchise agreement. We conclude that Red Robin did not meet its burden as the moving party on summary adjudication as to the causes of action based on its wrongful breach of the franchise agreement: Red Robin did not show that CHA had no rights under that agreement or that CHA could not show the wrongful termination of that agreement. On these grounds, we reverse the judgment

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[1] The tenant's complaint is not at issue in this appeal.

as to all causes of action based on Red Robin's breach of the franchise agreement.

We affirm only the cause of action for breach of the lease which is based on Red Robin's failure to require the tenant to transfer the tenant's liquor license to CHA.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, La Mirada Restaurant Group, Inc. (LMRG) and Sunstone Hotel Properties, Inc. (Sunstone) entered into a lease (Lease) which provided that LMRG would operate a Red Robin franchise restaurant out of a portion of Sunstone's Holiday Inn hotel.[2] LMRG, in turn, entered into a franchise agreement (Franchise Agreement) with Red Robin that gave LMRG rights to operate a Red Robin franchise at Sunstone's hotel for 20 years.

A "Landlord's and Franchisor's Consent Form" (Consent Agreement) was attached as an exhibit to the Lease. It was signed by Red Robin, Sunstone, and LMRG, and provided that LMRG assigned "to Landlord all of Tenant's rights in the Franchise, as partial security for the payment and performance by Tenant of the Lease." Red Robin, in turn, was assigned "all of Tenant's rights in the Lease, as partial security for the Franchise."

Six years later, in 2004, Cathedral Hill Associates, Inc. purchased the hotel and hotel property from Sunstone. Shortly thereafter, Cathedral Hill transferred the hotel and property to its subsidiary, CHA. LMRG continued to operate the Red Robin franchise out of the hotel.

In 2011, LMRG sued CHA alleging breach of the Lease; CHA cross-complained also for breach of the Lease. On October

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[2] Neither LMRG nor Sunstone is a party to this appeal.

30, 2013, the trial court ruled in CHA's favor, finding that the Lease terminated in September 2012 when LMRG failed "to maintain the financial assurances required by the Lease." As a holdover tenant, LMRG owed $628,615.83 in rent to CHA. Judgment was entered for that amount.

On November 1, 2013, LMRG's president, Tony Daoud, wrote Red Robin's franchise operations director, Todd Madlener, about shutting down the restaurant. Daoud said that LMRG would "likely be out" of the restaurant within two weeks. That same day, Red Robin's president, Eric Houseman, decided that if the restaurant did, in fact, close, Red Robin would terminate the franchise. Houseman's "business reasons" for this decision included: the restaurant was "underperforming from a sales and profitability standpoint," it "was attached to a hotel, which isn't our typical business model," "it was not a location that we would do today," and "it did weird things like serv[ing] breakfast, which created a lot of brand issues as well as additional corporate responsibilities." Houseman planned to wait five days after the restaurant closed and then terminate the franchise for abandonment.

On November 9, 2013, as a follow-up to its successful judgment for damages, CHA served a three-day notice to pay rent or quit on LMRG. On November 13, 2013, LMRG's counsel informed Red Robin's counsel that LMRG was vacating the premises in compliance with the notice. On November 13, 2013, Madlener visited the restaurant. Daoud informed him LMRG was closing the restaurant that day. Madlener supervised the removal of equipment and Red Robin trademarks from the restaurant.

On November 14, 2013, CHA sent Red Robin a letter stating that "CHA is pursuing an eviction action against the Tenant, LMRG." Pursuant to paragraph 4 of the Consent Agreement, CHA expected Red Robin "to recognize CHA as the Franchisee once possession of the Premises is obtained. To that end, please let us know what you need from my client to facilitate this transfer."

On November 18, 2013, Red Robin sent CHA a letter stating it was terminating the franchise that day based on LMRG's failure to operate the restaurant for five days. Red Robin also responded to CHA's claim that paragraph 4 of the Consent Agreement allowed CHA to assume the franchise. Red Robin acknowledged that, under the Consent Agreement, Red Robin had consented to LMRG's assignment to the landlord of LMRG's "rights in the Franchise, as partial security for the payment and performance" of the Lease. However, Red Robin stated that, under paragraph 4 of the Consent Agreement, that assignment was valid "[o]nly for so long as Tenant is not in default of the Franchise." According to Red Robin, "Your tenant (the franchisee) is in default of its franchise. Its default is one in which there are no rights to cure. The franchise is extinguished and therefore [CHA] may not assume it." Red Robin did not claim in the letter one of the positions it now asserts on appeal, namely, that CHA was not a party to the Consent Agreement at all.

In October 2014, LMRG filed the present action against CHA for breach of the Lease. CHA cross-complained against Red Robin for breach of the Franchise Agreement, violation of the California Franchise Relation Act, conspiracy to violate the Act, breach of the covenant of good faith and fair dealing, unfair

business practices, breach of the Lease, and intentional interference and conspiracy to interfere with prospective economic advantage.[3]

The majority of CHA's claims were based on Red Robin's alleged wrongful termination of the Franchise Agreement. The breach of the Lease cause of action was based on Red Robin's refusal to cooperate in the transfer of LMRG's liquor license to CHA.[4]

Red Robin moved for summary judgment or summary adjudication of each cause of action. Red Robin argued that CHA was *not* a party to the Consent Agreement on the ground that Sunstone was "contractually prohibited from assigning its rights" under that agreement. Red Robin also argued that Red Robin did not wrongfully terminate the agreement because LMRG had committed a non-curable default. Finally, Red Robin argued it had no duty to transfer LMRG's liquor license to CHA.

The trial court granted summary judgment in favor of Red Robin. It held that only Sunstone, not successor landlords, was entitled to exercise rights under the Consent Agreement. Accordingly, "CHA did not have the right to automatically assume the franchise." The court further held that CHA "failed to take the necessary, contractual steps to cure the franchisee's default." Judgment was entered for Red Robin on the cross-

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[3] CHA also cross-complained against LMRG and Daoud. Neither is a party to this appeal.

[4] The cross-complaint's first, second, third, fourth, fifth, sixth, eighth and ninth causes of action were asserted against Red Robin. We do not address the seventh and tenth through thirteenth causes of action, which were asserted only against LMRG and Daoud.

complaint, and the court awarded Red Robin $455,982.86 in attorney's fees and costs. CHA timely appealed.

DISCUSSION

1. *Standard of Review*

"A party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Id*., subd. (c).)

"A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it . . . . [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037 (*Cucuzza*); Code Civ. Proc., § 437c, subd. (p)(2).) Only if the defendant proves the foregoing does the burden shift to the plaintiff or cross-complainant to show a triable issue of fact exists. (Code Civ. Proc., § 437c, subd. (p)(2).)

"Summary judgment law in this state . . . require[s] a defendant moving for summary judgment to present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854 (*Aguilar*).) Circumstantial evidence supporting a defendant's summary judgment motion "can consist of 'factually devoid' discovery responses from which an absence of evidence can be inferred," but "the burden should not shift without stringent review of the

direct, circumstantial and inferential evidence." (*Scheiding v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 83.)

"Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion. [Citation.]" (*See's Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal.App.4th 889, 900.) On appeal, we review a trial court's granting of summary judgment de novo, applying the same standard as the trial court. (*Ibid.*)

2. *Red Robin Was Not Entitled to Summary Adjudication on the Causes of Action Based on Breach of the Franchise Agreement*

CHA argues that the trial court erred in granting summary adjudication as to its causes of action founded on Red Robin's breach of the Franchise Agreement. We agree.

As the moving party on summary judgment, Red Robin bore the burden of showing that one or more of each cause of action's elements could not be established or there was a complete defense to it. (Code Civ. Proc., § 437c, subd. (p)(2).) Red Robin moved for summary judgment on the grounds that CHA "had no rights under the Franchise Agreement" and Red Robin did not wrongfully terminate the agreement. It was Red Robin's burden to show that CHA was *not* assigned LMRG's rights to the franchise under the Consent Agreement. Red Robin did not do so. It was also Red Robin's burden to show that it did not wrongfully terminate the Franchise Agreement. Red Robin did not do so.

The only cause of action that was not based on Red Robin's alleged breach of the Franchise Agreement was the breach of the Lease claim. We find no trial court error with respect to the summary adjudication of that claim.

a. *The Franchise Agreement and Consent Agreement*

Our analysis depends heavily on an understanding of two documents: the Consent Agreement and Franchise Agreement.

The Consent Agreement defines "Tenant" as LMRG, "Landlord" as Sunstone "and its successors and assigns," and "Franchisor" as Red Robin "and its successors and assigns." The Consent Agreement also provides, "This Agreement shall extend to and bind the respective heirs, personal representatives, [and] *successors and assigns* of the parties to this Agreement." (Italics added.) The Consent Agreement is signed by LMRG, Sunstone, and Red Robin.

Section 3 of the Consent Agreement provides, "Tenant hereby assigns to Landlord all of Tenant's rights in the Franchise, as partial security for the payment and performance by Tenant of the Lease. Tenant and Landlord intend that this assignment will be a present transfer to Landlord of all of Tenant's rights under the Franchise, subject to Tenant's rights to use the Premises and enjoy the benefits of the Franchise while Tenant is not in default on the Franchise or the Lease."[5]

Section 4 of the Consent Agreement provides, "Only for so long as Tenant is not in default of the Franchise, the Franchisor consents to the above assignment in paragraph 3. Such consent shall automatically be deemed withdrawn after Franchisor declares a material default and breach of the Franchise by Tenant pursuant to the provisions of the Franchise and the passage of (i) 15 days, if the default is failure to pay any fees or other sums to the Franchisor, or (ii) 30 days, if the default is any

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[5] In a parallel provision, the tenant assigned to Red Robin all of the tenant's rights in the Lease, as partial security for the franchise.

failure under the Franchise other than a failure to pay any fees or other sums to the Franchisor, unless within such 15-day or 30-day period, as applicable, Landlord or Tenant cures all defaults in the Franchise. Whether or not Tenant is in default of the Lease or the Franchise, Landlord shall not at any time have or possess any right to reassign the Lease or the rights assigned to Landlord under paragraph 3 above to any person or entity other than to the Tenant, the present lessee. However, if after default by Tenant in the Lease, Landlord notifies the Franchisor in writing that: (a) Tenant is in default of the Lease, (b) Landlord has re-entered and taken possession of the Premises under the Lease, and (c) that Landlord has terminated the possessory right of Tenant under the Lease, and that (d) Landlord does by such notification personally and unconditionally assume and agree to pay and perform all of the obligations of the franchisee under the Franchise for the remaining term of the Franchise, other than royalty fees owed by Tenant to Franchisor up to the date of tenancy, then Landlord may relet the Premises and assign all of Landlord's rights under the Franchise to a qualified replacement franchisee pursuant to the procedures for transfer set forth in the Franchise Agreement. . . . Until Landlord assumes the Franchise . . . , Landlord may not conduct business as a Red Robin restaurant or use the Proprietary Marks or Red Robin System in the Premises. . . .

"After Landlord gives the notice to Franchisor of its assumption of the Franchise as described above in this paragraph 4, Landlord shall be fully obligated as the franchisee on the Franchise, and shall be entitled to all of the benefits and rights as franchisee thereunder, and shall pay all fees and other sums due thereunder from the franchisee . . . . If Landlord thereafter

relets the Premises and assigns all of Landlord's rights under the Franchise in accordance with this instrument and the Franchise Agreement to a person or entity experienced in the management and operation of family restaurants with the prior written consent of Franchisor, then in that event the Landlord's prospective obligations as a franchisee under the Franchise shall terminate and the assignee's obligations under the Franchise shall commence . . . ."

Article 17.0(H) of the Franchise Agreement provides, "Red Robin may terminate this Agreement, and the rights granted by this Agreement, upon notice to Franchisee without an opportunity to cure, upon the occurrence of any of the following events: . . . Franchisee ceases to operate the Franchise Restaurant for 5 consecutive days without Red Robin's prior written consent or otherwise abandons the Franchised Restaurant."

The Addendum to the Franchise Agreement provides, "Franchisee shall not be in default of this Franchise Agreement if: (1) Franchisee or Franchisee's lessor terminates the lease for the subject property upon default of the other party, or . . . (3) the lessor or a third party assumes the Franchise Agreement or executes a new Franchise Agreement with Franchisor pertaining to the subject location."

b. *The Assignment of Franchise Rights Under the Consent Agreement*

CHA argues it automatically succeeded to Sunstone's rights to the franchise under the Consent Agreement based on the contract's definition of "Landlord" as Sunstone "and its successors and assigns." As stated above, the Consent Agreement provided

that LMRG assigned its franchise rights to the "Landlord" under certain circumstances.

Red Robin argues that CHA had no franchise rights because it was not a party to the Consent Agreement: the Consent Agreement's "no-reassignment" provision barred Sunstone from assigning any franchise rights to CHA. As support for this argument, Red Robin cites to section 4 of the Consent Agreement which provides, "Whether or not Tenant is in default of the Lease or the Franchise, Landlord shall not at any time have or possess any right to reassign the Lease or the rights assigned to Landlord under paragraph 3 above to any person or entity other than to the Tenant, the present lessee." According to Red Robin, this provision prevails over the Consent Agreement's definition of "Landlord" as including all "successors and assigns."

"[L]anguage in a contract must be interpreted as a whole, and in the circumstances of the case . . . . [Citation.]" (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) Contracts must be interpreted "to try to give effect to every clause and harmonize the various parts with each other. [Citation.]" (*Friedman Prof. Management Co., Inc. v. Norcal Mut. Ins. Co.* (2004) 120 Cal.App.4th 17, 33.)

Here, section 4's no-reassignment provision must be harmonized with the Consent Agreement's definition of "Landlord" as Sunstone "and its successors and assigns." (Italics added.) Red Robin argues that if the term "Landlord" is interpreted to include Sunstone's "assigns," then the no-reassignment provision would be meaningless. To the contrary, Red Robin's suggested interpretation—striking the phrase "and

its successors and assigns"—would render *that* provision meaningless.

We conclude there is a reasonable interpretation of the no-reassignment provision that gives effect to both clauses and harmonizes them: the landlord, whether it was Sunstone or a new property owner, was not permitted to assign its rights under the Consent Agreement to a third party who did not own the property. The manifest purpose of the Consent Agreement was to give the landlord and franchisor some control over the franchise's operation at this particular location. The franchisor had an interest (at least in 1998) in ensuring that the owner of the property where its franchise was located did not prematurely terminate the lease. The landlord had an interest in ensuring the continuity of the restaurant it had approved to operate at its hotel. It was reasonable, however, for both the franchisor and landlord to include provisions preventing the other party from reassigning their rights under the Consent Agreement to a third party unrelated to the property or the franchise. Accordingly, the Consent Agreement broadly defined both "Landlord" and "Franchisor" to include "successors and assigns"—i.e., any future owners of the property or Red Robin franchisor rights—while also barring both parties from "reassigning" their rights under the contract to third parties unrelated to the property or franchise.

In the alternative, Red Robin argues that the no-reassignment provision trumps the definition of "Landlord" because it is more specific. (See *San Pasqual Band of Mission Indians v. State* (2015) 241 Cal.App.4th 746, 761 ["Specific terms of a contract govern inconsistent, more general terms."]) We disagree that the no-reassignment provision *is* more specific. Neither provision is more specific: one provision says the

landlord's assigns will step into its shoes, and the other provision says the landlord cannot reassign its rights. That tenet of construction simply does not apply.

Red Robin also argues that "CHA provided no evidence indicating that it was assigned any rights by Sunstone" under the Consent Agreement or Franchise Agreement. However, it was *Red Robin's* burden as the moving party on summary judgment to provide evidence that CHA could *not* establish this. (See, e.g., *Union Bank v. Superior Ct.* (1995) 31 Cal.App.4th 573, 580.) Only once the moving party meets this initial burden, does the burden of proof shift to the opposing party to raise a triable issue of fact as to that issue. (*Aguilar, supra*, 25 Cal.4th at p. 509.) Red Robin did not provide evidence on this element and, therefore, did not meet its burden of demonstrating it was entitled to summary judgment based on CHA's inability to prove it was assigned rights under the subject contracts.

Red Robin also did not meet its burden on summary judgment of showing that CHA did not take over for Sunstone under the Consent Agreement as a "successor." The Consent Agreement defined "Landlord" as Sunstone and "its *successors* or assigns." (Italics added.) "A successor is ' "one who takes the place that another has left, and sustains the like part or character." ' ([Citation]; Black's Law Dictionary (6th ed.1990) p. 1431.) 'Replace' means to supplant with a substitute or equivalent. (Black's Law Dict., *supra,* p. 1299.)" (*Mayer v. C.W. Driver* (2002) 98 Cal.App.4th 48, 58.) Red Robin provided no argument or evidence that CHA was not a "successor" to Sunstone under the Consent Agreement.

Accordingly, Red Robin did not show that CHA could not assert franchise rights under the Consent Agreement as an "assign or successor" to Sunstone.[6]

c. *The Tenant's Default Under the Consent Agreement*

In the alternative, Red Robin argues that any assignment of franchise rights to CHA under the Consent Agreement was terminated when LMRG defaulted on the Franchise Agreement. Red Robin cites to section 4 of the Consent Agreement which provides that the "Franchisor" only consents to the assignment of franchise rights to the "Landlord" "for so long as Tenant is not in default of the Franchise." According to Red Robin, LMRG defaulted on the Franchise Agreement on November 13, 2013 when it abandoned the restaurant. Red Robin further argues that this default was "non-curable."

Article 17(H) of the Franchise Agreement provides that a franchisee is in default when it does not operate the restaurant for five consecutive days or abandons the restaurant. It further provides that Red Robin "may terminate this Agreement, upon notice to Franchisee without an opportunity to cure" upon the occurrence of those events.

We look first to the sequence of events at issue. On November 13, 2013, LMRG allegedly "abandoned" the restaurant by closing operations and informing Red Robin it was vacating the premises. On November 14, 2013, CHA sent notice to Red

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[6] We also note that the uncontested facts show that CHA, not Sunstone, operated the hotel where the restaurant was located starting in 2004. (See *City of Hope National Med. Ctr. v. Genentech, Inc.* (2008) 43 Cal.4th 375, 393 ["A party's conduct occurring between execution of the contract and a dispute about the meaning of the contract's terms may reveal what the parties understood and intended those terms to mean."].)

Robin that LMRG had defaulted under the Lease and CHA intended to assume the franchise pursuant to the Consent Agreement. On November 18, 2013, Red Robin terminated the Franchise Agreement by providing notice to LMRG of its non-curable default.

The issue here is whether CHA's letter to Red Robin on November 14, 2013 was an effective assumption of the franchise. That Red Robin, several days after that event, attempted to terminate the Franchise Agreement by providing notice to LMRG (the apparent *former* franchisee at that point) that it had committed a non-curable default is beside the point if CHA had already assumed the franchise and become the new franchisee. The facts are certainly capable of a finding that CHA's notice to Red Robin prevailed over Red Robin's later notice to LMRG.

At oral argument, Red Robin briefly argued that CHA's November 14 notice was defective. Respondent only raised this argument tangentially in one sentence of its brief. (Resp. Brief, p. 32 ["CHA's November 14, 2013 and November 20, 2013 letters to Red Robin purporting to assert rights under the Consent Form did not contain any of the specific written notice requirements set forth in Section 4 of the Consent Form."]) Therefore, we are not required to consider it. (See *Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021 ["An appellate court is not required to consider alleged error where the appellant merely complains of it without pertinent argument. Contentions supported by neither argument nor citation of authority are deemed to be without foundation and to have been abandoned."].)

d. *A Qualified Replacement Franchisee*

Red Robin argues that, even if CHA was a proper party to the Consent Agreement and it duly gave notice of its attempt to assume the franchise, that effort failed because CHA was not a "qualified replacement franchisee" as required by section 4 of the Consent Agreement. Red Robin continues its argument that "none of CHA's letters to Red Robin in November 2013 asserted that CHA met any of the requirements to become a 'qualified replacement franchisee.' "

Red Robin's reliance on section 4's reference to a "qualified replacement franchisee" is misplaced. Section 4 of the Consent Agreement, which sets forth the notice requirements, does not state CHA had to provide evidence of a qualified replacement franchise. Rather, section 4 provides that *if* the "Landlord notifies the Franchisor in writing that: (a) Tenant is in default of the Lease, (b) Landlord has re-entered and taken possession of the Premises under the Lease, and (c) that Landlord has terminated the possessory right of Tenant under the Lease and (d) Landlord intends by such notification to personally and unconditionally assume and agree to pay and perform all of the obligations of the franchisee," *then* the landlord may assign its rights under the franchise to a "qualified replacement franchisee."

Accordingly, the Consent Agreement contemplated that once the landlord gave "notice of *its* assumption of the Franchise," it could "*thereafter* relet[] the Premises and assign[] all of Landlord's rights under the Franchise in accordance with this instrument and the Franchise Agreement to a person or entity experienced in the management and operation of family restaurants with the prior written consent of Franchisor . . . ."

(Italics added.) We read this language as meaning that upon assumption CHA could either operate the restaurant as the franchisee (under rights it had already obtained) *or* "relet" the premises to a third person. This distinction has both a contractual and practical foundation. The former is found in the parallel provisions in the Consent Agreement: LMRG assigned to the landlord its franchise rights and LMRG assigned its tenancy rights to Red Robin. The practical reason is that the parties reasonably could have concluded that if CHA decided to assume the lease itself, it would be able to use most if not all the personnel who had previously operated the restaurant as the restaurant was in CHA's building.

We conclude CHA was not required to provide evidence of a qualified replacement franchisee that would operate the restaurant in its November 2013 notice to Red Robin. Therefore, Red Robin's defective notice argument fails.

For all these reasons, Red Robin did not meet its burden on summary judgment of showing that CHA's attempt to assume the franchise was ineffective such that Red Robin was entitled to terminate the Franchise Agreement based on LMRG's default.

3. *Breach of the Lease*

The only cause of action that was not based on Red Robin's alleged breach of the Franchise Agreement was the breach of lease cause of action. The cross-complaint alleged that Red Robin breached the Lease by refusing "to make the requisite sale or transfer" of LMRG's liquor license. In its motion for summary adjudication, Red Robin argued that it had no duty or ability to transfer LMRG's liquor license to CHA.

On appeal, CHA argues only that it was error to summarily adjudicate this cause of action because Red Robin breached "the

Lease by refusing to cooperate in the transfer of the liquor license to CHA upon termination of LMRG's Lease." According to CHA, LMRG had a duty to transfer the liquor license back to CHA upon the Lease's termination. In turn, Red Robin "could have insisted that LMRG transfer the liquor license to CHA" because, under the Consent Agreement, LMRG had assigned its rights under the Lease to Red Robin. This argument does not address the basis for Red Robin's motion for summary adjudication as to this cause of action: that *Red Robin* had no duty to transfer the liquor license to CHA. The agreements are not susceptible to an interpretation that Red Robin had any such duty. We conclude CHA has not met its burden on appeal of showing trial court error as to this cause of action.

DISPOSITION

The judgment is reversed. The case is remanded to the trial court with directions to (1) vacate its order granting Red Robin's motion for summary judgment and (2) enter a new order granting summary adjudication of the sixth cause of action only and denying summary adjudication of the first, second, third, fourth, fifth, eighth and ninth causes of action.[7] CHA is entitled to recover its costs on appeal.

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[7] As noted above, CHA's seventh and tenth through thirteenth causes of action were asserted only against LMRG and Daoud, and are not at issue in this appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.