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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GILBERT GOMEZ, Plaintiff and Appellant, v. HOLLYWOOD TOWER ASSOCIATES LTD., L.P., et al., Defendants and Respondents.	B240428 (Los Angeles County Super. Ct. No. BC416973)

APPEAL from a judgment of the Superior Court for Los Angeles County, Deirdre Hill, Judge. Affirmed.

Campbell & Farahani, Frances M. Campbell, Nima Farahani, and Marissa Elena Mendoza for Plaintiff and Appellant.

Douglas Caiafa for Defendants and Respondents.

In this appeal following entry of judgment in favor plaintiff Gilbert Gomez on two claims alleging violation of the Ellis Act (Gov. Code, § 7060 et seq.), Gomez challenges the trial court's ruling granting summary adjudication in favor of defendants Hollywood Tower Associates, Ltd., L.P. (Hollywood Tower), American Alliance Capital Group, LLC (American Alliance), and Jack Dell on Gomez's four claims alleging housing discrimination. Finding no error, we affirm the judgment.

BACKGROUND

The following facts are not disputed.

Gomez lived in rent-controlled apartment at 901 Ocean Avenue in the City of Santa Monica; there were a total of 28 apartments in the building. In August 2006, the owner of the building removed the property from the rental market pursuant to the Ellis Act, and evicted Gomez and the other tenants. Before the owner could execute his plan to demolish the building and build a new residential housing project, he was killed in an airplane crash. The building sat vacant until defendant Hollywood Tower purchased it in March 2009. Defendant Dell is the manager of defendant American Alliance, which is the General Partner of Hollywood Tower.

Before buying the property, Dell contacted the Santa Monica Rent Control Board (the Board) to determine the obligations a new owner would have to former tenants of the apartments under the City's rent control laws. The Board informed Dell that under the Ellis Act and the Board's regulations, if the new buyer did not offer to re-rent to former tenants who complied with certain requirements, the buyer would be required to pay those former tenants up to six times their pre-eviction monthly rent. Hollywood Tower relied upon this information when it purchased the property, and would not have purchased it if it had been required to

re-rent to former tenants, because the projected rent from the property under that scenario would not have supported its purchase price.

After purchasing the property, Hollywood Tower filed with the Board a Notice of Intention to Re-Rent Withdrawn Accommodations. In accordance with procedure, the Board sent letters to former tenants, including Gomez, stating that the property had been returned to the rental market and that each of the former tenants "may have certain rights regarding the re-rental of your former unit or for monetary damages if the property owner does not offer to renew your tenancy." The letters instructed the former tenants that to perfect their right to re-rent, they must (within a certain time period) send the owner a written request for an offer to renew their tenancies. The letters also advised each of the former tenants that he or she may file a claim for money damages in small claims court if the owner does not offer to re-rent or pay money damages if a timely written request was sent.

Gomez timely sent the written request to re-rent his unit. In response to Gomez's request, Dell, as managing partner of Hollywood Tower, sent a letter to Gomez stating that Hollywood Tower's plans for the building "do not envision the traditional rental building." Dell noted that under the Ellis Act and the Board's regulations, Gomez "might be entitled to 'up to' 6 times [his] last rent payment in compensation for [Hollywood Tower's] decision not to re-rent to [him]," but he also stated that Hollywood Tower believes it should not have to pay any money to former tenants under the circumstances (i.e., the prior owner's intent to demolish the building, his death, and the subsequent sale of the building to Hollywood Towers). Nevertheless, Dell informed Gomez that Hollywood Towers was offering him $1,800 to resolve the matter.

Gomez declined the offer in a letter to Dell, and reiterated his desire to move back into his former apartment. Dell wrote back to Gomez on behalf of Hollywood Tower, stating "our plans for the building do not envision your return

as a tenant." Once again citing to the Ellis Act and the Board's regulations, Dell noted that Gomez was entitled to up to six times his last rent payment, and asked Gomez to send him a copy of the cancelled check for his last rent payment in order to facilitate payment of the compensation to which Gomez was entitled.

In the meantime, Hollywood Tower had applied to the City of Santa Monica for an occupancy permit. As part of the approval process, the Board conducted an investigation to determine whether Hollywood Tower had complied with the Ellis Act and Board regulations. In connection with its investigation, the Board wrote to Dell to inform him that it could not certify Hollywood Tower's compliance with the Ellis Act and Board regulations until Hollywood Tower showed that it had paid statutory damages to all eligible former tenants. In response to the Board's letter, Hollywood Tower tendered to each eligible former tenant a check in the amount of six months rent, and provided copies of those checks to the Board. The Board then certified to the City of Santa Monica's Planning Division that Hollywood Tower "has complied with the requirements set forth in the [Ellis Act] and with applicable regulations promulgated by the Rent Control Board." In October 2009, the City issued an occupancy permit determination authorizing the return of the property's 28 apartments to the rental market.[1]

In June 2009, Gomez filed the instant lawsuit against Hollywood Tower, American Alliance, and Dell, alleging claims for violation of the Ellis Act and Santa Monica Charter Amendments, conversion, breach of contract, and unjust enrichment. The complaint was amended in June 2010 to add claims based upon alleged racial discrimination. The operative first amended complaint alleges six causes of action. The first two causes of action seek damages and injunctive relief

[1] The parties do not dispute that Hollywood Tower entered into a lease agreement with Denny Smith, a Caucasian, for Gomez's former apartment in April 2009, before the City issued the occupancy permit determination.

for violation of the Ellis Act and Santa Monica Charter Amendments. The third cause of action alleges violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12955 et seq.) based upon a discriminatory act; the fourth cause of action alleges violation of FEHA based upon discriminatory effect; the fifth cause of action alleges violation of the Unruh Civil Rights Act (the Unruh Act) (Civ. Code, § 51 et seq.); and the sixth cause of action alleges violation of the Santa Monica Municipal Code prohibiting tenant harassment (Santa Monica Mun. Code, § 4.56.020) based upon racial discrimination.

Defendants moved for summary judgment or, in the alternative, summary adjudication as to each of the causes of action. In addition to submitting evidence to support each of the facts set forth above, defendants submitted a declaration in which Dell stated that Hollywood Tower declined to re-rent to *any* of the former tenants of the building for two reasons. First, Hollywood Tower understood that an owner can de-control the rent for an apartment unit (and raise rents to market rent) if the tenant voluntarily vacates it more than five years after the unit was initially withdrawn from the rental market; Hollywood Tower believed the former tenants would be more likely than new tenants to stay in their apartments for a long time, and therefore it would take longer for Hollywood Tower to raise the rents to market levels. Second, Hollywood Tower was considering the possibility of withdrawing the property from the rental market for a second time, for a use other than rental housing (such as turning the apartments into condominiums), and would have to evict the former tenants for a second time. Based upon these facts, defendants argued they were entitled to judgment on the third through sixth causes of action because defendants declined to re-rent to Gomez for a legitimate, non-discriminatory reason, and Gomez could not show that their facially neutral policy had a disproportionate impact on Hispanics.

In opposition to the motion, Gomez submitted portions of Dell's deposition transcripts and defendants' responses to interrogatories that Gomez asserted showed that Dell made disparaging statements about him. Gomez also submitted his own declaration in which he stated that (1) he understood Dell's statements and the interrogatory responses to reflect Dell's racial bias, and (2) defendants refused to re-rent to at least five other Latino tenants.[2]

The trial court denied the motion for summary judgment and the motion for summary adjudication of the first two causes of action (i.e., the claims based upon the alleged violation of the Ellis Act), but granted summary adjudication of the third through sixth causes of action.

As to the third cause of action (violation of FEHA, discriminatory act), the court found that Gomez cannot establish a prima facie case of discrimination because he cannot show that similarly situated individuals, i.e., former tenants, were treated differently. The court also found that defendants met their burden to show a legitimate, non-discriminatory reason for not re-renting to Gomez, and Gomez did not present any evidence to show pretext. As to the fourth cause of action (violation of FEHA, discriminatory effect), the court found that Gomez did not present any evidence that defendants' policy of not re-renting to former tenants had a significantly adverse effect on Hispanics, or that defendants refused to rent on the basis of race, ancestry, or national origin. As to the fifth cause of action, the court found that Gomez's evidence did not show that defendants' perception of Gomez's race, ancestry, or national origin motivated their decision not to re-rent, and that the evidence showed that defendants were instead motivated by an

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[2] Defendants objected to portions of Gomez's declaration, including the paragraph in which Gomez stated that defendants refused to re-rent to at least five other Latino tenants. The basis for the objection to that paragraph was lack of foundation or personal knowledge. The trial court sustained the objection to that paragraph.

economic interest. Finally, the court found that the sixth cause of action failed because there was no evidence of discrimination.

Following a court trial on the first two causes of action, the court found in favor of Gomez and against Hollywood Tower on his claim for damages for violation of the Ellis Act. The court entered judgment, awarding damages to Gomez in the amount of $4,500.72 (the equivalent of six months rent), plus prejudgment interest and costs. Gomez timely filed a notice of appeal from the judgment.

DISCUSSION

On appeal, Gomez contends there were triable issues of material fact as to each of his discrimination claims. We disagree.

A. *Standard of Review*

"On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*).) We "apply[] the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law." (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.) Like the trial court, we strictly construe the moving party's evidence and liberally construe the opposing party's evidence, and we must consider all inferences favoring the opposing party that a trier of fact could reasonably draw from the evidence. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) "There is a triable issue of material fact if, and only if, the evidence would allow a

reasonable trier of fact to find the underlying fact in favor of the party opposing the motion." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

Before we proceed to examine the evidence and claims in this case, we must address two arguments Gomez makes regarding our review of the trial court's ruling on a motion for summary judgment/adjudication and the standard for ruling on such motions in discrimination cases.

First, Gomez appears to argue that as part of our review of the summary adjudication, we must first review de novo any objections to the evidence submitted on the motion. He cites to *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 in support of this argument. He misapprehends that case. The question in that case was whether "a trial court's failure to rule on a party's evidentiary objections relating to a summary judgment motion waive[s] the objections on appeal." (*Id.* at p. 516.) The Supreme Court's conclusion that there was no waiver in such a case does not relieve an appellant, such as Gomez, from the obligation to specifically challenge the trial court's evidentiary rulings in the appellant's opening brief if he wants this court to consider evidence to which objections were sustained by the trial court. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4.) Because Gomez did not address any of the trial court's evidentiary rulings in his opening brief, we will not in our review of the summary adjudication ruling consider any evidence to which defendants' objections were sustained. (*Guz*, *supra*, 24 Cal.4th at p. 334.)

Second, Gomez contends that the rule requiring courts to liberally construe evidence submitted in opposition to a motion for summary judgment is broader in discrimination cases, which often depend upon inferences rather than direct evidence, and that ambiguous remarks made by defendants in discrimination cases may preclude summary adjudication. (Citing *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 283; *Reid v. Google, Inc.*, *supra*, 50 Cal.4th at p. 541.)

While we agree that ambiguous remarks can, in some cases, support an inference of a discriminatory motive (thus precluding summary adjudication), the rule requiring courts to liberally construe the evidence does not necessitate denial of summary adjudication in all discrimination cases where there is evidence of ambiguous remarks. Rather, inferences of discriminatory motive "must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork." (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161.)

With these rules in mind, we turn to the discrimination claims in this case.

B. *Third Cause of Action* (*Violation of FEHA Based Upon Discriminatory Act*)

In his third cause of action, Gomez alleges that defendants' refusal to rent to him, instead renting his former apartment to a Caucasian, constitutes unlawful housing discrimination in violation of FEHA. To resolve discrimination claims, courts in California employ a three-stage burden-shifting test, known as the *McDonnell Douglas* test. (*Guz*, *supra*, 24 Cal.4th at p. 354.) Under that test, the plaintiff has the initial burden to establish a prima facie case of discrimination. (*Ibid.*) If the plaintiff meets that burden, a presumption of discrimination arises, which the defendant may rebut by producing evidence to show that its action was taken for a legitimate, nondiscriminatory reason. (*Id.* at pp. 355-356.) If the defendant sustains that burden, "the presumption of discrimination disappears," and the plaintiff must show that the defendant's proffered reason is pretext for discrimination, or offer other evidence of discriminatory motive. (*Id.* at p. 356.)

To establish a prima facie case of housing discrimination under FEHA, a plaintiff is "required to show she was a member of a protected class, applied for and was qualified for a housing accommodation, was denied a housing accommodation, and that similarly situated individuals either applied for and

obtained housing, or provide other circumstantial evidence of discriminatory motive in refusing her the housing accommodation." (*Department of Fair Employment & Housing v. Superior Court* (2002) 99 Cal.App.4th 896, 902, citing *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300, 304-305.)

In moving for summary adjudication of the third cause of action, defendants asserted that Gomez could not establish a prima facie case of discrimination because he could not show that similarly situated individuals -- which defendants contended were other former tenants of the building -- applied for and obtained housing, nor could he provide any circumstantial evidence of discriminatory motive. Defendants also argued that even if Gomez could establish a prima facie case, they presented evidence that they had a legitimate, nondiscriminatory reason for not re-renting to Gomez, i.e., they did not re-rent to any of the former tenants because they believed it would be more difficult to de-control the rents and move them to market rent if they did so, and they did not want to re-evict the former tenants if they withdrew the building from the rental market for a second time.

On appeal, Gomez argues that he established a prima facie case in two ways. First, he challenges defendants' argument, accepted by the trial court, that the only "similarly situated individuals" were other former tenants (none of whom was allowed to re-rent), and contends he satisfied his burden to show that similarly situated individuals were treated differently by showing that he applied for the apartment and was denied while a Caucasian man was accepted. Second, he contends he provided circumstantial evidence of defendants' discriminatory motive.

We need not decide whether Gomez established a prima facie case, however, because defendants presented evidence that they denied Gomez's request to re-rent for a legitimate, nondiscriminatory reason. Thus, we proceed to the third step of the *McDonnell Douglas* test, i.e., whether Gomez presented sufficient evidence to

"raise[] a rational inference that intentional discrimination occurred." (*Guz*, *supra*, 24 Cal.4th at p. 357.) We conclude he did not.

In his opening brief, Gomez lists 10 items of evidence from which he contends one can infer discriminatory motive.[3] Half of those items come from Hollywood Tower's response to a form interrogatory asking it to state all facts upon which it based its denial of the material allegations of the complaint or its affirmative defenses. In that response, Hollywood Tower expressed its (and the previous owner's) concerns about rent control policies, including their belief that these policies "treat[] tenants as wards of the state" and give a windfall to tenants who could afford to pay market rent. Hollywood Tower noted that, due to of Santa Monica's rent control policies, the rental housing supply in the City had dropped, as building owners withdrew their apartments from the rental market under the Ellis Act. It observed that the City sought to encourage owners to bring their apartments back into the rental market by drawing up regulations that allowed the owners to decline to re-rent to former tenants. Hollywood Tower noted there were many reasons that the regulations do not require owners to re-rent to former tenants, and stated that some of the reasons were based upon "common sense real property investment criteria" -- such as "an owner's desire to know and approve who s/he rents to, and allows within his/her building" -- and some were based "on the State and Federal Constitutional guaranties to owners that they be allowed [to] control their real property." Hollywood Tower explained that the building at issue here sat vacant for three years because no one could decide what to do with it, since no one could make a profit by re-renting the units. Hollywood Tower

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[3] At oral argument, counsel for Gomez cited to evidence that she contended showed discrimination based upon age. The complaint, however, alleges only racial discrimination, and Gomez's opening brief on appeal does not address age discrimination. Therefore, we need not address that evidence.

decided to buy the building and bring it back into the rental market, even though it would not make a profit from residential rentals, because it "wanted to establish a housing project which was occupied by people it believed actually needed housing, not wealthy fat cats who were trying to take advantage of a failed rent controlled housing policy which is imposed on property owners by politicians who stay in power by giving their constituents a free lunch (low rents). [Hollywood Towers] wanted housing to be an opportunity for those people it believed could benefit from the housing, and people who were associated with it or its friends."

Of the five items Gomez cites as circumstantial evidence of defendants' discriminatory motive that come directly from Hollywood Tower's response to the form interrogatory, four of them -- items number 1, 2, 3, and 9 -- relate to Hollywood Tower's expressed desire to control to whom it rents apartments. There is nothing in Hollywood Tower's statements regarding its desire to control, however, to indicate that it wanted to discriminate based upon race, as Gomez asserts. Those statements provide no basis upon which a reasonable trier of fact could infer a discriminatory motive. (*Joseph E. Di Loreto, Inc. v. O'Neill*, *supra*, 1 Cal.App.4th at p. 161 [inference of discriminatory motive "must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork"].)

The fifth item taken directly from the interrogatory response is item number 8: "[Defendants] characterized Mr. Gomez as a 'perfect example' of a tenant who is a 'ward of the state.'" Not only is this not an entirely accurate description of what Hollywood Tower actually said in its response, but it fails to show any racial bias. In referring to Gomez as a "perfect example" of why rent control policies are misguided, Hollywood Tower focused solely on economic issues, contending that Gomez was "wealthy enough to pay his fair share of the cost of residential rental

housing." This statement cannot give rise to an inference of a racially discriminatory motive.

Similarly, Dell's statement at his deposition that he did not know Gomez "from a hill of beans" -- item number 7 -- does not give rise to an inference of racial bias or a discriminatory motive. Gomez's attempt to equate the expression "hill of beans" to the ethnic slur "beaners" is groundless. There is no basis to believe that Dell intended to use the well-known innocuous expression as an ethnic slur.

The remaining items also offer no basis to infer a discriminatory motive. Item numbers 4, 5, and 6 relate to the manner in which Hollywood Tower controlled whom it rents to and the racial makeup of the new tenants. The fact that Hollywood Tower advertised primarily through word of mouth, and that Dell determined who would be accepted as a tenant (item number 4), even if true,[4] does not support an inference of discriminatory motive. Neither does the fact that a Caucasian person rented Gomez's former unit (item number 6), standing alone, support an inference of discriminatory motive. Gomez's attempt to show discrimination by stating that none of the tenants chosen by Dell were African-American or Hispanic (item number 5) falls short because it is not supported by the evidence he cites. Although Dell testified that there were no African-American tenants, he testified that *he did not know* if there were any Hispanic tenants.

In any event, even if there was evidence that no Hispanic tenants were chosen for the 28 apartment units in the building, that fact alone would not support an inference of discrimination without evidence that similarly-situated Hispanics were denied an opportunity to rent an apartment. There was no such evidence in

[4] Gomez relies upon Dell's deposition testimony to support this assertion, but Dell actually testified that that there also were signs, flags, and banners in front of the building.

this case. Although Gomez stated in his declaration in opposition to the motion for summary judgment/adjudication that defendants refused to re-rent to five Hispanic former tenants (a statement he relies upon for item number 10), the trial court sustained defendants' objection to that statement, and Gomez does not challenge that ruling on appeal. Thus, even if the former tenants could be deemed to be "similarly situated" to the non-former tenant applicants for the units (an issue we need not decide), we do not consider that evidence in our review of the summary adjudication. (*Guz*, *supra*, 24 Cal.4th at p. 334 ["On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained"].)

In short, none of the items Gomez lists, alone or collectively, would allow a reasonable trier of fact to infer that defendants' decision not to rent to Gomez was motivated by racial discrimination. Therefore, the trial court's summary adjudication of Gomez's third cause of action was proper.

C. *Fourth Cause of Action (Violation of FEHA Based on Discriminatory Effect)*

In his fourth cause of action, Gomez alleges that defendants' refusal to re-rent to him violates FEHA because it has an unlawful discriminatory effect on him and other Hispanics. (Gov. Code, §§ 12955, 12955.8, subd. (b).) The trial court granted defendants' motion for summary adjudication of this claim on the ground that Gomez failed to present evidence showing that defendants' policy of not re-renting to former tenants had a significantly adverse impact on Hispanics. The trial court was correct.

To establish a violation of FEHA under a discriminatory effect (or disparate impact) theory, the plaintiff must prove "'(1) the occurrence of certain outwardly neutral practices, and (2) a significantly adverse or disproportionate impact on

persons of a particular type produced by the defendant's facially neutral acts or practices.' [Citation.] Demonstration of discriminatory intent is not required under disparate impact theory. [Citation.] However, a plaintiff must '"prove the discriminatory impact at issue; raising an inference of discriminatory impact is insufficient."' [Citations.]" (*Gamble v. City of Escondido, supra,* 104 F.3d at p. 306.)[5]

In this case, the only evidence that Gomez submitted regarding the effect of defendants' policy on other Hispanics was the statement in his declaration that at least five other Hispanic former tenants were denied the opportunity to re-rent their units. That evidence, however, cannot be considered here because the trial court sustained defendants' objection to it. (*Guz*, *supra*, 24 Cal.4th at p. 334.) But even if we were to consider it, that evidence alone would be insufficient to raise a triable issue to avoid summary adjudication, because there is no evidence of how many Hispanics applied for and/or obtained an apartment in the building.

D. *Fifth Cause of Action* (*Violation of the Unruh Act*)

In his fifth cause of action, Gomez alleges that defendants violated the Unruh Act by refusing to re-rent his former apartment to him because of his race and/or national origin. The trial court granted summary adjudication against him on this claim because it found that Gomez cannot establish that defendants intentionally discriminated against him.

On appeal, Gomez notes that the Unruh Act prohibits "arbitrary discrimination," which he argues "occurs when rental decisions are not based on actual facts about a person's bona fide qualification to rent or be a good tenant, but

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[5] Although the court in *Gamble* was examining a disparate impact claim under the federal Fair Housing Act (FHA), that Act is substantially equivalent to FEHA. Accordingly, "'[c]ourts often look to cases construing the FHA, . . . when interpreting FEHA.'" (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1420.)

instead on an assumption the prospective tenant possesses a certain characteristic or attribute thought to belong to a particular class of persons -- i.e., it is 'arbitrary' discrimination to judge prospective tenants collectively, rather than individually." (Citing *Sisemore v. Master Financial, Inc., supra,* 151 Cal.App.4th at p. 1420.) He contends he established a prima facie case with respect to his Unruh Act claim because he presented evidence that defendants "made assumptions about [his] characteristics and attributes as a prospective tenant that were arbitrary and discriminatory." He is incorrect.

As Gomez acknowledges, an essential element of an Unruh Act claim is "a causal connection between protected group status and the landlord's adverse rental practice." In other words, to avoid summary adjudication he was required to submit evidence that defendants' assumptions about his characteristics and attributes were related to the fact that he was Hispanic. As we discussed in section B., *ante,* none of the evidence Gomez submitted shows that defendants' decision not to re-rent to him was based upon his race or national origin. Instead, the undisputed evidence is that defendants' decision was based entirely on the fact that he was a former tenant of the rent-controlled apartment. Thus, the trial court correctly granted defendants' motion for summary adjudication of Gomez's Unruh Act claim.

E. *Sixth Cause of Action (Tenant Harassment)*

Gomez's sixth cause of action alleges that defendants violated the Santa Monica Municipal Code's prohibition against tenant harassment by violating FEHA and the Unruh Act. Because we have found that the trial court properly granted defendants' motion for summary adjudication of Gomez's FEHA and Unruh Act claims, we conclude its summary adjudication of this claim also was proper.

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.