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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

ERETZ MONTEREY PROPERTIES, LLC, Plaintiff and Appellant, v. LONGWOOD MANAGEMENT CORPORATION et al., Defendants and Respondents.	B271213 (Los Angeles County Super. Ct. No. BC583295)

APPEAL from a judgment of the Superior Court of Los Angeles County. Holly E. Kendig, Judge. Reversed and remanded with directions.

Glaser Weil Fink Howard Avchen & Shapiro, Patricia L. Glaser, Garland A. Kelley, Elizabeth G. Chilton for Plaintiff and Appellant.

Musick, Peeler & Garrett, Dan Woods, Adam Weg for Defendants and Respondents.

Appellant Eretz Monterey Properties, LLC (Monterey), appeals from a judgment of dismissal after the trial court sustained a demurrer to the first amended complaint filed by respondents Longwood Management Corporation (Longwood), Monterey Care Center, Inc. (MCCI), JRB Enterprises (JRB), Friedman Living Trust,[1] Karen Fugate (Fugate), Jacob Friedman (J. Friedman) and David Friedman (D. Friedman) (collectively, Respondents). Monterey also appeals from the trial court's order granting Respondents' motion to strike the deposition testimony excerpts and punitive damages allegations contained in the first amended complaint.

In September 2013, Monterey purchased real property consisting of a convalescent care facility and/or nursing home (Facility), which was being operated by Respondents under a lease agreement with Monterey's predecessor in interest set to expire in December, 2013. After advising Respondents that it intended to take over the Facility, Monterey contends Respondents engaged in a series of wrongful acts designed to strip the Facility of its value. Monterey sued Respondents for damages, alleging claims for conversion (personal property/business and medical records), intentional/negligent interference with prospective economic advantage, breach of contract and breach of the implied covenant of good faith and fair dealing.

We conclude the first amended complaint alleged facts sufficient to state viable claims for conversion of personal property, breach of contract and breach of the implied covenant of good faith and fair dealing, but not

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[1] Although the first amended complaint named J&L Trust as a defendant, according to Respondents, the correct name of the trust is Friedman Living Trust (FLT). Hereinafter, we will refer to J&L Trust as FLT.

conversion of business and medical records and intentional/negligent interference with prospective economic advantage. We also conclude the motion to strike the punitive damages allegations should have been denied. We therefore reverse the judgment of dismissal and remand with directions.

BACKGROUND

In September 2013, Monterey and H.J. Gormly Family Limited Partnership (Gormly) entered into a purchase and sale agreement and joint escrow instructions (Purchase Agreement) for real property located at 1267 San Gabriel Boulevard, Rosemead, California 91770, together with "any and all improvements" and all "Personal Property" and "leases, licenses, permits or any other entitlements" with respect to the land. The Purchase Agreement defined "Personal Property" as "the equipment, furniture, furnishings and fixtures situated at the premises . . . and used in connection with the operation of the nursing home and/or convalescent hospital . . . to the extent owned by Landlord."

At the time of sale, the property was being leased by Respondents for a monthly fixed rate of $13,500 as a "convalescent and intermediate care facility and/or nursing home" (Facility) pursuant to an agreement between Gormly and JRB set to expire in December 2013 (Lease). MCCI[2] operated the Facility and Longwood provided services to MCCI, including nursing, safety, human resources, budgeting and legal counsel. FLT was a 95 percent shareholder of JRB. D. Friedman was the president of MCCI, and a shareholder of Longwood and FLT. Fugate was the Facility's administrator. Together, D. Friedman and Fugate were responsible for the overall

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[2] Monterey alleged that MCCI had a sub-lease or other arrangement with JRB which permitted MCCI to use the Facility subject to the same terms and conditions as the Lease between JRB and Gormly.

operations of the Facility. J. Friedman was the signatory to the Lease on behalf of JRB, and also the owner of Longwood, the general partner of JRB, and a trustee of FLT.

Once the sale of the property was completed, Monterey advised Respondents that it intended to continue to operate the Facility. Rather than transition the operation of the Facility to Monterey, Respondents "engaged in a series of intentional and outrageous acts between September and December 2013 which were designed to diminish the value of the Facility as an ongoing enterprise and which caused damage to [Monterey]."

First, Respondents began to transfer, discharge, or otherwise displace a number of patients from the Facility. Following the expiration of the Lease, at least 70 patients were left behind at the Facility with no continued care. Second, in an effort to empty the Facility of employees, Fugate falsely advised the current employees that the Facility was shutting down and held a job fair for those employees to help them gain employment with other health care facilities. Third, Fugate, Longwood and MCCI removed equipment, furniture, furnishings and fixtures from the Facility, including hospital beds, linens, supplies and a generator. Fourth, Fugate, Longwood and MCCI removed all business and medical records from the Facility, including employee files, documents related to the resident trust fund and resident finances, patient medical records, pharmacy reports, dietary consultant reports, policy and procedure manuals (fire alarm, maintenance, and generator log books), and business office files. Most of the records were placed in Fugate's vehicle and taken to another health care facility, which was managed by Longwood and in which D. Friedman, J. Friedman, JRB and FLT had an ownership interest. Fifth, upon expiration of the Lease, MCCI declined to sign the Operations Transfer Agreement and cancelled the

Facility's Medicare and Medi-Cal agreements, which inhibited Monterey's ability to obtain reimbursement from Medicare and Medi-Cal, resulting in millions of dollars of unpaid care.

On March 28, 2015, Monterey filed a complaint against Longwood, Fugate, J. Friedman and D. Friedman in the Los Angeles Superior Court. On July 1, 2015, defendants filed a motion to strike and demurrer to the complaint. In lieu of responding to the demurrer, on December 15, 2015, Monterey filed a first amended complaint adding MCCI, JRB and FLT as defendants, and alleging claims for: (1) conversion-personal property, (2) conversion-business and medical records, (3) intentional interference with prospective economic advantage, (4) negligent interference with prospective economic advantage, (5) breach of contract, and (6) breach of the implied covenant of good faith and fair dealing.[3] Monterey sought "redress for the theft of property, business records, and business opportunities" by Respondents, which hindered its ability to operate the Facility. Monterey also alleged that each of the Respondents was liable for the alleged improper conduct because there "exist[ed] a unity of interest and ownership between [Respondents] such that any individuality and separateness between [the Respondents] ha[d] ceased with regard to the matters alleged in [the first amended complaint]."

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[3] The first amended complaint attached as exhibits the Net Lease Agreement, Addendum, Second Addendum to Net Lease Agreement, Third Addendum to Lease and the Purchase Agreement. In evaluating the ruling on demurrer, we take judicial notice of the existence and content of the documents, but not of disputed or disputable facts stated in those documents. (Evid. Code, §§ 452, subd. (h), 459, subd. (a); *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. 1.)

On January 15, 2016, Respondents filed a demurrer, arguing that all of Monterey's claims failed because it only purchased the real property upon which the Facility operated and therefore lacked standing to assert any claims related to the closing of the Facility.[4] As the lessor under the Lease, Respondents argued Monterey's claim for conversion of business and medical records failed because it had no possessory rights to the Facility's records; and its claims for intentional/negligent interference with prospective economic advantage failed because Monterey had no existing economic relationship with the Facility's patients. Although the Purchase Agreement included certain furniture, fixtures, and equipment with the sale of the property, Respondents argued that Monterey still failed to state a claim for conversion of personal property because the first amended complaint did "not contain any specific allegations that any [Respondent] converted any" personal property. Respondents also argued that Monterey's claims for breach of contract/breach of the implied covenant of good faith and fair dealing failed because the only basis for the breaches were the conversion claims, which were improperly pled. Respondents further argued Monterey's alter ego liability theory failed because "[t]here [were] no allegations of bad faith or fraud against the [Respondents] to satisfy the 'injustice' requirement to make it inequitable for them to hide behind their corporate form."

Respondents also filed a motion to strike the deposition testimony excerpts and punitive damages allegations contained in the first amended complaint, arguing that the deposition testimony should be stricken because the excerpts were "unnecessary" and "incomplete" and therefore "misleading,

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[4] Respondents argued that another entity, Monterey Healthcare & Wellness Centre, LP, obtained a license to operate the Facility starting in January 2014; however, that entity is not a party to the lawsuit.

false, and improper." For example, the first amended complaint alleged that when D. Friedman was asked who was going to take care of the remaining patients at the Facility after the Lease expired, he testified: "I don't know." Respondents contend that other portions of D. Friedman's deposition revealed that he also testified "the Health Department was going to take care of them." Respondents further argued the punitive damages allegations should be stricken because Monterey did not "allege any specific malicious, oppressive, or fraudulent conduct on behalf of any of the [Respondents] in order to justify recovery of punitive damages against any of them."

On March 3, 2016, the trial court sustained Respondents' demurrer with and without leave to amend,[5] and granted Respondents' motion to strike without leave to amend. Monterey's claims for conversion of business and medical records, intentional/negligent interference with prospective economic advantage and breach of the implied covenant of good faith and fair dealing were sustained without leave to amend. The trial court agreed with Respondents and ruled that Monterey, as the lessor of the property, did not have the right to possess Respondents' business and medical records nor assume the care of Respondents' patients after Respondents vacated the premises. It also ruled that "a tort based on the breach of implied covenant of

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[5] In connection with Respondents' demurrer to the first amended complaint, the trial court took judicial notice of the: (1) State of California, Department of Public Health license issued to Monterey Care Center, Inc.; (2) the Department of Public Health's approval of the relocation plan submitted by Monterey Care Center, Inc., dated October 15, 2013; (3) the Department of Public Health's letter to Shlomo Rechnitz, as Chief Executive Officer of Monterey Healthcare & Wellness Centre, LP, dated November 12, 2013; (4) licensee information from the Department of Health's website for Monterey Healthcare & Wellness Centre, LP; and (5) copies of various California statutes and regulations.

good faith and fair dealing [was] not supported outside the insurance arena." Monterey's claims for conversion of personal property and breach of contract were sustained with leave to amend. The trial court ruled that allegations that Respondents, in general, participated in the conversion were insufficient and there must be facts "showing who allegedly acted on behalf of Longwood and MCCI." It also ruled that Monterey must allege that the personal property converted was "'actually owned by Landlord'" by the terms of the Purchase Agreement. The trial court further ruled that Monterey's allegations were insufficient to support alter ego liability.

In granting Respondents' motion to strike, the trial court ruled the deposition testimony excerpts were "improper" because it "cannot consider evidence at the pleading stage" and the punitive damages allegations were conclusory and therefore must be "disregarded."

Rather than amend the first amended complaint, Monterey applied ex parte for an order and judgment of dismissal with prejudice, which the trial court granted. On March 24, 2016, Monterey filed a notice of appeal.

CONTENTIONS

Monterey contends the trial court erred in sustaining Respondents' demurrer without leave to amend as to its conversion and intentional/negligent interference with prospective economic advantage claims because it failed to consider that state and federal law entitled it to obtain ownership or possession of the Facility's records and maintain an existing relationship with the Facility's patients. It also contends it stated valid claims for breach of contract/breach of the implied covenant of good faith and fair dealing because Respondents' alleged improper conduct breached the Lease's prohibition against waste. Monterey further contends its alter ego allegations were sufficient because "[t]o plead alter ego, the

plaintiff 'is required to allege only "ultimate rather than evidentiary facts."'" Monterey also contends Respondents' motion to strike should have been denied because "Respondents' admissions [were] exactly the kind of 'supporting factual assertions' that the trial court ruled were required to support [its] punitive damage allegations" and therefore it was an "abuse of discretion to strike allegations essential to a cause of action."

Respondents agree with the trial court's ruling, dispute Monterey's contentions, and reiterate their argument that this action suffers from the "fundamental problem" that Monterey "purchased only the real property on which a skilled nursing facility was operating pursuant to a lease and did not purchase the business of the skilled nursing facility."

DISCUSSION

I. Standard of Review

"The standard governing our review of an order sustaining a demurrer is well established. We review the order de novo, 'exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.]'" (*Lefebvre v. Southern California Edison* (2016) 244 Cal.App.4th 143, 151.) "[W]e accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice." (*Yvanova v. New Century Mortgage Corp., supra,* 62 Cal.4th at p. 924.) "In addition, we give the complaint a reasonable interpretation, and read it in context. [Citation.] If the trial court has sustained the demurer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend . . . we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment

could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]" (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

II. The Trial Court Erred in Sustaining Respondents' Demurrer as to Monterey's Claim for Conversion of Personal Property

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Oakdale Village Group v. Fong* (2006) 43 Cal.App.4th 539, 543-544.)

The trial court ruled that Monterey failed to allege the personal property converted "was that actually 'owned by Landlord'" as stated in section 1.21 of the Purchase Agreement. We disagree. The first amended complaint alleged that "[a]s part of the purchase . . . [Monterey] assumed all leases with respect to the Facility" and that "Recital A of the Lease . . . provide[d] that 'LESSOR is . . . the owner of all of the equipment, furniture, furnishing and fixtures situated at the [Facility], and used in connection with the operation of the nursing home and/or convalescent hospital.'" These allegations were sufficient to set forth its claim for ownership or right to possession of the Facility's personal property. (*Franklin v. Municipal Court* (1972) 26 Cal.App.3d 884, 902.)

The trial court also ruled that Monterey's allegations that Respondents "participated" in the conversion were conclusory and therefore insufficient to

state a claim. Monterey contends the trial court erred because it sufficiently pled that each Respondent "committed conversion either personally, by direction, ratification, consent, authorization, participation, and/or failure to stop the misconduct." We agree with Monterey.

The first amended complaint alleged that "Fugate, Longwood, and MCCI removed and stole multiple items of equipment, furniture, furnishings and fixtures" from the Facility and that D. Friedman, as president of MCCI, and J. Friedman, as the owner of Longwood, were "aware of the conversion" and "failed to direct Fugate, Longwood, and/or MCCI to stop the conversion" or return the personal property to Monterey. It also alleged that both JRB and FLT "participated in, directed, ratified and/or failed to stop the conversion . . . ." These allegations were sufficient to state a claim for conversion of personal property against Respondents.

First, a general allegation that a defendant converted the property is sufficient to state a claim for conversion. (*Franklin v. Municipal Court*, *supra*, 26 Cal.App.3d at p. 902; see also *Baird v. Olsheski* (1929) 102 Cal.App. 452, 454 ["[I]f plaintiff's ownership of the property is properly alleged, and there is an averment that the defendant converted the same, a cause of action is sufficiently stated."].) Thus, as to Fugate, Longwood, MCCI, JRB and FLT, the first amended complaint adequately alleged that they interfered with Monterey's property right by directly participating in the conversion of the Facility's personal property. (*Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 50 [""Where the conversion is the result of the acts of several persons, which, though separately committed, all tend to the same end, there is a joint conversion."' [Citation.]"].) Second, although "[d]irectors or officers of a corporation do not incur personal liability for torts of the corporation merely by reason of their official position," if "they participate in the wrong or

authorize or direct that it be done[,] [t]hey may be liable, under the rules of tort and agency, for tortious acts committed on behalf of the corporation. [Citations.]" (*PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1379.) "A corporate director or officer's participation in tortious conduct may be shown not solely by direct action but also by knowing consent to or approval of unlawful acts." (*Id.* at p. 1380.) Thus, as to D. Friedman and J .Friedman, the first amended complaint adequately alleged that they interfered with Monterey's property right by knowingly consenting to Fugate, MCCI and Longwood's conversion of the Facility's personal property.

We conclude the first amended complaint alleged facts sufficient to state a viable claim for conversion of personal property.[6]

III. The Trial Court Did Not Err in Sustaining Respondents' Demurrer Without Leave to Amend as to Monterey's Claim for Conversion of Business and Medical Records

Monterey's second conversion claim involves the Facility's business and medical records. The requirements to state such a claim are the same as Monterey's claim for conversion of personal property. (See Section II, *ante*.) Although Monterey properly alleged that it was the owner of the Facility's business and patient records, the trial court sustained Respondents' demurrer without leave to amend on the ground that "the [L]ease that [Monterey] assumed . . . [did] not include any provision pertaining to the

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[6] Monterey also alleged that Respondents were liable for conversion of the Facility's personal property under the theories of agency, conspiracy and alter ego. Because we find the first amended complaint adequately alleged that Respondents directly participated in the conversion, we decline to address Monterey's other contentions related to this claim.

business and/or medical records of the prior lessee."[7] Monterey contends the trial court erred because it failed to consider that Monterey's ownership or possession of the Facility's records was also based on statute. For example, California regulations provide that if the ownership of a health care facility changes, the existing licensee must confirm to state regulators that the patients' health records are available to the new licensee.

The fundamental problem with Monterey's contention is that the California regulations upon which it relies apply to the "licensee" of the Facility and nowhere in the first amended complaint is there any allegation that Monterey applied for a license to operate the Facility. (Cal. Code Regs., tit. 22, § 72501, subd. (a) ["The licensee shall be responsible for compliance with licensing requirements and for the organization, management, operation and control of the licensed facility."].) Rather, Monterey's alleged connection to the Facility was that of owner and lessor, which entitled it to compensation for the use of the property, but not ownership or possession of the Facility's business and medical records. (*Ramona Manor Convalescent Hospital v. Care Enterprises* (1986) 177 Cal.App.3d 1120, 1143 ["as the owner of the real and, perhaps personal, property making up the nursing facility . . . [defendant] was entitled to compensation for the use of the property"]; see also *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC* (2011) 192 Cal.App.4th 1183, 1190 ["A lease is both a conveyance of an estate in real property and a contract between the lessor and the lessee for the

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[7] In so ruling, the trial court relied on *Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447, and *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627, for the proposition that "[f]acts appearing in exhibits attached to the complaint are accepted as true and, if contrary to the allegations in the pleading, will be given precedence."

possession and use of the property in consideration of rent. (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 517, p. 593.)"].) The trial court also took judicial notice of the fact that Monterey Healthcare & Wellness Centre, LP, obtained a license to operate the Facility after the expiration of the Lease and therefore Monterey cannot cure this deficiency on amendment.

We conclude the first amended complaint failed to allege facts sufficient to state a viable claim for conversion of business and medical records.

IV. The Trial Court Did Not Err in Sustaining Respondents' Demurrer Without Leave to Amend as to Monterey's Claims for Intentional/Negligent Interference with Prospective Economic Advantage

In order to state a claim for intentional interference with prospective economic advantage, a plaintiff must allege "'"(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." [Citations.]'" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) The same requirements apply to a claim for negligent interference with prospective economic advantage except that a plaintiff need only allege that "the defendant knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care its actions would interfere with [the probable future economic benefit] and . . . the defendant was negligent." (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786.)

Monterey contends the trial court erred in ruling that it had no legally cognizable economic relationship with the Facility's patients because both the Lease as well as state and federal law obligated Monterey to care for the Facility's patients. Because the Lease expressly stated that the property could only be used for the operation of a "convalescent and intermediate care facility and/or nursing home," Monterey contends such language made clear it had a future economic relationship with the Facility's patients. Monterey also contends that the various state and federal laws governing skilled nursing facilities require "continuity" in the care of patients, which meant the patients were not Respondents' patients, but the Facility's patients and because Monterey purchased the Facility, it was required to care for those patients. We disagree.

Monterey's claims for intentional/negligent interference with prospective economic advantage suffer from the same defect as its claim for conversion of the business and medical records. Monterey's alleged relationship with the Facility was that of owner and lessor, which entitled it to compensation for the use of the property, but not an economic relationship with the Facility's patients. (*Ramona Manor Convalescent Hospital v. Care Enterprises*, *supra*, 177 Cal.App.3d at p. 1143; *Avalon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC, supra,* 192 Cal.App.4th at p. 1190.) Moreover, neither the Lease nor the statutes relied on by Monterey gave it the right to assume the care of the Facility's patients.

The Lease makes clear that the lessor "wishes to retire from the involvements of participating in the business community" and that it is the intention of the parties to relieve the lessor of "all past, present and future liabilities connected with the [Facility] for the duration of the Lease period and for the [lessee] to assume all such duties and liabilities" in connection

with the Facility. Thus, the fact that the Lease stated the property could only be used for the operation of a nursing facility bound JRB, as the lessee of the property, but not Monterey. And the statutes relied on by Monterey do not permit the owner of a nursing home to assume the care of patients. For example, title 22 of the California Code of Regulations, section 72501, subdivision (d) provides: "Except where provided for in approved continuing care agreements, or except when approved by the Department, *no facility owner*, administrator, employee or representative thereof *shall act as guardian or conservator of a patient therein or of that patient's estate . . . .*" (Italics added.) Monterey also cannot purchase a license to operate the Facility in connection with the sale of the property. Instead, when there is a change of ownership for a skilled nursing facility, the California Department of Health Services must approve the application for a new license. (Cal. Code Regs., tit. 22, § 72201.) As noted above, the trial court took judicial notice of the fact that Monterey Healthcare & Wellness Centre, LP, obtained a license to operate the Facility after the expiration of the Lease and therefore Monterey cannot cure this deficiency on amendment.

We conclude the first amended complaint failed to allege facts sufficient to state viable claims for intentional/negligent interference with prospective economic advantage.

V. The Trial Court Erred in Sustaining Respondents' Demurrer as to Monterey's Claims for Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing

To state a claim for breach of contract, a plaintiff must allege "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371,

1388.) "Generally, every contract, including commercial leases, ""imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.' [Citation.]""" (*McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784, 798.) "A breach of the implied covenant of good faith is a breach of the contract [citation], and 'breach of a specific provision of the contract is not . . . necessary' to a claim for breach of the implied covenant of good faith and fair dealing."[8] (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244.)

Monterey contends the trial court erred because it sufficiently alleged Respondents breached the Lease by (1) removing the Facility's personal property and records; and (2) engaging in waste and frustrating the purpose of the Lease. It also contends that each of the Respondents (except Fugate) was liable for the breaches under the theories of ratification, agency and alter ego.[9] We disagree in part, finding Monterey adequately alleged a breach of contract claim and a breach of the implied covenant of good faith and fair dealing claim against Respondents (except Fugate) for removing the Facility's personal property only.

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[8] Monterey contends it is only seeking contract damages for its breach of the implied covenant of good faith and fair dealing claim. Thus, we need not address whether a tort based on the breach of the implied covenant of good faith and fair dealing is supported outside the insurance context.

[9] Although the Lease attached to the complaint was not signed by J. Friedman on behalf of JRB, the trial court could properly consider the lease provisions in ruling on Respondents' demurrer. (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1064 ["It is undisputed that the trial court could properly consider the unsigned copy [of the lease] in determining whether to grant judgment on the pleadings."].)

Here, Monterey's purchase of the real property included all "Personal Property," defined as "the equipment, furniture, furnishings and fixtures situated at the premises . . . ." Thus, when JRB vacated the premises, pursuant to section 15 of the Lease, it was required to "surrender [the Lease Property] [ ] in good order and repair, reasonable and ordinary wear and tear excepted." JRB did not do this. Monterey alleged that JRB "participated in" the removal of the Facility's personal property. We conclude that such allegations adequately allege a breach of contract claim and a breach of the implied covenant of good faith and fair dealing claim against JRB.

The Lease, however, did not provide Monterey with a right to assume the care of the Facility's patients or ownership/possession of the Facility's business and medical records. As we previously determined, Monterey's alleged relationship with the Facility was that of owner and lessor, which entitled it to compensation for the use of the property. After the Lease with JRB terminated, there was no ongoing duty on behalf of JRB to transfer the Facility's patients or the Facility's business and medical records to Monterey.

We also conclude that Monterey's alter ego allegations were sufficient to state a claim against each of the Respondents (except Fugate) for breach of contract and breach of the implied covenant of good faith and fair dealing for the removal of the Facility's personal property. "In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) Monterey alleged that J. Friedman and D. Friedman had an ownership

interest in FLT, JRB, MCCI and Longwood such that "any individuality and separateness . . . [had] ceased" and that FLT, JRB, MCCI and Longwood were "mere shell, instrumentality, and conduit thorough which [J. Friedman and D. Friedman] carried on their business in their corporate or entity names, exercising complete control and dominance of such business to such an extent that any individuality and separateness of these [Respondents] . . . did not [ ] exist." Monterey also alleged that "adherence to the fiction of the separate existence of each as distinct from one another would promote injustice by protecting one from the prosecution of its own wrongful acts committed under the name of another." Although Respondents argue that Monterey failed to allege specific facts to support its alter ego allegations, at this stage of the pleadings, it was only required to allege "'ultimate rather than evidentiary facts.'" (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 236.) Moreover, the "'less particularity [of pleading] is required where the defendant may be assumed to possess knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff,' which certainly is the case here." (*Ibid.*) Thus, we reverse the trial court's ruling that Monterey failed to sufficiently plead an alter ego theory of liability against Respondents (except Fugate).

VI. The Trial Court Erred in Granting Respondents' Motion To Strike the Punitive Damages Allegations

A. Punitive Damages

We review an order on a motion to strike punitive damages allegations de novo. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Ibid.)* "In order to state a prima

facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. [Citation.] These statutory elements include allegations that the defendant has been guilty of oppression, fraud or malice. (Civ. Code, § 3294, subd. (a).)" (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63.) "Malice" means "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "Oppression" means "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) "Fraud" means "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294(c)(3).)

The first amended complaint alleged that Monterey advised Respondents that it intended to continue to operate the premises as a skilled nursing facility, which clearly implied that Monterey would need the "equipment, furniture, furnishings and fixtures situated at the premises" it was entitled to under the Lease for the care of medical patients. By removing personal property from the Facility necessary for the care of medical patients, we find such allegations were sufficient to show that Respondents' conduct and their knowledge of the consequences thereof, if proven, could sustain a finding of willfulness with conscious disregard.

Respondents argue that even if the punitive damages allegations were adequate, Monterey did not allege that an officer, director, or managing agent of the corporate defendant ratified the wrongful conduct. However, Monterey

did allege that "[D. Friedman and J. Friedman] consented to, ratified, and/or facilitated the actions by JBR, MCCI, and Longwood alleged in the [first amended complaint] and that "[FLT], JRB, MCCI, and Longwood were each at all relevant times informed of each other's action alleged in [the first amended complaint], and consented to, ratified, and facilitated the actions of the others."

We therefore conclude the trial court erred in granting Respondents' motion to strike the punitive damages allegations.

B. Deposition Testimony Excerpts

Monterey contends the deposition excerpts contained in the first amended complaint were essential to its punitive damages claim and therefore it was an abuse of discretion for the trial court to strike them. However, as noted above, Monterey's allegations support a claim for punitive damages without reliance on the deposition excerpts.

Moreover, in ruling on a demurrer, a "trial judge could accept the truth of the facts stated in the [ ] deposition only to the extent they were not or could not be disputed." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375.) Respondents here contend the deposition excerpts were misleading, false and improper. Because the deposition excerpts were disputed and therefore cannot be considered by the trial court, it was not an abuse of discretion for the trial court to strike the excerpts from the first amended complaint as "irrelevant, false, and/or improper."

We conclude the trial court correctly granted Respondents' motion to strike the deposition testimony excerpts.

DISPOSITION

The judgment of dismissal is reversed with directions to the trial court to: (1) reverse the order sustaining Respondents' demurrer as to the first

cause of action (conversion-personal property), fifth cause of action (breach of contract) and sixth cause of action (breach of the implied covenant of good faith and fair dealing); (2) affirm the order sustaining Respondents' demurrer as to the second cause of action (conversion-business and medical records), third cause of action (intentional interference with prospective economic advantage), and fourth cause of action (negligent interference with prospective economic advantage); and (3) reverse the order denying Respondents' motion to strike the punitive damages allegations. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

CHAVEZ, J.

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* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.