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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

STEPHEN WINICK, Plaintiff, Cross-defendant and Appellant, v. HILTON MANAGEMENT, LLC, et al., Defendants, Cross-complainants and Respondents.	B280774 (Los Angeles County Super. Ct. Nos. SC119732, BC516374)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig D. Karlan, Judge. Affirmed.

Esner, Chang & Boyer, Stuart B. Esner and Joseph S. Persoff for Plaintiff, Cross-defendant and Appellant.

Glaser Weil Fink Howard Avchen & Shapiro, Joel N. Klevens, Elizabeth G. Chilton and Gali Grant for Defendants, Cross-complainants and Respondents.

Stephen Winick appeals from a judgment against him following a jury trial. Winick sued Hilton Management, LLC (Hilton) and Sergio Bocci (collectively Respondents), the director of operations for the Beverly Hilton Hotel (the Hotel), for claims arising from Winick's arrest while trying to attend the Golden Globe awards at the Hotel without a ticket or a pass. Bocci made a citizen's arrest of Winick after consulting with a Beverly Hills police officer who informed Bocci that Winick had committed a criminal trespass. Winick was not convicted of any crime following the arrest; the district attorney ultimately dismissed the charges against him.

Following trial, the jury returned a special verdict finding that Bocci had a reasonable good faith belief that Winick had committed a crime when Bocci made the arrest. Based upon that verdict, the trial court granted judgment against Winick on his claims for false arrest and negligence. The jury also found in favor of Hilton on Hilton's civil trespass claim against Winick, awarding Hilton nominal damages of $1.

On appeal, Winick argues that the trial court erred in: (1) instructing the jury that the arrest was valid if Bocci reasonably and in good faith believed that Winick had committed a public offense; (2) admitting evidence of Winick's prior arrests for trespassing at celebrity events; (3) granting summary adjudication against Winick on his civil rights claim under the Bane Act (Civ. Code, § 52.1); and (4) granting a permanent injunction against him. Winick also claims that the evidence was insufficient to show that he actually committed a criminal offense in entering the Hotel.

We reject Winick's instructional error argument, as Winick never made it in the trial court. Rather, Winick acquiesced in a special verdict form that invited the jury to decide *only* the issue

of good faith without even considering whether Winick actually violated the criminal law before his arrest. Under these circumstances, settled principles of appellate review preclude Winick from raising the instructional issue for the first time in this court. In light of this holding, Winick's argument that the evidence is insufficient to show that he actually violated the law is moot.

We also reject Winick's remaining arguments. The trial court acted within its discretion in finding that evidence of Winick's prior arrests was admissible on the issue of Winick's claimed damages for emotional distress. The trial court also properly exercised its discretion in deciding to issue a permanent injunction based upon evidence that Winick might engage in similar conduct in the future. Finally, we need not consider whether the trial court properly granted summary adjudication on Winick's Bane Act claim, as the jury's finding of good faith precludes Winick from showing that the outcome would have been any different if that claim had gone to trial.

BACKGROUND

1. The 2012 Incident at the Golden Globe Awards

The 2012 Golden Globe awards took place at the Hotel on January 15. Bocci was at the Hotel for the event and was advised by private security guards that they had seen Winick in the Hotel ballroom and lobby without a ticket. Bocci recognized Winick from a photograph from a previous year. Bocci saw that Winick had a camera. The security guards recommended a citizen's arrest to ensure that Winick would not return to the Hotel.

Bocci spoke with Beverly Hills Police Officer Gary Castaldo, who was on site. Castaldo determined that Winick did not have any ticket or credential to be at the event, and concluded that Winick had trespassed. Castaldo also believed that Bocci had

witnessed the trespass because Bocci had seen Winick in the Hotel without authorization.

Castaldo recognized Winick from a prior event in the Hotel in 2008. At that event, Castaldo had chased Winick and cited him for resisting arrest after he was observed "where he wasn't supposed to be."

Castaldo advised Bocci that Winick had committed a trespass. Castaldo explained that Bocci had the option of: (1) asking Winick to leave; (2) performing a citizen's arrest; or (3) making a criminal complaint later. Castaldo said that, to ensure Winick would not return, a citizen's arrest was necessary.

Bocci spoke to the general manager of the Hotel and they decided that Bocci should make a citizen's arrest. Bocci signed a citizen's arrest form that Castaldo had prepared. In doing so, Bocci relied on the advice that the private security guards and Castaldo had given him about the best way to get Winick off the property. Based on that advice, Bocci believed that Winick was trespassing.

Castaldo told Bocci what to say to Winick to make the arrest. After Bocci told Winick he was under arrest, the police removed Winick from the property. Castaldo transported Winick to the jail at the Beverly Hills Police Department. Winick was in custody there overnight.

Winick was charged with a violation of Penal Code section 602, subdivision (m).[1] The criminal case was ultimately

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[1] Subsequent undesignated statutory references are to the Penal Code. The jury in this case was instructed to consider whether Winick committed criminal trespass under section 602, subdivision (k), not under section 602, subdivision (m).

dismissed about a year later. The parties in this case stipulated that the dismissal of the criminal case was on the merits.

2. Trial Court Proceedings

Hilton sued Winick for trespass, and Winick sued Hilton and Bocci for false arrest, negligence, malicious prosecution, and violation of the Bane Act (Civ. Code, § 52.1). The two cases were subsequently consolidated.

Several weeks before trial the trial court granted summary adjudication against Winick on his Bane Act claim. The remaining claims went to trial on November 1, 2016.

The trial court permitted Respondents to introduce evidence of six prior occasions on which Winick had been arrested or cited for trespassing. Winick testified about previous incidents: (1) in March 2002, when he was arrested for trespassing at the Academy Awards; (2) in May 2002, when he was arrested for trespassing by Anaheim police at the Arrowhead Pond in Anaheim; (3) in August 2004, when he was arrested on the tarmac at the Long Beach Airport; (4) in February 2008, when he was cited by Officer Castaldo for resisting arrest at the Hotel after taking a picture of Lindsay Lohan; (5) in May 2008, when he was arrested at the Peterson Automotive Museum when he took a photograph of Michael Jackson; and (6) in June 2009, when he was arrested by Inglewood police officers at the Inglewood Forum during a private rehearsal by Michael Jackson. With respect to the May 2008 incident at the Peterson museum, Winick admitted that he was "convicted of trespass, and in order to clear [his]

record, [he] had to agree to attend a 12-hour management therapy."[2]

Winick dismissed his malicious prosecution claim before the case went to the jury. The jury returned a special verdict on November 4, 2016, finding that: (1) Bocci had a "reasonable good faith belief" that Winick had committed a crime when he placed Winick under arrest; and (2) Winick intentionally entered the Hotel on January 15, 2012, and did so without Hilton's permission. The jury awarded nominal damages of $1 on Hilton's trespass claim.

Based on the special verdict, the trial court entered judgment against Winick on his claims and in favor of Hilton on its trespass claim. On Hilton's motion, the trial court also permanently enjoined Winick from "entering that portion of the Hotel's property where any award show or private event is being held at the Hotel unless [Winick] has a valid ticket, media credential or invitation, which [Winick] is required to have with him at the event and provide to Hilton Management, LLC representatives for verification upon request."

DISCUSSION

1. Winick May Not Raise a Legal Challenge to Respondents' Good Faith Defense for the First Time on Appeal

Winick argues that the trial court erred in giving a jury instruction that permitted the jury to find in favor of Respondents

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[2] Although not discussed before the jury, according to Winick's pretrial motion in limine the May 2002 Anaheim incident also resulted in a municipal code conviction that was later expunged.

if Bocci arrested Winick in good faith. Special Instruction No. 101 informed the jury that, "[w]here the validity of the arrest turns on whether the conduct at issue constitutes a public offense, the test to be applied is whether the person making the arrest had a reasonable good faith belief that it did."

Winick acknowledges that this instruction follows this court's prior decision in *Gomez v. Garcia* (1980) 112 Cal.App.3d 392 (*Gomez*). However, Winick "disputes the soundness of the *Gomez* holding" and argues that the jury instruction was therefore erroneous. Winick did not make this argument at trial. Under well-settled principles of appellate review, Winick may not raise this issue for the first time in this court.

A. *The* Gomez *decision*

In *Gomez,* the plaintiff (Gomez) alleged claims for false imprisonment and malicious prosecution arising from his arrest after he attended a staff meeting at his former place of employment. Gomez refused to leave when asked, and one of the employer's executives, Garcia, called the police. The police advised Garcia that the only way they could remove plaintiff was for Garcia to make a citizen's arrest. (*Gomez, supra,* 112 Cal.App.3d at p. 396.) The police officers told Garcia that he should say the arrest was for a violation of Penal Code section 415 (disturbing the peace). (*Ibid.*) A jury found in favor of Gomez on his false arrest claim. (*Ibid.*)

On appeal, this court held that the trial court erred in instructing the jury that, to find that the arrest was lawful, it must first find that Gomez violated section 415. Gomez's own testimony established that he had actually trespassed in violation of section 602. Garcia therefore "would not be liable for false imprisonment because he relied on the officer's advice that he

announce to plaintiff that the arrest was for a violation of Penal Code section 415." (*Gomez*, *supra*, 112 Cal.App.3d at p. 398.)

The court also observed more generally that good faith reliance on a police officer's advice may constitute a defense to a false arrest claim. The court cited section 837, which "authorizes a private person to arrest another for a 'public offense' committed in his presence." (*Gomez, supra,* 112 Cal.App.3d at p. 397.) The court reasoned that, "[w]hile the statute does not speak of 'probable cause to believe' an offense has been committed in the presence of the person making the arrest, the state of mind of such person of necessity comes into play in a hindsight analysis of whether the arrest was or was not lawful." (*Ibid.*) The court noted that the facts in *Gomez* were "comparable" to the facts in *Peterson v. Robinson* (1954) 43 Cal.2d 690 (*Peterson*), in which our Supreme Court stated that "[a] private citizen who assists in the making of an arrest pursuant to the request or persuasion of a police officer is not liable for false imprisonment." (*Gomez*, at pp. 398–399, quoting *Peterson,* at p. 697.) The court also cited *Coverstone v. Davies* (1952) 38 Cal.2d 315 (*Coverstone*) in explaining that "[w]here the validity of the arrest turns on whether [the arrestee's conduct] constitutes a public offense, the test to be applied must be one of whether the person making the arrest had a reasonable good faith belief that it did." (*Gomez*, at p. 397.)

B. *Winick's legal challenge*

Winick argues that our decision in *Gomez* was inconsistent with the Legislature's decision to amend section 836 in 1957 in response to our Supreme Court's decision in *Coverstone.* At the time of the *Coverstone* opinion, both a police officer (under section 836) and a private citizen (under section 837) were authorized to arrest for "a 'public offense committed or attempted in his

presence.' " (See *Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 590, fn. 4 (*Cervantez*).) In *Coverstone,* the court held that, under section 836, police officers were "entitled to act on reasonable appearances in determining who were parties to the offense." (*Coverstone, supra,* 38 Cal.2d at p. 320.) The Legislature subsequently amended section 836 to incorporate this reasoning, stating explicitly that a police officer may make a warrantless arrest " 'whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.' " (*Cervantez,* at p. 590, fn. 4, quoting § 836.) However, "the Legislature left section 837 on citizen arrest untouched, thereby indicating an intent to distinguish between the authority of a peace officer and of a private citizen to arrest for a misdemeanor." (*Cervantez,* at p. 590, fn. 4.)

C. *Winick's failure to raise the issue below*

Whatever the merits of Winick's argument, this court's decision in *Gomez* has never been disapproved or overruled. (*Gomez, supra,* 112 Cal.App.3d 392.) We decline to reconsider the decision based on the record in this case.[3]

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[3] Without considering the merits of Winick's legal argument, we observe that it is possible to reconcile the opinion in *Gomez* with the Legislature's change to section 836 as discussed in *Cervantez.* As mentioned, in *Gomez,* in addition to citing *Coverstone*, this court cited our Supreme Court's holding in *Peterson* that a citizen who assists in making an arrest "pursuant to the request or persuasion" of a police officer is not liable. In *Gomez,* Garcia relied on the police officers' instruction to tell Gomez that his arrest was for a violation of section 415. Thus, *Gomez* arguably simply extended the privilege protecting a citizen's reliance on a police officer's *instruction* to arrest someone

Winick never argued in the trial court that *Gomez* was not good law or that the trial court should not rely on that decision. Indeed, he agrees on appeal that the trial court "was required to follow *Gomez*." Winick claims that the issue was "unable to be addressed at the trial court level," and rather is "properly considered at the appellate level."

Even if Winick believed that the trial court would follow *Gomez,* Winick was required to raise the legal issue below to preserve it for appeal. As a general rule, a party may not claim error based on a theory raised for the first time on appeal. (See *Pool, supra*, 42 Cal.3d at pp. 1065–1066.) An appellate court may make an exception for " 'purely legal' " issues that were not raised at trial, but only if the facts are undisputed. (*Ibid.*, quoting *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417.)

Here, Winick raises a purely legal issue. But his failure to raise the issue below resulted in a record that leaves critical facts

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to a citizen's reliance on a police officer's *advice* that a particular offense has been committed. Such a privilege is based on policy concerns that are different from those underlying whether a private citizen should be permitted to arrest based upon his or her own assessment of probable cause. (Cf. *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1074 (conc. opn. of Grodin, J.) (*Pool*) [citing *Peterson*, *supra*, 43 Cal.2d at p. 695 for the proposition that the privilege to report information to the police is based on "the strong public policy in favor of encouraging citizens to report . . . thereby permitting the police to determine whether further action is justified"].) Because Winick has not preserved the issue for appeal, we have no reason in this case to reconsider the merits of such a privilege.

unresolved. Both Winick and Respondents tried the case on the assumption that Bocci and Hilton were not liable if Bocci believed in good faith that Winick had committed a criminal trespass in violation of section 602. Winick argued that Castaldo's advice was wrong, and Bocci could not simply rely on that advice in arresting Winick without first asking Winick to leave. Respondents argued that Bocci's good faith reliance on Officer Castaldo's advice was a sufficient defense.

It is true that there was also evidence and instructions on the issue of whether Winick actually violated section 602. But because Winick never argued that good faith was not a proper defense to false arrest by a private citizen, Respondents and the trial court crafted a special verdict form that directed the jury to stop deliberating if it found that Bocci acted in good faith. Thus, the jury did not answer the question on the special verdict form asking whether Winick "enter[ed] the Beverly Hilton Hotel on January 15, 2012 with the intent of interfering with, obstructing, or injuring any lawful business carried on by those in lawful possession of the Beverly Hilton Hotel on January 15, 2012." This question tracked the elements of section 602, subdivision (k). The jury's verdict therefore left unresolved whether Winick actually violated section 602 prior to his arrest.

Winick did not propose any change to the order of questions in the special verdict form.[4] Winick's failure to challenge the

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[4] Winick did point out that some of the questions on the proposed special verdict form tracked Respondents' proposed special instructions and should not be included if the special instructions were not given. The parties disagree over whether Winick objected to Special Instruction No. 101 itself. We need not

legality of the good faith defense invited the trial court to rely on that defense in accepting a special verdict form that directed the jury to decide only the issue of good faith if it found in favor of Respondents. Had Winick raised the legal issue below, the trial court could have changed the form to require the jury to decide whether Winick actually violated section 602. A finding in favor of Respondents on that issue would have independently justified Winick's arrest and made the good faith issue irrelevant.[5]

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resolve that issue because even if Winick's statements amounted to an objection, he never provided any *reason* for his objection. He therefore gave the trial court no reason to question the legal basis for Respondents' good faith defense. That led directly to a special verdict form that invited the jury to decide *only* the issue of good faith.

[5] Contrary to Respondents' argument, we may not simply presume that Winick actually violated section 602 based upon substantial evidence of a violation in the record. It was the jury's task to resolve the facts. We may not assume that the jury made a factual finding that it was never asked to make. (*Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 827 [court could not "infer additional jury findings" beyond what the jury actually found in its special verdict]; *Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 961 (*Myers*) [the fact that the evidence might support a jury finding does not constitute a finding].) Although the jury found a civil trespass, as explained in the jury instructions in this case the elements of a civil trespass are different from a criminal trespass under section 602. The " 'essence of the cause of action for trespass is an "unauthorized entry" onto the land of another.' " (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) The intent necessary to be liable for a civil trespass is

Under these circumstances, the doctrine of invited error reinforces the conclusion that Winick may not raise the legal issue of good faith for the first time on appeal. The doctrine is an application of the estoppel principle. It prevents a party from misleading the trial court and then profiting from that conduct on appeal. (*Munoz v. City of Union City* (2007) 148 Cal.App.4th 173, 178.) The doctrine applies to invited error with respect to a special verdict form as well as jury instructions. (See *Myers, supra,* 13 Cal.App.4th at p. 960, fn. 8 [party was "bound by the erroneous special verdict" where he "fail[ed] to propose an appropriate special verdict"].)

We therefore reject Winick's argument that the trial court erred in permitting the jury to find in favor of Respondents based on Bocci's good faith in accordance with Special Instruction No. 101.

2. The Trial Court Did Not Err in Admitting Evidence of Winick's Prior Arrests

Winick argues that the trial court erred under Evidence Code sections 1101 and 352 in admitting evidence of his prior trespassing arrests. We conclude that the trial court acted within its discretion in finding that the evidence was relevant to disputed issues other than Winick's character.

A trial court's ruling on the admissibility of evidence under Evidence Code section 1101 is reviewed for abuse of discretion. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1003.) Trial courts also have broad discretion under Evidence Code section 352 to

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simply the intent to be in the place where the trespass occurred. (*Id.* at pp. 1480–1481.)

determine whether the potential for undue prejudice outweighs the probative value of evidence. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) A trial court's exercise of such discretion " 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*Id.* at pp. 1124–1125, quoting *People v. Jordan* (1986) 42 Cal.3d 308, 316.)

In denying Winick's pretrial motion in limine to exclude evidence of the prior arrests, the trial court initially indicated that evidence of Winick's prior arrests was relevant both to Winick's damages claim and to proof of his intent under section 602, subdivision (k). The court agreed with Respondent's argument that the prior arrests were relevant to Winick's claim for damages for emotional distress. The court explained, "Isn't it reasonable, and isn't it something the jury should consider that a person who has never been arrested before, never had their mug shot taken, would have a different level of emotional suffering than one who has had that happen to them on multiple occasions?" The court also indicated its agreement with Respondents' argument that the prior trespassing incidents were relevant to proving Winick's "intention of interfering with, obstructing, or injuring [Hilton's] lawful business or occupation" under section 602, subdivision (k). Respondents argued that Winick was aware from his prior experiences that his conduct in photographing celebrities who do not want him to take pictures of them was likely to disrupt the event. The trial court reasoned that Winick's six prior similar experiences were "more than usual for a common plan or scheme."

The following day, before the beginning of trial, the trial court made a comment indicating that it was admitting the

evidence of Winick's prior arrests for the issue of emotional distress damages only. The court stated that Winick's prior incidents "go to the damages element. . . . Those are not being allowed in . . . to show that he had knowledge or anything else."

Regardless of whether the trial court permitted the evidence of Winick's prior arrests as relevant to damages only or to damages *and* intent, the court acted within its discretion in deciding that such evidence was admissible. Evidence Code section 1101, subdivision (a) generally prohibits using evidence of a person's character to prove the person's "conduct on a specified occasion." However, evidence of prior acts is not precluded under that section when relevant to prove some other fact, "such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident." (Evid. Code, § 1101, subd. (b).)

The list of categories of permissible uses in subdivision (b) is not exclusive. (*People v. Catlin* (2001) 26 Cal.4th 81, 146 [evidence of other crimes admissible to show the cause of death in the charged crime].) The "admissibility of other-crimes evidence depends upon the materiality of the fact sought to be proved or disproved, the tendency of the uncharged crime to prove or disprove the material fact, and the existence of any policy requiring exclusion of the evidence." (*Ibid.,* quoting *People v. Thompson* (1980) 27 Cal.3d 303, 315.)

Winick's state of mind during the arrest was material because of Winick's claim for damages for emotional distress. His prior arrests were relevant to that state of mind. The jury could reasonably conclude that one who has experienced numerous prior arrests in similar circumstances will experience less emotional trauma from an arrest than would a person who had never before been arrested.

The trial court also acted within its discretion in finding that the risk of undue prejudice did not outweigh the probative value of this evidence. Winick argues that the jury could have considered the evidence of prior arrests for improper purposes. However, the trial court gave a sua sponte instruction to the jury to consider the evidence of "prior events" only with respect to Winick's claim for emotional distress damages. The court further instructed that "[w]hat we're concerned about is what happened at the Golden Globes in 2012. I'm not concerned about factually what happened; in other words, we're not going to open it up and have trials in each of those instances." We presume that the jury followed this instruction. (*People v. Lindberg* (2008) 45 Cal.4th 1, 25–26.)

Winick did not request any other limiting instruction. He has therefore forfeited any argument that the trial court's instruction was insufficient to limit the jury's consideration of his prior arrests. (*People v. Thomas* (2012) 53 Cal.4th 771, 810; *Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1686.)[6]

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[6] Winick's argument that proposing a limiting instruction would have been inconsistent with his objection to the admissibility of the prior incidents is meritless. A party can maintain his or her objection to the admissibility of evidence while also requesting an instruction to limit consideration of the evidence to the purpose that the court permits. (*People v. Guy* (1980) 107 Cal.App.3d 593, 602 ["It is sheer nonsense to say defendant had to choose between a posture contesting admissibility and a request for a limiting instruction"].)

Winick asserts that, in general, evidence of prior arrests that did not result in convictions is not admissible. Winick cites a criminal case, *People v. Williams* (2009) 170 Cal.App.4th 587, for that proposition. However, the primary concern that the court cited in that case—that "prior convictions minimize the risk the jury would be tempted to punish the defendant for the uncharged acts"—does not apply to a civil case. (*Id.* at p. 610; see also *People v. Ewoldt* (1994) 7 Cal.4th 380, 405 [circumstance that uncharged acts did not lead to criminal convictions "increased the danger that the jury might have been inclined to punish defendant for the uncharged offenses, regardless whether it considered him guilty of the charged offenses"].)[7]

Finally, Winick claims that Respondents caused unfair prejudice by arguing that Winick's prior arrests were relevant to issues beyond emotional distress damages, such as his knowledge that attendance at the Golden Globes without a ticket was "likely to cause a problem." However, the trial court indicated in its initial in limine ruling that such a purpose for the evidence would be proper. Even if the trial court later decided to limit the evidence to the issue of emotional distress, consideration of the evidence for the purpose that Respondents suggested—i.e., Winick's intent—was not unfairly prejudicial. That purpose was permissible under Evidence Code section 1101, subdivision (b). As Respondents suggested, the prior incidents leading to Winick's arrest were relevant to show that he understood that his presence

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[7] In any event, as mentioned above, it appears from the record that at least two of Winick's prior arrests did result in convictions that were later expunged.

at the awards ceremony without permission was likely to result in interference with Hilton's business. (§ 602, subd. (k); *In re Ball* (1972) 23 Cal.App.3d 380, 386 [describing the element of intent under former section 602, subdivision (j) as substantial certainty that a party's conduct would result in interference with Disneyland's business].)

3. The Trial Court Did Not Abuse its Discretion in Issuing a Permanent Injunction

Winick argues that the injunction the trial court ordered is improper because "there was no evidence of prior trespasses or a threat of continued trespass." We reject the argument.

We review the trial court's decision to grant a permanent injunction for abuse of discretion. (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 314.) The trial court's exercise of its discretion must be supported by the evidence. " ' " '[T]o the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, [we] review such factual findings under a substantial evidence standard.' " ' " (*Ibid.,* quoting *Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 647 (*Salazar*).)

A permanent injunction is " 'an equitable remedy for certain torts or wrongful acts of a defendant where a damage remedy is inadequate. A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action for tort or other wrongful act against a defendant and that equitable relief is appropriate.' " (*Salazer, supra,* 245 Cal.App.4th at p. 647, quoting *Bensara v. Mitchell Silberberg & Knupp* (2002) 96 Cal.App.4th 96, 110.) A permanent injunction "is an appropriate remedy for a continuing trespass." (*Allred v. Harris* (1993) 14 Cal.App.4th 1386, 1390 (*Allred*), citing 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 605, pp. 704–705.)

The trial court's decision to issue the permanent injunction was an appropriate exercise of its discretion and was supported by substantial evidence. In its minute order granting the injunction, the trial court explained that Hilton "presented substantial evidence that Winick has continually attended private award shows at the Hotel without proper credentials and maintains he has a right to do so." The evidence supports this conclusion. Winick testified at his deposition about the prior event that he attended at the Hotel in 2008 without authorization.[8] In addition, the jury in this case of course also found that Winick trespassed at the Golden Globes in 2012.

Winick also admitted attending the Golden Globes awards about 20 times. Winick claimed that he was "mainly . . . a guest of somebody" at those events. However, the trial court was entitled to view that testimony with skepticism in light of Winick's history.

Winick's statements also support the trial court's conclusion that he believes he has a right to attend such events. Winick testified that the public is free to come and go at the Hotel on the day of the Golden Globes.

Winick's testimony also suggests a belief that, no matter where he is, he is not trespassing until he is asked to leave. He testified during his deposition that a person who is "caught in a

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[8] Winick testified that one of his prior arrests concerned an event for Clive Davis at the Hotel that he attended without possessing any authorization. Winick left after he took a picture of Lindsay Lohan and Lohan's assistant started screaming. Winick was cited for resisting arrest. He later sold pictures that he took at the event.

ballroom without proper authorization or a ticket" cannot be arrested just for being in the ballroom. "Only you can [*sic*] arrested if you're asked to leave and you refuse to leave." He later elaborated: "You could be arrested for anything, but you really can't be arrested for trespassing unless someone asks you to leave." He expressed the same view when testifying at trial. When asked about his emotional reaction to the criminal case arising from the 2012 incident, he testified, "I was frustrated that they brought a case because I didn't break any laws. You cannot be arrested for trespassing unless you refuse to leave." He persisted in this view even after the jury found that he had trespassed. In opposing Hilton's motion for an injunction after trial, Winick filed a declaration in which he criticized Respondents' counsel for filing the trespass complaint in this case "even though they understand there is no trespass case unless you refuse to leave after being asked."

Winick's belief is incorrect. Under section 602, subdivision (k)—the provision at issue in this case—a person is guilty of criminal trespass if he or she enters property "for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession." There is no requirement under that subdivision that the trespasser first be asked to leave. Winick's belief that he is free to attend any private function until he is asked to leave is not only inconsistent

with the law,[9] but it also supports the trial court's finding that "Winick is likely to continue to trespass against the Hotel by attending future award ceremonies without a valid ticket, media credential or invitation."

The trial court also reasonably concluded that a damage award would be inadequate to remedy the harm from future trespassing incidents. As in this case, a successful civil claim against Winick is likely to result in only nominal damages, without any means to recover the attorney fees expended to prosecute the case. Nor is the possibility of criminal enforcement sufficient to avoid future harm. Arrest alone cannot prevent future disruptions, as there is no guarantee that Winick could be detained before his efforts to photograph celebrities have resulted in a disturbance. And Winick's insistence that he did nothing wrong with respect to the incident at issue in this case, or in any of the previous incidents leading to his prior arrests, suggests that the possibility of criminal sanctions is not a meaningful deterrent.

The injunction that the trial court issued is narrow and does not preclude Winick from attending any event that he is authorized to attend. The injunction is supported by the evidence and by the possibility of future harm that could not be adequately remedied through a claim for damages. We therefore affirm.

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[9] In addition to reflecting an incorrect view of the criminal law, the belief ignores Hilton's rights as a property owner. "As a general rule, landowners and tenants have a right to exclude persons from trespassing on private property; the right to exclude persons is a fundamental aspect of private property ownership." (*Allred, supra,* 14 Cal.App.4th at p. 1390.)

4. The Trial Court's Ruling Granting Summary Adjudication on Winick's Bane Act Claim is Moot in Light of the Jury Verdict

Winick argues that the trial court erred in granting a pretrial motion for summary adjudication on his claim under the Bane Act. (Civ. Code, § 52.1.) Civil Code section 52.1, subdivision (a) prohibits persons from interfering, or attempting to interfere, by "threat, intimidation, or coercion" with the exercise or enjoyment of constitutional rights. The trial court granted summary adjudication against Winick on his Bane Act claim on the ground that his arrest, even if wrongful, did not satisfy the requirement to show a "threat, intimidation, or coercion."

Citing a case that was decided after the trial court's ruling, *Cornell v. City and County of San Francisco* (2017) 17 Cal.App.5th 766, Winick argues that the coercion inherent in a wrongful arrest is sufficient to meet the "threat, intimidation or coercion" element under Civil Code section 52.1, subdivision (a). Winick argues that, under *Cornell*, if his arrest was wrongful the only remaining issue for his Bane Act claim was the disputed factual question whether Bocci made the arrest " ' "with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by" ' " the constitutional right at issue. (*Cornell*, at p. 803.) Under Winick's analysis, the jury should have been permitted to decide the "question of fact" whether Bocci acted with the particular purpose of depriving Winick "of his right to be free from arrest without probable cause." (*Id.* at p. 804.)

However, the jury *did* decide that factual question. The jury's finding in its special verdict that Bocci had a "reasonable good faith belief" that Winick had committed a crime when Bocci

placed Winick under arrest precludes any finding that Bocci had the particular purpose to arrest Winick without probable cause.

That finding makes any error in the trial court's summary adjudication ruling moot. "When the trial court commits error in ruling on matters relating to pleadings, procedures, or other preliminary matters, reversal can generally be predicated thereon only if the appellant can show resulting prejudice, and the probability of a more favorable outcome, *at trial*." (*Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 833.) The jury's verdict here precludes a finding of prejudice from the trial court's alleged error.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.