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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LUZELBA MANSOUR et al., Plaintiffs and Appellants, v. LESLIE A. JILLSON et al., Defendants and Respondents.	B262650 Los Angeles County Super. Ct. No. BC493899

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Feldsott & Lee and Jacqueline Pagano for Plaintiffs and Appellants.

Severson & Werson, Jan T. Chilton, Erik Kemp, Adam A. Hutchinson and Dan Ernst for Defendants and Respondents.

INTRODUCTION

Defendants and respondents Design Build Associates, Inc. and Leslie A. Jillson were hired by a homeowners association to provide construction-consulting services in connection with repairs to a condominium owned by plaintiffs and appellants Luzelba and Zaki Mansour. The repairs, which included abatement of extensive mold, termite damage, wood rot, lead, and disturbed asbestos, were required under a settlement agreement between the Mansours and the homeowners association because of water damage to the condominium. Once the cleanup was complete, the Mansours sued defendants for trespass to real property and conversion of personal property, alleging defendants entered the condominium without their permission and removed the interior, appliances, fixtures, furniture, and other personal property without their consent. The trial court granted defendants' motion for summary judgment on two grounds: the Mansours' claims were barred by res judicata based on an earlier arbitration award in favor of the homeowners association, and the Mansours did not raise triable issues of fact showing defendants were responsible for damage to their condominium or for removing any personal property. Because we agree there is no evidence defendants committed trespass or converted the Mansours' personal property, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The First Lawsuit and Settlement

In May 2007, in case no. BC371493 ("the first case"), condominium owners Alexandra Kusion and Ian Rowe (unit 237), sued their upstairs neighbors, Luzelba and Zaki Mansour (unit 337) and their homeowners association, Marina Strand Colonies #1 Home Owners Association, for water damage to their unit. In response, the association claimed the water damage was caused by a Jacuzzi in the Mansours' master bathroom, as well as other leaks from the Mansours' plumbing. The Mansours filed a cross-complaint against Kusion, Rowe, and the association, alleging various causes of action premised on the theory that the water damage was caused by a leaking common roof over units 237 and 337. Specifically, the Mansours contended the water flowed through the common roof, passed by gravity through their unit (no. 337), and ultimately

damaged unit 237 below. The Mansours also claimed the leaky roof caused water damage and mold in their own unit.

In March 2010, the Mansours and the association settled the cross-complaint in the first case.[1] Under the terms of the settlement, the association promised to pay the Mansours $350,000 plus attorneys fees and costs, to make repairs, and "to remediate the Mansours' Unit." The settlement also required the association to arrange for a certified industrial hygienist to "perform mold remediation in Unit 337 . . . [and] issue a mold clearance for Unit 337." Further, the settlement provided, "Association shall be responsible for all wood rot and termite repairs to all perimeter walls and ceiling of Unit 337." Among other things, the repairs would require removal of the unit's drywall and compliance with Air Quality Management District asbestos requirements.

2. Defendants Oversee Repairs to the Mansours' Condominium

The association retained Leslie A. Jillson and Design Build Associates, Inc., the defendants in this case (no. BC493899), to consult on the repair and remediation of the Mansours' condominium. Jillson, an owner and vice president of Design Build Associates, was the employee principally responsible for fulfilling Design Build's contract with the association. In their role as construction consultants, defendants were responsible for: (1) helping the association with construction budgets; (2) coordinating contract documents; (3) advising the association on how to separate the construction into different projects and contracts; (4) assisting the association with the bid process for the projects and contracts; (5) developing a schedule; (6) providing "administrative, consulting and related advisory services as required to coordinate work of the contractors, engineers, architects and/or subcontractors"; (7) inspecting the ongoing construction and advising the association; (8) maintaining change orders and accounting records; (9) receiving certificates of insurance; and (10) obtaining necessary releases from the contractors, engineers, architects, and subcontractors. Notably, defendants did

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[1] Kusion and Rowe, the owners of unit 237, were not a party to this settlement.

not agree to act as a general contractor, control the project site, or assume responsibility for either the construction or the people and businesses executing the project.

On May 11, 2010, Jillson met with Zaki Mansour to discuss the repairs and establish a tentative work schedule. Mansour sent Jillson a follow-up email the next day. He wrote, "It was very nice meeting you . . . for the purpose of inspecting and formulat[ing] a plan to effectuate and accomplish the settlement agreement that was reached between the MSC#1 HOA and us." Mansour insisted, given the "mold, termite and wood rot" throughout, "this unit Must Be gutted and Stripped." He agreed to work with Jillson, and thanked him for his "understanding and cooperation in assist[ing] us resolving this matter."

Before moving forward, Jillson "requested a report from an industrial hygienist to determine the scope of abatement for interior mold, asbestos, and/or lead paint." On May 12, 2010, the hygienist's preliminary tests confirmed the presence of disturbed asbestos in the condominium—as well as mold and lead paint. Apparently, the asbestos was disturbed when the association removed the unit's drywall. Discovery of the disturbed asbestos, in turn, required a "Procedure 5 cleanup," including stripping the unit to the studs and changing the locks to limit access to the contaminated area. The association retained Del Mar Pacific Construction and Janus Corporation to execute the hygienist's plan to remediate and abate the asbestos, mold, and lead in the unit. On or around August 20, 2010, Del Mar and Janus removed the fixtures, cabinets, and remaining drywall from the Mansours' unit, and placed all salvageable fixtures and personal property onto pallets wrapped in plastic.

3. The First Arbitration

Meanwhile, on August 10, 2010, the Mansours notified the association of their intent to pursue binding arbitration for breach of the settlement in the first case. On September 27, 2010, Zaki Mansour discovered "the total obliteration and destruction of MANSOUR UNIT," including the removal of personal property he claimed was worth $500,000. On October 19, 2010, the Mansours filed an arbitration brief in the first case. They demanded "damages for all detriments proximately caused by the subject breach

by the ASSOCIATION." Among the claimed damages were "$300,000 for damages to personal property" including mirrors ($30,000), closet cabinets ($10,000), tiles and flooring ($200,000), a steamer ($2,000), special ceiling paint ($15,000), shower doors and plumbing fixtures ($30,000), and audio wiring ($15,000).

Throughout 2011, the Mansours engaged in extensive discovery in the arbitration proceeding. Indeed, they deposed Jillson three times. After two days of hearings, which included Jillson's live testimony, the arbitration award was filed April 30, 2012. The arbitrator concluded that "while the Mansours were greatly damaged and inconvenienced due to lack of maintenance at Marina, they have been compensated for those issues as resolved by the March 10, 2010 agreement." He found in favor of the association, and ruled the Mansours "shall take nothing in this arbitration."

4. The Second Lawsuit and Subsequent Arbitration Proceedings

Notwithstanding their arbitration loss in April 2012, for the next two years, the Mansours would press their claims in a second lawsuit and in a second arbitration proceeding. In the summer of 2012, the Mansours sent the association a letter demanding it fix the gutted condominium under the settlement. Then, on October 16, 2012, the Mansours filed suit against defendants in this case. They alleged two causes of action stemming from the purported destruction of their condominium.[2] In the first case of action, for trespass to real property, the Mansours alleged that "within the last year," defendants, "without plaintiffs' consent and/or permission, express or implied," entered the condominium "and completely removed all of the interior thereof, including all fixtures and personalty, stripping [the unit] of its interior walls (drywall, tile, ceilings, floors and appurtenances) and all plumbing and electrical, thereby demolishing same as a condominium residence and rendering [it] completely uninhabitable." In the second cause of action, for conversion of personal property, the Mansours alleged that

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[2] The complaint's caption lists a third claim—trespass to personal property—that is not listed as a separate cause of action in the body of the complaint. However, the Mansours did not dispute defendants' contention that their complaint stated only two causes of action.

within the last year, "defendants, in destroying the [unit] as above alleged, further removed therefrom all appliances, lighting and plumbing fixtures, electrical fixtures, furniture and other personal property of the plaintiffs . . . . "

On November 30, 2012, the Mansours moved to vacate the arbitration award in their earlier case. In their motion, they characterized the arbitrator's award as a "surprise ruling" involving "the never agreed-upon destruction of the condominium unit." On February 25, 2013, the court denied the motion to vacate. The Mansours did not seek reconsideration of the court's order, and did not appeal the subsequent judgment confirming the award. On April 19, 2013, defendants filed a first amended answer in this case, asserting, among other things, that the action was barred by res judicata based on the April 2012 arbitration award.

The Mansours initiated a second arbitration claim against the association with a letter to the arbitrator asserting that the association "authorized the complete demolition of the interior of our client's unit (#377) and even changed the locks on our client's unit in order to effectuate same. . . . The Association was never authorized to destroy the interior of our client's unit." Shortly thereafter, they filed a second arbitration petition to enforce the settlement and compel repairs. The petition alleged the association changed the locks on their unit, disposed of their personal property, was required to repair and reconstruct the gutted condominium, and had still not repaired the common areas. They asked the arbitrator to award them $563,687.90 in damages.

The second arbitration began on May 20, 2014, and the award was issued July 31, 2014. Though the arbitrator determined the association had removed the drywall and fixtures in the condominium, he noted, "[t]o what extent [the fixtures] were saved is unknown. There are plastic wrapped appliances of an unknown nature in the unit. Other than references to the invasive destruction in this and the prior arbitration, very little evidence has been produced. The claim is addressed in Claimants' brief only as to the event and the egregiousness of it. Certainly, there is not enough evidence for this Arbitrator to determine if the tear out was justified. Nor is he able to make an informed award as to damages, if any. The event, however, has been established."

Accordingly, the arbitrator denied the claim without prejudice. The Mansours subsequently filed a third arbitration petition, in which they again argued that the association "entered [the condominium], gutted the property, removed all the fixtures, and destroyed them in the process."

5. Summary Judgment Proceedings

On May 23, 2014, defendants filed a motion for summary judgment and/or summary adjudication in this case. While the Mansours have failed to provide us with the memorandum of points and authorities filed in support of that motion, it appears, based on the other summary judgment papers in the record, defendants argued the Mansours' claims were barred by res judicata because the same claims, subject matter, and damages were the subject of a binding arbitration between the Mansours and the association, the arbitrator ruled in favor of the association, the arbitrator's award was confirmed in a superior court judgment, and defendants were in privity with the association.[3] Defendants argued in the alternative that judgment should be entered in their favor because they did not engage in any conduct that could constitute trespass or conversion. As to both causes of action, defendants contended the Mansours could not establish lack of consent. As to the conversion cause of action, defendants also argued the Mansours could not establish that defendants interfered with the Mansours' ownership of or right to possess the fixtures and personal property in the condominium. Defendants noted they were hired as construction consultants for repairs required under the settlement, the association hired contractors to perform the actual work, and defendants did not remove or touch any fixtures or personal property in the condominium, or direct others to do so.

The court agreed with defendants and granted the motion for summary judgment, concluding, based on the arbitration award in favor of the association, that the

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[3] It is the appellant's burden to provide an adequate record on appeal. To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.)

Mansours' claims were barred by res judicata because defendants were in privity with the association. The court also found, in the alternative, that the Mansours failed to raise triable issues of fact regarding defendants' responsibility for the damage to their unit. On November 17, 2014, the court entered a judgment of dismissal, and the Mansours timely appealed.[4]

CONTENTIONS

The Mansours contend the court erred by granting summary judgment in favor of defendants because defendants were not parties to the settlement, the current claims seek damages for defendants' independent torts, and the issues raised in this lawsuit were not previously adjudicated in the arbitration proceedings. The Mansours also contend there were triable issues of fact regarding whether defendants trespassed, destroyed the interior of the condominium, and absconded with the Mansours' property.

DISCUSSION

1. Standard of Review

"A party is entitled to summary judgment only if there is no triable issue of material fact and the party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. (*Id*. subd. (p)(2).) If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact. (*Ibid*.)

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[4] Though the judgment of dismissal was entered on November 17, 2014, the appellate record contains no evidence the Mansours were served with notice of entry of judgment or with the judgment itself. On November 19, 2014, the Mansours filed a motion for reconsideration, which defendants opposed as untimely. At the Mansours' request, the court treated the Mansours' filing as a motion for new trial, which it denied on March 3, 2015. On our own motion, we take judicial notice of the court's March 3, 2015 minute order as a "[r]ecord[] of . . . any court of this state." (Evid. Code, § 452, subd. (d)(1).) Since a motion for new trial extends time to appeal by 30 days, the notice of appeal filed on March 12, 2015 was timely. (See Code Civ. Proc., § 659 [denial of motion for new trial extends time to appeal by 30 days, subject to 180-day outside limit].)

A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.)

"We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) We must affirm a summary judgment if it is correct on any of the grounds asserted in the trial court, regardless of the trial court's stated reasons. [Citation.]" (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 636–637 (*Grebing*).)

We conduct this review, of course, according to the normal rules of appellate procedure. It is hornbook law that if an appellate brief does not contain reasoned argument and legal authority to support a contention, we may treat the claim as waived. (Cal. Rules of Court, rule 8.204(a)(1)(B); *People v. Stanley* (1995) 10 Cal.4th 836, 852.) "Whether legal or factual, no error warrants reversal unless the appellant can show injury from the error. [Citation.] In order to demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record. Rather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record. [Citations.] Similarly, we may disregard conclusory arguments that are not supported by pertinent legal authority or [that] fail to disclose the reasoning by which the appellant reached the conclusions he wants us to adopt. [Citations.]" (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286–287.) Put another way, "[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived. [Citations.]" (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.)

2. Summary judgment was properly granted on the ground that defendants did not commit trespass or convert the Mansours' personal property.

As discussed, the court granted defendants' motion for summary judgment on two alternative grounds. First, the court held "Defendants have shown that Plaintiffs' claims are barred by the arbitration award in favor of the HOA. Plaintiffs have failed to raise a triable issue of material fact, and summary judgment is therefore granted on this ground." Second, the court held "Plaintiffs have failed to submit any admissible evidence to raise triable issues of fact as to whether Defendants removed or touched any fixtures or personal property in Plaintiffs' unit. . . . Summary judgment is also granted on this ground." As we explain below, defendants made a prima facie showing negating an element of each cause of action and the Mansours presented no admissible evidence to rebut that showing.

2.1 Trespass to Real Property

Trespass to real property is the unlawful interference with its possession. (See Rest.2d, Torts § 157 et seq.; *Allred v. Harris* (1993) 14 Cal.App.4th 1386, 1390.) The tort requires (1) entry; (2) to property owned by plaintiff; (3) plaintiff did not give defendants permission to enter *or* defendants exceeded the permission; (4) actual harm; and (5) defendants' entry was a substantial factor in causing the harm. "Where there is consensual entry, there is no tort, because lack of consent is an element of the wrong." (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 16–17; see Rest.2d, Torts §§ 167, 892 et seq.)

Defendants' moving papers made a prima facie showing that they entered the Mansours' unit only with their consent under the settlement and the consulting contract. The moving papers established that the association and the Mansours entered into a settlement that obligated the association to repair and remediate the Mansours' condominium; the association hired defendants to coordinate the repairs and remediation; the remediation required removal of all drywall; after the drywall was removed, Pacific Health and Safety, an industrial hygiene firm, confirmed the presence

of mold, lead, and disturbed asbestos; under federal, state, and local law, this discovery required a Procedure 5 cleanup; the hygiene firm prepared a Procedure 5 decontamination plan; the association hired Del Mar and Janus to execute the plan; in accordance with the plan, Del Mar and Janus—not defendants—stripped the unit to the studs, isolated contaminated personal property, and limited access to the unit for health and safety reasons.

It was then up to the Mansours, in their opposition papers, to present some evidence to show, for example: (1) defendants assumed control of the remediation efforts or personally destroyed the Mansours' property, (2) defendants' actions exceeded the Mansours' consent, or (3) the resulting damage was unnecessary either to effect the association's obligations under the settlement, or to comply with the legal requirements of the Procedure 5 asbestos abatement.[5] (See generally *Grebing, supra,* 234 Cal.App.4th at pp. 636–637 [if moving party shows nonexistence of any genuine issue of material fact, burden is shifted to opposing party to show otherwise].) They did not meet their burden.[6] The Mansours presented no admissible evidence that defendants disturbed the asbestos; that they created or executed the Procedure 5 plan; that defendants performed or directed the abatement work; or that the actions mandated by

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[5] Asbestos-containing materials are regulated by South Coast Air Quality Management District rule 1403, Cal/OSHA, the Clean Air Act (42 U.S.C.A. § 7401 et seq.), the EPA, and numerous additional local, state, and federal agencies. Rule 1403—Asbestos Emissions from Demolition/Renovation Activities—regulates demolition and renovation of buildings, ships, and waste sites other than single-unit residential buildings, as required by California law. (See Cal. Code Regs. § 93105; Health & Saf. Code, § 39666.) The rule limits asbestos emissions from those activities and governs the removal and disposal of asbestos-containing materials.

[6] In their reply brief, the Mansours argue the court erred by sustaining defendants' objections to the declarations submitted in support of the Mansours' opposition to summary judgment. Because the Mansours did not raise this argument in their opening brief, we do not consider it. (See *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500.) Accordingly, we also reject the Mansours' arguments to the extent they are supported solely by evidence the court excluded below.

the plan were excessive or performed incorrectly. Instead, the Mansours produced correspondence with defendants in which Zaki Mansour instructed Jillson, "this unit Must Be gutted and Stripped and all wood rot, termite infestation, mold removed . . . . " In short, there was no evidence that any of the work performed in the Mansours' condominium exceeded the association's obligations under the settlement or under the law—or that it exceeded the Mansours' consent.

2.2 Conversion of Personal Property

Conversion is "the wrongful exercise of dominion over the personal property of another. . . . The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181.) "Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial." (*Los Angeles Federal Credit Union v. Madatyan* (2012) 209 Cal.App.4th 1383, 1387.)

Here, defendants made a prima facie showing that they entered the Mansours' unit only to perform their obligations under their consulting contract with the association. As consultants, they inspected and coordinated the work, but did not touch or remove anything inside the unit—and were not responsible for the contractors who did. In response, the Mansours failed to raise facts sufficient to support a conclusion that defendants either personally removed the Mansours' personal property or directed someone else to do so, or that any destruction or removal was unnecessary to effect the consented-to remediation. Nor did the Mansours establish that they were entitled to immediate possession of the asbestos and mold-coated items, or that third parties' shrink-wrapping these items actually interfered with their right to possess them. Accordingly, the court properly determined that defendants did not convert the Mansours' personal property.

3. By failing to address the court's alternative ruling that there was no evidence defendants trespassed or converted property, the Mansours have forfeited the issue on appeal.

In any event, the Mansours' failure to discuss the issue in their opening brief forfeits any appellate challenge to summary judgment on that basis. "Though summary judgment review is de novo, review is limited to issues adequately raised and supported in the appellant's brief. [Citations.] 'As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed.' [Citation.]" (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125–126 (*Christoff*).)

Where an appellant seeking reversal of a summary judgment fails to present any argument on an issue that provides an independent ground for summary judgment, we may presume the judgment is correct and may affirm summary judgment on this basis alone. (See, e.g., *Christoff, supra,* 134 Cal.App.4th at pp. 125–126.) In *Christoff,* the defendant moved for summary judgment on the ground that there was no evidence it caused plaintiff's injuries. (*Id*. at p. 125.) The trial court concluded defendant's conduct was not a legal cause of plaintiff's injuries. (*Ibid*.) On appeal, the plaintiff did not present any argument on the issue of causation. (*Ibid*.) The *Christoff* court held the plaintiff forfeited any challenge to the summary judgment insofar as it was based on lack of causation. (*Ibid*.) The court then reasoned that because the trial court's ruling on causation "disposes of the entire complaint," the appellant's failure to challenge the ruling "suffices to affirm summary judgment in favor of defendant." (*Id*. at p. 126.)

In this case, the Mansours provide no argument whatsoever on the court's alternative ground for granting summary judgment—that defendants did not actually trespass or convert the Mansours' personal property. The Mansours' opening brief asks, "Were there triable issues of material fact regarding whether or not Respondents trespassed and destroyed the interior of the UNIT and absconded with Appellants'

property?"—yet they do not attempt to answer their question. Indeed, the Mansours wholly fail to identify the elements of either trespass or conversion. Although they included 12 pages of declarations in their opening brief—every sentence not excluded by the trial court—they do not specify which portions of those declarations establish a triable issue of fact. Instead, apparently assuming we will construct our own theory supportive of their views, they offer us this: "These recitals certainly set forth triable issues of material fact as to whether Respondents did or did not commit the subject torts and whether or not res judicata can apply to prior rulings of the arbitrator."

Quite simply, we are not obligated to cull the record, research relevant authority, or, unassisted by the Mansours, develop an argument to challenge the trial court's conclusions. Having failed to explain how defendants' conduct was the legal cause of their injuries, the Mansours have forfeited their challenge to the court's alternate ground for granting summary judgment. (*Christoff*, *supra*, 134 Cal.App.4th at p. 125.) Our resolution of this issue negates any need to discuss res judicata, the court's alternative ground for granting summary judgment.

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.