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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

MYRTLE PLAZA, INC., Plaintiff and Respondent, v. JUDITH GALLARDO, Defendant and Appellant.	B263650 (Los Angeles County Super. Ct. No. VC063200)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian F. Gasdia, Judge. Affirmed.

Stanley D. Bowman for Defendant and Appellant.

Tredway, Lumsdaine & Doyle, Roy J. Jimenez and Brandon L. Fieldsted for Plaintiff and Respondent.

Judith Gallardo appeals from a judgment awarding Myrtle Plaza, Inc. (MPI) damages for breach of a written lease after a nonjury trial. Gallardo contends (1) MPI is not the real party in interest and has no standing to sue for breach of the lease; (2) the trial court erroneously admitted hearsay; and (3) the written lease is inadmissible under the parol evidence rule and violates the statute of frauds. We conclude that Gallardo has shown no prejudicial error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Parties*

MPI, a corporation, was owned in some manner by Johnny Persico,[1] his brother Caro, and their sister until Johnny's death in July 2013. The Persicos also had a family trust. The evidence in the record does not indicate whether the siblings individually owned the corporation or if it was trust property. MPI rented and managed a commercial complex known as "Myrtle Plaza," located at Myrtle Street and 2nd Street in Downey, California. Johnny managed the rental business and maintained the business records, and was trustee of the family trust until his death, when Caro became trustee. Gallardo is a real estate mortgage broker who leased property from MPI.

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[1] Johnny Persico's legal name is Giovanni Joseph Persico, but he is known as Johnny. Because he and his brother have the same last name, and meaning no disrespect, we refer to them by their first names.

B. *The Commercial Lease and Unlawful Detainer Action*

MPI as lessor and Gallardo as lessee entered into a lease dated May 20, 2009. Johnny signed the lease on behalf of MPI. The lease provided for Gallardo to occupy two units for a five-year term. The cover page of the lease stated in handwriting, "8043 2nd UNITS 101/102," while page 2 of the lease stated in print that the leased premises were suites 101 and 102 of 8036 2nd Street in Downey. The lease stated that MPI owned the property located at 8036 2nd Street. The lease stated that the monthly rent would be $2,990 in the first year and would increase in subsequent years to a maximum of $5,531.50 in the fifth year.

Gallardo never took possession of suites 101 and 102 at 8036 2nd Street. Instead, in September 2009 she took possession of units 101 and 102 at 8043 2nd Street because she preferred those units and they became available after the parties had signed the lease.

In March 2012, Myrtle Plaza LLC filed an unlawful detainer complaint against Gallardo. Myrtle Plaza LLC alleged that it owned the property located at 8043 2nd Street in Downey, that Gallardo had agreed to pay monthly rent of $4,000 for units 101 and 102, and that she owed $20,000 in past due rent. Johnny signed a verification of the complaint on behalf of Myrtle Plaza LLC. The record does not disclose the disposition of the unlawful detainer complaint.

C. *The Unpaid Rent and Sale of the Property*

In February 2013, Johnny notified Gallardo that the property located at 8043 2nd Street would soon be sold. Gallardo received a letter from a real estate broker dated March 13, 2013, stating that Johnny as trustee of the family trust had conveyed

the properties located at 8043 2nd Street, 8036 3rd Street, and 11019 Myrtle Street in Downey to Myrtle Medical Properties LLC.[2] On March 13, 2013, a grant deed was recorded conveying the property from Johnny as trustee to Myrtle Medical Properties LLC. Gallardo vacated unit 102 at the end of March 2013, but she continued to occupy unit 101.

On March 25, 2013, Gallardo wrote a letter to MPI's attorney. The letter stated that the attorney had claimed that Gallardo owed $18,729, but when Gallardo had spoken with Johnny two weeks earlier she calculated the amount due as $17,733.29. The letter also stated, "I paid [Johnny] $4,000 per month." Gallardo offered to pay $17,733.29 in three installments over a period of 120 days. However, Gallardo never made any of those payments.

D. *MPI's Complaint and Subsequent Events*

On May 28, 2013, MPI filed a complaint against Gallardo alleging a single cause of action for breach of contract. MPI alleged that Gallardo had breached the written lease by failing to pay $29,792 in rent.

Johnny died in July 2013. Gallardo vacated unit 101 in June 2014.

E. *The Trial and Judgment*

On December 16, 2014, the trial court conducted a nonjury trial. Caro testified he believed that MPI had changed from a corporation to a limited liability company, Myrtle Plaza LLC, at

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[2] The letter referred to 8036 3rd Street, although the lease referred to 8036 2nd Street.

some time and that the corporation was no longer in existence. He stated that both he and Johnny were owners and officers of the limited liability company. Caro also stated that after his brother's death in July 2013 he was responsible for winding up the corporation's affairs and was MPI's custodian of records.

MPI presented several pages of handwritten notes purportedly showing amounts due for several properties, including $16,000 due for 8043 2nd Street. Caro testified he recognized his brother's handwriting and that his brother had made the records each month in the regular course of business. Gallardo objected to the handwritten notes as hearsay, arguing the business records exception was inapplicable because there was no testimony as to the mode of preparation or source of information, and that the notes were untrustworthy. The trial court overruled the objection and admitted the handwritten notes into evidence.

Gallardo testified she paid monthly rent of $4,000 after the first year of the lease. She testified the written lease never became effective because she never occupied any units at 8036 2nd Street and instead occupied two units at 8043 2nd Street. She stated that the parties had entered into a separate written lease for 8043 2nd Street, but she did not have a copy of that lease.

MPI argued that Gallardo owed $24,891.75 in unpaid rent, plus late fees. MPI argued that the parties had agreed to a "side deal" that Gallardo would pay only $4,000 per month, rather than the contract amount of $5,531.50 per month. MPI argued, however, that the side deal did not amount to a contract modification. MPI sought damages based on the amount stated in the lease.

Gallardo countered that MPI was not entitled to sue for rent because the corporation never owned the property and no longer existed. She argued that a statement dated April 5, 2013 from Myrtle Medical Properties LLC showing the amount of rent that had accrued after the sale of the property indicated that there was no unpaid rent due for the period before the sale, and that the parties had agreed that no prior rent was due. Gallardo also argued that the parties had agreed that any unpaid rent belonged to the new owner.

The trial court issued an oral statement of decision. The court found that MPI owned the property until the property was sold to Myrtle Medical Properties LLC on March 13, 2013, so MPI had standing to sue for unpaid rent. The court stated that the lease identified MPI as the landlord and there was no evidence that any other party had a superior right to enforce the lease. It also stated that the corporation continued to exist for purposes of winding up, pursuant to Corporations Code section 2010, subdivision (a), and that Caro had the authority to act on behalf of MPI as "the person who is in charge of winding up the affairs of this corporation in whatever form it may now exist—beneficiary of a trust, trustee of this trust, executor of his brother's estate—I don't know what status—but it appears that the trust is somehow involved."

The trial court found that the agreed monthly rent after the first year was not the amount stated in the lease, but instead was $4,000 as shown by the handwritten notes and Gallardo's testimony. The court found that the written lease in evidence was the governing lease, that there was no other lease, and that the parties had modified the lease by making the rent $4,000 after the first year, as shown by the handwritten notes. The

court found that Gallardo owed MPI $17,548.39 in unpaid rent and entered a judgment awarding MPI that amount. The court later awarded MPI $34,782.74 in attorney's fees on a noticed motion.

Gallardo timely appealed from the judgment.

CONTENTIONS

Gallardo contends (1) MPI is not the real party in interest and has no standing to sue for breach of the lease; (2) the handwritten notes are inadmissible hearsay and do not satisfy the business records exception; and (3) the written lease is inadmissible under the parol evidence rule and violates the statute of frauds.[3]

DISCUSSION

A. *MPI Has Standing To Sue as a Real Party in Interest*

Gallardo contends MPI has no standing to sue for breach of the lease because it does not own the property. She argues that

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[3] While Gallardo briefly stated in her opening brief that she intended to argue the court abused its discretion in awarding $17,548.39 and attorney's fees of over $34,000 to MPI, she provided no separate argument or citation to the record to support this contention, thereby forfeiting those issues. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457 ["'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review'"]; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

Myrtle Medical Properties LLC owns the property and therefore is the real party in interest entitled to any unpaid rent. She also argues that Myrtle Plaza LLC or, more likely, the family trust owned the property before the sale to Myrtle Medical Properties LLC, so the family trust is the real party in interest.

Only a real party in interest has standing to sue to enforce a right. (Code Civ. Proc., § 367 ["Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute"].) A real party in interest is a person possessing the right sued upon under the substantive law. (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 208.)

A party to a contract has standing to sue to enforce the contract. (See *Berclain America Latina v. Baan Co.* (1999) 74 Cal.App.4th 401, 405.) Under Civil Code section 1951.2, a lessor may bring an action for unpaid rent against a tenant who is in breach of a lease. Gallardo does not argue to the contrary. MPI is the lessor under the lease, and Gallardo agreed to pay rent to MPI. We conclude that MPI as lessor under the lease is a real party in interest with standing to enforce the lease regardless of whether MPI ever owned the property.[4]

The cases cited by Gallardo do not support the proposition that only the current owner has standing to sue for breach of a lease. In *American Enterprise, Inc. v. Van Winkle* (1952) 39 Cal.2d 210, the owner of a bowling alley had entered into a long

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[4] The trial court found that MPI has standing to sue as the property owner. We need not decide whether the evidence supports this finding because even if MPI was not the owner, MPI as lessor under the lease has standing to sue for breach of the lease.

term lease for the property, which contained specific provisions requiring the lessee to buy the fixtures and equipment on the property if an eminent domain action was commenced against it. The owner subsequently transferred its entire interest in the property to a third party. In the face of possible eminent domain proceedings, the original owner sought to enforce the furnishings buy-out provision in the lease. The California Supreme Court held that having conveyed its interest in the property, the original owner could not enforce the buy-out provisions. (*Id.* at p. 220.) The lessee's obligation under the lease with respect to buying the personal property arose after the transfer of the property from the original owner to the third party. The corporation lacked standing to sue not because it did not own the property at the time of the lawsuit, but because it did not own the property when the lessee's obligation arose. (*Ibid.*) Here, in contrast, the unpaid rent accrued before the sale to Myrtle Medical Properties LLC at a time when MPI as lessor under the lease was entitled to the rent payments.

The other case law relied upon by Gallardo is equally unavailing. *Del Mar Beach Club Owners Assn. v. Imperial Contracting Co.* (1981) 123 Cal.App.3d 898 involved a construction defect action by a homeowners' association against a general contractor and others. *Del Mar* held that the plaintiff had adequately alleged its standing to sue both as the property owner and in a representative capacity on behalf of its members. (*Id.* at pp. 906-908.) *Friendly Village Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal.App.3d 220 involved a construction defect action by a homeowner's association formed to manage the common areas of a condominium complex. While *Friendly Village* affirmed the trial court's finding that the

homeowner's association lacked standing to bring suit because the association did not have an ownership interest in the property, the decision turned on the fact that the association was seeking *damages* for injury to real property; one of the elements of a cause of action for "injury to real property is the plaintiff's ownership, lawful possession, or right to possession, of the property" which the association could not claim. (*Id.* at p. 224.) Neither *Del Mar* nor *Friendly Village* involved a lessor suing for breach of a written lease for lease payments due prior to sale or transfer of the property. Contrary to Gallardo's argument, neither of these cases supports the proposition that a lessor lacks standing to bring suit for unpaid rent during the lease period.

Gallardo cites the letter dated March 13, 2013 as evidence that after the sale of the property, only Myrtle Medical Properties LLC as the new owner was entitled to recover any unpaid rent. The letter from a real estate broker to Gallardo stated that Johnny as trustee of the family trust had conveyed the property to Myrtle Medical Properties LLC. The letter stated, "All future payments of rent and other sums owing . . . should be paid to the New Owner . . . ."

A prior lessor's interest in rent accrued during the lessor's period of ownership is a personal property right and is not conveyed to the new owner unless the parties expressly agree to convey those rights. (See Cal. Practice Guide: Landlord & Tenant (The Rutter Group 2015) ¶ 2:522.5, p. 2B-217 ["a sale or assignment does *not* transfer the seller/assignor-landlord's claims to *back-due* rent (preexisting rent defaults) *unless* expressly so provided in the instrument of transfer"]; 34 Miller & Starr, Cal. Real Estate (4th ed. 2015) § 34:75, p. 34-231 ["After the sale of leased property, the former landlord can sue and collect rent that

accrued before the date of the sale unless the rents have been assigned to the buyer"]; 29 Williston on Contracts (4th ed. 2003) 74:6, p. 258 ["The assignment of rights under a continuing contract does not imply an assignment of rights of action for previous breaches of the contract"].) The evidence does not support Gallardo's claim that MPI or some other owner of the property assigned to Myrtle Medical Properties LLC the right to collect prior unpaid rent. The letter from the broker cannot be construed as evidence of an actual assignment. In any event, the reference to "[a]ll future payments of rent and other sums owing" is not inconsistent with the understanding that only rent and other amounts becoming due after the sale date were payable to the new owner. Since the law presumes claims for back-due rent are not conveyed unless there is an express agreement so providing, MPI remained the party entitled to enforce the rental contract for periods prior to the sale.

We conclude that MPI is a real party in interest with standing to sue Gallardo for breach of the lease.[5]

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[5] Gallardo's alternative argument, that MPI lacked standing to bring any action on its own behalf because it had "converted" to another entity pursuant to Corporations Code section 1158, subdivision (b)(1) and (2), was not raised below and is deemed waived. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847.) Even if we were to consider the argument, the claim of conversion must fail on this record as Gallardo presented no evidence of an actual conversion taking place, as opposed to a sale of real property from one entity to another.

B. *Gallardo Has Shown No Reversible Error in the Admission of Evidence*

Gallardo argues that the handwritten notes were hearsay as to the amount of unpaid rent and MPI presented no evidence regarding their mode of preparation, time of preparation, and trustworthiness, as required for the business records exception.

An out-of-court statement offered for the truth of the matter asserted is hearsay. (Evid. Code, § 1200, subd. (a).) Hearsay evidence is inadmissible unless it satisfies an exception to the hearsay rule. (*Id.*, subd. (b); *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 608-609.)

The business records exception to the hearsay rule provides, "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness." (Evid. Code, § 1271.)

The trial court determined that the handwritten notes were admissible under the business records exception. We review the court's ruling for abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 308 ["We review a ruling that a business record was admissible under an exception to the hearsay rules for abuse of discretion"].) "'An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] This standard of review

affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law. We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]' [Citation.]" (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1413.)

An error in the admission of evidence is grounds for reversal only if it resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b); see also Code Civ. Proc., § 475.) "'In civil cases, a miscarriage of justice should be declared only when the reviewing court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 799.)

Caro testified that his brother was in charge of managing the rental business and maintaining records, and that he became the custodian of records after his brother's death. He testified that he found the handwritten notes in a safe together with other records after his brother's death. He testified that the handwritten notes were in his brother's handwriting and that his brother had made the notes each month in the regular course of business. He acknowledged, however, on cross-examination that he knew nothing about the handwritten notes until he discovered them in the safe after his brother's death.

We need not decide whether the trial court properly admitted the handwritten notes under the business records exception because we conclude that Gallardo has shown no miscarriage of justice. In her letter dated March 25, 2013,

Gallardo acknowledged that she owed $17,733.29 in rent. She authenticated the letter at trial and answered "Yes" to the question, "Doesn't this letter indicate that you owe a certain sum of money for 8043 Second Street?" There is no evidence that Gallardo paid any part of the amount that she had acknowledged was due, and Caro testified that he never received any rents from Gallardo after he took over the business in July 2013. In light of the evidence presented at trial, there is no reasonable probability that the trial court would have awarded MPI less than the amount it awarded, $17,548.39, if the court had excluded the handwritten notes. Gallardo has not established any miscarriage of justice or prejudicial error and therefore is not entitled to a reversal.

C. *Gallardo Cannot Argue for the First Time on Appeal That the Lease Is Inadmissible Under the Parol Evidence Rule or Violates the Statute of Frauds*

1. *Parol Evidence Rule*

Gallardo argues that the written lease is inconsistent with and contradicts the terms of the parties' agreement because the lease states a different address from the property she actually occupied. She argues that the entire lease therefore is inadmissible under the parol evidence rule.

The parol evidence rule, codified in Civil Code section 1625 and Code of Civil Procedure section 1856, provides that the terms of an integrated written agreement cannot be "contradicted by evidence of a prior agreement or of a contemporaneous oral agreement." (Code Civ. Proc., § 1856, subd. (a); *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343-344.) An integrated written agreement supersedes any prior or contemporaneous

negotiations and embodies the parties' sole agreement. (*Casa Herrera*, at p. 345.)

At trial, Gallardo objected to only the cover page of the lease on the grounds that it was not part of the lease and varied the lease terms.[6] She did not object to the entire lease, as she does now. A party must timely object to the admission of evidence on specific grounds in order to challenge the ruling on appeal. (Evid. Code, § 353, subd. (a).) By failing to make a timely and specific objection to the entire lease at trial, Gallardo forfeited any objection to the entire lease. (*People v. Pearson* (2013) 56 Cal.4th 393, 438; *Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4th 726, 749.)

Moreover, Gallardo did not produce any written agreement apart from the lease itself and does not challenge the court's finding that there was no other lease. Although she testified there was another written agreement, she did not seek to introduce it at trial. Because there was no other written agreement, the lease does not contradict the terms of an integrated written agreement, so the parol evidence rule is inapplicable. If anyone violated the parole evidence rule it was Gallardo, as she sought to offer oral testimony about the terms of another written agreement which she could not produce and which contradicted the terms of the only signed agreement between the parties.

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[6] Gallardo reasserts this argument in her reply brief, arguing that the lease was an integrated written agreement and the cover page impermissibly varied its terms. We conclude that she forfeited this argument by failing to assert it in her opening brief. (*Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 753, fn. 2.)

2. *Statute of Frauds*

Gallado also argues that the written lease violates the statute of frauds because it does not identify with reasonable certainty either the leased property or the amount of rent.

The statute of frauds provides that certain contracts are "invalid" unless the contract, or a note or memorandum of the contract, is "in writing and subscribed by the party to be charged or by the party's agent." (Civ. Code, § 1624, subd. (a).) Among the contracts governed by the statute of frauds is an agreement to lease real property for longer than one year. (*Id.*, subd. (a)(3).) A writing satisfies the statute of frauds if it identifies the subject of the parties' agreement, shows that they made a contract, and states the essential contract terms with reasonable certainty. (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 766.) If a writing includes the essential terms of the parties' agreement but the meaning of those terms is unclear, the writing satisfies the statute of frauds "if extrinsic evidence clarifies the terms with reasonable certainty and the evidence as a whole demonstrates that the parties intended to be bound." (*Id.* at p. 771.)

"'"The primary purpose of the Statute [of Frauds] is evidentiary, to require reliable evidence of the existence and terms of the contract and to prevent enforcement through fraud or perjury of contracts never in fact made.'" [Citation.] Once sufficient written evidence of an agreement is presented, the evidentiary purpose is served, and extrinsic evidence is admissible to clarify ambiguous terms and to reform the writing to correct a mistake, even when the writing is intended to be a complete and exclusive statement of the parties' agreement. [Citations.]" (*Estate of Duke* (2015) 61 Cal.4th 871, 889.)

"Conflicts in the extrinsic evidence are for the trier of fact to resolve, but whether the evidence meets the standard of reasonable certainty is a question of law for the court." (*Sterling v. Taylor*, *supra*, 40 Cal.4th at p. 771.)

A party must object to the admission of evidence at trial on the specific grounds of the statute of frauds in order to raise the issue on appeal. (*Howard v. Adams* (1940) 16 Cal.2d 253, 257; see *Secrest v. Security National Mortgage Loan Trust 2002–2* (2008) 167 Cal.App.4th 544, 551.) Gallardo failed to assert the statute of frauds at trial and therefore forfeited any objection based on the statute of frauds.

Even if we consider Gallardo's argument, we conclude that the written lease satisfies the statute of frauds. The lease is in writing and signed by Johnny on behalf of MPI. Although the lease is ambiguous in identifying the subject property, extrinsic evidence clarifies the matter with reasonable certainty: the parties' conduct shows that the leased premises were the units Gallardo actually occupied. Regarding the amount of rent, the lease states with reasonable certainty the rent in the first year and in each subsequent year. The trial court found that the parties later modified the lease by making the rent $4,000 after the first year, and Gallardo has shown no error in that finding. Thus, the lease includes the essential terms of the parties' agreement, and extrinsic evidence clarifies the terms with reasonable certainty.

DISPOSITION

The judgment is affirmed. MPI is entitled to costs on appeal.

KEENY, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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