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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

631 S. OLIVE LLC,

Plaintiff and Respondent,

v.

GARWACKI & ASSOCIATES et al.,

Defendants and Appellants.

B276087

(Los Angeles County
Super. Ct. No. BC563365)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Reversed and remanded with directions.

Law Offices of Yuri Voronin and Yuri Voronin, for Defendants and Appellants.

Lee Law Offices and W. Dan Lee for Plaintiff and Respondent.

Garwacki & Associates and Raymond Garwacki appeal from a judgment in an unlawful detainer action in favor of respondent landlord, 631 S. Olive LLC. Appellants assert that the three-day notice to pay rent or quit is defective. We agree and reverse the judgment.

FACTUAL AND PROCEDURAL SUMMARY

In September 2013, the parties entered into a five-year commercial lease of an office space. Base rent was to be \$4,030.25 a month, with rent for March 2014 to be abated. The tenant was to share in the operating expenses. Appellants paid a security deposit and first-month rent and moved into a temporary suite. They took possession of the leased premises in mid-December 2013. A dispute arose over improvements to be made by respondent, and appellants paid no further rent.

In October 2014, respondent gave appellants a three-day notice to pay \$42,290.20 in past-due rent. The notice was accompanied by a tenant ledger, indicating that the amount sought consisted of unpaid rent of \$4,030.25 and a late fee of \$403.03 per month, with prorated rent for December 2013. The ledger included entries for unpaid rent and a late fee for March 2014.

In November 2014, respondent filed an unlawful detainer complaint against appellants. Appellants cross-complained. At trial, appellants moved for a nonsuit based on a defective three-day notice, which failed to abate the March 2014 rent. The court took the motion under submission and proceeded with the trial. Respondent's accountant, Young Park, acknowledged that appellants should not have been charged rent for March 2014. However, he offered an alternative calculation of past due rent

that, in addition to the base rent, included rent for use of the temporary suite and appellants' share of the operating expenses, for a total of \$42,643.83. Park admitted that these items were not included in the three-day notice or accompanying ledger, and that appellants had not been given any operating expense statements.

Appellants moved for judgment and later objected to the proposed statement of decision in respondent's favor. The court entered judgment for respondent in the amount of \$88,281.18, plus attorney fees and costs. The court concluded that any inaccuracy in the rent amount demanded in the three-day notice was not prejudicial to appellants because the ledger made clear how the amount was calculated, and the evidence received at trial showed that amount was less than what appellants actually owed. The court also concluded that respondent had not materially breached the lease. It terminated the lease, awarded possession of the premises to respondent, and dismissed the cross-complaint as improperly filed in the unlawful detainer proceeding.

This appeal followed.

DISCUSSION

The only issue on appeal is the validity of the three-day notice to pay rent or quit as required by the unlawful detainer statute.¹ These statutes must be strictly construed; "relief not

¹ Appellants' challenges to the trial court's failure to rule on their motions for nonsuit and judgment and to the correctness of its statement of decision are indistinguishable from their challenge to the validity of the notice.

statutorily authorized may not be given due to the summary nature of the proceedings. [Citation.]” (*WDT–Winchester v. Nilsson* (1994) 27 Cal.App.4th 516, 526.) The statutory three-day notice must contain “the amount which is due.” (Code Civ. Proc., § 1161, subd. 2.)² “A notice which demands rent in excess of the amount due does not satisfy this requirement. [Citations.] This rule ensures that a landlord will not be entitled to regain possession in an unlawful detainer action unless the tenant has had the opportunity to pay the delinquent rent. [Citation.]” (*Bevill v. Zoura* (1994) 27 Cal.App.4th 694, 697.) The requirement has been liberalized in commercial lease cases where the amount “is clearly identified by the notice as an estimate and the amount claimed is not in fact correct, but it is determined upon the trial or other judicial determination that rent was owing, and the amount claimed in the notice was reasonably estimated” (§ 1161.1, subd.(a).)

Respondent relies on section 1161.1, but by its terms that section applies only if the amount included in the three-day notice is “clearly identified by the notice as an estimate.” (§ 1161.1, subd.(a); see *Levitz Furniture Co. v. Wingtip Communications, Inc.* (2001) 86 Cal.App.4th 1035, 1040, fn.4; *Bevill v. Zoura*, *supra*, 27 Cal.App.4th at p.697, fn.2.) Here, it is undisputed that the amount in the notice was not identified as an estimate, thus, section 1161.1 is inapplicable. It also is undisputed that the amount is inaccurate because it includes rent for March 2014, even though the lease provides that rent for that month is abated. That renders the notice defective.

WDT–Winchester v. Nilsson, *supra*, 27 Cal.App.4th 516, cited by respondent, is distinguishable. That case involved two

² Statutory references are to the Code of Civil Procedure.

notices, of which only the second identified the amount due as an estimate. (*Id.* at p. 523.) The appellate court declined to consider a challenge to the validity of the first notice, as that challenge had not been made in the trial court. (*Id.* at pp.526–527.) It focused solely on whether the estimate in the second notice was reasonable. (*Id.* at p.527.) Here, by contrast, appellants preserved their challenge to the accuracy of the amount in the notice, and the notice did not identify that amount as an estimate. Nor did the ledger place appellants on notice that respondent sought payment of rent for the use of the temporary suite or of appellants’ share in the operating expenses, as those items were not included in the ledger.

Because the notice is defective, it cannot support the judgment for unlawful detainer. (See *WDT-Winchester v. Nilsson*, *supra*, 27 Cal.App.4th at p. 534, citing *Kwok v. Bergren* (1982) 130 Cal.App.3d 596, 599–600.)

DISPOSITION

The judgment is reversed, and the trial court is directed to enter judgment for appellants, and upon their application to award them reasonable attorney fees under the lease. Appellants are entitled to their costs on appeal.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.