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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

CHRIS LE FEUVRE, Plaintiff and Appellant, v. DH & MA INVESTMENTS, LLC, et al., Defendants and Respondents.	B268279 (Los Angeles County Super. Ct. No. LC099782)

APPEAL from a judgment of the Superior Court of Los Angeles County. Russell S. Kussman, Judge. Affirmed.

Chris Le Feuvre, in pro. per., for Plaintiff and Appellant.

Zakariaie & Zakariaie and Jack M. Zakariaie for Defendants and Respondents.

Chris Le Feuvre appeals from a judgment which disposes of his claim for breach of contract against DH & MA Investments, LLC, Michael Abaian, and Delaram Hanookai (collectively, DHMA) on collateral estoppel grounds. We affirm the judgment.

FACTS

Le Feuvre entered into a standard commercial lease with DHMA to rent a restaurant and bar located in the city of Sherman Oaks. The lease specified a five-year term to begin "upon close of escrow." Under paragraph 59 of the lease addendum, DHMA was obligated to remove bakery equipment left by a previous tenant prior to close of escrow. The bakery equipment was removed on August 10, 2007.

The lease addendum further specified: "Provided that Lessee is not in default under the terms of this lease, Lessor will grant Lessee two (2), five (5) year options to renew the lease provided that Lessee notify Lessor in writing by certified mail at least six months prior to lease expiration of Lessees intent to exercise said lease options. In the event Lessee fails to notify Lessor in writing in the time frame and manner specified, the lease options shall become null and void." By letter hand-delivered on February 4, 2012, Le Feuvre notified DHMA he wanted to exercise his five-year renewal option.

A. The Unlawful Detainer Action

On January 16, 2013, DHMA filed an unlawful detainer action against Le Feuvre for unpaid rent totaling $103,400. Le Feuvre filed for bankruptcy on March 4, 2013. The next day, he filed a notice to stay the proceedings in the unlawful detainer action under the Bankruptcy Code (11 U.S.C. § 362).

DHMA opposed a stay, arguing a bankruptcy proceeding does not stay an action for possession of a commercial property if the lease expires prior to the bankruptcy filing. (11 U.S.C. § 362(b)(10).) The trial court set an evidentiary hearing to determine the issue. At the hearing, presided over by the Honorable James Kaddo, Le Feuvre and Michael Albian, a principal of DHMA, were sworn and testified. Judge Kaddo admitted into evidence a copy of the lease, the February 4, 2012 letter by Le Feuvre purporting to exercise his option to renew, and the three day notice to quit served on Le Feuvre.

In an order dated March 15, 2013, Judge Kaddo found Le Feuvre "admitted being so notified" that escrow on the lease closed on July 13, 2007. As a result, the lease expired five years later, on July 13, 2012, approximately eight months before Le Feuvre's bankruptcy filing. Judge Kaddo rejected Le Feuvre's argument that escrow closed on August 10, 2007, when the bakery equipment was removed pursuant to paragraph 59. He found Le Feuvre's "assertion that the lease was extended pursuant to paragraph 59 of the Addendum and his denial of being served with the 3 day notice (exh. 2 and exh. 3) were not supported by the evidence and defendant did not preponderate."

Additionally, Judge Kaddo found the lease was not renewed as a result of Le Feuvre's hand-delivered February 4, 2012 letter. Under the terms of the lease addendum, the renewal option had to be exercised on or before January 13, 2012, six months prior to the lease expiration, and sent by certified mail. Judge Kaddo found Le Feuvre's February 4, 2012 letter was not sufficient because "(1) it was untimely and (2) it was not in the manner set forth in the lease." Because the lease had expired prior to

Le Feuvre's bankruptcy filing, he was not entitled to a stay. Judgment was entered for DHMA and the lease forfeited.

B. The Current Action

Le Feuvre sued DHMA on February 13, 2013, on a number of theories. After a succession of demurrers and motions to strike,[1] Le Feuvre filed a second amended complaint which alleged one cause of action for breach of contract. Le Feuvre alleged DHMA breached the lease in three ways: (1) DHMA violated his right to the quiet possession and enjoyment of the premises by filing various unfounded three day notices to quit and unlawful detainer actions; (2) DHMA improperly denied his right to extend his lease per the terms of the lease addendum; and (3) DHMA failed to return his security deposit.

On July 20, 2015, DHMA filed a motion for judgment on the pleadings on the ground the breach of contract claim was barred by the doctrines of collateral estoppel or res judicata. DHMA argued the only remaining claim open to Le Feuvre was the claim that DHMA improperly denied his right to extend the lease. DHMA asserted the findings reached by the court in the unlawful detainer action regarding when the lease expired and the sufficiency of Le Feuvre's February 4 letter were binding in this action and those findings rendered his claim baseless. DHMA requested the trial court take judicial notice of the March 15, 2013 order from the unlawful detainer action. The trial court

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[1] A more thorough examination of the procedural background leading to the motion for judgment on the pleadings may be found in our previous opinion, *Le Feuvre v. DH & MA Investments, LLC* (April 12, 2016, B261840) [nonpub. opn.], in which Le Feuvre appealed the trial court's order granting DHMA's motion to strike under the anti-SLAPP statute.

granted DHMA's motion for judgment on the pleadings, and judgment was entered on September 1, 2015. Le Feuvre appealed.[2]

DISCUSSION[3]

Le Feuvre contends collateral estoppel does not apply to bar his breach of contract claim in this matter because the March 15, 2013 minute order in the unlawful detainer action is not a final judgment and the claims are not identical. Le Feuvre also contends the failure to deem the unlawful detainer action and this action related under rule 3.300 of the California Rules of Court demonstrates the judge in the unlawful detainer action did

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[2] Le Feuvre is self-represented on appeal. Contrary to his contention, this does not afford him special treatment. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.) To the extent Le Feuvre takes issue with his trial counsel's performance in the unlawful detainer action or in this action, that is the subject of a separate lawsuit.

[3] In addition to his contention that collateral estoppel does not apply, Le Feuvre also attempts to retry the facts of his case. He urges us to allow him the opportunity to testify and bring two witnesses to oral argument. He also presents evidence to support his argument that paragraph 59 served to extend the close of escrow and that DHMA's principals committed perjury in their discovery responses in the unlawful detainer action. This evidence is contained in a notice of lodging of exhibits, which includes an extensive declaration by Le Feuvre, his bank statements, cashier's checks, photos of the leased premises, a USB flash drive, and recordings. DHMA moves to strike this notice of lodging. As we do not operate as a trier of fact, but instead review judgments from the trial courts, we deny his request to testify and to bring other witnesses to testify at oral argument. In addition, we grant the motion to strike.

not intend his ruling to have any collateral estoppel or res judicata effect in this case. Finally, Le Feuvre contends collateral estoppel does not preclude consideration of the remaining issues raised in his breach of contract claim, namely, that DHMA breached the contract by failing to return his security deposit and by depriving him of the quiet possession and enjoyment of the premises. None of these arguments have merit.

I. Collateral Estoppel Bars Relitigation of Factual Issues Decided in the Unlawful Detainer Action

A. Standard of Review

We independently review the trial court's decision to grant or deny a motion for judgment on the pleadings to determine whether the complaint states a cause of action. (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1144.) "In determining whether the pleadings, together with matters that may be judicially noticed, entitle a party to judgment, a reviewing court can itself conduct the appropriate analysis and need not defer to the trial court. [Citation.]" (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) Likewise, "[w]hether the doctrine of res judicata applies in a particular case is a question of law which we review de novo." (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 228; *Ayala v. Dawson* (2017) 13 Cal.App.5th 1319, 1325 (*Ayala*).)

A. Law on Collateral Estoppel

The doctrine of res judicata encompasses both claim and issue preclusion. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*).) Claim preclusion " 'prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' " (*Ibid.*)

Issue preclusion, also known as collateral estoppel, "precludes relitigation of issues argued and decided in prior proceedings." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; *Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828–829.) Collateral estoppel "applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings, supra,* 61 Cal.4th at p. 825.) An unlawful detainer judgment usually has limited collateral estoppel effect because it typically follows a summary proceeding focused only on deciding a party's right to immediate possession of property. (*Malkoskie v. Option One Mortgage Corp*. (2010) 188 Cal.App.4th 968, 973 (*Malkoskie*).) "But when litigants to an unlawful detainer proceeding fully try other issues besides the right of possession, the unlawful detainer judgment is conclusive as to those other litigated issues." (*Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371.)

In *Ayala, supra,* 13 Cal.App.5th 1319, a tenant was precluded under collateral estoppel principles from relitigating the issue of fraud in the inducement. In a previous unlawful detainer action, the tenant had moved to quash the service of summons for lack of jurisdiction. The tenant argued there was never a landlord-tenant relationship because the landlord duped him into signing the lease by misrepresenting that it was an installment sale contract. (*Id.* at p. 1323.) According to the tenant, they had an oral agreement that the tenant would pay the mortgage on the property, manage the property, and the landlord would transfer the property to him once the mortgage was paid off. The tenant claimed he trusted the landlord because the landlord was his real estate broker. (*Id.* at p. 1322.) After an

"evidentiary hearing that ran six and a half courtroom hours, taking testimony from both parties, and admitting extensive documentary evidence[,]" the court rejected the tenant's motion to quash, finding there existed a valid landlord-tenant relationship. (*Id.* at p. 1330.)

In a separate action, the tenant sued the landlord for fraud and breach of contract, setting forth the same theory of fraud in the inducement he argued in the unlawful detainer action. The landlord moved for summary judgment against the tenant on collateral estoppel grounds, arguing the tenant was precluded from relitigating whether the lease was fraudulently obtained. (*Ayala, supra,* 13 Cal.App.5th at p. 1324.) The summary judgment motion was granted and affirmed on appeal. (*Ibid.*)

The appellate court determined that, despite the summary nature of the unlawful detainer action, the tenant's fraud in the inducement theory was actually litigated. (*Ayala, supra,* 13 Cal.App.5th at p. 1330.) The tenant presented testimony and exhibits supporting his theory in an evidentiary hearing. By finding there existed a landlord-tenant relationship, the court in the unlawful detainer action necessarily found the landlord did not commit fraud and the tenant was barred from asserting he did in a separate action. (*Id.* at p. 1331.)

B. Analysis

Here, collateral estoppel applies to bar relitigation of the issues decided by Judge Kaddo, including when the lease expired, whether escrow was extended under paragraph 59, and whether the lease was renewed. These issues were addressed in the unlawful detainer action, where they were actually litigated and necessarily decided in a final adjudication against Le Feuvre and in favor of DHMA. All four of the requirements listed by the

California Supreme Court in *DKN Holdings* for the application of collateral estoppel are present.

1. The order was a final adjudication of the issue.

First, the March 15, 2013 minute order setting forth the court's reasoning and factual findings in the lawful detainer action was a final adjudication for purposes of collateral estoppel.

In *Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1564–1565 (*Border Business Park*), the court held a minute order sustaining a demurrer in the prior action was sufficiently final for purposes of collateral estoppel despite the lack of a judgment. There, the plaintiff "effectively acquiesced in the ruling by failing to obtain a final judgment and filing an appeal, and instead promptly presenting a Government Code claim asserting the breach of contract claim. Having decided not to pursue the remedy available to it, it should not now be able to contend that the order is not a final adjudication of the issues it addressed." (*Border Business Park, supra,* at pp. 1565-1566.)

Similarly here, Le Feuvre failed to appeal the unlawful detainer judgment and instead pursued his breach of contract claim in this action. Thus, he "should not now be able to contend that the order is not a final adjudication of the issues it addressed." (*Border Business Park, supra,* at p. 1566.)

Le Feuvre relies on *Grable v. Citizens Nat. Trust & Sav. Bank* (1958) 164 Cal.App.2d 710, 714 (*Grable*), for the proposition that a minute order may never be a final adjudication for collateral estoppel purposes. His reliance is misplaced. In *Grable,* the minute order under consideration merely indicated the court's intent to make certain findings. (*Id.* at p. 714.) It was tantamount to a tentative order which the court never made

final. In this case, the minute order was not tentative; it was a final order. We also reject Le Feuvre's contention that the judgment in the unlawful detainer action had to have repeated or referenced the findings made in the March 15 minute order. Le Feuvre presents no authority for this proposition. In fact, this argument disagrees with cases which hold orders, not only judgments, are sufficiently final for collateral estoppel purposes. (*McClain v. Rush* (1989) 216 Cal.App.3d 18, 27–28 [minute order granting summary judgment motion was sufficiently final for issue preclusion purposes]; *Pitzen v. Superior Court* (2004) 120 Cal.App.4th 1374, 1387 [memorandum of decision sufficient]; *Border Business Park, supra,* 142 Cal.App.4th at pp. 1564–1565.)

2. The issues are identical.

Second, the issues in the present action are the same issues that were necessarily litigated in the prior unlawful detainer action.[4] The identical issue requirement "addresses whether 'identical factual allegations' are at stake in the two proceedings." (*Lucido v. Superior Court, supra,* 51 Cal.3d at p. 342.) An issue for purposes of collateral estoppel may include any legal theory or factual matter which could have been asserted in support of or in opposition to the issue which was litigated. (*Border Business Park, supra,* 142 Cal.App.4th at p. 1564.)

In his second amended complaint, Le Feuvre alleged escrow closed on August 10, 2007, when he removed a previous tenant's bakery equipment. According to Le Feuvre, paragraph 59 of the lease addendum required DHMA to remove the bakery equipment prior to close of escrow. DHMA failed to do so, and

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[4] Le Feuvre argues that the causes of action are not identical and therefore res judicata does not apply. We are, however, concerned with issue preclusion rather than claim preclusion.

Le Feuvre accomplished the removal on August 10, 2007. By Le Feuvre's calculation, his lease did not expire until August 10, 2012, and he was not required to exercise his option to renew until February 10, 2012. As a result, his February 4, 2012 notice to renew was timely and DHMA breached the lease by refusing to honor the renewal.

The same issues were raised by Le Feuvre in the unlawful detainer action and rejected by Judge Kaddo, who found escrow closed on July 13, 2007, and the lease expired on July 13, 2012. Under Judge Kaddo's findings, Le Feuvre had to give notice of his intent to renew by January 13, 2012, six months prior to the expiration of the lease. Judge Kaddo found Le Feuvre's February 4, 2012 letter was untimely and not sent by certified mail. Judge Kaddo also rejected Le Feuvre's argument that paragraph 59 extended the close of escrow until the bakery equipment was removed. These factual issues are identical to those raised in the second amended complaint.

As in *Ayala*, Le Feuvre is precluded under collateral estoppel principles from relitigating the same issues in his breach of contract claim as he did in the unlawful detainer action. (*Ayala, supra,* 13 Cal.App.5th at p. 1324.) Judge Kaddo's findings are binding in this action.

3. The issues were actually litigated and necessarily decided.

Third, these issues were actually litigated and necessarily decided in the unlawful detainer proceeding. The record shows this was not a typical summary proceeding focused only on deciding a party's right to immediate possession of property. (*Malkoskie, supra,* 188 Cal.App.4th at p. 973.) Instead, Le Feuvre himself raised the issues by attempting to stay the

proceedings under the Bankruptcy Code. (11 U.S.C. § 362(b)(10).)

As in *Ayala,* the parties participated in an evidentiary hearing lasting two court days. Le Feuvre was represented by counsel during the hearing and testified. Evidence was admitted and considered. The minute order by Judge Kaddo in the unlawful detainer action shows the court's careful consideration of the evidence and arguments. The record shows the issues were actually litigated in the unlawful detainer action. (*Pitzen v. Superior Court, supra,* 120 Cal.App.4th at p. 1387.)

The record also shows the issues were necessarily decided. The trial court was required to determine when the lease expired to rule on Le Feuvre's motion to stay the proceedings. In doing so, the trial court necessarily decided the date of close of escrow, whether paragraph 59 extended the close of escrow, and whether Le Feuvre properly renewed the lease. All of these factual determinations are alleged in Le Feuvre's breach of contract claim. Collateral estoppel prevents him from relitigating these issues.

4. The parties are the same.

Finally, it is undisputed the parties to the unlawful detainer action and this action are the same. To the extent Abaian and Hanookai were not parties to the unlawful detainer action, it is undisputed they are principals of DHMA and thus in privity with it. (*Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 719.) Under these circumstances, the findings in the March 15 minute order in the unlawful detainer action preclude relitigation of the issues raised in the second amended complaint regarding renewal of the lease.

II. The Cases Did Not Need To Be Related

On April 10, 2013, Le Feuvre filed a notice of related case, requesting the unlawful detainer action be deemed related to this matter. That request was denied. Le Feuvre contends the trial court's refusal to deem the unlawful detainer matter and this matter related under Rule 3.300 of the California Rules of Court demonstrates he never intended his rulings to have any effect on this matter. This argument is meritless. Whether two cases are related under Rule 3.300 is irrelevant to whether collateral estoppel precludes relitigation of issues.

III. The Breach of Contract Claim Does Not Survive on the Remaining Theories

Finally, Le Feuvre argues his breach of contract claim is not based solely on DHMA's refusal to honor his renewal option; he also alleged DHMA breached the lease agreement by failing to refund his security deposit and by breaching the covenant of quiet enjoyment as indicated in paragraph 38 of the agreement. Thus, Le Feuvre contends his breach of contract claim survives on these other theories. Not so.

Le Feuvre's claim for breach of the covenant of quiet enjoyment is premised on DHMA's unlawful detainer actions. As discussed in the previous appeal in this matter, DHMA's unlawful detainer actions were protected litigation activity under the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (a); *Le Feuvre v. DH & MA Investment, LLC* (April 12, 2016, B261840) [nonpub. opn.].) As such, these lawsuits and the attendant three day notices to quit may not form the basis for a breach of contract claim. Moreover, Le Feuvre failed to raise the security deposit issue with the trial court. He may not raise it now on appeal. (*Hepner v. Franchise Tax Bd.* (1997)

52 Cal.App.4th 1475, 1486; *Cinnamon Square Shopping Center v. Meadowlark Enterprises* (1994) 24 Cal.App.4th 1837, 1844.)

DISPOSITION

The judgment is affirmed. DHMA to recover its costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.