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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DEBORAH A. PURNELL, Plaintiff and Appellant, v. LARRY EDWARDS et al., Defendants and Respondents.	B267372 (Los Angeles County Super. Ct. No. TC025122)

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

Deborah A. Purnell, in pro. per., for Plaintiff and Appellant.

Law Offices of Dennis P. Block & Associates, Richard Jacobs and Dennis P. Block for Defendants and Respondents.

Deborah A. Purnell and her disabled father were evicted from the home they rented following entry of judgment in an unlawful detainer action. They then filed the instant lawsuit against Audrey and Larry Edwards asserting causes of action including retaliatory eviction, religious persecution and breach of contract. In an earlier appeal we reversed the judgment of dismissal entered after the Edwardses' demurrer to the second amended complaint was sustained without leave to amend. (See *Purnell v. Edwards* (B242063, Oct. 16, 2013) [nonpub.] (*Purnell I*).) On remand the matter was tried to a jury, which returned a defense verdict on all causes of action. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The First Appeal*

According to the allegations of Purnell's pleadings and attached exhibits, she leased a home in Carson from the Edwardses in 2001. The Edwardses were aware her father, who suffered from Alzheimer's disease, would be living in the home.[1] In January 2009 Purnell, who was experiencing financial difficulties, requested a payment plan for past due and current rent. The Edwardses agreed, provided she maintain the proposed payment plan, noting Purnell's failure to do so in the past.

In February 2009 Audrey Edwards informed Purnell a number of items "need to be done by both you and myself to assure that interior and exterior areas are kept up to standards of other homes in the neighborhood." Audrey asked Purnell to "appropriately" maintain the front and back yards, to clear out clutter inside the home and the garage "for insurance as well as safety purposes" and to remove a "large truck in the driveway" that "has been a complaint by neighbors for some time."

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[1] Although Purnell's father was named as a party in certain earlier proceedings, he is not a party to this appeal.

Purnell responded with a strongly worded letter disputing the characterization of the home, contending she had made several improvements at her own expense and intended to invest in additional improvements. Purnell also questioned whether Audrey was troubled by the religious message painted on the back of the truck, which had been parked in the driveway as long as the Purnells had lived at the home. Purnell stated the "criticisms were unfounded, unfair and grossly inconsiderate of the overall circumstances" and demanded to know whether the Edwardses intended to sell the house or rent to another tenant.

Frustrated at the tone of Purnell's response and her history of late payments, the Edwardses withdrew their agreement to the payment plan and initiated eviction proceedings. After she was served with a three-day notice to pay rent or quit premises specifying delinquent rent in the amount of $3,500, Purnell tendered a money order of $1,000, which was rejected. The Edwardses filed an unlawful detainer action soon thereafter. In Purnell's answer she alleged the Edwardses were seeking to evict her and her father in retaliation for refusing to remove their truck and for requesting the Edwardses make certain repairs. She also filed a cross-complaint asserting causes of action including retaliatory eviction, elder abuse, religious persecution and breach of contract. The cross-complaint was apparently struck as not permitted in unlawful detainer actions. On June 5, 2009 judgment was entered in favor of the Edwardses for $6,050 and possession of the premises.

Purnell filed this action on March 4, 2011, asserting causes of action for wrongful eviction, retaliatory eviction, discriminatory eviction, religious persecution, breach of contract, breach of the implied warranty of habitability, malicious prosecution and intentional infliction of emotional distress. After two rounds of amendments, the trial court sustained the Edwardses' demurrer to the second amended complaint without

leave to amend on the ground the issues raised in the cross-complaint had been addressed in the unlawful detainer action involving the same parties. A judgment of dismissal was entered on June 1, 2012.

We reversed on the ground the Edwardses had failed to carry their burden at the pleading stage of establishing Purnell's claims were barred as a matter of law by principles of res judicata (claim preclusion) or collateral estoppel (issue preclusion). (*Purnell I, supra,* at p. 10.) In other words, the Edwardses had failed to show Purnell's defenses had been fully and fairly litigated in the unlawful detainer action. (See *Vella v. Hudgins* (1977) 20 Cal.3d 251, 258 ["[i]n return for speedy determination of his right to possession, plaintiff sacrifices the comprehensive finality that characterizes judgments in nonsummary actions"].)

2. *The Instant Appeal*

As with the previous appeal, the record provided by Purnell is woefully incomplete. The appendix Purnell elected to provide in lieu of a clerk's transcript (see Cal. Rules of Court, rules 8.121, 8.124) lacks relevant pleadings and orders, and there is no reporter's transcript or agreed or settled statement (*id.*, rules 8.130, 8.134, 8.137). According to a minute order contained within the appendix, a jury trial began on May 26, 2015. Before impaneling the jury the court granted the Edwardses' motions in limine to exclude any mention of the previous appeal or the Ellis Act (Gov. Code, § 7060 et seq.) and to bar Purnell from arguing she had been current in her rent at the time she was evicted. The following day Purnell, representing herself, testified and called both Audrey and Larry Edwards as witnesses. By the end of the day the jury returned a special verdict finding against

Purnell and in favor of the Edwardses on all causes of action.[2] Judgment was entered in their favor on July 15, 2015.

CONTENTIONS

Purnell contends the trial court erred by excluding evidence she was current in her rent payments at the time of the eviction, thus depriving her of a fair hearing. She also contends the trial court improperly barred her from introducing evidence about the Ellis Act and refused to give appropriate instructions she had proposed.

DISCUSSION

1. *The Trial Court Did Not Abuse Its Discretion in Excluding Evidence of Purnell's Alleged Payment of Rent*

Trial court rulings on the admissibility of evidence, whether in limine or during trial, are generally reviewed for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 196-197 ["In determining the admissibility of evidence, the trial court has broad discretion. . . . On appeal, a trial court's decision to admit or not admit evidence, whether made in limine or following a hearing pursuant to Evidence Code section 402, is reviewed for abuse of discretion."]; accord, *People v. Alvarez* (1996) 14 Cal.4th 155, 203 ["appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion"]; *Zhou v. Unisource Worldwide, Inc.* (2007) 157 Cal.App.4th 1471, 1476.) "The trial court's error in excluding evidence is grounds for reversing a judgment only if the party appealing demonstrates a 'miscarriage of justice'—that is, that a different result would have

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[2] In summary, the special verdict asked whether the Edwardses had wrongfully evicted, retaliated against, discriminated against, religiously persecuted, intentionally inflicted emotional distress on, breached the contract with or breached the duty of good faith and fair dealing owed to, Purnell.

been probable if the error had not occurred." (*Zhou,* at p. 1480; see Evid. Code, § 354; Code Civ. Proc., § 475.)

Although the record provided is inadequate to determine the basis of the trial court's ruling excluding evidence Purnell had paid the rent on time, we assume the trial court concluded that issue had been conclusively determined against her in the unlawful detainer action.[3] As we explained in *Purnell I*, an unlawful detainer judgment is given preclusive effect only as to issues that were actually, fully and fairly litigated in that proceeding. (*Vella v. Hudgins*, *supra*, 20 Cal.3d at pp. 255-257; *Pelletier v. Alameda Yacht Harbor* (1986) 188 Cal.App.3d 1551, 1557.) On the record then before us—an appeal from a judgment of dismissal following an order sustaining a demurrer—we were unable to conclude the factual bases for Purnell's causes of action for wrongful or retaliatory eviction and breach of contract had been fully litigated in the earlier unlawful detainer action.

The question here, however, does not implicate the same concerns. The sole issue in the unlawful detainer action was whether the Edwardses had a right to possession of the property based on Purnell's nonpayment of rent. (See Code Civ. Proc., § 1174, subds. (a), (b).) Hence, the only issue we can be certain was fully and fairly litigated was whether Purnell had, in fact, paid the rent. Because that issue was finally determined against Purnell after she was accorded an opportunity to litigate that

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[3] We are required to presume the trial court's judgment or order is correct and must draw all inferences in favor of the trial court's decision. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "[E]ven if there is no indication of the trial court's rationale for [its ruling], the court's decision will be upheld on appeal if reasonable justification for it can be found. 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion."'" (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

obligation, the finding she had not paid the rent is entitled to preclusive effect in this action. (See *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371; *Hudec v. Robertson* (1989) 210 Cal.App.3d 1156, 1163.)

Accordingly, the trial court's ruling precluding Purnell from introducing evidence she had paid the rent was by no means an abuse of its broad discretion. Purnell remained free to litigate her affirmative causes of action based on her claims of discrimination and retaliation, which were not necessarily addressed in the unlawful detainer action; and there is no evidence the trial court prevented her from doing so.

2. *The Trial Court Did Not Abuse Its Discretion in Excluding Evidence Related to the Ellis Act*

Purnell's contention the trial court improperly excluded evidence of the Ellis Act is also misconceived. Apparently, Purnell sought to introduce excerpts of documents suggesting that some jurisdictions require landlords to pay relocation costs to tenants displaced when housing units are withdrawn from the rental market under the Ellis Act. (See, e.g., L.A. Mun. Code, § 151.09G.1.)[4]

We surmise Purnell was unable to establish that the house she had rented from the Edwardses was subject to the Ellis Act; that, even if it were, the Edwardses had withdrawn the house from the rental market (see, e.g., *Valnes v. Santa Monica Rent Control Bd.* (1990) 221 Cal.App.3d 1116, 1121-1122 [Ellis Act did not apply to individually rented condominium unit; "Legislature's primary concern was apartment buildings, whose rental units were being lost through demolition of the buildings or conversion

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[4] "The Ellis Act permits owners of property subject to rent control to evict their tenants and go out of business if they comply with certain procedural requirements." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, 18.)

to condominiums"]); or that the City of Carson had adopted an ordinance mandating payment of relocation benefits to eligible tenants displaced from units subject to the Ellis Act.[5] Purnell has similarly failed to establish on appeal the relevance of the proffered evidence to any of her claims against the Edwardses. Accordingly, we have no basis to find an abuse of discretion by the trial court in excluding these materials. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["'[E]rror must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'"].)

3. *Purnell Was Not Prejudiced by the Trial Court's Rejection of Her Proffered Jury Instructions*

Purnell contends the trial court improperly rejected nine jury instructions she proposed that related to her alleged economic and noneconomic damages and her causes of action for discriminatory and retaliatory eviction. She argues she was entitled to instructions that presented a tenant's perspective on the applicable law.

"A party is entitled upon request to correct, nonargumentative instructions on every theory of the case advanced by him or her which is supported by substantial

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[5] The Edwardses' counsel has provided no assistance on this point. According to him, the Ellis Act is "inapplicable to the City of Carson," a patently incorrect assertion. (See *San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 478 ["[c]onsidered in its entirety, 'the Ellis Act does not prohibit local governments from providing procedural protections designed to prevent abuse of the right to evict tenants ([Gov. Code,] § 7060.7, subd. (c)), [but] it "completely occupies the field of substantive eviction controls over landlords who wish to withdraw" all units from the residential rental market,'" quoting *Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7, 14].)

evidence." (*Soule v. General Motors Corp*. (1994) 8 Cal.4th 548, 572 (*Soule*); *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 684 (*Bullock*).) A court may refuse a proposed instruction that incorrectly states the law or is argumentative, misleading or incomplete. (*Shaw v. Pacific Greyhound Lines* (1958) 50 Cal.2d 153, 158; see *Harris v. Oaks Shopping Center* (1999) 70 Cal.App.4th 206, 209 ["[i]rrelevant, confusing, incomplete or misleading instructions need not be given"].) In addition, a court may refuse an instruction requested by a party when the legal point is adequately covered by other instructions given. (*Arato v. Avedon* (1993) 5 Cal.4th 1172, 1189, fn. 11.)

When the contention on appeal is that the trial court failed to give a requested jury instruction, we review the record in the light most favorable to the party proposing the instruction to determine whether there was substantial evidence warranting the instruction. (*Soule*, *supra*, 8 Cal.4th at p. 572; *Bullock*, *supra*, 159 Cal.App.4th at p. 685.) If so, reversal is required only when "'it seems probable'" the refusal to give the proposed instruction "'prejudicially affected the verdict.'" (*Soule*, at p. 580; accord, *Bullock*, at p. 685; *Viner v. Sweet* (2004) 117 Cal.App.4th 1218, 1225-1226.)

Six of the nine instructions challenged by Purnell related to damages she allegedly had suffered as a result of the Edwardses' breach of contract and tortious conduct. Because the jury found in favor of the Edwardses on each cause of action, Purnell suffered no cognizable prejudice as a result of the damages instructions refused by the trial court.[6] (See *Soule, supra,* 8 Cal.4th at p. 580 ["[i]nstructional error in a civil case is

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[6] The trial court gave alternative instructions for damages that, unlike several proposed by Purnell, did not contain items that were noncompensable under applicable law.

prejudicial 'where it seems probable' that the error 'prejudicially affected the verdict'"]; Cal. Const., art. VI, § 13 [no reversal for instructional error in a civil case unless "'the error complained of has resulted in a miscarriage of justice'"].)

The three remaining instructions requested by Purnell, which were based on CACI Nos. 4321 (Retaliatory Eviction—Tenant's Complaint), 4322 (Retaliatory Eviction—Engaging in Legally Protected Activity) and 4323 (Discriminatory Eviction) (Unruh Act), related to her allegation the Edwardses had evicted Purnell and her father because of the religious message printed on the back of her father's church truck.[7] The court gave alternative instructions on those claims that did not include Purnell's modifications.[8] (See *Arato v. Avedon, supra,* 5 Cal.4th at p. 1185, fn. 11 [court may refuse proposed instruction if other instructions given adequately cover the legal point]; *Bullock, supra*, 159 Cal.App.4th at p. 685 [court may refuse argumentative instruction and ordinarily has no duty to modify a proposed instruction].)

Here, as elsewhere in her briefs, Purnell has failed to demonstrate the trial court erred in choosing not to give Purnell's proposed instructions rather than those submitted by the Edwardses. (See *Bullock, supra,* 159 Cal.App.4th at p. 685 [appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record and

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[7] "WHO is the CREATOR and OWNER of ALL THINGS—GOD or MAN? Man bring nothing here! Man carries nothing away! The ENEMY is the CONSCIOUSNESS of SCARCITY (the DEVIL-SATAN). Not a nation, class, race, gender, person, religion or other physical being, says the Lord Jesus!"

[8] According to the Edwardses, the court offered to give Purnell's instructions if she agreed to alter certain language, but she refused to do so. Again, the record here is inadequate to fully evaluate the validity of Purnell's argument.

discussion of legal authority].) Accordingly, her claim of error must be denied.

DISPOSITION

The judgment is affirmed. The Edwardses are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.