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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

MARLON JOHNSON PRYOR, Plaintiff and Appellant, v. THE AMERLAND GROUP LLC et al., Defendants and Respondents.	B275743 (Los Angeles County Super. Ct. No. BC543098)

APPEAL from judgments of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Marlon Johnson Pryor, in pro. per., for Plaintiff and Appellant.

Ropers, Majeski, Kohn & Bentley, Lawrence Borys, and Terry Anastassiou for Defendants and Respondents The Amerland Group LLC, Logan Property Management, Inc., Alexandria Housing Partners, LP, and Ruben Islas.

Akin Gump Strauss Hauer & Feld, Edward A. Woods, and Garrett S. Llewellyn for Defendants and Respondents Inner City Law Center, Javier Beltran, and Dianne Prado.

Plaintiff Marlon Johnson Pryor appeals from judgments entered after the trial court granted summary judgment motions (Code Civ. Proc., § 437c)[1] in favor of defendants/respondents in this discrimination and breach of fiduciary duty action Pryor filed after he was evicted from his apartment for failure to pay rent. For the reasons explained below, we affirm the judgment in favor of The Amerland Group LLC, Logan Property Management, Inc., Alexandria Housing Partners, LP, and Ruben Islas (the Amerland defendants) and the judgment in favor of Inner City Law Center, Dianne Prado and Javier Beltran (the ICLC defendants).

BACKGROUND

Pryor's Tenancy and the Unlawful Detainer Action[2]

In 2006, Amerland Group LLC and Alexandria Housing Partners, LP purchased the Alexandria Hotel, a residential apartment property in downtown Los Angeles. Alexandria Housing Partners contracted with Logan Property Management, Inc. to manage the Alexandria Hotel from 2006 to 2013. Ruben Islas is a managing member of Amerland Group LLC.

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[1] Statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] The following account is taken from the undisputed facts set forth in the Amerland defendants' and ICLC defendants' motions for summary judgment.

In October 2008, Pryor moved into an apartment in the Alexandria Hotel. His rent was initially $400 per month, and increased to $424 in April 2010.

According to the Amerland defendants' records, Pryor submitted 33 maintenance requests regarding his apartment between November 3, 2008 and November 13, 2012. The Amerland defendants completed 12 of the 33 work orders the same day Pryor made the requests, 10 work orders within three days, and one within 30 days (repainting the floor of the apartment).

In April 2012, Pryor missed his rent payment. For the next four months, the Amerland defendants accepted partial payments on Pryor's outstanding rent balance. Pryor failed to make any rent payments in September and October 2012.

On November 21, 2012, Logan Property Management issued a 10-day notice to pay rent or quit. On December 3, 2012, Pryor made a partial payment on his outstanding balance. Logan Property Management issued another 10-day notice to pay rent or quit on December 7, 2012, updating the balance on Pryor's account after his partial payment four days before. On December 17, 2012, Pryor made another partial payment. The same day, Logan Property Management issued another 10-day notice to pay rent or quit, again updating the balance Pryor owed. Pryor made no further payments. At the end of December 2012, his outstanding balance was $574.96.

In or about January 2013, Alexandria Housing Partners filed an unlawful detainer action against Pryor. He retained the ICLC defendants to represent him on a pro bono basis. On the day of the unlawful detainer trial, Pryor terminated the ICLC defendants' representation. After a continuance, he subsequently

conducted the trial in propria persona.[3] In or about April 2013, judgment was entered against Pryor, and he was ordered to vacate the apartment in May 2013.

The Complaint and Operative Second Amended Complaint

In April 2014, Pryor, acting in propria persona, filed this action against 15 defendants, including the Amerland defendants, the ICLC defendants, the State of California, The State Bar of California, the County of Los Angeles, and Governor Brown, asserting two causes of action for "public entity liability for failure to perform mandatory duty" against the State of California and related defendants, causes of action for breach of fiduciary duty and legal malpractice against ICLC, and causes of action for premises liability and retaliation against Amerland. He sought $4 million in compensatory damages plus punitive damages against Amerland, ICLC and two other defendants, and $5 in compensatory damages against the State of California and related defendants.

After demurrers by the Amerland defendants, the ICLC defendants, and the State of California, Pryor filed the operative second amended complaint on March 6, 2015 (SAC). He asserted two causes of action: a cause of action for housing discrimination under the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) against the Amerland defendants, and a cause of action for breach of fiduciary duty against the ICLC defendants.

In the SAC, Pryor alleged the Amerland defendants retaliated against him by issuing notices to pay rent or quit because he requested they fix "various defects" in his apartment,

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[3] Pryor received legal advice from another law firm before representing himself at the unlawful detainer trial.

including plumbing, heating and cooling, electrical, pest control, and other issues. He further alleged the Amerland defendants ignored his maintenance requests because of his race (African-American), age (52 years old when he filed the SAC), and disability (which he did not identify in the SAC). He also alleged employees of the Amerland defendants threatened him "with physical injury," harassed him, and entered his apartment and stole items from him.

As to the ICLC defendants, Pryor alleged in the SAC that he retained ICLC to defend him in the unlawful detainer action Alexandria Housing Partners filed against him. According to Pryor, defendant Javier Beltran was a supervising/managing attorney at ICLC who assigned his case to defendant Dianne Prado, another attorney at ICLC. Pryor asserted that, although he "briefed" ICLC's paralegal on the facts of his case during the "initial consultation," neither Beltran nor Prado "appeared to" know these facts (e.g., "the amount of rent due"), which "result[ed] in a failure to act competently handling [his] affairs" and "damaged [his] negotiation leverage" with Alexandria Housing Partners. Pryor also alleged opposing counsel indicated Prado did not forward his settlement offers to Alexandria Housing Partners. He further claimed Prado did not "abide by" his case "strategy" and then "consumed critical time and damaged [his] efforts" by "substitut[ing] out as defense counsel twice in the same day." Pryor sought damages for the ICLC defendants' alleged breaches of fiduciary duty.

On March 6, 2015, Pryor filed a proof of service stating that on March 5, 2015, he served the "Second Amended Complaint

(Revised)"[4] by mail on counsel for the ICLC defendants and another attorney whose clients were not listed on the proof of service but appeared to be the attorney for the Amerland defendants. The ICLC defendants answered the operative SAC on March 19, 2015. Two of the Amerland defendants—The Amerland Group LLC and Logan Property Management, Inc.—answered the operative SAC on April 7, 2015.

On April 24, 2015, Pryor filed a request for entry of default against two of the Amerland defendants—Alexandria Housing Partners and Ruben Islas—on the complaint filed April 17, 2014 (the original complaint). The clerk of the court rejected the request, notifying Pryor the request had several defects, including that the date of the operative complaint was incorrect, there were two second amended complaints on file and one needed to be vacated before default could be entered, the proof of service did not separately list the address of the attorney for each defendant, and the original proof of service was not filed. Pryor did not file another request for entry of default with the defects corrected. On June 9, 2015, Alexandria Housing Partners and Ruben Islas filed an answer to the operative SAC.

Pryor's Deposition

At his deposition in this case, Pryor testified he stopped paying rent because the Amerland defendants "were not providing any services to [his] unit," were not "fixing things that were broken," were harassing him, and had a "very belligerent"

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[4] Pryor filed two different pleadings labeled "Second Amended Complaint," one on November 19, 2014 and one on March 6, 2015. The latter pleading is the one we described above as the operative SAC.

attitude toward him. He testified that heat was pumped into his apartment during the day, causing the temperature inside to reach nearly 90 degrees; no heat came into his apartment at night when the temperature was "like in the 30s"; his "kitchenette fixture wasn't working"; he had "cloudy water"; and "they wouldn't clean his windows." The Amerland defendants' records do not show any work orders for Pryor's apartment between September 11 and November 13, 2012, and none after November 13, 2012. Pryor alleges he made maintenance requests during this time, but the Amerland defendants ignored his requests.

Pryor also testified his disability is "schizo-affective disorder," and his symptoms include disordered thoughts and moods, depression, and auditory hallucinations.

Pryor further testified that he was evicted in retaliation for enforcing his rights and because he is African-American.

Motions for Summary Judgment[5]

The ICLC defendants' motion

On December 28, 2015, the ICLC defendants filed a motion for summary judgment, arguing Pryor cannot establish his cause of action as a matter of law because he cannot show a breach of fiduciary duty or resulting harm, and he cannot substantiate his claim against them for $1 million in emotional distress damages. In connection with the summary judgment motion, the ICLC

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[5] Pryor moved for summary judgment against all defendants. The trial court denied his motion because he served it by mail 76 days before the hearing, which is insufficient notice (§ 437c, subd. (a)(2)), and he failed to cite to supporting evidence in his separate statement of undisputed material facts (§ 437c, subd. (b)(1)). The ruling on this motion is not at issue on appeal.

defendants submitted a declaration from attorney Prado, explaining that she obtained six continuances of Pryor's unlawful detainer trial to allow him to gather receipts for his rental payments. Three months after the ICLC defendants took Pryor's case, he provided Prado with some of the receipts, which demonstrated he did in fact owe back rent. According to Prado's declaration and a declaration from the attorney who represented Alexandria Housing Partners in the unlawful detainer action, Prado relayed Pryor's settlement offers and opposing counsel rejected them as unacceptable to Alexandria Housing Partners. Prado's declaration also states she advised Pryor against representing himself at trial, but he decided to substitute out the ICLC defendants and proceed in propria persona. The ICLC defendants also submitted with their motion excerpts from the transcript of Pryor's deposition in which he testified that at one time he possessed evidence showing retaliation by the Amerland defendants, but he lost the evidence prior to the unlawful detainer trial (through no fault of the ICLC defendants).

Pryor opposed the ICLC defendants' motion. He argued the motion was untimely because it was served 77 days before the hearing. He claimed the ICLC defendants were required to serve him with notice of the motion 80 days before the hearing—75 days' notice plus five days for mailing. He ignored the fact that they served him by overnight mail (and by email) and not by regular mail.

In his opposition, Pryor complained about the manner in which the ICLC defendants represented him in the unlawful detainer action, but he did not explain how their actions harmed him. He explained the reasons he filed this action against them as follows: "[I]f ICLC had taken my case to trial and I lost, I

would have thanked them for their time. If ICLC has taken my request for settlement to AHP [Alexandria Housing Partners], I would have been satisfied.[6] And if ICLC would have accepted my request for termination of our agreement without all the drama, there would not be any action taken against them."

On April 8, 2016, the trial court granted the ICLC defendants' motion for summary judgment, concluding they met their initial burden of demonstrating Pryor could not establish the causation element of his breach of fiduciary duty cause of action, and Pryor did not meet his burden of showing a triable issue of material fact.

The Amerland defendants' motion

On December 30, 2015, the Amerland defendants filed a motion for summary judgment, arguing Pryor cannot prove housing discrimination because (1) the undisputed evidence establishes he was evicted because he did not pay rent, (2) his maintenance requests were not treated differently than those of other tenants, (3) his "maintenance requests were attended to and completed by apartment management in a timely manner," (4) he cannot prove he was harmed by any illegal or improper conduct of the Amerland defendants or that defendants' discriminatory conduct was a substantial factor in causing him harm, and (5) he is improperly attempting to collaterally attack the judgment in the unlawful detainer action.

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[6] As discussed above, the attorney for Alexandria Housing Partners in the unlawful detainer action stated in his declaration in support of this summary judgment motion that ICLC conveyed Pryor's settlement offer and he rejected it on behalf of Alexandria Housing Partners.

The Amerland defendants submitted declarations from defendant Islas and Martha Enriquez, the president of Logan Property Management, stating: (1) "There were persons living in the hotel of various race origins, i.e., African American, Hispanic, Asian, and Caucasian, and all were treated the same. We did not discriminate against [Pryor] based on race or disability"; and (2) "We were not told by [Pryor] that he suffered from schizoaffective disorder nor were we aware of that. Regardless, we did not treat [Pryor] any differently as to his requests or eviction from any other tenant."

On January 7, 2016, the Amerland defendants re-noticed their motion for summary judgment for hearing on March 23, 2016, and personally served notice of the motion on Pryor, 76 days before the hearing. On February 3, 2016, Pryor filed an objection to the motion, arguing the Amerland defendants were required to serve him with notice of the motion 80 days before the hearing—75 days' notice plus five days for mailing. Pryor ignored the fact that the Amerland defendants served him personally (and by email) and not by mail.

Pryor opposed the Amerland defendants' motion. He asked the trial court "to strike all pleadings from Alexandria Housing Partners, L.P. [*sic*] and Ruben Islas" (presumably because he had filed a request for entry of default, although the request was rejected by the court as defective). He filed a declaration in support of his opposition to the Amerland defendants' motion, which contained conclusory statements, including: (1) "I declare that as for being of the above characteristics [African-American, 53 years old, with a disability not identified in the declaration], I was discriminated against by the above encaptioned co-defendants while engaging in protected activities, and that my

inherent characteristics played a substantial role in the discrimination"; (2) "I suffered damages as the direct result of the discriminatory actions against me. Which [*sic*] include, but are not limited to, grave emotional distress, mental anguish, violation, fear, neglect, sleepless nights, and eviction among others"; (3) "In speaking with other building tenants, I discovered that I was treated differently than people of other race and/or disability characteristics"; (4) "I was denied property services which went on for a period of months, while others were receiving theirs within a 24 hour window"; and (5) "A regular person of normal constitution experiencing similar circumstances would have succumbed to the pressure, and, may have avoided pursuing his or her rights."

Pryor did not file a separate statement of disputed and undisputed material facts in opposition to the Amerland defendants' motion. He submitted 12 pages of unauthenticated documents, including: (1) one money order stub for a $500 payment he claims he made to the Alexandria on August 31, 2012;[7] (2) the three notices to pay rent or quit from Logan Property Management; (3) a receipt from the Alexandria listing his outstanding balance on December 3, 2012 ($612.96), after he made a payment of $524; (4) a list of work orders for his apartment, purportedly showing the Alexandria did not put in any work orders for him between September 11 and November 13, 2012, even though he claims he made maintenance requests during this time; (5) a four-page handwritten letter purportedly from Pryor to the Alexandria, dated December 21, 2012,

[7] The Amerland defendants' records indicate Pryor made a $500 payment on August 3, 2012, not August 31, 2012.

complaining about the manner in which staff handled his account and issued the notices to pay rent or quit; and (6) a police report detailing a vandalism report he made, claiming someone etched the word "Fuck" on his apartment door and management did not fix it.

On April 4, 2016, after taking the matter under submission, the trial court granted the Amerland defendants' summary judgment motion. The court found the evidence they submitted in support of the motion was "sufficient to meet [their] initial burden of demonstrating that [Pryor] was not denied the full and equal accommodations, advantages, facilities, privileges or services on the basis of race, color, disability, or medical condition as a resident of the Alexandria Hotel apartments in violation of Civil Code § 51(b)." The court further found Pryor did not meet his burden of raising a triable issue of material fact because (1) he did not submit a separate statement of disputed and undisputed material facts, (2) the documents he submitted were "of insufficient evidentiary quality," and (3) his declaration did "not set forth evidentiary facts, only conclusions."

The trial court entered judgments in favor of the Amerland defendants and the ICLC defendants, and Pryor timely appealed.

DISCUSSION

The Amerland Defendants' Summary Judgment Motion

Notice of summary judgment motion

Pryor contends the Amerland defendants did not give him sufficient notice of their summary judgment motion.

Section 437c, subdivision (a)(2) requires the moving party to serve the notice and all supporting papers on all parties to the action at least 75 days before the hearing. The Amerland defendants personally served their notice of motion and all

supporting papers on Pryor on December 30, 2015. On January 7, 2016, they personally served an amended notice of summary judgment on Pryor, 76 days before the March 23, 2016 hearing.

Pryor argues the Amerland defendants were required to serve the amended notice of summary judgment 80 days before the hearing—75 days' notice plus five days for mailing. The Amerland defendants did not serve Pryor by mail, they personally served him. Accordingly, 75 days' notice was sufficient under the statute.

Request for entry of default

Pryor contends the trial court improperly entered summary judgment in favor of Alexandria Housing Partners and Ruben Islas when these defendants were in default. As discussed above, Pryor requested entry of default against these two defendants, but the clerk rejected his request because it was defective in several respects. Pryor did not file another request for entry of default, correcting the defects. Alexandria Housing Partners and Islas answered the operative SAC on June 9, 2015. There is nothing in the record, indicating Pryor sought to have the answer stricken. Thereafter, Pryor moved for summary judgment against these two defendants, before they moved for summary judgment against him. Pryor cannot establish that the trial court erred. His assertion that these defendants made their first appearance on December 30, 2015, when they filed their summary judgment motion, is disingenuous.

Pryor also argues the trial court did not have personal jurisdiction over Alexandria Housing Partners and Islas because they did not appear in the action until they filed their summary judgment motion on December 30, 2015. As set forth above, they answered the operative SAC on June 9, 2015. Pryor has a

misapprehension about personal jurisdiction. At the time of the events giving rise to this action, Alexandria Housing Partners was a company doing business in Los Angeles, California. Islas was an individual working in Los Angeles, California. And all of the events alleged in the operative SAC occurred in Los Angeles, California. Thus, this California trial court had personal jurisdiction over these defendants.

Standard of review on summary judgment

A trial court should grant summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (§ 437c, subd. (c).) A defendant may establish a right to summary judgment by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (§ 437c, subd. (p)(2).) Once the moving defendant has satisfied this burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to each cause of action. (*Ibid.*) A triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

"We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections were made and sustained." (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65-66.) We view the evidence and the inferences reasonably drawn from the evidence "in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843.)

Summary judgment in favor of the Amerland defendants was proper

Pryor asserted one cause of action against the Amerland defendants for housing discrimination under the Unruh Civil Rights Act. Under this Act, "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b).) To prevail on a cause of action under this Act, a plaintiff must prove (1) that the defendant denied the plaintiff full and equal accommodations, (2) that a substantial motivating reason for the defendant's conduct was its perception of the plaintiff's race, disability, or other actionable characteristic, (3) that the plaintiff was harmed, and (4) that the defendant's conduct was a substantial factor in causing the plaintiff's harm. (CACI No. 3060.)

The Amerland defendants satisfied their burden of showing Pryor cannot establish one or more elements of his cause of action. They produced work order records indicating they promptly responded to Pryor's maintenance requests. They submitted declarations showing they were unaware of Pryor's disability. They declared they did not treat Pryor differently than other tenants. They produced account records showing they worked with Pryor when he could not pay full rent, accepting partial payments for several months. Finally, they presented evidence (account records and declarations) demonstrating they

evicted Pryor because he did not pay his outstanding rent balance.

Pryor did not satisfy his burden of showing a triable issue of material fact. He did not submit a separate statement, informing the trial court what facts he did and did not dispute. He submitted unauthenticated documents without proper foundation. His declaration was filled with conclusory statements rather than specific facts. He produced no evidence indicating the Amerland defendants were aware of his alleged disability. He produced no evidence showing he was treated differently than tenants who were not African-American. And he produced no evidence showing he made specific maintenance requests that the Amerland defendants did not respond to in a timely and appropriate manner.[8] Pryor's bald assertions to the contrary do not raise a triable issue of material fact.

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[8] In his opening appellate brief, Pryor cites to an unauthenticated, unaddressed, handwritten letter he purportedly sent to an unidentified recipient on December 31, 2012, after the three 10-day notices to pay rent or quit had been issued. He submitted this letter to the trial court in support of his own summary judgment motion, and not in opposition to the Amerland defendants' summary judgment motion. In the letter, he listed maintenance requests that he claimed he had orally made to management previously and did not believe were handled sufficiently. The letter does not show a triable issue of material fact that the Amerland defendants discriminated against him based on his race or disability in the handling of his maintenance requests. There is nothing in the record detailing how maintenance requests were handled for tenants of other races who did not have a disability.

For the foregoing reasons, the trial court properly granted the Amerland defendants' motion for summary judgment.

The ICLC Defendants' Summary Judgment Motion

In his opening appellate brief, Pryor indicated he was abandoning his appeal from the judgment in favor of the ICLC defendants: "I ask this Court to please accept my Request for Dismissal of the Parties Inner City Law Center, Javier Beltran, and Diane Prado."[9] He did not file a formal request or motion to dismiss these defendants, however, and they filed a respondents' brief. Thus, we review the summary judgment.

To prevail on a breach of fiduciary duty cause of action, the plaintiff must establish: "(1) the existence of a fiduciary duty; (2) the breach of that duty; and (3) damage proximately caused by that breach." (*Mosier v. Southern California Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1044.) Summary judgment was proper because Pryor cannot establish any damage proximately caused by the ICLC defendants' actions.

Undisputed evidence submitted with the ICLC defendants' moving papers demonstrated, among other things: (1) Pryor owed back rent to Alexandria Housing Partners at the time of the unlawful detainer trial; (2) Pryor's settlement offers were unacceptable to Alexandria Housing Partners; (3) Pryor terminated the ICLC defendants' representation on the date set for trial; and (4) after a continuance, Pryor represented himself at the unlawful detainer trial and lost—he was required to pay $443.12 in back rent and was evicted from the apartment.

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[9] In a May 12, 2017 request for extension of time to file his opening brief, Pryor also indicated he wanted to dismiss the ICLC defendants from this action.

In opposition to the summary judgment motion, Pryor did not show a triable issue of material fact. His argument appeared to be that if the ICLC defendants had not wasted time on the date set for trial by pursuing a settlement he did not want and trying to talk him out of terminating their representation, he could have proceeded to trial that day and fared better than he ultimately did when he went to trial after the continuance. He explained that "in hindsight" he had "the impression" the court would have been "fairer" on the former date than the latter. Pryor did not present any evidence with his opposition indicating he could have prevailed in the unlawful detainer action if the case had gone to trial on the date he terminated the ICLC defendants' representation. Although he maintained that he had in his possession the necessary evidence to prevail on the earlier court date, he did not present such evidence in opposition to the summary judgment motion.

The trial court properly granted the ICLC defendants' motion for summary judgment.

DISPOSITION

The judgments are affirmed. Respondents are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.