Filed 2/6/14 California Hotel Partners v. Diep CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CALIFORNIA HOTEL PARTNERS, LLC, Plaintiff and Respondent, v. MY DUNG DIEP, Defendant and Appellant.	B248064 (Los Angeles County Super. Ct. No. BC486745)

APPEAL from an order the Superior Court of Los Angeles County. Joanne O'Donnell, Judge. Affirmed.

My Dung Diep, in pro. per.; and Stefan Pancer, for Defendant and Appellant.

McGarry & Laufenberg and William Leamon Cummings for Plaintiff and Respondent.

* * * * * * * * * *

Defendant My Dung Diep (also known as Michelle Diep), personally guaranteed a commercial lease between plaintiff California Hotel Partners, LLC, and its tenant, Double D Group, Inc. (Double D). When Double D stopped paying rent and abandoned the premises, plaintiff sued defendant (and others who are not parties to this appeal) for breach of contract, to collect the unpaid rent.

Defendant appeals from the trial court's orders granting plaintiff's pretrial application for a right to attach order and issuing a writ of attachment. We discern from defendant's briefs that she contends the trial court erred when it did not consider her declaration in opposition to the application for a right to attach order. As we understand the briefs, defendant also contends damages are not readily ascertainable because the lease sued upon had expired, she cannot be liable as a guarantor for an expired lease, and her objections to plaintiff's declarations in support of the application for a right to attach order should have been sustained.

Defendant also claims that "errors" in an unlawful detainer proceeding between plaintiff and Double D (for a different retail property that was not involved in this case), and a later-filed action for fraudulent transfer (where plaintiff sued defendant alleging fraudulent transfer of her house to her mother to avoid satisfaction of judgment), require reversal of the attachment order.

Because defendant failed to demonstrate that the trial court's order is not supported by substantial evidence, we affirm.

FACTS

Defendant has not adequately summarized the facts relevant to this appeal. Rather, her briefs are a hodgepodge of irrelevant facts concerning other lawsuits and describe only those relevant facts that she deems favorable to her claims on appeal. We have gleaned the following facts from our independent review of the clerk's transcripts: Plaintiff leased retail space to Double D to operate a women's clothing store. Defendant signed the lease and its addenda as Double D's president and secretary. She also signed a personal guaranty of the lease, waiving notice of breach of the lease or default. The lease was for a term of 10 years 3 months, commencing in

May 2002.[1] The lease called for base rent of $1,772.50, but the parties entered into various addenda over time, increasing and reducing the rent. The rent abatement agreements that reduced the monthly rent called for recapture of the abated rent in the event of Double D's default or breach of the lease.

In January 2012, Double D stopped paying rent. It abandoned the premises in April 2012. Plaintiff was unable to rent the premises to another tenant before Double D's lease terminated on July 31, 2012.

Plaintiff sued defendant, as well as Double D and others, for the unpaid rent, including the recapture of rent that had been reduced over the course of Double D's tenancy. While its lawsuit was pending, plaintiff filed an application for a right to attach order for defendant's Arcadia, California home. In support of its application, plaintiff submitted a declaration by Donald J. Zennie, president of plaintiff's property management company, D.B. Commercial Investments, Inc. Zennie was involved in lease negotiations, and authenticated copies of the lease and addenda, which were attached to the application. Zennie's declaration calculated past due rent under the lease and addenda of $41,767.50.

Plaintiff's attorney, William Leamon Cummings, also submitted a declaration in support of the application. Because the lease called for payment of attorney fees, Cummings set forth the fees he would likely incur during the litigation, as well as the interest due on the anticipated damages. He estimated fees of $20,370, and interest of $3,895.19. Therefore, the total attachment sought was $64,695.19 (which included costs, and an offset for Double D's security deposit).

In opposition to the application, defendant contended that the lease could not have been breached because it expired in 2011. She also complained of various

---

[1] The lease was to commence at the earlier of: the opening of the hotel affiliated with the retail space, or December 31, 2001. However, Double D sought to delay occupancy, and plaintiff agreed that the tenancy would begin in May 2002. This agreement was memorialized in a letter.

problems in an unrelated unlawful detainer proceeding brought by plaintiff against Double D (for the lease of a different suite in the same retail complex). While plaintiff's application for a right to attach order was pending, defendant filed a cross-complaint against plaintiff, Zennie, D.B. Commercial Investments, Inc., and Ralph Wong (who verified plaintiff's complaint), alleging abuse of process, intentional infliction of emotional distress, and other claims. The cross-complaint alleged that defendant was not a party to plaintiff's lease with Double D (the purpose of this allegation being, presumably, though incorrectly, that she could not be held responsible under it).

The trial court granted plaintiff's application. In so doing, it considered defendant's declaration (contrary to defendant's claim on appeal). The court found that plaintiff had sufficiently established a probability of prevailing on its contract claims. This timely appeal followed.

DISCUSSION

A prejudgment attachment may issue in a lawsuit on a claim based on an express or implied contract. (Code Civ. Proc., § 483.010, subd. (a).) An attachment order seizes property before trial and judgment to facilitate postjudgment collection. The attached property is held as security for satisfaction of the judgment unless it is released by the posting of other security. (*Randone v. Appellate Department* (1971) 5 Cal.3d 536, 543-545.) For a prejudgment attachment to issue, the claim sued upon must not be secured by real property and, if the defendant is a natural person, must "arise[] out of the conduct by the defendant of a trade, business, or profession." (§ 483.010, subds. (b) & (c).) That is because "[a] purpose of the attachment statutes is to confine attachments to commercial situations and to prohibit them in consumer transactions." (*Kadison, Pfaelzer, Woodard, Quinn & Rossi v. Wilson* (1987) 197 Cal.App.3d 1, 4.) The plaintiff must further establish (1) that the "claim upon which the attachment is based is one upon which an attachment may be issued" and (2) "the probable validity of the claim." (§ 484.090, subd. (a).)

"On appeal from an attachment order, we review the record for substantial evidence to support the trial court's factual findings. . . . We will not disturb a determination upon controverted facts unless no substantial evidence supports the court's determination." (*Goldstein v. Barak Construction* (2008) 164 Cal.App.4th 845, 853, citations omitted.)

Defendant's briefs contain numerous extraneous facts about other cases between the parties. For example, defendant complains that plaintiff's "refusal to attach the 'Written Lease' in the 'UD' . . . prove[s] the allegations contained in [the] 'UD' were untrue"; that plaintiff "wanted appellant to pay 'Double D's' debt [b]ut . . . would not recognize appellant as a defendant in the 'UD' "; among other claims. What the briefs do not contain is any summary of all the evidence, including evidence which was not favorable to defendant, and that *was* relevant to the proceedings that are the subject of this appeal.

It was defendant's burden to demonstrate that no substantial evidence supports the findings challenged on appeal. (See *Daluiso v. Boone* (1969) 71 Cal.2d 484, 490, fn. 6.) Defendant failed to fairly summarize the evidence, and therefore did not meet this burden. (*Ibid*.; see also Cal. Rules of Court, rule 8.204(a)(2)(C); *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274.) Accordingly, defendant has not persuaded us that reversal is warranted. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Although technical rules of procedure should not, when possible, be applied in a manner that deprives litigants of appellate review, defendant's failure to fairly state and analyze the evidence makes meaningful appellate review impracticable. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

DISPOSITION

The order is affirmed. Appellant's requests for judicial notice are denied as moot. Respondent is to recover its costs on appeal.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.