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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CANOGA PARK HAND CAR WASH, Plaintiff and Respondent, v. BIJAN YAGHOOBIA, Defendant and Appellant.	B280547 (Los Angeles County Super. Ct. No. LC104598)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Reversed.

Bijan Yaghoobia, in pro. per., for Defendant and Appellant.

Perry Roshan-Zamir for Plaintiff and Respondent.

Defendant Bijan Yaghoobia appeals the summary judgment against him in this unlawful detainer action involving his occupancy of a food stand on a parcel of land containing both a car wash and the food stand. Three basic facts are undisputed: Yaghoobia was assigned a lease in 1985 to occupy the entire property and operate both the car wash and the food stand. He transferred some interest in the lease when he sold the car wash business in 1996. Plaintiff Canoga Park Hand Car Wash (plaintiff car wash) eventually obtained an assignment of whatever interest Yaghoobia transferred under the lease in 1996.

From there, the evidence is far less clear and, as we will explain, in conflict. Plaintiff car wash claims the undisputed evidence shows Yaghoobia assigned the *entire* lease to the purchaser of the car wash business in 1996 and has simply occupied the food stand for 20 years without paying rent as a tenant at will subject to eviction upon 30-days' notice. Yaghoobia claims he merely sublet the car wash in 1996 and retained the right to possess the food stand under the 1985 lease still in effect and extended to 2032. Among his evidence, he submitted several letters sent by an attorney representing the owners of the property taking the position that he remained a tenant under the 1985 lease.

Proceeding without an attorney on appeal, Yaghoobia raises a host of challenges to the summary judgment. We conclude his evidence created a clear dispute of material fact over whether he retained an interest in the food stand, so we reverse the grant of summary judgment. We will briefly address his remaining contentions for the benefit of the parties and the court on remand.

Several motions are also pending before us, including plaintiff car wash's motions for sanctions and to declare Yaghoobia a vexatious litigant. Given our reversal of the judgment, we deny the motions.

BACKGROUND

1. Undisputed Foundational Facts

At issue is a lease involving a food stand located at 21008 Sherman Way, Canoga Park, California 91403. The entire commercial parcel consists of both the food stand at 21008 Sherman Way and a car wash located at 21004 Sherman Way. The whole parcel is owned by several individuals and trusts (the owners) who are not parties to this case.

In 1985, the owners entered a 20-year lease with certain individuals (the original lease), set to expire in 2005. Although the lease identified 21004 Sherman Way as the address for the property, the lease covered both the car wash and the food stand. Around the same time the original lease was executed, it was assigned to Yaghoobia with consent of the owners.

The car wash business and some portion of the lease passed through several hands over the years, as we will explain below. Yaghoobia continued to exercise possession of the food stand until he was served with two 30-day Notices to Terminate Tenancy on May 4, 2016—one from the owners and one from plaintiff car wash. After those notices were served, the owners and plaintiff car wash signed agreements on August 1, 2016 purporting to terminate the original lease and create a new lease in favor of plaintiff car wash for both the car wash and the food stand. Plaintiff car wash then filed this unlawful detainer action on September 7, 2016.

2. Plaintiff Car Wash's Summary Judgment Motion

Following discovery, plaintiff car wash moved for summary judgment, arguing Yaghoobia had a tenancy at will subject to termination at any time upon 30-days' notice. In support of that contention, plaintiff car wash submitted declarations from Anahid Artslevelian, one of its officers and shareholders, and Alfred Beridon, a co-trustee of one of the trust owners of the property. Artslevelian testified that Yaghoobia operated the car wash and food stand until 1996 when he sold "the business" to William Marble (she did not clarify whether that meant the car wash business or both the car wash and food stand businesses). "As part of the sale," she testified, "YAGHOOBIA assigned his entire interest in the ORIGINAL LEASE to Mr. Marble." That "entire interest" in the lease was subsequently transferred several times until it came to plaintiff car wash in 2008. She claimed that, starting in 1996, plaintiff car wash paid water, taxes, and rent for the entire property, including the car wash *and* the taco stand.

Beridon testified, "It is now my understanding that, as part of the sale, YAGHOOBIA assigned his entire interest in the ORIGINAL LEASE to Mr. Marble." Beridon further testified the owners had not received rent from Yaghoobia since 1996, had never consented to the splitting of the property or a partial assignment of the original lease, and had never consented to a sublease for the food stand. Beridon believed that, through the series of assignments, plaintiff car wash was "rightfully entitled to exclusive possession of the entire property including the CARWASH and TACO STAND."

Plaintiff car wash also relied on Yaghoobia's testimony in a prior unlawful detainer action Yaghoobia had filed against a

subtenant on the property (the *Morales* action), which it argued showed Yaghoobia admitted to transferring his entire interest in the lease to Marble. Yaghoobia testified as follows:

"Q: Did you assign your lease rights for that car wash to someone else?

"A: Yes, I did.

"Q: All right. So that was an assignment of the existing lease; correct?

"A: That's right.

"Q: So the existing lease covers the 21004, the entire lot. It makes no reference to 21008. And you assigned this lease that's exhibit 5 to someone else?

"A: Yeah. 21004 always been the number that referred to the entire parcel.

"Q: Do you have any evidence with you to show how 21008 was created?

"A: Nobody argued. I just never had any cause or concern. No one claimed anything about it, so always been the same. And I don't think that is my issue. That is landlord's issue.

"The Court: Who did you assign this lease to? [¶] . . . [¶]

"Mr. Yaghoobia: Basically, this is the way it happened. In 1996, I sold the car wash without the food stand. And the way it worked out was that we had some difficulties with it and I assigned the lease to Mr. Bill Marble. [¶] . . . [¶]

"The Court: So you assigned the lease to Bill Marble then?

"Mr. Yaghoobia: Yes."

Yaghoobia later testified that no written sublease existed:

"Q: So did you ever have a written agreement with Mr. Marble that gave you the right of possession over the taco stand?

"A: He has no claim.

"Q: That's not what I asked. Did you ever get anything from Marble that you had a right to possession of the taco stand?

"A: No.

"Q: Okay.

"A: Wasn't an issue.

"Q: So is there anything you have in writing that says that you have a right to the taco stand, other than a letter from their attorney that's not been authenticated?

"A: Well, this is my proof. And I've been receiving rent and I've been there since 1985. What else do you want? How many more proofs do you need?"

Later, the court asked him, "And you sold the car wash business to?" He responded, "Mr. Marble." The court asked, "The business?" He answered, "The business and the lease." The following exchange then occurred:

"The Court: So was Mr. Marble supposed to sublease from you or was he actually buying the lease?

"Mr. Yaghoobia: Actually, it was like an assignment of the lease to Mr. Marble.

"The Court: Right. So you would no longer have any rights if it went through?

"Mr. Yaghoobia: No, no. Basically, I assigned it to him, but I was still on the lease as a guarantor for the lease.

"The Court: I see. I see."

Yaghoobia further testified that the buyer after Marble paid monthly rent directly to the owners, which covered all the

rent owed under the original lease. He explained, "Basically, what happened for that, too, I purchased the food stand and I prepaid that to them up front. So from there, they paid the rent. Instead of like having two rental payments to the actual landlord and having subtenancy for the food stand, they decided I take over this thing, I sublease it myself, and they do the car wash business. And they pay the entire rent and expense—rent and expenses to landlord."

Plaintiff car wash also cited Yaghoobia's deposition testimony in this case, in which Yaghoobia confirmed he had no separate written lease for the taco stand at 21008 Sherman Way.[1]

Finally, plaintiff car wash cited Yaghoobia's responses to an interrogatory requesting Yaghoobia to identify agreements and modifications not in writing. Yaghoobia responded: "Defendant agreed with William Marble, with the consent of landlord of Subject Property . . . to carve out Taco Stand located at 21008 Sherman Way, Canoga Park, CA, from the original lease."

3. Yaghoobia's Oppositions

Yaghoobia was granted three continuances of the hearing on the motion, and he filed three oppositions. In two declarations, he took the position that plaintiff car wash was a subtenant and the original lease term had been extended until

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[1] Plaintiff car wash's motion quoted two excerpts from Yaghoobia's deposition in which he testified the car wash paid the lease payment and water bills. The cited pages from Yaghoobia's deposition were included in the Clerk's Transcript on appeal, but we have been unable to locate the quoted testimony on those pages.

2032. In support of the lease extension, he produced an addendum to the original lease dated 1996 and executed by him and the owners that set a rent schedule and extended the lease term to 2032. He explained he sublet the car wash to Marble in 1996 and "kept and maintained ownership of the leasehold interest for the Food Stand and its area for the remainder of the lease ending December 31, 2032." He had loaned Marble $950,000 as part of the transaction, which was secured by an interest in the sublease for the car wash property. He did not submit any written sublease, but he produced a document dated December 1996 and entitled "ASSIGNMENT OF SUB-LEASE AS COLLATERAL SECURITY," which memorialized the security agreement. The owners also signed the document consenting to the assignment as collateral security.

Yaghoobia further explained that, due to disputes between him and Marble, he discounted the note to Marble by $250,000 so Marble could sell the business. In 1998, Marble sold the car wash business and made another sublease to another buyer with Yaghoobia's consent. Again, Yaghoobia did not produce a written sublease but he executed and recorded another "ASSIGNMENT OF SUB-LEASE AS COLLATERAL SECURITY" with the new sub-lessee. In 1999, that sub-lessee executed an "ASSIGNMENT OF SUB-LEASE AS COLLATERAL SECURITY" with a new sub-lessee, which was approved by the owners. Through similar transactions, the sublease for the car wash was eventually transferred to plaintiff car wash in 2008. Yaghoobia testified after that date he had no interactions with plaintiff car wash and it interacted directly with the owners.

Yaghoobia testified throughout these transactions he was only transferring a sublease in the car wash. In apparent

rebuttal to the testimony from the *Morales* action plaintiff car wash cited in its motion, he testified "[a]ny testimony I made with reference to the transfer of the lease was made with respect to the transfer of the Car Wash only." And he testified he incurred $410,000 in reliance on his right to lease the food stand.

In further support of his claim he merely subleased the car wash, he submitted three letters from the owners' attorney and one letter from plaintiff car wash. In a June 3, 2015 letter to Yaghoobia, the owners' attorney addressed issues that had arisen between Yaghoobia and plaintiff car wash. The attorney wrote, "It is Owner's belief and understanding that in late 1996 you entered into a sublease with William Marble for the car wash land; this belief and understanding is based on a request by you and Mr. Marble for Owner to sign a consent to an assignment of a sublease as collateral security for a loan made by you to Mr. Marble in connection with his purchase of the car wash business. However, notwithstanding such collateral assignment and consent (which Owner signed), and subsequent similar documents (which Owner also signed), neither I nor any of the persons comprising Owner has ever seen a written copy of any sublease for the car wash land." He noted Yaghoobia "ceased interacting with the car wash owners, to the point where [plaintiff car wash] has been paying its rent and all the taxes for the property directly to Owner."

The attorney went on: "After conducting legal research, and based on correspondence with you, Owner agrees with you that there is only one lease for the entire Property, and that you are the sole tenant of the entire Property. Accordingly, [plaintiff car wash] occupies the car wash pursuant to a sublease (or some other relationship with you). Therefore, Owner's position is that

it is obligated only to you with respect to the Lease and the Property, and that you are obligated to Owner for everything under the Lease and with respect to the entire Property. Therefore, Owner should not be dealing directly with [plaintiff car wash], because since you are the sole tenant of the entire property, Owner and [plaintiff car wash] have no legal relationship. Thus, Owner has no obligations to [plaintiff car wash], nor does [plaintiff car wash] have any rights against Owner."

The attorney then advised Yaghoobia he was solely responsible for future rent and property tax payments due under the lease. He also demanded Yaghoobia promptly enter a sublease with plaintiff car wash and execute a consent to sublease with the owners, "otherwise you will be in violation of the lease."

Plaintiff car wash sent a June 30, 2015 letter to the owners' attorney with a carbon copy to Yaghoobia. In the letter, plaintiff car wash disagreed with the owners' attorney's request to submit all rent and tax payments to Yaghoobia, "believ[ing] the Owner entered into a legal relationship with [plaintiff car wash] by signing lease agreements with [plaintiff car wash] and accepting lease and property tax payments for the Property for over seven years."

Yaghoobia also produced two letters sent to the City of Los Angeles Department of Building and Safety and Department of Water and Power from the owners' attorney with carbon copies to Yaghoobia. Dated October 28, 2013 and May 28, 2014, the letters gave Yaghoobia authorization to research the permit history and seek permits for the food stand. In basically identical language, the letters identified the original lease from the owners and the

assignment to Yaghoobia and stated that "the Lease is still in full force and effect, and that with regard to the taco stand located on the Property (which has the address of 21008 Sherman Way, Canoga Park, CA), Mr. Yaghoobia is still the tenant under the Lease (the remainder of the Lease has been assigned to a third party, who operates the 'Canoga Park Hand Car Wash' located on the Property, which has the address of 21004 Sherman Way, Canoga Park, CA)."[2]

As part of his opposition to summary judgment, Yaghoobia objected to portions of Artslevelian's and Beridon's declarations.

4. Plaintiff Car Wash's Reply

In reply, plaintiff car wash did not offer additional evidence or object to Yaghoobia's evidence, but argued that Yaghoobia's declarations should be discounted because they conflicted with his sworn testimony. It continued to emphasize his testimony that he had no written lease for the food stand.

5. Ruling and Appeal

The trial court granted the motion and entered judgment for plaintiff car wash, including holdover damages of $11,800. The record does not contain any reasoning for the court's decision or reflect that the court ruled on Yaghoobia's evidentiary objections. Yaghoobia appealed.[3]

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[2] One of the letters identifies the car wash address as "21008 Sherman Way," but that appears to be a typographical error.

[3] Without citing the record, plaintiff car wash claims a writ of possession was issued on March 15, 2017, and possession of the premises was delivered on April 11, 2017. Also without supporting citations, it claims Yaghoobia filed a separate wrongful eviction action on March 10, 2017.

DISCUSSION

1. Summary Judgment

a. Legal Standard

In an unlawful detainer action, "[s]ummary judgment shall be granted or denied on the same basis as a motion under [Code of Civil Procedure] Section 437c." (Code Civ. Proc., § 1170.7.) "A motion for summary judgment is properly granted only when '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.' (Code Civ. Proc., § 437c, subd. (c).) . . . We review a grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law." (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 749.)

Plaintiff car wash complains that "most" of Yaghoobia's arguments lack citation to the record and citable authority. It also complains the record is inadequate because Yaghoobia did not submit a Reporter's Transcript of the hearing on the motion and a full transcript of his deposition.

As appellant, Yaghoobia bears the burden to demonstrate error by an adequate record. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.) He is also required to include adequate citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) He is not exempt from these rules even though he is not represented by an attorney. (*Nwosu,* at pp. 1246-1247.) We have reviewed Yaghoobia's briefs and the record. With one exception discussed below, we find them sufficient to review his appeal on the merits.

b. Nature of Yaghoobia's Possession

Plaintiff car wash sought to terminate Yaghoobia's tenancy by claiming he had a tenancy at will subject to termination upon 30-days' notice. " 'A tenancy at will is an estate which simply confers a right to the possession of premises leased for such indefinite period as both parties shall determine such possession shall continue. . . . The tenant at will is in possession by right with consent of the landlord either express or implied, and he does not begin to hold unlawfully until the termination of his tenancy. His estate is a leasehold and he holds in subordination to the title of the landlord.' [Citation.] And 'A permissive occupation of real estate, where no rent is reserved or paid and no time agreed on to limit the occupation, is a tenancy at will.' " (*Covina Manor, Inc. v. Hatch* (1955) 133 Cal.App.2d Supp. 790, 792.)

Plaintiff car wash is correct that Yaghoobia produced no specific written agreement expressly granting him an interest *solely* in the food stand. Yaghoobia admitted as much in his deposition and responses to interrogatories. But that is not the pertinent issue as we understand it. There is no dispute Yaghoobia was assigned the original written lease in 1985, giving him a lease over both the food stand and the car wash. Yaghoobia produced a signed addendum to the lease extending it to 2032, a document plaintiff car wash does not address, let alone dispute. If a factfinder concluded Yaghoobia merely subleased the car wash to Marble in 1996 and retained the original lease for the food stand, the original lease would remain in effect until 2032, giving Yaghoobia a continuing right to possess the food stand. If a factfinder concluded Yaghoobia assigned his full interest in the original lease to Marble, then he could be

considered a tenant at will subject to termination upon proper notice as plaintiff car wash contends.[4]

As our detailed recitation of facts demonstrates, the evidence on this issue is conflicting. Most obviously, in the June 3, 2015 letter, the owners' attorney took the very position Yaghoobia asserts now, stating it was "Owners' belief and understanding that in late 1996 you entered into a sublease with William Marble for the car wash land; this belief and understanding is based on a request by you and Mr. Marble for Owner to sign a consent to an assignment of a sublease as collateral security for a loan made by you to Mr. Marble in connection with his purchase of the car wash business." The owners "agree[d] with you that there is only one lease for the entire Property, and that you are the sole tenant of the entire Property. Accordingly, [plaintiff car wash] occupies the car wash pursuant to a sublease (or some other relationship with you). Therefore, Owner's position is that it is obligated only to you with

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[4] Plaintiff car wash repeatedly emphasizes that Yaghoobia personally paid no rent or utilities for the food stand since 1996. While that appears to be basically accurate, the evidence suggests Yaghoobia did not occupy the property rent-free; he testified the operator of the car wash paid the rent and expenses for the entire property. It defies logic that owners of a commercial property would allow a tenant to occupy a portion of an income-generating property for 20 years without someone paying rent for it. We also question why the owners and/or plaintiff car wash did not serve 3-day notices to pay rent or quit the premises if in fact Yaghoobia had not paid the rent he was contractually bound to pay under the lease. (Code Civ. Proc., § 1161, subd. (1).) In any case, Yaghoobia does not argue that he is not a tenant at will because he paid the rent owed under the lease, so we will not address the point further.

respect to the Lease and the Property, and that you are obligated to Owner for everything under the Lease and with respect to the entire Property."

The owners took basically the same position in 2013 and 2014 in the letters to the City of Los Angeles, stating "the Lease is still in full force and effect, and that with regard to the taco stand located on the Property (which has the address of 21008 Sherman Way, Canoga Park, CA), Mr. Yaghoobia is still the tenant under the Lease (the remainder of the Lease has been assigned to a third party, who operates the 'Canoga Park Hand Car Wash' located on the Property, which has the address of 21004 Sherman Way, Canoga Park, CA)."

Plaintiff car wash does not acknowledge the existence of these letters in its briefs on appeal, let alone explain why they do not create a dispute of fact. In his declaration in the trial court, Beridon testified some of the owners sent the May 28, 2014 letter to the City of Los Angeles after "YAGHOOBIA falsely represented to the ORIGINAL OWNERS that through an agreement with CANOGA PARK, he was entitled to take certain actions with respect to the TACO STAND. . . . Such letter did not, and was not intended to, grant any right to possession of the TACO STAND or any other part of the entire property." This testimony creates a clear credibility conflict and a dispute over the purpose and nature of these letters and Yaghoobia's interest in the food stand.[5]

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[5] At oral argument, counsel for plaintiff car wash cited testimony from the owners' attorney at a hearing the trial court held on January 4, 2017 for the purpose of determining whether any sublease to Yaghoobia for the food stand was in writing. The attorney testified the purpose of the letters to the Department of

Although plaintiff car wash insists its evidence is dispositive, that evidence was ambiguous at best. The declarations from Artslevelian and Beridon, for example, contained testimony that Yaghoobia transferred his "entire interest" in the original lease to Marble during the 1996 transaction. Artslevelian did not explain how she knew about the details of this transaction in 1996, given plaintiff car wash did not obtain an interest in the lease until over a decade later in 2008. For Beridon, he signed the December 1996 "ASSIGNMENT OF SUB-LEASE AS COLLATERAL SECURITY," which specifically described Marble's interest as a "sub-lease." In his declaration, he testified it was "now [his] understanding" that Yaghoobia transferred his entire interest to Marble. He also testified the owners "never consented to the splitting of the property," to a "partial assignment" of the lease,

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Building and Safety was to allow Yaghoobia to review permits for construction on the food stand. He explained, "Because I only had the original lease, and the original assignment to Mr. Yaghoobia, and no other documents, and the City—according to Mr. Yaghoobia—was insisting on seeing the documents, I had to describe him as an assignee because that's all I had at the moment. [¶] And, therefore, he would have been, as I thought at the time, a lessee, based on the document trail." His understanding of Yaghoobia's interest changed over time, and "[a]s to the food stand, I don't know really what he had from the time he assigned it to Mr. Marble in 1996 until recently, I really don't know. [¶] In fact, I really don't know now, to be honest with you." This testimony only emphasizes the triable issues of fact in this case and the need for a trial to determine the factual issues.

or to subletting the food stand. The document signed by Beridon in 1996 brings this testimony into question.[6]

Plaintiff car wash relies heavily on Yaghoobia's testimony in the *Morales* case, but this testimony was not dispositive. Yaghoobia explained in his declaration in opposition to summary judgment that this prior testimony was referring to the sublease for the car wash, and a reasonable factfinder could interpret it that way. For example, the first line of questioning from the *Morales* case quoted above began with a reference to the "lease rights for that car wash" and ended with Yaghoobia testifying that he "assigned the lease to Bill Marble." In another excerpt, the court asked, "So was Mr. Marble supposed to sublease from you or was he actually buying the lease?," and Yaghoobia testified "it was like an assignment of the lease to Mr. Marble" and Yaghoobia "was still on the lease as a guarantor for the lease." Yaghoobia also testified that the buyer after Marble paid monthly rent directly to the owners, which covered all the rent owed under the original lease, but he did not testify that arrangement existed because he had no rights to the food stand under the original lease.

Plaintiff car wash urges us to reject Yaghoobia's declarations submitted in opposition to summary judgment because they contradict this prior testimony. It is true that " '[a] party cannot create an issue of fact by a declaration which

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[6] Yaghoobia objected to various portions of Beridon's and Artslevian's declarations. Although we have no indication the trial court ruled on these objections, they have been preserved for the purpose of appeal. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 531-532.) Because we conclude factual issues exist even considering this testimony, we need not decide whether their testimony should have been excluded.

contradicts his prior [discovery responses]. [Citation.] In determining whether any triable issue of material fact exists, the trial court may, in its discretion, give great weight to admissions made in deposition and disregard contradictory and self-serving affidavits of the party.' " (*Benavidez v. San Jose Police Dept.* (1999) 71 Cal.App.4th 853, 860.) As we have explained, however, a reasonable factfinder could find his prior testimony and his declarations consistent, so we decline to disregard his declarations for the purpose of summary judgment.[7] Also, in light of the letters from the owners' attorney supporting Yaghoobia's rights under the original lease, Yaghoobia's prior testimony would not automatically entitle plaintiff car wash to summary judgment. (See *Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1089 ["neither a party's deposition testimony nor its responses to interrogatories constitute

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[7] Plaintiff car wash claims in its brief that "some of the contradictions are blatant and simply outrageous." Its only cited example is deposition testimony from Yaghoobia that he never entered arbitration with anyone involved in the property, even though, according to plaintiff car wash, Yaghoobia "has used a partial transcript of the arbitration (that he denied ever participating in) as proof of his rightful possession of the Subject Premises in both his opposition to the motion for summary judgment and his opening brief." The record cite for the quoted deposition excerpt does not point to Yaghoobia's deposition, but to plaintiff car wash's reply to summary judgment. The reply itself contains no citation at all. Also, plaintiff car wash does not cite anywhere in the trial record or Yaghoobia's opening brief for the conflicting statements from Yaghoobia. In any event, plaintiff car wash does not explain how this alleged contradiction should factor into our analysis.

'incontrovertible judicial admissions' of a fact that bar the party from introducing other evidence that controverts the fact"].)

Plaintiff car wash next argues that if Yaghoobia had an oral sublease in the food stand, it would be invalid under the statute of frauds. (Civ. Code, § 1624, subd. (a)(3) [requiring written agreement for "[a]n agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein"].) Likewise, although the record does not show the trial court's reasoning in granting summary judgment, it issued a December 20, 2016 minute order explaining, "The thrust of plaintiff's motion is that there is no written lease to give defendant the right to operation on the premises. There is only an oral agreement, and an oral agreement that extends for more than 1 year is in violation of the statute of frauds. The master lease, by all accounts, was assigned to a 3rd party but there is no reservation of defendant's rights to maintain an operation on the premises. [¶] The court finds no authorization for defendant's continued occupation of the premises. In fact, the existing written documents do not mention or include defendant." The court also held a hearing on January 4, 2017 to determine whether Yaghoobia had any sublease in writing for the food stand, expressing its concerns about the statute of frauds.

Both the trial court and plaintiff car wash misapprehend Yaghoobia's position, which does not implicate the statute of frauds. As we understand it, Yaghoobia is not arguing that *he* had a sublease for the food stand; he is arguing he subleased the car wash to Marble and retained an interest in the original lease, which was undisputedly in writing. If the sublease to Marble was invalid under the statute of frauds, that is of no concern to Yaghoobia in this case—he retained his interest under the valid

original *written* lease. If anything, plaintiff car wash's rights as a sub-lessee would come into question in that scenario, given it received its interest in the lease from Marble through several assignments over the years. Because the statute of frauds is not implicated, the parties' arguments and the trial court's focus on it are beside the point.

In the end, if a factfinder credited Yaghoobia's evidence, it could conclude he retained an interest under the original lease in the food stand. He would not be a tenant at will, and he would have a right to continued possession of the food stand under the original lease and addendum extending the lease until 2032. Summary judgment was therefore improper.

c. Other Contentions

We briefly address Yaghoobia's remaining contentions, which have either been rendered moot by the reversal of the judgment, should be addressed in the first instance in the trial court, or lack merit.

i. Demurrer and Motions to Quash

At various points in his briefs Yaghoobia argues the trial court erred in denying his demurrer, contending the unlawful detainer complaint was insufficiently pled. The record demonstrates the parties stipulated to taking his demurrer and motions to quash service off calendar and Yaghoobia filed an answer. Thus, the trial court could not have erred because it did not rule on the demurrer or motions to quash.

ii. Damages Award and Affirmative Defenses

Yaghoobia challenges the damages award and raises various contentions related to his affirmative defenses of laches, estoppel, waiver, and unclean hands. Given our reversal of the judgment, we need not address these issues. The trial court may

address them in the first instance on remand should that become appropriate.

iii. Moot Contentions

The following arguments from Yaghoobia are moot in light of our reversal of the judgment: his claim that the trial court erred in failing to specify the reasons for granting summary judgment as required by Code of Civil Procedure section 437c, subdivision (g) or issue a statement of decision pursuant to Code of Civil Procedure section 632; his claim that the trial court failed to consider his opposition to the motion; his claim that he was not properly served with the motion; and his claim that his due process rights were violated because he was not given a proper opportunity to be heard in the trial court.

iv. Proper Notice

Yaghoobia suggests he did not receive proper notice of the termination of tenancy. Both notices were served by a registered process server leaving copies with the person in charge at the property and by mailing to the address of 21008 Sherman Way. Proofs of service were submitted to the trial court. Yaghoobia admitted he received the notices.

"A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than 30 days, to be specified in the notice." (Civ. Code, § 789.) Code of Civil Procedure section 1162 allows for service of a notice to terminate tenancy to a commercial tenant by "delivering a copy to the tenant personally," or "[i]f he or she is absent from [the commercial rental property], by leaving a copy with some person of suitable age and discretion at [the property],

and sending a copy through the mail addressed to the tenant [at the address where the property is situated]." (Code Civ. Proc., § 1162, subd. (a)(1), (2).)

Evidence Code section 647 provides that the return of a properly registered process server "establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." Yaghoobia has offered no evidence to rebut this presumption or undermine plaintiff car wash's showing. (See *Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1428.)

v. Plaintiff Car Wash's Authority to File Action

Yaghoobia argues plaintiff car wash lacked "standing" to file the unlawful detainer action because it had no greater rights than he had in the subject property. This simply rephrases the primary issue discussed above—whether plaintiff car wash was assigned the original lease in full or whether Yaghoobia retained the right to possess the food stand under the original lease. In any case, Beridon stated in his declaration the owners "irrevocably assigned" plaintiff car wash any rights and remedies it had against Yaghoobia and any occupants of the food stand, including under the 30-day notices. Yaghoobia offered no contrary evidence, so his contention fails.

vi. Motion to Consolidate and Stay

After plaintiff car wash filed this unlawful detainer action, Yaghoobia filed a separate declaratory relief action against plaintiff car wash. The complaint sought to determine title to the food stand, which Yaghoobia alleged could not be decided in an unlawful detainer proceeding. Yaghoobia then filed an ex parte application in this case to continue the hearing on the summary judgment motion, to stay this action, and to consolidate it with

the declaratory relief action. The court granted the continuance but denied the requests to stay and consolidate.

Yaghoobia contends the court abused its discretion in refusing his request to stay and consolidate the cases. However, he did not include a Reporter's Transcript of the hearing or a copy of any order explaining the court's reasons for denying his requests, which precludes our review. He has therefore forfeited this contention on appeal. (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259.)

2. Pending Motions

Plaintiff car wash filed three motions in conjunction with this appeal: (1) a motion for sanctions against Yaghoobia in the amount of $35,265 for filing a frivolous appeal; (2) a motion for an order declaring Yaghoobia a vexatious litigant; and (3) a motion for judicial notice in support of those motions. Given we have reversed the judgment, we deny the motions.

Yaghoobia filed a motion to augment the appellate record with documents from an arbitration in another case. Plaintiff car wash contends those documents were not included in the trial record in this case, and Yaghoobia has not suggested otherwise. The motion is denied.

DISPOSITION

The judgment is reversed. Yaghoobia is awarded costs on appeal.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.