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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ISAAC GABRIEL,

Plaintiff and Respondent,

v.

JOSEPH GABRIEL et al.,

Defendants and Appellants.

B278035

(Los Angeles County
Super. Ct. No. SC125910)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Law Offices of Mark B. Plummer and Mark B. Plummer for Defendants and Appellants.

Law Offices of Leslie Richards and Leslie Richards; Robert F. Smith for Plaintiff and Respondent.

In 2015, the trial court decided an unlawful detainer action brought by plaintiff and respondent Isaac Gabriel (plaintiff) against defendants and appellants Joseph Gabriel and Michael Gabriel (defendants) in favor of defendants, without prejudice. Plaintiff filed another unlawful detainer action against defendants in 2016, and the trial court entered judgment for plaintiff in that case. We consider whether the record on appeal establishes the trial court erred by not according preclusive effect to an issue decided in the parties' 2015 unlawful detainer action.

I.

In April 2015, defendant Joseph Gabriel rented an apartment from plaintiff for the use of his son, defendant Michael Gabriel. The lease agreement required that monthly rent of \$3,200 be paid in cash. The agreement also contained a severability clause, which provided that if any part of the lease were determined to be invalid, the remaining parts of the lease would "remain valid and enforceable and . . . be construed to so remain."

In August 2015, plaintiff filed an unlawful detainer action against defendants for failure to pay \$9,600 in rent plus a \$6,400 security deposit. The trial court entered judgment for defendants, without prejudice, and made the following findings in a minute order: (1) plaintiff failed to prove the agreement was signed by Joseph Gabriel; (2) Civil Code section 1947.3 prohibits landlords from requiring rent to be paid exclusively in cash unless the tenant previously paid with checks returned for insufficient funds; (3) the lease, if signed, was unlawful under Civil Code section 1947.3; and (4) there was no evidence plaintiff provided a 30-day notice to quit.

The following year, in May 2016, plaintiff filed another unlawful detainer action against defendants, this time alleging they had failed to pay \$38,400 in rent. Defendants asked the trial court to take judicial notice of the prior action, including the trial court's minute order. The record does not disclose whether the trial court granted or denied defendants' request for judicial notice, but we do know the trial court decided the matter in plaintiff's favor after an unreported trial. The court ordered that the lease be forfeited and that defendants pay plaintiff past-due rent, damages, and costs totaling \$44,831.71.

II.

Defendants contend the judgment must be reversed because the trial court in the 2015 action found the parties' lease was not enforceable and that determination was binding in the subsequent action pursuant to the doctrine of issue preclusion. The appellate record provided by defendants is insufficient to establish error.

A party seeking to invoke the doctrine of issue preclusion must raise it in the trial court (*Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 89 (*Rodgers*)) and establish that the doctrine's requirements are satisfied (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943 (*Pacific Lumber*)). "[I]ssue preclusion applies: (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825 (*DKN Holdings*).)

The record adequately shows defendants raised issue preclusion as a defense to plaintiff's 2016 unlawful detainer action. (*In re Fireside Bank Cases* (2010) 187 Cal.App.4th 1120, 1127 [issue preclusion defense may be raised "by seeking judicial notice of relevant judicial records"].) The record is insufficient, however, to show defendants established that the requirements of issue preclusion were met or that application of the doctrine compelled a judgment in their favor. Trial proceedings in the 2016 action were not reported, and the judgment does not contain the factual or legal underpinnings of the court's decision. We cannot adequately review defendants' contention of error where the record does not show how the parties addressed issue preclusion in the trial court or how the court resolved the matter.¹

It is an appellant's burden to affirmatively demonstrate error through an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557,

¹ For example, we have no way of knowing whether defendants provided sufficient evidence that the 2016 action presented an identical issue (the record does not establish whether the lease involved in the 2016 action was the same lease underlying the 2015 decision). Nor can we assess whether the trial court determined issue preclusion was inapplicable because plaintiff lacked "a "full and fair" opportunity to litigate the issue" in the prior proceeding or because applying issue preclusion would result in injustice. (*Rodgers, supra*, 136 Cal.App.4th at p. 90; see also *DKN Holdings, supra*, 61 Cal.4th at p. 826; *Pacific Lumber, supra*, 37 Cal.4th at pp. 943-944.) The trial court also could have determined that even if the parties were barred from relitigating the lawfulness of the lease's cash-only provision, the lease was still binding on defendants pursuant to its severability provision.

564 (*Denham*.) We presume the trial court’s judgment is correct, and “[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent” (*Denham, supra*, at p. 564.) Without a reporter’s transcript of the trial (or a settled or agreed statement of the proceedings), we must conclude sufficient evidence supports the trial court’s judgment and that the court properly determined issue preclusion did not operate as a bar to the judgment it entered.²

² The deficiencies in the record presented also doom defendants’ argument that we should “independently find” the lease is void.

DISPOSITION

The judgment is affirmed. Plaintiff is to recover his costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIM, J.*

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