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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

WILLIAM H. SCHELLBACH, Plaintiff, Cross-defendant and Respondent, v. HOOSIK NAJARIAN, Defendant, Cross-complainant and Appellant.	B294202 (Los Angeles County Super. Ct. No. EC066278)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ralph C. Hofer, Judge. Affirmed.

Law Office of Julie A. Herzog and Julie A. Herzog for Defendant, Cross-complainant and Appellant.

Shore Law Offices and Michael D. Shore for Plaintiff, Cross-defendant and Respondent.

Plaintiff William H. Schellbach leased dental office space to defendant Hoosik Najarian in 1995. They amended their lease agreement three times. After plaintiff decided to sell the building in 2016, a dispute arose concerning defendant's right to renew the lease. Defendant believed he was entitled to renew the lease in perpetuity, despite a lease amendment providing the lease would end not later than August 2024. The trial court granted summary judgment in plaintiff's favor. We affirm.

FACTS

In 1995, defendant leased a unit in plaintiff's dental office building in Toluca Lake. The written lease agreement was for a four-year term. Paragraph 45 of the lease created an option to extend the lease term for an additional five-year period. Paragraph 45 of the lease provided that if defendant timely exercised the option and accepted the new rental amount, the acceptance shall include an additional option period.

In 2008, the parties amended the lease to extend the lease term to August 24, 2009, and to modify paragraph 45 of the lease to provide for two 5-year renewal options, commencing on August 24, 2009 (first amendment). Both parties signed the first amendment.

The lease was amended again in May 2009 (second amendment). The second amendment extended the lease term from August 24, 2009 to August 24, 2014, and modified paragraph 45 to provide for two 5-year option periods, commencing at the expiration of the term on August 24, 2014. The second amendment also provided: "At the time of [defendant's] exercise of any option to extend, another five year option to extend shall automatically be created (on the identical terms) so that [defendant] shall always retain two options to

extend of five years each." Both parties signed the second amendment.

The lease was amended again in May 2014 (third amendment). The third amendment provided, "I [Plaintiff] am confirming our agreement for you to exercise your option for you to extend your office lease for an additional five years. This extension begins August 24, 2014, and expires on August 23, 2019. As previously agreed, the exercising of this option automatically gives you an additional five year extension option on top of your standard five year extension, thus giving you the security of your lease through August 23, 2024." Both parties signed the third amendment.

In 2016, plaintiff decided to sell the dental building to the dentist occupying the other dental suite in the building. Plaintiff informed defendant of the proposed sale, and acknowledged his right of first refusal as provided for in the lease. Defendant declined to purchase the building, but informed plaintiff and the buyer that any sale was subject to his renewal options in the lease.

Plaintiff filed this action for declaratory relief and quiet title, in addition to other causes of action he later dismissed.

In his verified answer to the first amended complaint, defendant asserted numerous affirmative defenses, including estoppel. Defendant also filed a cross-complaint for declaratory relief. The cross-complaint alleged that defendant retained rights under the second amendment of the lease to unlimited renewals, in perpetuity, limited only to 99 years under Civil Code section 718.

Plaintiff moved for summary adjudication of his claims for quiet title and declaratory relief, and summary judgment of

defendant's cross-complaint, arguing the lease and its amendments did not clearly and explicitly provide for unlimited renewals, and that under *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873 (*Ginsberg*), the court may not consider extrinsic evidence of the parties' intent, and must conclude the lease does not provide for perpetual renewals. Plaintiff argued that the third amendment to the lease "expressly provides for the termination of 'the security of the lease' on August 23, 2024," making clear that defendant "is not entitled to any renewals of the Office Lease after August 23, 2024."

In opposition, defendant argued the second amendment to the lease clearly and explicitly showed that defendant would "always" retain two "automatic" options to extend the lease, and that the third amendment did not modify or change his option rights. Defendant also offered extrinsic evidence of the parties' intent and his own subjective beliefs.

The trial court granted summary adjudication of plaintiff's claims for quiet title and declaratory relief and summary judgment of the cross-complaint, all in plaintiff's favor.

DISCUSSION

1. Standard of Review

A plaintiff moving for summary judgment "has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff . . . has met that burden, the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1).) " 'It is not plaintiff's initial burden to disprove affirmative defenses . . . asserted by

defendant.' " (*Consumer Cause v. Smilecare* (2001) 91 Cal.App.4th 454, 473.) Summary judgment is appropriate where "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).)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. (*Perry,* at p. 542.) "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Ibid.*) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citation omitted.)

2. Analysis

Defendant contends the second amendment to the lease clearly and explicitly evidences a right to perpetual lease renewals, and the third amendment is not ambiguous and did not amend his renewal options.

Plaintiff argues our opinion in *Ginsberg*, *supra*, bars any finding that the lease or any of its amendments created a perpetual right to renew the lease, and that the third amendment ends the term of the lease and all options on August 23, 2024.

In *Ginsberg*, *supra*, we held that perpetual lease renewal provisions are disfavored, and that a lease must clearly and explicitly give the lessee the unequivocal right to extend the lease in perpetuity in order for a court to enforce such a provision. (205 Cal.App.4th at p. 893.) We further held that extrinsic evidence of the parties' intent is not admissible to construe an ambiguous lease, and such a lease must be construed as allowing only one renewal. (*Id*. at pp. 885, 895.)

If there were not a third amendment of the lease, then *Ginsberg* would govern our analysis here. The *Ginsberg* analysis is unnecessary in this case for the most part, because the third amendment modified the second amendment on which defendant's arguments rest. Parties to a written contract may modify it by a contract in writing. (*Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 519; see also Civ. Code, § 1698, subd. (a).)

The third amendment explicitly states that if defendant exercised a five-year option to extend the lease, that would automatically give him "an additional five year extension option" so defendant would have "the security of your lease through August 23, 2024." The third amendment unambiguously gave defendant two, and only two, 5-year options, and stated the lease would expire not later than August 23, 2024.

Defendant makes much of letters exchanged between him and plaintiff, and his own subjective understanding of the third amendment. If the lease were ambiguous on the question whether defendant has a perpetual renewal option, such evidence would be inadmissible under *Ginsberg*. More to the point, this evidence is inadmissible parol evidence because the third amendment is neither ambiguous nor reasonably susceptible to

the interpretation urged by defendant. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.)

In his reply brief, defendant says the third amendment did not supersede the lease but amended only some and not all of the lease provisions. The provisions that were amended, however, included the renewal option, and the third amendment did supersede the renewal option provisions in previous agreements.

Lastly, defendant contends plaintiff should be equitably estopped from asserting he gave up his rights to perpetual option renewals. From our review of the record, defendant never once attempted to prove his estoppel defense in opposition to the motion for summary adjudication and judgment, and plaintiff was not required to disprove defendant's affirmative defenses in making his motion. (*Consumer Cause v. Smilecare*, *supra*, 91 Cal.App.4th at p. 473.) Moreover, one element of estoppel is that a defendant is ignorant of the true state of facts. (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 756.) Defendant here signed an amendment that clearly gave him not more than two 5-year extensions, so he cannot assert ignorance.

DISPOSITION

The judgment is affirmed. Respondent may recover his costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.