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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

JOHNNY GALLO, Plaintiff and Appellant, v. SARA GHIRUM, et al., Defendants and Respondents.	B281032 (Los Angeles County Super. Ct. No. BC578735)

APPEAL from an Order of the Superior Court of Los Angeles County, Debre K. Weintraub, Judge. Affirmed.

Corey Parker for Plaintiff and Appellant.

Gibbs Giden Locher Turner Senet & Wittbrodt LLP, Philip C. Zvonicek and Gary E. Scalabrini for Defendants and Respondents.

Appellant Johnny Gallo appeals from the judgment entered on the motion for summary judgment brought by Respondents Vince Nguyen and Gaineasy, LLC. Gallo argues that the trial court made an error of law on the merits of the matter, and abused its discretion in denying his request for a continuance. Finding neither error, nor abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In his first amended complaint in this matter, filed in February 2016. Gallo sued Sara Ghirum,[1] Vince Nguyen, and Gaineasy, LLC, alleging that he and Ghirum had leased a residential unit from Gaineasy, which was acting through Nguyen as its agent. He further alleged that he lived in the unit with Ghirum until December 2013, when their relationship ended and Ghirum moved out. In April 2014, when Gallo was out of town, Ghirum obtained a temporary restraining order against him[2], and had Nguyen and Gaineasy change the locks at the

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[1] Ghirum is not a party to this appeal.

[2] Gallo alleged that the temporary restraining order was denied, but on April 10, 2014, the court issued a domestic violence restraining order against Gallo, pending hearing, including a stay-away and move-out order. The hearing took place between April 30 and May 5, 2014; the court found that Ghirum had failed to meet her burden of proof and denied the request, but left Ghirum, whom the court acknowledged was identified as the tenant on the lease, in possession of the unit. On May 19, Gallo moved ex parte for reconsideration, which the court denied, instructing the parties to either agree to a mechanism for the return of Gallo's belongings, or to have the Sheriff accompany Gallo to the unit to retrieve them.

unit. Ghirum moved some, but not all, of Gallo's belongings into a storage unit. After hearing, the court denied the restraining order, but Gallo was unable to recover his possessions. He sued all defendants for conversion and intentional infliction of emotional distress; Nguyen and Gaineasy for forcible ejectment; Gaineasy for breach of contract and violation of Civil Code sections 789.3 and 1954; and Ghirum for abuse of process.

In September 2016, Nguyen and Gaineasy filed a motion for summary judgment. Gallo opposed the motion; in his separate statement, he referred only to his own declaration as evidence. With respect to the events surrounding Ghirum's request for a restraining order, and her subsequent correspondence to Nguyen concerning the temporary order and her request to change the locks, Gallo asserted that he had no personal knowledge. He referred to his allegations that the defendants controlled access to the unit and blocked his access; when he did gain access, his belongings were gone. He also requested judicial notice of the declaration of a third party that had been filed in connection with the hearing on the restraining order.[3] In his memorandum of points and authorities, he requested a continuance of the hearing, arguing that he lacked knowledge as to the facts and needed to depose the defendants; as of the date of filing, he asserted that only Ghirum's deposition

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[3] Respondents objected to his declaration and request for judicial notice; the court sustained the objection to the request for judicial notice and overruled in part the objections to the Gallo declaration.

had been scheduled.[4] He filed no declaration in support of the request for continuance.

The trial court heard the motion on November 17, 2016. The trial court granted the motion, and entered judgment on December 15, 2016.

DISCUSSION

On appeal, Gallo argues that the trial court abused its discretion by denying his request to continue the hearing, and that the court erred in determining Nguyen and Gaineasy were entitled to continuing statutory immunity for their actions.

A. We Review the Grant of Summary Judgment De Novo

"'[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.' (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, 107 Cal.Rptr.2d 841, 24 P.3d 493, fn. omitted.) 'Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to that cause of action. . . .' (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra,* at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The party opposing summary judgment 'may not rely upon the mere allegations or denials of its pleadings,' but rather 'shall set forth the specific facts showing that a triable issue of material fact exists. . . .' (Code Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists where 'the evidence would

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[4] The record demonstrates that Gallo had conducted no discovery prior to this time.

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.' [Citation.]" (*Jade Fashion & Co. Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643.)

We review the grant of the motion de novo. (*Chavez v. Glock, Inc*. (2012) 207 Cal.App.4th 1283, 1301.)

B. The Trial Court Properly Denied the Request to Continue The Hearing

Code of Civil Procedure section 437c, governs motions for summary judgment. Subdivision (h) provides:

"If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due."

We review the trial court's determination whether to grant such a continuance for abuse of discretion. (*Jade Fashion, supra*, 229 Cal.App.4th at 643.) We find no abuse of discretion here.

As the trial court found, Gallo failed to comply with the statutory requirements for a request; he submitted no affidavits or declaration describing what facts were essential, or why he had not previously obtained those facts. Instead, Gallo made a request for a continuance as an alternative to his request to deny the motion in his opposition brief, without specifying the facts he

needed to discover; he made only a general reference to 10 issues in defendants' statement of undisputed facts as to which he had no personal knowledge. He made no reference at all to the need for discovery in his declaration in opposition to the summary judgment motion. As a result, he failed to comply with the statute. Enforcing the statutory requirements is not, as Gallo argues, arbitrary action by the court.

Gallo also failed to demonstrate why, notwithstanding his failure to comply with the statute, there was good cause to grant the continuance. (*Levingston v. Kaiser Foundation Health Plan* (2018) 26 Cal.App.5th 309, 315; *Hamilton v. Orange County Sheriff's Dept.* (2017) 8 Cal.App.5th 759, 765 [showing of good cause made where party had noticed depositions over one month before due date for opposition and defense, which had failed to allow the discovery, had stipulated to continuance]).

Gallo had not conducted any discovery during the time the case was pending, and proffered no explanation for his failure to do so. The record before the trial court does not show that Gallo was unable to conduct the discovery needed to establish his claims, or that defendants hindered that discovery in any manner. His lack of diligence precludes any finding of good cause. The trial court did not abuse its discretion in denying his request for a continuance.

C. Nguyen and Gainesay Are Entitled To Immunity Under Civil Code Section 1941.6

The record demonstrates, and the trial court found, that the defendants changed the locks to the unit, as Ghirum requested, on April 15, 2014, while the temporary restraining order was in effect.

Civil Code section 1941.6[5] requires a landlord, on written request, to change the locks when a co-tenant is restrained from contact pursuant to court order, including the type of restraining order issued in this case. The statute also provides immunity to the landlord who changes the locks in compliance with such a request.[6] Gallo nonetheless argues that any immunity granted

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[5] Except as noted, all further statutory references are to the Civil Code.

[6] Civil Code section 1941.6 states:
"(a) This section shall apply if a person who is restrained from contact with a protected tenant under a court order is a tenant of the same dwelling unit as the protected tenant.
"(b) A landlord shall change the locks of a protected tenant's dwelling unit upon written request of the protected tenant not later than 24 hours after the protected tenant gives the landlord a copy of a court order that excludes from the dwelling unit the restrained person referred to in subdivision (a). The landlord shall give the protected tenant a key to the new locks.
"(c)(1) If a landlord fails to change the locks within 24 hours, the protected tenant may change the locks without the landlord's permission, notwithstanding any provision in the lease to the contrary.
"(2) If the protected tenant changes the locks pursuant to this subdivision, the protected tenant shall do all of the following:
"(A) Change the locks in a workmanlike manner with locks of similar or better quality than the original lock.
"(B) Notify the landlord within 24 hours that the locks have been changed.
"(C) Provide the landlord with a key by any reasonable method agreed upon by the landlord and protected tenant.

under the statute expired when the order after hearing was denied.

Neither Gallo nor respondents have the benefit of published authority on this issue, and this court has been unable to identify such authority. The language of the statute, however, contains no indication that a person who acts in compliance with an order which was then in effect, and thus is entitled to immunity, loses that immunity if the order later expires. Were that the case, the intent of the Legislature–to protect victims of

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"(3) This subdivision shall apply to leases executed on or after the date the act that added this section takes effect.
"(d) Notwithstanding Section 789.3, if the locks are changed pursuant to this section, the landlord is not liable to a person excluded from the dwelling unit pursuant to this section.
"(e) A person who has been excluded from a dwelling unit under this section remains liable under the lease with all other tenants of the dwelling unit for rent as provided in the lease.
"(f) For the purposes of this section, the following definitions shall apply:
"(1) 'Court order' means a court order lawfully issued within the last 180 days pursuant to Section 527.6 of the Code of Civil Procedure, Part 3 (commencing with Section 6240), Part 4 (commencing with Section 6300), or Part 5 (commencing with Section 6400) of Division 10 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 of the Welfare and Institutions Code.
"(2) 'Locks' means any exterior lock that provides access to the dwelling.
"(3) 'Protected tenant' means a tenant who has obtained a court order.
"(4) 'Tenant' means tenant, subtenant, lessee, or sublessee."

domestic violence by providing a mechanism for immediate safety in their homes–would not be served.

When interpreting a statute, the "touchstone" of the court's inquiry is to effectuate the legislative intent. (See *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332 ["In interpreting a statue our primary goal is to determine and give effect to the underlying purpose of the law"].)

Relevant analysis of the bill provided: "this bill would permit a tenant who is a documented victim of domestic violence, sexual assault, or stalking to demand that the landlord change the exterior locks, since abusers have been known to return to the victim's home notwithstanding an order to stay away. These lock changes provide not only protection, but peace of mind." (Assem. Com. on Judiciary, Report of Sen. Bill No. 782 (2009-2010 Reg. Sess.) p. 1.) Were the immunity provided only in effect so long as the order was in effect, landlords would be unable to comply. Protective orders, by their nature, are limited in duration; to be effective, immunity cannot be.

D. The Statutory Immunity Applies to All Causes of Action Asserted Against Respondents

a. Forcible Ejectment, Section 789.3, Section 1954

Although California law recognizes no claim entitled forcible ejectment, the pleadings make clear that this cause of action is based on Gallo's loss of access to the unit, effected by the change of locks. The claim under section 789.3[7], which prohibits

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[7] Civil Code Section 789.3 states:
"(a) A landlord shall not with intent to terminate the occupancy under any lease or other tenancy or estate at will, however

created, of property used by a tenant as his residence willfully cause, directly or indirectly, the interruption or termination of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, telephone, elevator, or refrigeration, whether or not the utility service is under the control of the landlord.

"(b) In addition, a landlord shall not, with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence, willfully:

"(1) Prevent the tenant from gaining reasonable access to the property by changing the locks or using a bootlock or by any other similar method or device;

"(2) Remove outside doors or windows; or

"(3) Remove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3.

"Nothing in this subdivision shall be construed to prevent the lawful eviction of a tenant by appropriate legal authorities, nor shall anything in this subdivision apply to occupancies defined by subdivision (b) of Section 1940.

"(c) Any landlord who violates this section shall be liable to the tenant in a civil action for all of the following:

"(1) Actual damages of the tenant.

"(2) An amount not to exceed one hundred dollars ($100) for each day or part thereof the landlord remains in violation of this section. In determining the amount of such award, the court shall consider proof of such matters as justice may require; however, in no event shall less than two hundred fifty dollars ($250) be awarded for each separate cause of action. Subsequent or repeated violations, which are not committed contemporaneously

a landlord from terminating a tenancy and blocking access by, among other actions, changing the locks, rests on the same facts.

Section 1941.6, by its own terms, provides express immunity from claims under section 789.3. Gallo does not assert the contrary, but rests his argument on the assertion, discussed above, that immunity terminates when the order terminates.

Section 1954[8] permits a landlord to enter a dwelling unit pursuant to court order (§ 1954, subd. (a)(4)), but ordinarily

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with the initial violation, shall be treated as separate causes of action and shall be subject to a separate award of damages.
"(d) In any action under subdivision (c) the court shall award reasonable attorney's fees to the prevailing party. In any such action the tenant may seek appropriate injunctive relief to prevent continuing or further violation of the provisions of this section during the pendency of the action. The remedy provided by this section is not exclusive and shall not preclude the tenant from pursuing any other remedy which the tenant may have under any other provision of law."

8 Civil Code section 1954, subdivision (a)(4) provides in relevant part:
"(a) A landlord may enter the dwelling unit in the following cases:
". . .
"(4) Pursuant to a court order.
". . .
"(d)(1) Except as provided in subdivision (e), or as provided in paragraph (2) or (3), the landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable

requires reasonable notice, which the statute presumes to be 24 hours, to do so. (§1954, subd. (d)(1).) The notice requirement is subject to exceptions, including the ability of the landlord to respond to an emergency. (§ 1954, subd. (e)(1).)

Gallo cites no authority for his argument that the landlord's immunity, when acting in compliance with section 1941.6, does not extend to entry into the unit without 24 hours of notice. Nor could he, as 1941.6, by its terms, requires the landlord to act within 24 hours. Moreover, as the trial judge explained, construing the relevant statutes together properly leads to the conclusion that the intent to protect the victim of violence would be frustrated by giving the restrained person the opportunity to block, or impede, the change of locks.

Courts properly seek to harmonize statutes relating to the same subject, and to avoid interpretations that make one statute ineffective. (*Estate of Gibson* (1983) 139 Cal.App.3d 733, 736 ["It is a cardinal rule of statutory construction that statutes relating to the same subject matter must be read together and reconciled whenever possible. (See *Fuentes v. Workers' Comp. Appeals*

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age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

". . . .

"(e) No notice of entry is required under this section:

"(1) To respond to an emergency."

Board (1976) 16 Cal.3d 1, 6–7, 128 Cal.Rptr. 673, 547 P.2d 449; *Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 340, 122 Cal.Rptr. 210.)"].) The trial court properly harmonized the applicable statutes in this matter.

b. Breach of Contract

Even after the temporary restraining order was no longer in effect, the issuing court terminated Gallo's right of occupancy and prohibited Gallo's access to the unit except for the limited purpose, and under the conditions set by the court, for retrieving his property. However, section 1941.6 provides, by its terms, continuing liability of the restrained person for rent, and also provides that the lock change does not constitute a breach of the lease. (§ 1941.6, subd. (e).)

Gallo's only assertion of error with respect to this claim is his view that the immunity must end when the order ceases to be in effect. As discussed above, that argument is inconsistent with both the plain language of the statute, and the legislative intent.

c. Conversion and Intentional Infliction of Emotional Distress

The trial court, in addition to finding the statutory immunity relevant to these causes of action, also found that Gallo had failed to provide any evidence to counter respondents' showing that they took no action, and made no agreement, to convert or dispose of his property. Gallo does not argue that he presented such evidence, nor could he. Instead, in his separate statement, he disputed the relevant facts by stating that he had no personal knowledge. This response is insufficient to meet his burden to show a triable issue of disputed material fact.

(*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1433 [in opposition plaintiff must produce specific facts demonstrating triable issue].)

Moreover, Gallo presented no evidence to support his allegation that the respondents took any actions of any kind after changing the locks in compliance with applicable law. The record establishes no acts other than those expressly entitled to immunity. The trial court did not err.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.