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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALFREDO GARCIA,

Plaintiff and Appellant,

v.

SIMON SHIMON ELHIANI as Trustee of
the Elhiani/Lewkowicz Living Trust,

Defendant and Respondent.

B243426

(Los Angeles County
Super. Ct. No. BC467393)

APPEAL from a judgment of the Superior Court of Los Angeles County,

John L. Segal, Judge. Affirmed.

Law Offices of Morse Mehrban and Morse Mehrban for Plaintiff and Appellant.

Law Offices of Chester & Lewkowicz and Melissa Lewkowicz for Defendant
and Respondent.

INTRODUCTION

Plaintiff Alfredo Garcia (plaintiff) contends that the court erred in shortening the notice period for the demurrer without good cause, and in sustaining defendant's untimely served demurrer. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action in August 2011.¹ In January 2012, plaintiff filed a first amended complaint alleging one cause of action for violation of the Unruh Civil Rights Act and the American Disabilities Act. The complaint alleged that plaintiff, a paraplegic, patronized the Elat Burger restaurant (Restaurant) and was unable to extract soap or paper towels from the "dispenser[s]" there. The complaint further alleged that removing these "architectural barriers would have been readily achievable." Defendant Simon Shimon Elhiani as Trustee of the Elhiani/Lewkowicz Living Trust dated July 26, 1994 (defendant) was alleged to be the owner and lessor of the building where the Restaurant was located. Does 1-10 were alleged to be the operators of the Restaurant.

Defendant filed a demurrer on May 21, 2012, and set the hearing for October 9, 2012. On May 31, 2012, the court, *sua sponte*, advanced the demurrer hearing to June 22, 2012, to be heard with a case management conference. The court faxed notice of the new hearing date to plaintiff's counsel on May 31, 2012. Defendant served the demurrer on plaintiff by mail on June 4, 2012.

¹ The original complaint is not included in the record.

Plaintiff did not file an opposition to the demurrer. Plaintiff's counsel appeared at the hearing. The court sustained the demurrer as "unopposed" and granted plaintiff ten days leave to amend. On July 5, 2012, plaintiff filed a "Notice of Refusal to Amend Complaint" stating only that, "[o]n this date, the Court sustained Defendant's demurrer with leave to amend. Plaintiff will not amend his complaint but will appeal from the judgment dismissing his action." On July 10, 2012, defendant moved ex parte for dismissal of the action. The court issued an order acknowledging plaintiff's notice of " 'Refusal to Amend Complaint' " and granted plaintiff an additional ten days leave to amend. On July 24, 2012, the court noted that "[p]laintiff has again chosen not to amend his complaint" and dismissed the case with prejudice. Plaintiff timely appealed.

CONTENTIONS

Plaintiff argues that the court erred in shortening the notice period for the demurrer without good cause, and in sustaining defendant's untimely served demurrer.

DISCUSSION

Code of Civil Procedure section 1005 requires that at least 16 court days notice be given for motions, "[u]nless otherwise ordered or specifically provided by law." (Code Civ. Proc., § 1005, subd. (b).) Thus, the statute recognizes that the court may shorten the notice period. Furthermore, rule 3.1300 of the California Rules of Court authorizes "[t]he court, *on its own motion* or on application for an order shortening time supported by a declaration showing good cause, [to] prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005." (Cal. Rules of Court, Rule 3.1300, subd. (b) [emphasis added].)

Here, plaintiff contends that the court erred when it shortened the notice period for the demurrer without good cause. However, the court is authorized to shorten the notice period and, when it acts on its own motion, there is no requirement that there be a declaration showing good cause. Furthermore, the record does not show that the court shortened the notice period for the demurrer. The record shows only that, on May 31, 2012, the court advanced the hearing date on the demurrer to June 22, 2012, 16 court days later. The court did not authorize defendant to serve the demurrer papers on a shortened time frame.

Plaintiff also contends that the court erred in sustaining the demurrer when he had not been provided with timely notice. Defendant served the demurrer on plaintiff on June 4, 2012, only 14 court days before the June 22 hearing. Therefore, defendant provided untimely notice of the demurrer. However, plaintiff never brought the untimely service to the court's attention. Plaintiff does not dispute that his counsel failed to object to the lack of adequate notice at the hearing. Furthermore, although plaintiff subsequently filed a notice of "Refusal to Amend Complaint," plaintiff again failed to notify the court that he had been untimely served. Plaintiff's failure to raise this objection in the trial court means he has forfeited the argument here.²

(Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (2006)

136 Cal.App.4th 212, 226.)

² We decline to address the merits of the demurrer because, based on the limited record before us, it is unclear on what basis the court sustained the demurrer.

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.