Filed 10/14/16 Daes v. DHA Villa Bonita CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SUZANNE DAES, Plaintiff and Appellant, v. DHA VILLA BONITA, LLC et al., Defendants and Respondents.	B261937 (Los Angeles County Super. Ct. No. BC492081)

APPEAL from a judgment of the Superior Court of Los Angeles County, MelRed Recana, Judge. Reversed and remanded with directions.

MyBedbugLawyer, Inc. and Brian J. Virag for Plaintiff and Appellant.

Slaughter, Reagan & Cole, Barry J. Reagan and Gabriele M. Lashly for Defendant and Respondent DHA Villa Bonita, LLC.

Citron & Citron, Thomas H. Citron and Katherine A. Tatikian for Defendants and Respondents Villa Bonita Partners and Jemco Investments.

Plaintiff Suzanne Daes was a longtime tenant of a residential apartment building owned and managed by defendants DHA Villa Bonita LLC, Villa Bonita Partners LP, and JEMCO Investments (collectively, DHA). In 2011 and 2012, Daes and other tenants discovered bedbugs in their units, which during Daes's tenancy were never fully eliminated. DHA brought an unlawful detainer action, asserting that Daes repeatedly failed to prepare her unit for fumigation; after a court trial, Daes was evicted.

Shortly thereafter, Daes filed the present action against DHA alleging breach of the warranty of habitability, premises liability, and breach of contract, among other things. DHA demurred, urging that all of Daes's causes of action had been litigated and decided in the unlawful detainer action and thus were barred by res judicata or collateral estoppel. The trial court sustained the demurrer without leave to amend. Daes appealed.

We reverse as to all but two causes of action. Because of their summary nature, unlawful detainer actions preclude relitigation of only those issues that have been *fully and fairly* litigated. In the present case, DHA provided the trial court with only a very truncated record of the unlawful detainer action, and thus we cannot determine the extent to which the issues raised here were fully litigated in the unlawful detainer action. Therefore, the trial court erred in sustaining the demurrer on the grounds of res judicata/collateral estoppel.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Background

From 1982 until 2012, Daes leased unit #31 of a residential apartment building located at 1817 Hillcrest Road, Los Angeles (the building). At all times relevant to this litigation, the building was owned and managed by DHA.

In 2011 and 2012, Daes and other tenants complained of bedbugs in their units. DHA hired two different pest control companies to fumigate Daes's unit, but during Daes's tenancy the bedbug problem was never fully remediated.

II.

Unlawful Detainer Action

On March 16, 2012, DHA served Daes with a "Three (3) Day Notice to Perform or Quit," which stated that Daes had breached her lease agreement by "[r]efusing owner reasonable access to the premises for the purpose of making repairs or improvements," as follows: "You were served a notice to enter on February 16, 2012 for the purpose of fumigation on February 17, 2012 along with instructions on how to prepare your unit for the fumigation. Your unit was not adequately prepared when the pest control company came to spray, and subsequently he could not properly fumigate your unit. You need to prepare your unit properly so that we may fumigate your unit. Attached please find . . . 3 notices to enter for March 19th, 2012, March 20th, 2012, and March 21st, 2012 . . . and instructions on how to prepare the unit for fumigation. . . . If you fail to do so, legal action will be instituted in good faith against you to recover possession of the premises, to declare the forfeiture of your rental agreement and/or to recover such damages as are allowed by law."

DHA filed an unlawful detainer action against Daes on March 28, 2012. Daes answered on April 3, 2012, asserting affirmative defenses of breach of the implied warranty of habitability, retaliation, discrimination, and negligence, among other defenses. The unlawful detainer action was tried to the court. On June 26, 2012, the court entered findings of fact and conclusions of law, as follows:

"The complaint alleges that Defendant failed to properly prepare her unit for multiple pest control treatments. The parties agree that several units in the building in question reported bedbug problems from May 2011 and into 2012.

"Plaintiff hired two companies to treat defendant's unit, one by chemicals and one by a heat treatment. Employees from both companies testified that the treatments were performed, but were not effective because defendant did not properly prepare her unit for treatment, as is noted in their respective invoices. Both said they discussed preparation with defendant, and defendant admitted receiving ABC Pest Control's written instructions for preparation.

"The notice to perform or quit specifies planned spraying on March 19, 20 and 21. The ABC Pest Control invoice for those dates, Exhibits 3e-g, states that full treatments were not done because the unit was not properly prepared any of those dates.

"The pest control technicians, Colp and Foster, were generally credible, although the hearsay on hearsay facts stated in Exhibit 3b regarding an infested discarded bed being brought into the defendant's unit, #31, [were] not proven. The other information in that exhibit, that Colp found bedbugs in the mattress in #31, was credible.

"Defendant testified that she fully complied with all preparation requests on each occasion, although she states that several scheduled treatments were postponed. She herself requested a postponement of the March 20 treatment so she could better prepare, but apparently it was not granted.

"Defendant did not produce cleaning or laundry receipts or other records showing that all her clothes and bed linens were washed in hot water or dry-cleaned on each occasion. Although she said she did so, specifics were lacking in her testimony. Exhibits 4a and 4b show clutter in #31 as described by witness Colp, but Defendant says the clutter existed only while she was preparing for treatments.

"It appears that the only occasion on which defendant actually removed items from the unit for treatment [was] for the heat treatment in January.

"Defendant argues that all the treatments were ineffective only because the pest control companies were incompetent. Nevertheless, defendant offers no expert of her own to testify to any errors by those companies, and Defendant offered no evidence to prove her argument. It is too well known to debate that the bedbug infestation in the United States in the past few years spread so rapidly because bedbugs became resistant to insecticides that previously were effective in controlling them. Bedbugs today are, simply, very difficult to eradicate.

"It is true that defendant testified she always complied completely with preparation instructions. Her son and a neighbor confirmed her testimony in general. Nevertheless, the court finds that the relevant testimony of plaintiff's witnesses is of

greater weight than that of the defense witnesses. Therefore, the court intends to give judgment for plaintiff."

Judgment of possession for DHA was entered on August 10, 2012.

III.

The Present Action

A. Complaint

Daes and co-tenant David Gorder (not a party to this appeal) filed the present civil action on September 13, 2012, and filed the operative third amended complaint (complaint) on May 7, 2014. The complaint alleged that DHA failed to properly maintain Daes's and Gorder's units, as well as the common areas of the apartment building. As a result, tenants were forced "to endure slum-like conditions," which included a bedbug infestation, peeling paint and plaster on walls and ceiling throughout common hallways, stained hallway carpet, holes in walls in common areas, deteriorating window frames, a cockroach infestation, mold/mildew, broken appliances, broken smoke detectors, and missing window screens. These conditions caused Daes and Gorder to suffer "severe ongoing medical problems . . . including significant dermatological, respiratory, and heart issues. These symptoms have been increasing in severity [and] . . . are consistent with exposure to insect bites, vermin infestation, and mold."

Daes and Gorder alleged that these issues gave rise to eight causes of action: (1) breach of warranty of habitability; (2) negligence/premises liability; (3) nuisance; (4) intentional infliction of emotional distress; (5) negligent infliction of emotional distress; (6) breach of contract; (7) breach of covenant of quiet enjoyment; and (8) negligence.

B. Anti-SLAPP Motion

DHA filed a special motion to strike pursuant to Code of Civil Procedure section 425.16 (anti-SLAPP motion), urging that Daes's fourth and fifth causes of action for intentional and negligent infliction of emotional distress should be stricken. In connection with the special motion to strike, DHA requested judicial notice of the

complaint, answer, findings of law and facts, and judgment in the unlawful detainer action. On October 20, 2014, the trial court denied the special motion to strike.

C. Demurrer

At about the same time that it filed the special motion to strike, DHA filed a demurrer, urging that the complaint failed to state a claim as to each of the eight causes of action. In the alternative, as to Daes only, DHA asserted that all causes of action were barred by res judicata or collateral estoppel as a consequence of the judgment in the prior unlawful detainer action against her.

On December 11, 2014, the trial court entered an order (1) sustaining the demurrer to the fourth and fifth causes of action without leave to amend, and otherwise overruling it, and (2) in the alternative, as to Daes only, sustaining the demurrer to all causes of action without leave to amend. As relevant to this appeal, the court explained:

"Defendants urge that Daes' claims are barred by collateral estoppel/res judicata because in the UD action she asserted in her answer filed on 4/3/12 affirmative defenses of 'misrepresentation of property,' 'action in bad faith,' and 'breach of habitability of premises.' [¶] . . . [¶]

"Daes' claims are barred by collateral estoppel/res judicata. The UD court determined the issue of habitability. The UD complaint alleged that Daes had failed to properly prepare her unit for multiple pest control treatments. The Statement of Decision dated 6/26/12[1] states that plaintiff hired two companies to treat defendant's unit, one by chemicals and one by a heat treatment. Employees from both companies testified that the treatments were performed but were not effective because Daes did not properly prepare her unit for treatment. Both said they discussed preparation with Daes and Daes admitted to having received ABC's written instructions for preparation. Daes had argued that all the treatments were ineffective only because the pest control companies were

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1 Presumably the trial court reviewed the Statement of Decision submitted by DHA in connection with its anti-SLAPP motion. There was no mention of the Statement of Decision in DHA's demurrer.

incompetent but did not offer any expert of her own to testify to any errors by those companies, and defendant offered no evidence to prove her argument. . . ."

On December 22, 2014, Daes filed a motion for reconsideration of the order sustaining the demurrer without leave, which was denied. On February 18, 2015, the trial court entered judgment against Daes as to all causes of action.[2] Daes timely appealed from the judgment of dismissal.

DISCUSSION

Daes urges on appeal that the trial court erred in finding her complaint barred by res judicata or collateral estoppel. DHA responds that Daes has forfeited the issue on appeal and, in any event, the trial court's ruling was correct. For the reasons that follow, we conclude that (1) Daes did not forfeit her appellate contentions, and (2) the record does not support the trial court's conclusion that Daes's complaint is barred by res judicata or collateral estoppel.

I.

Daes Has Not Forfeited Her Appellate Contentions

DHA contends that Daes has forfeited the res judicata/collateral estoppel issue below by failing to address it in her opposition to DHA's demurrer. We disagree.

" 'When a demurrer is sustained without leave to amend the petitioner may advance on appeal a new legal theory why the allegations of the petition state a cause of action.' (*20th Century Ins. Co. v. Quackenbush* (1998) 64 Cal.App.4th 135, 139 fn. 3.) This is so because of the general rule that ' "a litigant may raise for the first time on appeal a pure question of law which is presented by undisputed facts." ' (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 959, quoting *Hale v. Morgan* (1978) 22 Cal.3d 388, 394.)" (*Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 259; see also *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1207 [pure question of law cognizable on appeal although not argued in proceedings below]; *Smith v. Commonwealth Land Title Ins. Co.* (1986)

[2] Gorder's action appears to be ongoing in the trial court.

177 Cal.App.3d 625, 629-630 ["New theories may not be presented to the appellate court *after trial*. This is grounded on principles of waiver and estoppel, and is a matter of judicial economy and fairness to opposing parties. [Citation.] But in the pleading stage these considerations are inapplicable, and on appeal from a demurrer we search the facts to see if they make out a claim for relief under *any* theory."].) Accordingly, Daes's failure to address res judicata/collateral estoppel below does not preclude her from doing so in this court.

We note, moreover, that DHA's memorandum of points and authorities in support of its demurrer devoted only three paragraphs to the issue of res judicata/collateral estoppel.[3] Those three paragraphs asserted that, in an appropriate case, an unlawful detainer judgment can have preclusive effect in a subsequent lawsuit. They did not show, however, that such a result was appropriate here. Specifically, DHA failed to demonstrate by *citation to or discussion of any portion of the unlawful detainer record*

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[3] The entirety of DHA's res judicata/collateral estoppel argument in support of its demurrer was as follows: "[Daes's] initial Complaint alleges that, in her Answer, filed on April 3, 2012 in DHA's Unlawful Detainer Action against her, Daes asserted the following affirmative defenses: (1) 'misrepresentation of property,' (2) 'action in bad faith' and (3) breach of habitability of premises.' These defenses were adjudicated against Daes who was admittedly evicted pursuant to the UDA. California Courts hold that *collateral estoppel* and/or *res judicata* bar claims which have previously been asserted, and fully adjudicated, in an unlawful detainer action. For example, *Seidell v. Anglo-California Trust Co.* (1942) 55 Cal.App.2d 913, 921-922 concluded that the: [¶] 'unlawful detainer judgment determined issues tendered by [these appellants] in their answer which constituted legal defenses of alleged specific violations of the statute in failing to give the notice of sale required by section 2924 of the Civil Code, lack of consideration for the note secured by the trust deed, and other asserted defects going to the validity of the trust deed and note secured thereby, and to the proceedings on the sale of that property under the provisions of the deed. All of those issues of law, as distinguished from equity, affecting the legality of the note, deed of trust and the sale were properly determined against the defendants in that unlawful detention suit.' (Emphasis added.) See also *Malkoskie v. Option One Mortgage Corp.* (2010) 188 Cal.App.4th 968, 975 (held that an unlawful detainer judgment had claim preclusive effect in a subsequent lawsuit). [¶] Because Plaintiff's Answer in the Unlawful Detainer Action put her claims in this action into issue in that prior action, *collateral estoppel* and *res judicata* bar her attempt to re-assert those claims here."

that the legal issues before the court had already been adjudicated in the unlawful detainer action.[4]

DHA also contends that Daes's appeal fails because she failed to provide this court with a reporter's transcript or settled statement of the demurrer hearing. Not so. Where an appeal is from an order sustaining a demurrer, "a reporter's transcript or agreed-on settled statement is not necessary." (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700, fn. 2; see also *Chodos v. Cole* (2012) 210 Cal.App.4th 692, 699 [reporter's transcript not necessary where appellate issue is "a purely legal issue based on the filings before the trial court"].)

II.

Standard of Review

The rules governing our review of the trial court's order sustaining a demurrer are well settled. "In ruling on a demurrer . . . the trial court examines the pleading to determine whether it alleges facts sufficient to state a cause of action under any legal theory, with the facts being assumed true for purposes of this inquiry. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (*Committee for Green Foothills*); *Pang v. Beverly Hospital, Inc*. (2000) 79 Cal.App.4th 986, 989.) Our review is de novo. (*Committee for Green Foothills*, *supra*, 48 Cal.4th at p. 42; *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) '[W]e treat the properly pleaded allegations of [the] complaint as true, and also consider those matters subject to judicial notice. [Citations.]' (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1232.)" (*Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, 904.)

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[4] Indeed, although DHA had submitted portions of the unlawful detainer record in connection with its anti-SLAPP motion, it did not seek judicial notice of the unlawful detainer record in connection with its demurrer.

III.

The Trial Court Erred in Sustaining DHA's Demurrer on Res Judicata/Collateral Estoppel Grounds

A. Res Judicata and Collateral Estoppel

The principles of res judicata and collateral estoppel describe the preclusive effect of a final judgment on the merits. Our Supreme Court has explained that there are "two aspects of the doctrine of res judicata. In its narrowest form, res judicata ' "precludes parties or their privies from relitigating a cause of action [finally resolved in a prior proceeding]." ' [Citations.] But res judicata also includes a broader principle, commonly termed collateral estoppel, under which an issue ' "necessarily decided in [prior] litigation [may be] conclusively determined as [against] the parties [thereto] or their privies . . . in a subsequent lawsuit on a different cause of action." ' [Citation.]" (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828, italics omitted, brackets in original.) Because Daes has not asserted in this action the same cause of action adjudicated in the unlawful detainer suit, we are concerned here solely with collateral estoppel.

Courts apply the doctrine of collateral estoppel only if several threshold requirements are fulfilled. "First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements. [Citation.]" (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

B. Unlawful Detainer

Unlawful detainer actions are summary in nature and ordinarily only address the issue of immediate possession of property. (*Borsuk v. Appellate Division of Superior Court* (2015) 242 Cal.App.4th 607, 609, fn. 1; *Culver Center Partners East #1, L.P. v.*

Baja Fresh Westlake Village, Inc. (2010) 185 Cal.App.4th 744, 749.) Thus, in unlawful detainer actions, "tenants generally may assert legal or equitable defenses that 'directly relate to the issue of possession and which, if established, would result in the tenant's retention of the premises.' " (*Drouet v. Superior Court* (2003) 31 Cal.4th 583, 587.) Cross-complaints, counter-claims, and affirmative defenses generally are not permitted, unless success on the claim would preclude removal of the tenant. (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255; *Green v. Superior Court of San Francisco* (1974) 10 Cal.3d 616, 634, fn. 19.)

Because of the summary nature of unlawful detainer actions, such actions generally have limited preclusive effect. (See *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371; *Pelletier v. Alameda Yacht Harbor* (1986) 188 Cal.App.3d 1551, 1557.) However, " 'full and fair' litigation of an affirmative defense—even one not ordinarily cognizable in unlawful detainer, if it is raised without objection, and if a fair opportunity to litigate is provided—will result in a judgment conclusive upon issues material to that defense." (*Vella v. Hudgins*, *supra*, 20 Cal.3d at p. 256; see also *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371 ["when litigants to an unlawful detainer proceeding fully try other issues besides the right of possession, the unlawful detainer judgment is conclusive as to those other litigated issues"]; *Pelletier v. Alameda Yacht Harbor*, at p. 1557 ["[l]egal and equitable claims—such as questions of title and affirmative defenses—are not conclusively established unless they were fully and fairly litigated in an adversary hearing"].)

Our Supreme Court illustrated these principles in *Vella v. Hudgins, supra,* 20 Cal.3d 251. There, the defendant purchased a note and second deed of trust encumbering real property owned by the plaintiff, assuring the plaintiff that she need not make payments on the note. Subsequently, the defendant gave notice of default and purchased the property at a trustee sale. The plaintiff filed a fraud suit, and the defendant filed an unlawful detainer proceeding. The defendant obtained judgment in the unlawful detainer proceeding and then sought to dismiss the fraud suit on the ground that it was barred by the unlawful detainer judgment. (*Id.* at pp. 253-254.)

The Supreme Court held that under the circumstances of the case, the unlawful detainer action did not bar the fraud action. The court explained that an unlawful detainer judgment can have preclusive effect in a subsequent proceeding if "a fair opportunity to litigate is provided." (*Vella v. Hudgins, supra*, 20 Cal.3d at pp. 256-257.) In the case before the court, however, the defendant failed to prove that the plaintiff had a fair opportunity to litigate the fraud allegations in the unlawful detainer action. The court explained: "The burden of proving that the requirements for application of res judicata have been met is upon the party seeking to assert it as a bar or estoppel. [Citations.] In the matter before us [defendant] has failed to sustain that burden. [¶] The record offered in support of the plea of res judicata is virtually barren. Evidently the unlawful detainer proceedings were unrecorded or untranscribed, for no transcript of the municipal court hearing exists, and no findings of fact or conclusions of law were made, other than a notation in the trial judge's minute order to the effect that [plaintiff] had not proved her affirmative defenses of 'waiver and [equitable] estoppel and tender.' The sparse record presented to us fails to show either the precise nature of the factual issues litigated, or the depth of the court's inquiry. We decline to assume, given the summary character of this type of action, that the mere pleading of a defense without objection by the adverse party necessarily demonstrates adequate opportunity to litigate the defense." (*Id.* at pp. 256-258.)

C. Application of These Principles to the Present Case

The record of the unlawful detainer proceeding in this case, though somewhat less sparse than that provided in *Vella*, is insufficient to establish that Daes had an adequate opportunity to litigate the claims she has asserted in this action.

Although DHA repeatedly suggests otherwise, Daes's complaint is not limited to DHA's allegedly ineffective fumigation efforts. The complaint's allegations are much broader: Daes alleges that DHA failed to timely remediate bedbugs in an adjoining unit to prevent them from spreading to her unit; to make prompt and timely efforts to address the bedbug problem in Daes's unit; to address a cockroach infestation in the building; to fix broken appliances and smoke detectors; to provide window screens; and to eliminate

mold and mildew. Nothing in the limited portions of the unlawful detainer record appearing in the appellate record suggests that any of these issues were addressed in the unlawful detainer trial:

Statement of decision. DHA contends that the unlawful detainer court made "detailed findings" from which we can conclude that Daes "actually litigated the habitability, negligence, breach of contract, and emotional distress claims in the unlawful detainer action." We do not agree. Commissioner Dodson's statement of decision in the unlawful detainer action suggests that both parties introduced evidence concerning the adequacy of Daes's preparation of her apartment for treatment: It says that employees from two pest control companies testified that Daes did not adequately prepare her apartment for treatment; and plaintiff, her son, and a neighbor testified that she "fully complied with all preparation requests on each occasion." *Nothing* in the statement of decision, however, suggests that there was any testimony in the unlawful detainer proceeding concerning Daes's affirmative claims that DHA failed to timely eliminate a bedbug infestation in an adjoining unit to prevent it from spreading to her unit; to timely remediate the bedbug problem in Daes's unit; to address a cockroach infestation in the building; to fix broken appliances and smoke detectors; to provide window screens; and to eliminate mold and mildew. Nor does the statement of decision suggest that Commissioner Dodson heard testimony concerning Daes's claim that DHA caused her severe emotional distress by suggesting that she was the cause of the bedbug infestation.

Reporter's transcript. DHA did not furnish the court below any portion of the reporter's transcript of the unlawful detainer trial in support of its demurrer, and, although the unlawful detainer trial apparently lasted several days, DHA provided the court with only about 30 pages of the reporter's transcript in connection with its anti-SLAPP motion. Even assuming that a reporter's transcript is a proper subject of judicial notice in connection with a demurrer—an issue we do not reach—the limited portion of the transcript DHA provided simply does not allow us to determine the scope of the

issues litigated in the unlawful detainer action.[5] Accordingly, we cannot conclude on the present record that Daes's claims were fully and fairly litigated in the unlawful detainer action.

The cases on which DHA relies are distinguishable from the present case either with regard to the scope of the issues tried in the underlying unlawful detainer trial or the completeness of the record provided to the court in the subsequent civil action. For example, in *Seidell v. Anglo-California Trust Co.* (1942) 55 Cal.App.2d 913, 916, the Court of Appeal held that a judgment in a prior unlawful detainer action had preclusive effect in a subsequent action to set aside a trustees' sale because the "[e]laborate findings" made in the unlawful detainer action persuaded the subsequent court that "every essential issue of this case was determined by the judgment in that unlawful detainer action." Similarly, in *Wood v. Herson* (1974) 39 Cal.App.3d 737, 742, the Court of Appeal concluded that the plaintiff's suit challenging defendant's title to real property was barred by res judicata because the issue of title had been *litigated and decided* in an earlier unlawful detainer action. And in *Needelman v. DeWolf Realty Co., Inc.* (2015) 239 Cal.App.4th 750, 757-758, the court held that res judicata barred the plaintiff's tort claims because the stipulated judgment in defendant's earlier unlawful detainer action expressly "waived any claims for wrongful eviction 'or any action in any way arising out of or concerned with [plaintiff's] tenancy . . . .' and 'clearly spelled out that he agreed that any personal property remaining in the residence after [plaintiff] vacated or was evicted 'therefrom shall be considered abandoned property, and [the lessors] shall be entitled to dispose of it without any notice to [plaintiff] or his attorney."[6] As we have

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[5] DHA asserts that "[i]t is evident from those portions of the Reporter's Transcript of the [unlawful detainer] trial which Daes relied on in her Motion for Reconsideration in the Superior Court that the habitability, retaliatory eviction and other claims and issues which she asserted against Defendants in this action were 'actually litigated' in the [unlawful detainer action]." Not so. The "portion" of the reporter's transcript to which DHA refers is just five pages, only two of which contain any testimony.

[6] *Malkoskie v. Option One Mortgage Corp*. (2010) 188 Cal.App.4th 968, relied on by DHA, is distinguishable for a somewhat different reason. There, the appellate court

said, in this case the record of the unlawful detainer action is insufficient to allow us to conclude that Daes's claims have been fully and fairly litigated, and thus the cited cases are distinguishable.

In short, although collateral estoppel is potentially available as a defense to Daes's claims, DHA has failed to carry its burden at the pleading stage to establish that collateral estoppel precludes those claims as a matter of law. While there is undoubtedly some overlap between the prior unlawful detainer action and the present case, the limited record provided the trial court below prevents a determination of the extent of that overlap and, thus, does not support the trial court's conclusion that all of Daes's claims were fully and fairly litigated in that action. On this sparse record, we simply cannot conclude Daes had her day in court. The demurrer therefore should have been overruled.

D. Daes Has Forfeited Any Challenge to the Court's Alternative Ruling Sustaining the Demurrer to the Fourth and Fifth Causes of Action

"On appeal, a plaintiff bears the burden of demonstrating that the trial court erroneously sustained the demurrer as a matter of law." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) "Appellant's failure to meet [her] burden forfeits [her] claims on appeal." (*People v. Stanley* (1995) 10 Cal.4th 764, 793 [if a party fails to provide legal argument and citations to authority on a point, ' "the court may treat it as waived, and pass it without consideration" ']; accord *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363–364.)

Here, in addition to finding that Daes's claims were barred by res judicata/ collateral estoppel, the trial court reached DHA's alternative grounds for demurrer, concluding that the complaint failed to state a claim for relief as to the fourth and fifth causes of action (negligent and intentional infliction of emotional distress). Nowhere in

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referenced "decisional law holding that 'subsequent fraud or quiet title suits founded upon allegations of irregularity in a trustee's sale are barred by the prior unlawful detainer judgment,' " and concluded that all of plaintiffs' claims arose from the alleged invalidity of a foreclosure sale. (*Id.* at p. at p. 974.) In the present case, of course, a foreclosure sale is not at issue.

her appellate briefing does Daes present any argument with regard to these causes of action. We therefore agree with DHA that, by failing to address these aspects of the trial court's ruling, Daes has forfeited any claim that the trial court erroneously sustained the demurrer as to her fourth and fifth causes of action. (See, e.g., *Brown v. Deutsche Bank National Trust Company* (2016) 247 Cal.App.4th 275, 282, citing *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 657.)

DISPOSITION

The judgment is reversed and the order sustaining the demurrer is vacated with directions to the trial court to enter a new and different order sustaining the demurrer as to the fourth and fifth causes of action, and otherwise overruling it. The parties shall bear their own appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

STRATTON, J.*

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