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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

D. WONG & ASSOCIATES LLC, Plaintiff and Appellant, v. U.S. SECURITY ASSOCIATES INC., Defendant and Respondent.	B286411 (Los Angeles County Super. Ct. No. BC615404)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Affirmed.

James Karagianides for Plaintiff and Appellant.

Fisherbroyles and Steven C. Papkin for Defendant and Respondent.

In the underlying action, appellant D. Wong & Associates, LLC (DWA) sought to recover unpaid rent under a commercial lease from respondent U.S. Security Associates, Inc. (U.S. Security). Following a bench trial, the court found that U.S. Security owed no rent, entered a judgment in favor of U.S. Security, and issued an award of attorney fees to U.S. Security. We reject DWA's challenges to the judgment and fee award, and thus affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

In February 2011, DWA and U.S. Security entered into a commercial lease regarding office space in Commerce. The original lease was for a three-year period from March 1, 2011 to February 28, 2014. The lease contained a term doubling the base monthly rent were U.S. Security to hold over under specified conditions, and a term authorizing an award of attorney fees to DWA in the event that DWA commenced an action against U.S. Security.

In May 2014, the parties agreed upon an amendment to the original lease, extending the term to April 30, 2016. The amendment contained a new provision entitled "Early Termination Option" permitting U.S. Security to terminate the lease during the first year of the extended lease, subject to enumerated conditions.

In March 2015, U.S. Security notified DWA that it was exercising its early termination option. When U.S. Security continued to occupy the property while paying the base monthly rent, a dispute arose over whether U.S. Security was obliged to pay rent at the doubled rate.

In March 2016, DWA commenced the underlying action as one for unlawful detainer, seeking possession of the property, $42,752 in unpaid rent, additional damages, and an award of attorney fees. After U.S. Security vacated the property in April 2016, the action was converted to an unlimited civil action. When the parties appeared for trial, the court ruled that it would decide the matter on the basis of the trial briefs and their accompanying exhibits.

On September 18, 2017, the trial court issued a minute order stating: "The [c]ourt finds that there was not a breach of the lease agreement and that all rents have been paid in full." On the same date, judgment was entered in favor of U.S. Security and against DWA. Later, relying on the lease's attorney fee provision and Civil Code section 1717, the court awarded U.S. Security fees totaling $32,702.50.

DISCUSSION

DWA contends the trial court erred in finding that U.S. Security owed no rent and in awarding attorney fees to U.S. Security. As explained below, we disagree.

A. *Standard of Review*

Although the parties agree that DWA's contentions present only issues subject to de novo review, we apply two standards of review. Because DWA attacks the fee award solely on the ground that the judgment is infirm, that contention presents a question of law that we independently review. However, DWA's challenge to the judgment requires a more complex inquiry.

At the outset, we note that the trial court, in resolving DWA's claim for unpaid rent, conducted a bench trial on the basis of the parties' trial briefs and certain documents. Accompanying the trial briefs were portions of the lease, the parties'

correspondence relating to U.S. Security's exercise of the early termination option, and other documents. Although the briefs agreed on many facts, some were disputed, notably, whether U.S. Security paid any rent during the final six months it occupied the property. On the basis of the trial briefs and related documents, the court made factual findings in favor of U.S. Security and against DWA. On appeal, the parties state that they agreed to the manner in which the court conducted the bench trial.

Because no statement of decision was requested, we assume that the trial court made all factual findings necessary to support the judgment (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793), and examine them for the existence of substantial evidence (*Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1288-1292). We apply that standard even when the relevant historical facts are not in dispute or are conclusively demonstrated, provided they support conflicting inferences. That is because "[t]hough the probative facts are undisputed, an appellate court cannot substitute its inferences for those of the trial court reasonably grounded on substantial evidence. [Citations.] We are required to draw those inferences which support the judgment. [Citations.]" (*Hewitt v. Meaney* (1986) 181 Cal.App.3d 361, 368.)[1]

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[1] At our request, DWA has discussed whether its failure to provide a reporter's transcript of the bench trial mandates affirmance of the judgment due to an inadequate record on appeal. Because the trial court heard no testimony and DWA has provided all the materials submitted to the trial court, we conclude that the record is sufficient to support a review for reversible error.

In contrast, the interpretation of contracts -- including leases -- presents a question of law when there is no extrinsic evidence or when the pertinent extrinsic evidence supports no material conflicting inferences. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; see *Eltinge & Graziadio Dev. Co. v. Childs* (1975) 49 Cal.App.3d 294, 297.) Although our review is ordinarily confined to documents and other evidence submitted to the trial court (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291(*Western Aggregates*)), DWA has requested that we augment the record to include the full 2011 lease for purposes of interpreting its provisions, even though a complete copy of the lease was not submitted to the trial court. As U.S. Security has not opposed that request, we have granted it, and will examine the key provisions of the 2011 lease in light of the complete lease. (*Monsan Homes, Inc. v. Pogrebneak (*1989) 210 Cal.App.3d 826, 830; Code Civ. Proc., § 909.)

B. *Judgment*

We begin with DWA's challenge to the judgment. DWA contends the record unequivocally establishes that U.S. Security was obliged to pay "double rent" after it exercised its option to terminate the lease.

1. *Governing Principles*

Ordinarily, when a lease expires and the lessee "holds over" with the lessor's consent, the parties are presumed to have created a tenancy regulated by the terms of the lease. (*Miller v. Stults* (1956) 143 Cal.App.2d 592, 598-599.) That presumption is set forth in Civil Code section 1945, which states: "If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for

the same time, not exceeding one month when the rent is payable monthly, nor in any case one year."

Although the statute creates a presumption regarding the payment periods for rent, the length of the tenancy itself is indefinite unless the lease specifies otherwise. (*Psihozios v. Humberg* (1947) 80 Cal.App.2d 215, 219-220.) Thus, absent such a limitation in the expired lease, when a tenant occupies the premises with the landlord's consent and pays monthly rent, there is a so-called "month to month tenancy" of indefinite length. (*Id*. at p. 219; see *Palmer v. Zeis* (1944) 65 Cal.App.2d Supp. 859, 861.) That tenancy is otherwise subject to the provisions of the lease. (*Multani v. Knight* (2018) 23 Cal.App.5th 837, 851.)

Here, the parties dispute whether U.S. Security terminated the lease in March 2015, as well as the monthly rent required of U.S. Security under the lease if the termination was, in fact, effective. To the extent the latter issue requires us to interpret the lease provisions, we apply established principles. "In construing a contract, we must give effect to the parties' intentions. [Citations.] For purposes of ascertaining the parties' intent, the court must first look to the language of the contract itself. [Citations.]" (*Jamieson v. City Council of the City of Carpinteria* (2012) 204 Cal.App.4th 755, 761 (*Jamieson*).) Provisions of a contract should be harmonized whenever possible (*Southern Pacific Land Co. v. Westlake Farms, Inc.* (1987) 188 Cal.App.3d 807, 822), and "[s]trained interpretations or constructions must be avoided" (*Jamieson*, at p. 762). We also may consider the facts, circumstances and conditions surrounding the execution of the contract. (*Falkowski v. Imation Corp.* (2005) 132 Cal.App.4th 499, 506.)

2. *Underlying Proceedings*

Before the trial court, the parties agreed on most of the historical facts, but disputed whether certain inferences could be drawn from them. We summarize the historical facts before describing the parties' positions.

a. *Facts*

The 2011 lease, as originally executed, contains "no holdover" and "no waiver" provisions. The former is found in section 8.03, which states: "[U.S. Security] has no right to retain possession of the Premises or any part thereof beyond the expiration or early termination of this Lease. Any holding over after the expiration of the term of this Lease, with the prior written consent of Lessor, shall be construed to be a tenancy from month to month at a Rental and upon the terms and conditions as existed during the last month of the term hereof, except that the [base monthly rent] shall be doubled plus applicable taxes, common area maintenance, insurance and property taxes."[2]

The "no waiver" provision is found in section 8.29, which states in pertinent part: "The . . . acceptance of Base Rent . . . shall not be deemed to be a waiver of any preceding

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[2] Section 8.03 of the 2011 lease further states: "The full calendar month is due regardless of whether [U.S. Security] actually occupies the premises for all or any portion of each month and thereafter until [U.S. Security] vacates the premises. Nothing contained hereon shall be construed as consent by Lessor to any holding over by [U.S. Security]."

breach by [U.S. Security] of any term, covenant or condition of this Lease . . . ."[3]

In addition to extending the term of the lease to April 30, 2016 and establishing a new base monthly rent, the 2014 amendment to the 2011 lease contained a section entitled "Early Termination Option." Under that provision, U.S. Security was permitted to terminate the lease during the first year of the extended lease term "prior to Month 12" (April 2015), provided that certain conditions were met, including that U.S. Security was not in default under the lease, was current in paying its rent, and provided a specified one-month notice of its election to exercise the termination option.[4] The 2014 amendment further

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[3] Section 8.29 of the 2011 lease provides: "The failure of Lessor to exercise its rights in connection with this Lease or any breach or violation of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Base Rent and any Additional Rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease other than the failure of Lessee to pay the particular amount of Base Rent or any Additional Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such monies."

[4] The 2014 amendment states: "Early Termination Option [U.S. Security] shall have the Option to terminate this Lease (the 'Termination Option') anytime during the first year prior to Month 12 subject to the following terms and conditions: [¶] a) Lessee shall not be in default under this Lease either on the date that [U.S. Security] exercises the Termination Option or on the designated Early Termination Date; and [¶] b) [U.S

stated: "Except as otherwise specifically provided herein, all other terms and conditions of the Lease shall remain in full force and effect."

The parties also submitted documents establishing the following events: In a letter to DWA dated March 26, 2015, Joseph Forte of U.S. Security stated, "[T]his letter serves as written notification that [U.S. Security] is hereby exercising its Early Termination Option . . . . [¶] [U.S. Security] desires to continue its current occupancy of the space on a month-to-month basis going forward until an alternative location can be found. [U.S. Security] agrees to provide [DWA] a 30 day written advanced notice prior to vacating the space and thereby terminating the month-to-month arrangement."

On April 22, 2015, by e-mail, Darryl Wong of DWA informed Forte that his letter, though dated March 26, 2015, was not received until April 14, 2015. Noting that DWA's notice was timely only if mailed before April 1, 2015, Wong requested proof of its mailing. Wong stated: "Pending confirmation that the Notice was tendered in March, the tenancy will convert to a month-to-month tenancy effective May 1, 2015 with a thirty day written notice required by either [U.S. Security] or [DWA] to terminate the month-to-month tenancy. We're sorry to lose your tenancy . . . ."

Security] must give Lessor no less than One (1) month advance written notice of [U.S. Security]'s election to exercise this Termination Option ('Lessee's Termination Notice'), and [¶] c) [U.S. Security] shall be current in paying its rent through the termination date. If Lessee terminates during the first year, no free rent will be given for Month 12. [¶] d) [U.S. Security]'s security deposit shall be reconciled independently upon vacating premises pursuant to the terms of the Lease."

Shortly afterward, in an internal DWA e-mail, Wong asked Linda Prather and other DWA employees to "look up the hold over rate on [U.S. Security's] lease" and "[c]oordinate the amount." On April 22, 2015, by e-mail, Forte sent Wong a copy of the original UPS envelope in which the March 26, 2015 letter had been placed, which showed that it left U.S. Security's office on March 27. Forte stated that the letter had been sent to DWA's old address and was returned on April 10 as undeliverable; upon learning that DWA had changed its address, U.S. Security sent it to DWA's new address.

From May through September 2015, DWA accepted U.S. Security's monthly payments of the base rent. In an e-mail to Forte dated September 2, 2015, Prather stated: "Please let us know the status of your relocation, as it has been four months since you terminated your lease. According to Section 8.03 of your lease, there is a hold[]over rate that can double your last month's rent." On September 8, after Forte responded that U.S. Security continued to look for a new location, Prather replied: "Unfortunately, the holdover rate is effective as of May 1, 2015 and the total rent owed as of this date is $13,360."

In October 2015, DWA accepted U.S. Security's monthly payment of the base rent. On October 6, 2015, DWA sent U.S. Security a three-day notice to quit or pay rent. The following day, by e-mail, Forte informed DWA: "I disagree that our notification . . . of our intention to early term[inate] the lease kicks in a hold[]over provision requiring the rent to be increased. [¶] . . . [¶] . . . [W]hen you received our written notice . . . six months ago, hold[]over rent was not addressed." Later, in an e-mail to Prather dated October 22, 2015, Forte stated: "I . . . disagree that you can now impose [the holdover provision] after [six] months and demand back [rent]. [¶] I'm willing to

discuss paying holdover rent starting with the November payment, but your request to demand it at this time is unreasonable. [¶] We have been good tenants for several years, and are in good standing with you regarding our rent payments during that time. I'm finding it difficult to understand . . . the sudden change in your position with us."

Accompanying U.S. Security's trial brief were documents showing that it tendered monthly rental payments from November 2015 to April 2016. In April 2016, U.S. Security vacated the property.

b. *Parties' Positions*

U.S. Security offered two distinct theories why it was not obliged to pay monthly rent at the doubled "holdover" rate after its March 2015 notice. U.S. Security contended that under the "Early Termination Option" provision of the 2014 amendment, the extended lease did not terminate until U.S. Security actually vacated the property in April 2016. For that reason, U.S. Security argued, "the appropriate monthly rental rate payable . . . was [the base rate] at all times." In the alternative, U.S. Security contended that if the March 2015 notice did terminate the extended lease, DWA waived, or was estopped from asserting, any right to rent at the doubled rate.[5]

DWA maintained that because the March 2015 notice terminated the extended lease, the "no holdover" provision obliged U.S. Security to pay rent at the double rate. DWA further contended that the "no waiver" provision of the extended lease

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[5] On appeal, U.S. Security advances an additional theory that we discuss below (see pt. A.3., post).

precluded a waiver of DWA's right to doubled rent, and that no circumstances supported application of the estoppel doctrine.

3. *Analysis*

In our view, the trial court did not err in finding that U.S. Security did not breach the lease and that it owed no rent to DWA. As explained below, there is sufficient evidence that U.S. Security's March 2015 notice created a tenancy regulated by the terms of the extended lease. Furthermore, under the applicable terms of that lease -- which included the "no holdover" and "no waiver" provisions of the 2011 lease -- U.S. Security was obliged to pay only the base monthly rent, not the doubled rent specified in the "no holdover" provision.[6]

The record supports the reasonable inference that U.S. Security's March 2015 notice terminated the extended lease and established a month-to-month tenancy subject to the terms of that lease. Upon receiving the notice, Wong told Forte that U.S. Security's tenancy would convert to a month-to-month tenancy effective May 1, 2015, provided that Forte confirmed that the notice was timely. After Forte explained why the notice had been delivered after the deadline for the exercise of the termination option, DWA never rejected the notice as untimely. On the contrary, in September 2015, Prather asserted that U.S. Security had terminated the extended lease; furthermore, before the trial court, DWA maintained that U.S. Security's notice exercised its early termination option. Accordingly, the trial court could

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[6] Because we review the trial court's ruling, not its reasoning (*J.B. Aguerre v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15), we will affirm the trial court's ruling on any theory properly established by the record (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1).

reasonably have concluded that the notice created a month-to-month tenancy regulated by the applicable terms of the terminated lease.

The remaining issue is whether the "no holdover" provision established the amount of the monthly rent, rather than the provisions obliging U.S. Security to pay the base rent. The "no holdover" provision states: "[U.S. Security] has no right to retain possession of the Premises . . . beyond the expiration *or* early termination of this Lease. Any holding over *after the expiration of the term of this Lease*, with the prior written consent of Lessor, shall be construed to be a tenancy from month to month, at a Rental and upon the terms and conditions as existed during the last month of the term hereof, except that the [base monthly rent] shall be doubled . . . . " (Italics added.)

We conclude that the "no holdover" provision was inapplicable to the month-to-month tenancy created by U.S. Security's termination notice. The first sentence of the "no holdover" provision, by its plain language, distinguishes the expiration of the lease from an early termination, and the second sentence provides for the creation of a month-to-month tenancy with a doubled monthly rent *only* upon the expiration of the term. Because the tenancy following U.S. Security's notice resulted from an early termination of the extended lease, rather than the expiration of its term, the "no holdover" provision did not impose doubled monthly rent. Accordingly, U.S. Security was obliged to pay only the base monthly rent during the month-to-month tenancy.[7]

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[7] DWA contends that U.S. Security may not rely on the interpretation of the "no holdover" provision set forth above because it did not submit that interpretation to the trial court.

DWA maintains that unless the second sentence of "no holdover" provision is construed to encompass early terminations, the reference to such terminations in the first sentence would be "meaningless," "a nullity," and "surplusage." DWA argues: "Why include 'early termination' in [the first sentence] (or in the section at all) if no consequence flows from remaining on the property after early termination?" The crux of DWA's contention is that because the intent underlying the "no holdover" provision was to afford DWA protections in the event of a holdover, the second sentence must be viewed as imposing doubled monthly rent on a tenancy following an early termination. We disagree.

The historical facts relating to the 2011 lease and the 2014 amendment disclose a reasonable explanation why the parties, in negotiating the 2011 lease, limited the second sentence to tenancies following upon the expiration of the lease. The 2011 lease, as originally executed, contained no provision permitting U.S. Security to terminate the lease before the expiration of its term. For that reason, when the parties negotiated the 2011 lease, an early termination differed from the expiration of the lease. Simply put, the former -- but not the latter -- implied that U.S. Security had breached the lease. That difference provided a reasonable basis for the omission of an early termination from the second sentence of the "no holdover" provision. In the event of an early termination involving a breach of the lease, DWA would have been unlikely to consent to a continued occupancy; furthermore, it was unnecessary to specify the protections

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However, a party may offer a new theory on appeal presenting only a question of contractual interpretation on undisputed facts. (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 856.) That principle applies to the interpretation in question.

available to DWA upon an early termination, as DWA was entitled to recover statutorily authorized damages (Civ. Code, § 1951.2).

Although the 2014 amendment extended and modified the 2011 lease, it is not reasonably regarded as having expanded the scope of the second sentence to include early terminations. Following the "Early Termination Option" clause, the amendment stated that it modified no provisions of the 2011 lease, "[e]xcept as otherwise *specifically* provided herein." (Italics added.) Because the amendment did not mention the "no holdover" provision in the 2011 lease, it did not alter that provision. Accordingly, during the month-to-month tenancy following the March 2015 termination notice, U.S. Security was required to pay the base monthly rent, not the doubled rented specified in the "no holdover" provision.

DWA maintains that even if it is not entitled to doubled rent under the "no holdover" provision, the judgment must be reversed because U.S. Security failed to pay any rent from November 2015 to April 2016. DWA concedes that U.S. Security tendered rent checks for the base monthly rent during that period, but argues: "[A]lthough the trial court found 'all rents have been paid in full,' it did not account for the fact that DWA returned the disputed payments submitted between November 2015 and April [] 2016." In support of that argument, DWA directs our attention to the copy of the three-day notice to pay rent or quit accompanying DWA's unlawful detainer complaint. The notice stated that DWA was "herewith" returning the rent checks tendered for the five-month period from November 2015 to March 2016; attached to the notice were copies of those checks. As explained below, DWA's contention fails for want of

substantial evidence, as the three-day notice to pay rent or quit was not submitted at trial.

Generally, on review for substantial evidence, we do not examine documents not admitted at trial. (*Western Aggregates*, *supra*, 101 Cal.App.4th at p. 291; *Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 815.) Here, after U.S. Security offered evidence that it tendered the rent checks in question, DWA submitted no evidence that it returned them. The first trial brief filed was from U.S Security, which stated that when it attempted to make rent payments, DWA "did not cash th[e] checks." Accompanying the brief were copies of five rent checks for the period from November 2015 to March 2016, and a U.S. Security financial record stating that the April 2016 rent check had been remitted to DWA.[8] Although DWA's trial brief was filed after U.S Security's brief, DWA's assertion that the rent for the period from November 2015 to April 2016 "remain[ed] unpaid," was unsupported by any evidence. Nothing else submitted to the trial court suggested that DWA had returned the checks. Accordingly, the court reasonably found that U.S. Security owed no rent for the period from November 2015 to April 2016. In sum, DWA has shown no error in the judgment.

C. *Fee Award*

DWA's sole challenge to the fee award relies on its contention that the judgment must be reversed. Accordingly, we reject that challenge.

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[8] In a footnote, the brief asserted: "U.S. Security does not have physical copies of its checks that are not cashed. U.S. Security is able to supply copies of the checks [described above] because such copies were attached to [DWA's c]omplaint."

DISPOSITION

The judgment and award of attorney fees are affirmed. U.S. Security is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P.J.

We concur:

WILLHITE, J.

MICON, J.*

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