Filed 7/30/18 Polpantu v. RLR Investments CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PLERNPIT POLPANTU et al., Plaintiffs and Appellants, v. RLR INVESTMENTS, LLC, et al., Defendants and Respondents.	B271096, B276083 (Los Angeles County Super. Ct. No. BC511535)

APPEALS from a judgment and order of the Superior Court of Los Angeles County, Teresa A. Beaudet, Judge. Affirmed.

G. Gregory Williams, in pro. per., for Plaintiff and Appellant G. Gregory Williams.

Plernpit Polpantu, in pro. per., for Plaintiff and Appellant Plernpit Polpantu.

Wilson Elser Moskowitz Edelman & Dicker and Gregory K. Lee for Defendants and Respondents RLR Investments, LLC, R & L Transfer, Inc., and Michelle Walsh.

Plernpit Polpantu and G. Gregory Williams sued RLR Investments LLC (RLR), R&L Transfer, Inc. (R&L), and Michelle Walsh (collectively defendants), among others, for damages arising from the defendants' termination of a warehouse storage agreement and for causing the California Department of Alcoholic Beverage Control (ABC) to revoke Polpantu's beer and wine wholesaler license.

The court granted the defendants' motion for summary judgment and entered judgment for them. The court subsequently denied plaintiffs' motion to tax and strike defendants' costs.

Plaintiffs appeal from the judgment and from the order denying their motion to strike and tax costs.[1] We consolidated the appeals. Plaintiffs also challenge certain pre-judgment rulings concerning discovery motions and orders imposing monetary sanctions. We reject plaintiffs' arguments and affirm.

FACTUAL AND PROCEDURAL SUMMARY

In 2010 or 2011, Polpantu, Williams, and Staporn Nilluang formed Xiam Beer, an informal partnership, for the purpose of importing and distributing beer from Asia. Nilluang goes by the name "Aoi." Under the partnership agreement, Polpantu was responsible for customer relations, Williams was responsible for

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[1] The notices of appeal are signed by Williams, ostensibly for himself and Polpantu. Williams is not a licensed attorney and cannot represent Polpantu in this case, and he does not purport to do so. A party may, however, authorize a non-attorney to sign a notice of appeal on his or her behalf. (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 853-854.) Polpantu's signature on appellants' opening brief and a notice of errata purporting to correct the notices of appeal indicate that Polpantu had authorized Williams to sign the notices of appeal on her behalf. We therefore deem the notices of appeal to have been filed by both Williams and Polpantu.

marketing and development, and Nilluang would contact customers, take orders, pick up beer, and deliver beer to customers.

In furtherance of the partnership, Polpantu filed a fictitious business name statement for the name Xiam Beer and identified herself as the owner of that name.

Plaintiffs have referred to Xiam Beer as both the name of their partnership and as a fictitious business name for Polpantu individually.

RLR or R&L owns and operates a warehouse in San Diego under the name Miramar Cold Storage, which we will refer to as the Miramar warehouse. Walsh is the general manager of the Miramar warehouse.

In 2011, Williams acquired for the partnership a beer and wine distribution business from Aittidej Tanvilai. At that time, Tanvilai held a license from ABC to act as a beer and wine wholesaler, and he used the Miramar warehouse to store his inventory. In connection with the acquisition, Polpantu applied to ABC to have Tanvilai's license transferred to her, and Williams contacted Walsh about taking over Tanvilai's storage space at the Miramar warehouse.

The parties agree that someone signed an agreement to rent space at the Miramar warehouse to store goods for Xiam Beer (either the partnership or Polpantu), but they disagree as to who signed the agreement. Defendants contend that Nilluang signed an agreement as an agent for Xiam Beer; plaintiffs contend that Polpantu signed an agreement for herself.

Defendants proffered a written agreement dated October 26, 2011, that names Xiam Beer (without identifying its legal nature) as the "depositor," and is signed by "Aoi" as the depositor's "authorized agent" (the Xiam/Nilluang agreement). Walsh, the manager of the Miramar warehouse, signed the Xiam/Nilluang agreement as RLR's agent. Under the agreement,

RLR agreed to provide storage space for Xiam Beer's goods at a cost of $40 per pallet per month. Either party could cancel the agreement upon 30 days written notice.

Defendants authenticated the Xiam/Nilluang agreement through Nilluang's and Walsh's declarations. Nilluang stated that he "signed the warehouse agreement to open an account for Xiam Beer" while he was "a partner in Xiam Beer." Walsh stated that "Nilluang was the only person who signed the . . . agreement for Xiam Beer," and "Polpantu never signed any rental of space agreement with Miramar."

Plaintiffs contend that the Xiam/Nilluang agreement is forged and fraudulent. According to plaintiffs, Walsh prepared an agreement naming Polpantu as the depositor, which Polpantu signed and hand-delivered to Walsh in November 2011. Plaintiffs did not, however, produce a copy of an agreement. According to Williams, the e-mails to which the agreement was attached may have been inadvertently deleted.

In December 2011, ABC approved Polpantu's license transfer application and issued a license to Polpantu that indicates her Xiam Beer dba designation. The business address shown on the license for Xiam Beer is the address of the Miramar warehouse.

In March or April 2012, Nilluang told Polpantu that he was leaving the partnership to develop a competing business.

On June 30, 2012, Nilluang met with Walsh and asked her to close the Xiam Beer account and open an account for Nakhon Premium Beer. Nilluang did not inform Walsh that he was no longer a Xiam Beer partner, and Walsh was unaware that he had left the partnership. Walsh agreed to close the Xiam Beer account and open a new account for Hakhon Premium Beer.

On September 25 and 26, 2012, Walsh exchanged e-mails with ABC indicating that she had terminated Xiam Beer's account

for storage at the Miramar warehouse. In a declaration supporting the defendants' motion for summary judgment, Walsh stated that she sent the e-mails pursuant to her "custom and practice" of "notify[ing] the appropriate State licensing agency" whenever a food or alcohol distribution business closes its account at the Miramar warehouse. She does this, she explained, "to protect Miramar . . . from potential liability and to ensure that a food and/or alcohol distribution business that has ceased operations from [the Miramar warehouse] location does not continue to designate Miramar . . . as its licensed premises."

As a result of Walsh's e-mails, ABC "surrendered" Polpantu's license. According to Melissa Ryan, an ABC district supervisor, ABC took this action pursuant to ABC regulations because Polpantu's "specified licensed premises [had been] closed for a period of 15 consecutive days."[2]

On October 31, 2012, Polpantu and Williams learned that Xiam Beer's account at the Miramar warehouse had been closed. The next day, Polpantu and Williams went to the Miramar warehouse and asked Walsh why she had closed Xiam Beer's account, and asked her to open a new account or lease other space.

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[2] Ryan referred to "rule 65," an apparent reference to section 65 of title 4 of the California Code of Regulations, which provides in part: "Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates of any licensee who fails to comply with the surrender provisions of this rule, and may proceed to revoke his license or licenses." Based on this rule, ABC did not "surrender" Polpantu's license, as Ryan stated, but rather "seize[d] the license" because Polpantu failed to surrender it.

Walsh did not provide an explanation for the closure, and said that she could not open a new account because there was no space available at that time. When Polpantu and Williams became "confrontational," Walsh felt threatened and had employees escort them off the premises.

In November 2013, plaintiffs filed a verified first amended complaint, which included causes of action against defendants for unfair business practices, interference with prospective economic advantage, breach of contract, wrongful eviction, and intentional infliction of emotional distress.

In September 2015, defendants filed a motion for summary judgment supported with declarations by Walsh, Nilluang, and Ryan, and deposition testimony of Polpantu and Williams. Plaintiffs opposed the motion with a declaration from Williams and Williams's and Polpantu's depositions. Defendants filed objections to portions of Williams's declaration.

On January 11, 2016, the court ruled on defendants' objections to Williams's declaration, sustaining some and overruling others, and granted the defendants' motion for summary judgment. On February 9, 2016, the court entered judgment in favor of defendants.

Defendants filed a memorandum of costs, seeking a total of $10,989. Plaintiffs moved to strike or tax the costs, which the court denied on June 7, 2016.

On March 14, 2016, plaintiffs filed a notice of appeal from the judgment and on July 7, 2016, plaintiffs filed a notice of appeal from the court's order denying their motion to strike and tax costs. We consolidated the appeals.

DISCUSSION

I. Discovery Rulings

Plaintiffs raise numerous discovery issues encompassing: (1) an order denying Williams's motion to compel responses to a request for production of documents and awarding monetary sanctions to defendants; (2) an order awarding defendants monetary sanctions due to plaintiffs' failure to respond timely to defendants' discovery requests; (3) alleged procedural defects in defendants' deposition notices and a related motion to compel depositions; (4) the validity of plaintiffs' objections to defendants' deposition notices; and (5) defendants' alleged failure to satisfy the meet and confer prerequisite to filing motions to compel.

In the 11-page portion of their opening brief addressing the discovery issues, plaintiffs provide a single citation to the record on appeal. The citation, to page 923 of the clerk's transcript, is offered for the statement that the trial court's failure to grant Williams's motion to compel production of documents "deprived [Williams] of the fundamental right to conduct discovery." The cited page is a page in a writ petition Williams filed in this court in May 2015, which does not support the statement for which it is cited.

California Rules of Court, rule 8.204(a)(1)(C) provides that the parties must, in their briefs, "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." The rule is not a mere technical requirement, but rather a function of the fundamental rule of appellate procedure that the "appellant must affirmatively demonstrate error through reasoned argument, *citation to the appellate record*, and discussion of legal authority." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685, italics added; see also *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29

[it "is axiomatic that an appellant must support all statements of fact in his briefs with citations to the record"].) It applies to statements " 'no matter where in the brief the reference to the record occurs.' " (*Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 970.)

As defendants point out, appellate courts are not required "to comb the record seeking support for assertions parties fail to substantiate" (*Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 534), and may treat the failure to support an argument with the necessary citations as a waiver or forfeiture of the argument (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*); *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407).

These principles apply here. Plaintiffs do not refer us to any page in the 21-volume, 3,831-page record where we could find any of the relevant discovery requests, deposition notices, responses and objections to discovery, discovery motions, oppositions to motions, requests for sanctions, or the court's pertinent orders. Accordingly, we decline to address the arguments. (See *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827, fn. 1.)

II. Summary Judgment

A. *Standard of Review*

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*); Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment bears the initial burden of showing that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to that cause of action. (*Nealy v. City of Santa Monica*, *supra*, 234 Cal.App.4th at p. 370; *Aguilar*, *supra*, 25 Cal.4th at p. 849.)

If the defendant meets this burden, the plaintiff has the burden to demonstrate that there are one or more triable issues of material fact as to the cause of action or defense. (*Ibid.*) A triable issue of material fact exists "if, and only if, the evidence would 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." (*Id.* at p. 850.)

In reviewing summary judgment, "[w]e review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017–1018.)

Before considering the merits of the summary judgment motion, we address certain preliminary issues raised in the briefs.

B. *Arguments Concerning the Legal Status of Miramar Cold Storage*

Plaintiffs make a series of assertions under the heading: "Defunct corporations cannot defend, thus punitive damages are properly alleged: Respondents failed to rebut." (Capitalization omitted.) The plaintiffs appear to contend that an alleged entity it has sued by the name, "Miramar Cold Storage" (capitalization omitted), is "a defunct entity [that] has failed to answer" the complaint, and other parties cannot defend the lawsuit on its behalf. The argument is repeated in plaintiffs' challenge to the order denying plaintiffs' motion to strike or tax costs.

The defendants assert that Miramar Cold Storage is not a legal entity, but merely a fictitious business name used by RLR.

Regardless of whether Miramar Cold Storage is a legal entity, it is not named in the judgment or order from which plaintiffs appealed, and there is no party involved in this appeal with that name. Whether it is an entity that can defend itself in

a lawsuit, therefore, is not before us, and plaintiffs' arguments concerning its status is irrelevant.

C. *The Trial Court's Purported Failure to Strike the Motion for Summary Judgment*

Plaintiffs assert that the court erred in denying their request to strike the defendants' summary judgment motion. The argument is stated in a perfunctory manner and without citation to either authority or the record. Indeed, they do not cite to anything in the record indicating that they had moved to strike the motion for summary judgment or that the court ruled on such a motion.

When, as here, "an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited. [Citations.]" (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 406-407; accord, *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) This rule applies here, and we deem the argument forfeited.

D. *Plaintiffs' Evidentiary Arguments*

Plaintiffs contend that the court erred by "excluding" Williams's declaration and the excerpts of deposition testimony plaintiffs submitted in opposition to the motion for summary judgment. We reject those contentions.

The assertion that the court excluded Williams's declaration is made without citation to the record or pertinent argument, and is therefore waived. (*Nwosu*, *supra*, 122 Cal.App.4th at p. 1246.) In any event, although the record discloses an order sustaining the defendants' objections to particular parts of Williams's declaration and overruling objections to other parts, there is nothing to suggest an outright exclusion of the declaration. Indeed, the overruling of some of the defendants' objections implies that the court did not

exclude the entire declaration. As for the court's order sustaining objections to the declaration, plaintiffs do not challenge any particular ruling and, therefore, have presented no question concerning them.

Plaintiffs' contention that the court excluded the deposition excerpts they submitted is also without merit. Although plaintiffs do not cite to the record to support their assertion that the court excluded or failed to consider the proffered deposition excerpts, they appear to refer to the trial court's statement that the plaintiffs failed to file a declaration authenticating the deposition excerpts and failed to highlight the relevant parts of the proffered testimony in violation of the California Rules of Court. (See Cal. Rules of Court, rule 3.1116(c) ["The relevant portion of any testimony in the deposition must be marked in a manner that calls attention to the testimony."].) The court did not indicate, however, that it was excluding such evidence or refusing to consider it. Indeed, in its written ruling on the motion, the court discussed particular testimony from Williams's deposition that plaintiffs had offered in support of their opposition. In any event, even if the trial court failed to consider any of plaintiffs' admissible evidence, that failure is harmless because our review is de novo, and we have considered the portions of the deposition testimony that plaintiffs cite.

We now turn to the merits of plaintiffs' summary judgment motion.

E. *Breach of Contract*

Plaintiffs alleged that Xiam Beer entered into an agreement with defendants to rent warehouse space at the Miramar warehouse, and that the defendants breached the agreement and the implied covenant of good faith and fair dealing by "evicting" plaintiffs and refusing them access and possession to the rented space. The claim is based upon Walsh's acceptance of Nilluang's

request to close the Xiam Beer account, which effectively terminated the warehouse storage agreement.

Plaintiffs point out that the warehouse agreement—both the Xiam/Nilluang agreement or the agreement that they assert Polpantu signed—provides that it "may be cancelled . . . upon 30 days written notice" (italics omitted), and that Walsh did not give plaintiffs notice of the cancellation. The notice provision ensures that the agreement cannot be cancelled unilaterally on less than 30 days notice. It does not, however, prevent the parties from mutually agreeing to immediately terminate or abandon the contract. (Civ. Code, § 1682; *Evans v. Rancho Royale Hotel Co.* (1952) 114 Cal.App.2d 503, 508 ["a contract can be mutually abandoned by the parties at any stage of their performance and each of the parties released from any further obligation on account thereof"]; *Grant v. The Aerodraulics Co.* (1949) 91 Cal.App.2d 68, 75 [when parties terminate a contract, they "abrogate so much of it as remains unperformed, thereby doing away with the existing agreement"].)

Although the *parties* could mutually agree to terminate or abandon their agreement, the question is whether *Nilluang* could agree with Walsh to terminate an agreement to which Xiam Beer (either the partnership or Polpantu) is a party. Plaintiffs contend that Nilluang, who had withdrawn from the Xiam Beer partnership prior to requesting Walsh to close the Xiam Beer account, did not have authority to act on its or Polpantu's behalf. Defendants assert that Nilluang had at least ostensible, or apparent, authority to do so and, consequently, they cannot be liable for accepting his request to close the account and terminate the agreement. We agree with defendants.

In support of their motion for summary judgment, defendants submitted the Xiam/Nilluang agreement, which Nilluang signed as Xiam Beer's agent, and the declarations by Walsh and Nilluang

establishing: Nilluang was a partner of Xiam Beer when he signed the Xiam/Nilluang agreement; Nilluang subsequently requested Walsh to close the Xiam Beer account without informing Walsh that he was no longer a partner with plaintiffs; and Walsh complied with the request without any knowledge that Nilluang had disassociated from the partnership.

If Xiam Beer is a partnership, these facts establish a prima facie case that Nilluang, as a partner, had actual authority to bind the partnership when he signed the Xiam/Nilluang agreement as Xiam Beer's agent. (Corp. Code, § 16301, subd. (1).) Under principles of agency, " 'the acts of an agent after his authority has been revoked bind a principal as against third persons, who, in the absence of notice of the revocation of the agent's authority, rely upon its continued existence.' " (*Isaacs v. Frank Meline Co.* (1934) 2 Cal.App.2d 341, 345; see Civ. Code, §§ 2318, 2334; Rest.3d Agency, § 3.11, com. c, pp. 239-240.) Thus, even though Nilluang had disassociated from the partnership prior to his request and no longer had actual authority to act on behalf of Xiam Beer, Xiam Beer is bound by his agreement with Walsh to terminate the warehouse storage agreement because Walsh did not have knowledge that Nilluang lacked such authority.

The analysis is the same if Xiam Beer was not a partnership, but a fictitious business name for Polpantu. If Polpantu (as Xiam Beer) was a party to the Xiam/Nilluang agreement at all, she was a party because she had given Nilluang authority to act as her agent in signing the agreement. (If she had not given Nilluang such authority, then Polpantu had no agreement with defendants and, therefore, has no cause of action for breach of contract.) Even if Nilluang did not have Polpantu's actual authority to request termination of the agreement, Walsh could rely on Nilluang's apparent authority in the absence of notice that his actual authority had terminated.

Regardless of whether Xiam Beer is a partnership or a Polpantu-owned enterprise, the defendants' evidence is thus sufficient to satisfy their initial burden of showing that they did not breach the Xiam/Nilluang agreement by accepting Nilluang's request to close the account.

Plaintiffs challenge the factual premise in the foregoing scenarios: that the Xiam/Nilluang agreement is valid. Indeed, plaintiffs assert that Polpantu entered into an agreement directly with defendants and that the Xiam/Nilluang agreement is fraudulent. They did not, however, produce a copy of the alleged Polpantu agreement, and the bare assertion that an opponent's evidence is fabricated or fraudulent is insufficient to create a triable issue of fact. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 166-167.) Moreover, plaintiffs' assertion that Polpantu hand-delivered her version of the agreement to Walsh in 2011 is belied by Polpantu's deposition testimony that she met Walsh for the first time in October or November 2012, after she learned that Xiam Beer's license had been revoked, about one year after the purported delivery of the agreement.

Plaintiffs also assert that defendants breached the implied covenant of good faith and fair dealing implied in the agreement due to their "bad faith denial of the existence of the lease; conduct of discovery; and production of a fraudulent lease." We reject these points because plaintiffs failed to provide any citations to the record or make reasoned arguments to support the points. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [appellate court may treat contentions lacking cogent legal argument as waived].)

Plaintiffs further contend that defendants had "an implied contractual duty of reasonable inquiry," and breached that duty by failing to contact plaintiffs before terminating the lease and informing ABC of the termination. They offer no citation to legal

authority for this duty. We therefore reject the argument. (See *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.)

F. *Interference with Prospective Economic Advantage*

Plaintiffs allege that defendants' caused ABC to revoke Xiam Beer's license to distribute wine and beer and, therefore, interfered with the economic relationships they had with their customers.

Liability for intentional interference with economic advantage requires, among other elements, that the defendants interfered with an economic relationship between the plaintiffs and third parties by "conduct [that] was 'wrongful by some legal measure other than the fact of interference itself.' " (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) An "act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id.* at p. 1159.)

As explained above, the declarations submitted by defendants establish that Walsh lawfully accepted Nilluang's request to close the account and informed ABC that she had closed that account. Plaintiffs have pointed to no evidence to create a triable issue of fact with respect to this element. Summary judgment as to this claim was therefore correct.

G. *Wrongful Eviction*

Plaintiffs contend that defendants wrongfully evicted them from the Miramar warehouse. They alleged that they were "entitled to possession and control of the rented facilities," and that defendants "evicted and locked [them] out of the cold storage facilities" in violation of law. On appeal, they address this claim by asserting the defendants' warehouse storage agreement "is a lease of specific warehouse space within a larger public commercial

warehouse facility." They conclude, without citation to the record or authority, that defendants "judicially admit the predicate facts to support a cause of action for wrongful eviction."

The wrongful eviction claim fails for the same reason the breach of contract action fails: defendants submitted evidence establishing the lawfulness of Nilluang and Walsh's closing of the Xiam Beer account, and plaintiffs' failure to proffer evidence creating a triable issue of fact. Thus, even if the warehouse agreement established a tenancy, its termination under these circumstances does not establish a wrongful eviction.

H. *Intentional Infliction of Emotional Distress*

Plaintiffs' intentional infliction of emotional distress claim is based on the premise that they were wrongfully evicted from the Miramar warehouse without due process. They assert that their first amended complaint "alleges intentional conduct" and an "ulterior motivation of racial animus and an illegal anti-competition combination in violation of anti-trust laws." They conclude that defendants have "judicially admit[ted] the predicate facts to support this cause of action." Plaintiffs, however, offer no citations to the record or meaningful argument to support the claim. Indeed, based on our conclusions regarding the breach of contract and wrongful eviction claims, there is no merit to the plaintiffs' emotional distress claim.

I. *Unfair Business Practices*

Plaintiffs contend that the defendants' actions in terminating the Xiam Beer storage contract and reporting that termination to ABC constitute an unfair business practice because their actions were motivated by "*plaintiff's race*." An inference of such motivation arises, they contend, based on the facts that defendants terminated the warehouse storage contract, leased space to

Nilluang, and caused ABC to revoke Polpantu's license. We disagree.

Assuming that these allegations state a cause of action, the facts submitted in support of and in opposition to the motion for summary judgment establish that: (1) Walsh terminated the warehouse storage agreement at the request of Nilluang (who, as discussed above, had ostensible authority to do so); (2) defendants entered into a new agreement with Nilluang; and (3) Walsh reported the termination of the Xiam Beer agreement to ABC in accordance with her custom and practice. Nothing in these facts give rise to an inference of a racial motivation. Moreover, Nilluang stated in his declaration that he had never spoken with Walsh "about the subject of race" and that, in his experience, Walsh had "never exhibited any racial bias proclivities."

Plaintiffs further argue that the termination of their agreement with defendants constituted an unfair business practice because defendants violated the 30-day notice provision in the agreement and because Nilluang did not have authority to terminate that agreement. We have addressed these arguments in our discussion of the breach of contract cause of action.

Plaintiffs also argue that the defendants committed an unfair business practice by operating a business that requires a particular type of license from ABC, which they assert it does not have. Plaintiffs assert that defendants were "silent on this point" in their motion for summary judgment. As defendants point out, however, this theory was not asserted against defendants in plaintiffs' first amended complaint and they had no reason to address the theory in their motion. They are correct: "The complaint limits the issues to be addressed at the motion for summary judgment" and it "is the allegations in the complaint to which the summary judgment motion must respond." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) Plaintiffs cannot, therefore, avoid

summary judgment by raising a theory not addressed in the pleadings.

III. Motion to Strike and Tax Costs

In their motion to strike and tax costs, plaintiffs sought to strike the defendants' memorandum of costs or, alternatively, to tax the following items of costs: (1) $3,305 for filing and motion fees; (2) $6,089 in deposition costs; and (3) $1,595 for "other" costs. They contend, initially, that any award of costs is improper because Miramar is "a defunct entity" that has failed to answer the complaint. We reject this point for the reasons discussed in part II.B, *ante*.

Plaintiffs next assert that an "award of costs threatens to violate" the orders granting plaintiffs' fee waivers. They cite no authority for this argument. The awarding of costs to the prevailing party is authorized by statute, and there is no exception for costs awarded against a party who has obtained a fee waiver. We therefore reject this argument.

Lastly, plaintiffs contend that the claimed costs are excessive and were not reasonably incurred, paid, or allowable. Because they offer no citations to the record, we deem the points waived. (See *Bullock v. Philip Morris USA, Inc.*, *supra*, 159 Cal.App.4th at p. 685.)

DISPOSITION

The judgment and the order denying appellants' motion to tax and strike costs are affirmed.

Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.