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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ECHO PARK ONE, LLC,

Plaintiff and Respondent,

v.

MICHAEL CALDWELL et al.,

Defendants and Appellants.

B237835

(Los Angeles County
Super. Ct. No. BC444307)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Johnson, Judge. Affirmed.

Kevin Patrick McBride for Appellants.

Steven Soloway for Plaintiff and Respondent.

I. INTRODUCTION

Plaintiff and Respondent, Echo Park One, LLC (“Echo”), sued Defendant and Appellant, Michael Caldwell (“Caldwell”) and Defendants Jacqueline Grad and Kevin Murphy¹ for unlawful detainer in connection with a commercial lease as a result of Defendant’s failure to pay rent. Defendant and Appellant ER Pro, LLC, dba Bedrock Studios (“Bedrock Studios”), a California limited liability company, intervened in this action as an occupant of the premises. Following a bench trial, judgment was entered in favor of Echo and against all Defendants for possession of the premises, forfeiture of the lease, unpaid rent, attorneys’ fees and costs. Defendants challenge the judgment on the grounds that the trial court improperly excluded evidence of Defendants’ affirmative defenses of mistake, commercial impartiality and commercial frustration. We affirm the judgment.

II. BACKGROUND

In November, 2008, Plaintiff and Defendants entered into a written lease for the premises located at 1623-1641 Allesandro Street, Los Angeles. The lease contained an integration clause as well as an attorney’s fee provision. Defendants intended to lease the premises, redesign and improve the premises for use as a musical rehearsal/recording studio and a brew pub and operate a business at the premises: Bedrock Studios and Bedrock Brew Pub. The music studio, Phase I was self-financed. The Brew Pub, Phase II, was to be financed with loans to the business and with cash flow. Before signing the lease, Caldwell contacted several commercial lenders who told him that money was

¹ Jacqueline Grad and Kevin Murphy did not appeal, and are not parties to this appeal.

going to be available for the Phase II development. After the lease was signed in November, 2008, the lenders contacted by Caldwell refused to make financing available for Phase II improvements, informing Caldwell that credit was not available for small business loans or real estate collateralized loans in the Los Angeles area. Defendants failed to pay rent, and on August 20, 2010, Defendants were served with a 3-Day Notice to Pay Rent or Quit. Defendants failed to pay rent or quit within the time specified in the 3-Day Notice.

At trial, the Court asked for an offer of proof as to the defense witnesses, Robert Rodriguez, Clint Lukens, and Russell Edge. It was proffered that Robert Rodriguez is an expert in business valuation and business brokerage in the Los Angeles area. Based on this business experience and expertise, he is very familiar with capital availability to finance businesses. He would testify among other things that: (a) credit markets for small business and real estate collateralized loans collapsed somewhere between October 2008 and early 2009, and by the time of trial, had never recovered, and (b) it was very realistic in late 2008 for borrowers and the tenants to believe that credit would be available to them. Clint Lukens is an expert in the area of commercial leases and commercial lending and finance of commercial properties in the Los Angeles area, and in particular the Echo Park area. Mr. Lukens would testify that: (a) the premises had remained vacant and essentially unused for the period of 2002 through 2008; (b) fair rental value of the premises at the time of trial was \$22,000 to \$27,000 per month; (c) the premises did not have a commercially practicable use at the time of the lease without substantial capital improvements; and (d) business loans and collateralized real estate loans were impossible for any small business, even with excellent credit, by early 2009. Russell Edge is the bookkeeper and accountant for Bedrock Studios and has prepared the financial records for the business. He would testify that all reports were prepared in the ordinary course of business and would authenticate proffered defense trial exhibits.

The trial court sustained the Plaintiff's objections to the proposed witnesses and exhibits and excluded the evidence finding that the Defendants' proposed evidence was not relevant to any recognized defense in an unlawful detainer proceeding.

III. DISCUSSION

An unlawful detainer proceeding is designed to be a summary legal proceeding limited to rights related to possession of property and associated damages. There are some equitable affirmative defenses that apply.

"The purpose of the unlawful detainer statutes is to provide the landlord with a summary, expeditious way of getting back his property when a tenant fails to pay the rent or refuses to vacate the premises at the end of his tenancy. If a defendant were allowed to assert affirmative defenses or cross-claims which were irrelevant to the right of immediate possession, the summary character of the proceedings would be lost. A defense which 'arises out of the subject matter' of the original suit, and, thus, is permitted in the usual case, is normally excluded in an unlawful detainer if the defense is extrinsic to the issue of possession. [Citation.] This does not mean the defendant may not present any defense; rather, he may only assert those defenses which, if proven, would either preserve his possession as a tenant or preclude the landlord from recovering possession. [Citation.]" (*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 413.)

"There are two major exceptions to the rule that affirmative defenses or cross-claims may not be asserted in an action for unlawful detainer. The first includes instances where the tenant has vacated the premises before the complaint is filed. The issue of possession becomes moot and the only question is the amount of rent and damages due. An action in unlawful detainer is no longer appropriate and, in what becomes a contract case, affirmative defenses may be raised. [Citation.] The second exception allows the court to examine equitable considerations." (*Nork v. Pacific Coast*

Medical Enterprises, Inc., supra, 73 Cal.App.3d at p. 413.)

The first exception does not apply here because possession was at issue. The second exception has been analyzed by appellate courts. Recognized affirmative defenses in unlawful detainer include: the defense of eviction of a person only because of his race which involves state action and violates both the State and Federal Constitution (*Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 255); defense that eviction is sought in retaliation for the tenant's exercise of statutory rights to have landlord repair dilapidations and deduct the cost of repairs from the rent (*Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 516-517); and the defense of nonpayment of rent because of the landlord's breach of the implied warranty of habitability. (*Green v. Superior Court* (1974) 10 Cal.3d 616, 631.)

The affirmative defenses of mistake, impracticability and commercial frustration based on the proffered evidence are not relevant to this unlawful detainer proceeding.

The inability to obtain a commercial loan due to an unexpected downturn in the economy is not a valid affirmative defense for nonpayment of rent due under the terms of a valid lease.

IV. DISPOSITION

The judgment is affirmed. Echo Park One is to recover its costs on appeal from Michael Caldwell and Bedrock Studios.

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FERNS, J.*

We concur:

TURNER, P.J.

KRIEGLER J.

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