Filed 6/27/17 Fillmore Senior Center v. City of Fillmore CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

FILLMORE SENIOR CENTER, INC., Plaintiff and Appellant, v. CITY OF FILLMORE, Defendant and Respondent.	2d Civ. No. B278001 (Super. Ct. No. 56-2015-00466382-CU-BC-VTA) (Ventura County)

Fillmore Senior Center, Inc. (FSCI), a senior citizens organization, leased a building from the City of Fillmore (City) pursuant to a written commercial lease agreement. The lease provided that either party may terminate the lease upon the giving of 180 days written notice. Nineteen years after entering into the lease, the City gave timely written notice of termination. The notice failed to include statutory language advising FSCI of its right to reclaim abandoned personal property. (Civ. Code,

§ 1946.)[1] At no point in the proceedings did FSCI claim any loss of personal property. Section 1946 was specifically mentioned only after the City moved for summary judgment. Subsequently, FSCI amended its complaint to allege that "[n]o lawful notice [of the termination] was provided to [FSCI]," and the parties addressed the application of section 1946 in their trial briefs. The trial court, which held a bench trial on FSCI's amended complaint, did not address the section 1946 issue in its Statement of Decision. FSCI did not object to this omission.

Under the doctrine of implied findings, we must infer that the trial court made every factual finding necessary to support its judgment. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48, 58-60 (*Fladeboe*).) Accordingly, we will infer that even if the City did breach the lease agreement by failing to give the personal property advisement, FSCI did not suffer any damages as a result of the breach. Normally, we would review this implied factual finding for substantial evidence, but FSCI has not provided us with a reporter's transcript of the trial. In the absence of a reporter's transcript, we must presume the record supports the judgment in all respects. We affirm.

FACTS AND PROCEDURAL HISTORY

The City owns a multipurpose building at 533 Santa Clara Street in Fillmore. In 1995, the City leased the property to FSCI at no cost to FSCI. In exchange, FSCI agreed to provide senior center activities on the property. The lease provided that it was for one year and would continue for successive years

---

[1] All further statutory references are to the Civil Code unless otherwise stated.

"unless one party [gives] notice in writing to the other no later than one-hundred eighty (180) days prior to the expiration of the original term or such extended term of its intention that the Agreement shall not be so extended."

On November 20, 2014, the City gave FSCI a written "Notice of Termination of Senior Center Agreement[]," effective July 1, 2015. FSCI objected to the notice. On February 10, 2015, FSCI's counsel, Richard Francis, sent a letter to the City, stating, inter alia, that "FSCI, not having received any formal written notice authorized by the City Council that its [Lease] Agreement is affirmatively terminated ('No Action Taken' clearly does not substitute for such a notice), it anticipates the City will agree that its use will remain in place until at least July 12, 2016."

On April 14, 2015, FSCI filed a complaint against the City alleging claims for breach of contract, declaratory relief and violation of the Brown Act. FSCI alleged that the City unlawfully terminated the lease "without providing the agreement's required 180 days of written notice." In response to the City's motion for summary judgment, FSCI claimed, for the first time, that the termination notice was defective due to a failure to include language required by section 1946 regarding personal property.[2]

---

[2] Section 1946 requires that a lessor, when terminating a lease, provide the following notice: "'State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.'"

In its tentative ruling, the trial court observed that the breach of contract claim "as pled is based solely on the failure to provide sufficient written notice of the termination; it is not based on matters extrinsic to the contract, such as whether . . . it complied with statutory requirements for such notice."

While a final ruling on the summary judgment motion was pending, FSCI moved to amend its complaint. The trial court granted the motion on the first day of trial. The complaint, as amended, alleges that "[o]n or about February 10, 2015, defendant breached the agreement by the following acts: At a meeting of the City Council, Defendants and each of them purported to terminate the attached 'use Agreement,' without providing the agreement's required 180 days of written notice. *Subsequently, no lawful notice was provided to Plaintiff.*" (Italics added.) It further alleges that FSCI has suffered "rental damages" as a result of the breach. At trial, FSCI claimed that it incurred rental damages of $18,000, moving expenses of $192.50 and renovation expenses of $10,362.35.

The trial court granted summary adjudication of the breach of contract and Brown Act claims and denied the motion as to the declaratory relief claim. Although the trial court granted summary adjudication of the breach of contract claim, it accepted the amended complaint as the "charging document." FSCI argued in its trial brief that the City failed to give the mandatory notice regarding personal property, as required by section 1946. The City responded, in its trial brief, that section 1946 applies only to termination of residential tenancies.

Following a one-day trial, the trial court took the matter under submission. The court subsequently issued a one-page Statement of Decision in the City's favor. The court stated:

"The Court has reviewed the lease and concludes that the November 20, 2014, notice that the lease would be extended was sufficient. [FSCI] was entitled to 180 days. The November 20, 2014, notice from the City . . . to [FSCI] erroneously stated that [it] was effective July 1, 2015. It is undisputed that the November 20, 2014 written notice was served 223 days prior to the July 1, 2015 date of termination. [FSCI] received adequate notice of the [City's] intentions to allow [FSCI] to relocate. [FSCI] should not be permitted to extend its lease because of a typographical error." The trial court did not address FSCI's allegation that the termination notice was defective under section 1946.

FSCI did not request a further statement of decision or any clarification of the trial court's ruling. The court subsequently entered judgment in favor of the City on the amended complaint. FSCI appeals.

DISCUSSION

FSCI argues the judgment must be reversed as a matter of law because it is undisputed that the City did not give the termination notice regarding personal property required under section 1946. The City responds that the argument is not properly before us because it was not adequately pled. We disagree. A complaint's allegations are construed liberally in favor of the pleader. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438; *Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.) FSCI raised the section 1946 issue in opposition to the motion for summary judgment and then amended its breach of contract action to allege that "no lawful notice [of the termination] was provided to Plaintiff." This was sufficient to put the City on notice that FSCI was continuing to claim that the

termination notice was defective because it failed to comply with section 1946. The fact that the City briefed the issue in its trial brief further confirms that it had sufficient notice of the claim. (See *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413 ["Fairness dictates that a complaint give the defendant sufficient notice of the cause of action stated to be able to prepare the case"].)[3]

We also reject the City's contention that FSCI is barred from raising its section 1946 argument because it was not alleged in FSCI's claim under the Government Claims Act (Gov. Code, § 900 et seq.). Government Code section 911 states that "[a]ny defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8 . . . ." The City has not demonstrated that it gave the requisite notice of FSCI's purported omission of the section 1946 issue from its claim under the Government Claims Act.

Next, the City asserts that a violation of section 1946 may not serve as a basis for FSCI's breach of contract action. It maintains the violation may only be raised as a defense to an unlawful detainer proceeding brought by the landlord. It is true that FSCI has not cited any authority suggesting that the failure to give the notice under section 1946 constitutes a breach of the lease agreement. We need not reach this issue, however, because

---

[3] Although we conclude that FSCI's notice was sufficient for pleading purposes, FSCI should have directly alleged a section 1946 violation. Neither the City nor the trial court should have to go on a quest for FSCI's contentions when a specific allegation could have been added.

we conclude that under the doctrine of implied findings, the trial court resolved the section 1946 claim in the City's favor. For the same reason, we need not address the City's alternative argument that section 1946 *may* apply only to termination of residential leases.[4]

Application of the Doctrine of Implied Findings

The doctrine of implied findings requires that "the reviewing court . . . infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision. Securing a statement of decision is the first step in avoiding the doctrine of implied findings, but [it] is not always enough: The appellant also must bring ambiguities and omissions in the factual findings of the statement of decision to the trial court's attention. If the appellant fails to do so, the reviewing court will infer the trial court made every implied factual finding necessary to uphold its decision, even on issues not addressed in the statement of decision. The question then becomes whether substantial evidence supports the implied factual findings." (*Fladeboe*, *supra*, 150 Cal.App.4th at p. 48; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 (*Arceneaux*); see Code Civ. Proc., § 634.)

The rationale for the doctrine is that it is "unfair to allow counsel to lull the trial court and opposing counsel into believing the statement of decision was acceptable, and thereafter to take advantage of an error on appeal although it could have been corrected at trial. [Citations.] . . . It is clearly unproductive to deprive a trial court of the opportunity to correct

---

[4] Although we do not decide whether section 1946 applies only to residential leases, we grant the City's motion requesting that we take judicial notice of Assembly Bill No. 2521.

such a purported defect by allowing a litigant to raise the claimed error for the first time on appeal." (*Arceneaux*, *supra*, 51 Cal.3d at p. 1138.)

To prevail on its breach of contract claim, FSCI had to prove (1) existence of a valid contract, (2) its performance, (3) the City's breach and (4) damages. (*First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745.) FSCI's amended complaint alleges that "no lawful notice [of termination] was provided to [FSCI]" and, as a result, FSCI "has been forced from the premises by deprivation of its lawful quiet enjoyment and has suffered rental damages." FSCI contends, and we have agreed, that this language subsumes its allegation that the City breached the lease agreement by failing to give the termination notice required under section 1946. It is undisputed that the trial court did not address this particular allegation in its Statement of Decision. It also is undisputed that FSCI did not object to the Statement of Decision or otherwise inform the trial court of its omission. Consequently, we must infer that the trial court resolved this aspect of FSCI's breach of contract claim in the City's favor.[5] (*Fladeboe*, *supra*, 150 Cal.App.4th at pp. 48, 58-60; see *Sammis v. Stafford* (1996) 48 Cal.App.4th 1935, 1942 [In the absence of any objections to the statement of decision, "[w]e . . . are required to presume the trial court made all findings necessary to support the judgment"].)

The section 1946 notice at issue here is a personal property advisement, relating solely to the former tenant's

---

[5] The trial court did resolve, in the City's favor, FSCI's claim that the lease was breached by the City's failure to provide the 180 days of written notice required under the lease. FSCI does not challenge that finding.

reclamation of any personal property that was left on the leased premises. (§ 1946.) FSCI does not assert that it left any personal property on the leased premises, but argues that it established the City's breach of the lease agreement because the City concedes that the personal property advisement was not given. Even if that is true, it does not mean that FSCI is legally entitled to damages for the purported breach. FSCI cites no case or statute authorizing a claim for breach of contract damages based on a violation of section 1946. In any event, even if we assume such damages are authorized by section 1946, the doctrine of implied findings requires that we infer that the lack of the personal property advisement did not result in any damages to FSCI. (*Fladeboe*, *supra*, 150 Cal.App.4th at p. 48; *Arceneaux*, *supra*, 51 Cal.3d at pp. 1133-1134.) The question then becomes whether substantial evidence supports this implied factual finding. (*Fladeboe*, at p. 48; see *GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 873 [the issue of whether a plaintiff was damaged by the defendant's breach of contract is reviewed for substantial evidence].)

We must presume that substantial evidence exists to support the judgment unless the appellant provides an adequate record demonstrating otherwise. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532-1533. Since FSCI has not provided a reporter's transcript of the testimony at trial, we presume that the evidence supports the trial court's implied factual finding that FSCI did not incur any damages based on the City's failure to give the section 1946 personal property advisement. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; *Estate*

of Fain (1999) 75 Cal.App.4th 973, 992 ["[I]t is presumed that the unreported trial testimony would demonstrate the absence of error"].) In light of this presumption, the judgment must be upheld.

DISPOSITION

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

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kent M. Kellegrew, Judge
Superior Court County of Ventura

Law Offices of Richard L. Francis & Associates and Richard L. Francis, for Plaintiff and Appellant.

Aleshire & Wynder, Tiffany J. Israel, Stephen R. Onstot and Marsha M. Yasuda, for Defendant and Respondent.