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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

EMOCHA, LLC et al.,

Plaintiffs and Respondents,

v.

CENTRAL PLAZA UNION CITY, LP,

Defendant and Appellant.

A132324

(Alameda County Super. Ct.
No. RG 06-296460)

Defendant Central Plaza Union City, LP (Central Plaza) appeals from a judgment after jury trial awarding damages against it in the amount of \$207,967, plus costs and attorney fees, to plaintiffs eMocha, LLC (eMocha) and Manjinder Sandhu.¹ Central Plaza argues the trial court erred in denying its motions for judgment notwithstanding the verdict and, in the alternative, for a new trial because eMocha was not entitled to damages as a business acting in violation of zoning laws, an issue the trial court improperly allowed the jury to decide. We conclude that Central Plaza has not established error, and affirm the judgment.

¹ It is unclear whether eMocha and Sandhu are both respondents in this appeal. The captions used refer to “respondents,” plural, as does the title of the document transmitting exhibits to this court. However, the titles of the briefs refer to “respondent,” singular, and the attorney’s statement of representation refers to eMocha alone. The issue does not matter for the purpose of our conclusions herein. For simplicity’s sake, we refer only to “eMocha” as responding.

BACKGROUND

In November 2006, eMocha and Sandhu filed a complaint against Central Plaza and others.² These included causes of action for breach of contract regarding the covenant of quiet enjoyment and possession, constructive eviction, concealment, and negligence. Central Plaza filed a cross-complaint, later amended, which alleged, among other things, breach of lease against Sandhu. A jury trial followed. We review the evidence presented at trial that is relevant to the resolution of this appeal.

Sandhu's Testimony

Sandhu testified that in 2003 he ran a computer business from his home and decided to move into office space. He contacted a real estate broker for lease space at the Central Plaza (property) in Union City, California (City) and met with the landlord representative, Chang. Sandhu signed a three-year lease for a space in Building B of the property to operate a computer business.

Sandhu testified that he subsequently decided to open a café instead of a computer business because he thought he could fill a need in the area. He told the real estate broker of his change in plans in early December 2003. He talked to staff at the City's planning department and understood that he could open up a café in his leased space; nothing was said about needing to apply for a "use permit" in order to do so.

Sandhu spoke to the real estate broker about his café plans. The broker said Chang agreed to a café and that he, the broker, would draft an addendum to the lease agreement. Sandhu decided to call his café "eMocha." He envisioned that a customer could come into the café, "have a coffee, sandwich, and maybe use wireless access."

According to Sandhu, in January 2004, he returned to the planning department and told staff about his eMocha plans, including that he would be selling coffee, smoothies, and sandwiches. He was given a business packet of documents, none of which referred to a use permit. He subsequently filled out a business license application, writing as his

² Robert Chang (Chang), Susan Xia Mi Fan, and Susan Chang were the other named defendants in plaintiffs' complaint. Only Central Plaza has appealed from the judgment.

business description, “Café Internet Coffee Shop, Internet Gaming.” He also filled out a business tax form, on which he described the business as “Internet café, coffee shop, Internet gaming, serving coffee-related drinks with pastries, provide computer with Internet access and Internet gaming,” and described the “manufacturing/assembly” of the business as “coffee making.”

Sandhu received a business license from the City about a week later. His business classification, as indicated on licenses admitted as trial exhibits and contained in the record,³ was “retail sales,” the same classification as that given to Quiznos Classic Subs fast food restaurant (Quiznos) in Building A of the property, as also indicated by a business license admitted as a trial exhibit and contained in the record.

Sandhu testified that he returned to the City’s planning department to learn what steps to take next, and was directed to submit plans to the county health department, after which, he was told, the plans would be reviewed by the planning department. After talking to a county health inspector, he hired a restaurant designer, who created blueprint plans for eMocha. The plans referred to the project as converting an existing commercial space into an Internet café, and listed the occupancy classification as “Class B,” “restaurant,” a classification Sandhu had received from the health department. His designer submitted the plans to the health department.

In April 2004, Sandhu said, he met with Chang to review Sandhu’s plans and sign a lease addendum. Chang asked Sandhu what he would be selling and Sandhu said

³ Central Plaza refers to trial exhibits without providing citations to where they are contained in the record. Although Central Plaza’s “notice designating record on appeal” includes a request for the superior court to include all trial exhibits in the clerk’s transcript, they are not included. Therefore, we disregard these references and the arguments based on them. “ ‘ “It is the duty of the party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.” ’ [Citation.] Because ‘[t]here is no duty on this court to search the record for evidence’ [citation], an appellate court *may* disregard any factual contention not supported by a proper citation to the record.” (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379 (*Grant-Burton*); Cal. Rules of Court, rules 8.224, 8.204(a)(1)(C).) The trial exhibits we refer to herein were submitted to this court by eMocha.

coffee, smoothies, and sandwiches. Sandhu showed Chang plans that referred to a panini grill and went over “everything” about his plans with Chang. Chang did not tell Sandhu there would be any limitation on the number of sandwiches he could sell, or mention anything about Quiznos having an exclusive-use provision that would prevent Sandhu from selling sandwiches. Sandhu testified that if he had, Sandhu would have continued with his computer business.

Sandhu and Chang signed a lease addendum that changed the use of the premises from “Computer Services” to “Café (Food, Internet, Music, etc.)” and provided for an additional seven-year lease term. The addendum stated that Sandhu, as tenant, was responsible for obtaining all required permits and/or licenses for the new use. Plans were attached to the addendum showing the layout of his business and referring to a “panini grill.” Sandhu testified that he did not obtain a use permit from the City because no one had informed him that it was required.

Sandhu further testified that he took the plans he received back from the health department to a meeting with Joan Malloy of the City’s planning department. Malloy was concerned about the computer portion of his business and had Sandhu prepare a written description of his business and attend a planning committee meeting before beginning construction. Sandhu recalled that the meeting was attended by Mark Leonard (who, Malloy testified, was the director of economic and community development, of which the planning department was a division, Malloy, two assistant planners, two building department employees, an assistant City manager, a fire department representative, and a few other City officials.

Sandhu said that he showed his plans at the meeting, which included lists of equipment and described the occupancy type as “Occupancy B, restaurant,” and gave out copies of a four-page description of eMocha, which included the following:

“eMocha Café, unlike a typical café, will provide a unique forum, which includes a combination of a full service café and computers. . . . [T]he services that eMocha provides [include] great coffee, specialty beverages (smoothies), bakery/sandwich items, computer rental . . . , conference rooms, free wireless internet access, etc. . . . The café

part of the business will offer traditional style services including coffee bar, smoothies, pastries and sandwiches.”

Sandhu testified that he told the meeting attendees that he planned to operate a full service café and would sell coffees, smoothies, bakery and sandwich items, and would have a room with some computers. He also attached a checklist to his written description listing all the steps he needed to take to get his business up and running. The second step was to obtain a business license and make sure he was in compliance with zoning laws; Sandhu testified that this had been completed when he was issued a retail sales license by the City. At the meeting, Sandhu asked if anything was missing from his list and he was told about fire department and sanitation permits, but not anything about a use permit. The planning department approved his plans that day or the next day.

Sandhu said he then hired a construction company to remodel the leased space. Altogether, Sandhu spent about \$325,000 to plan, construct and open eMocha, which opened in October 2004. After the opening, the City’s planning department notified eMocha that it had violated certain ordinances regarding landscaping and signage, but said nothing about a use permit violation. According to Sandhu, the cafe was profitable and patronized by a variety of people, including the mayor, council members, and the City manager.

Sandhu further testified that in late 2005, the owner of the Quiznos at the property, Paul Garcha, approached him and told him about Quiznos’s exclusive right to sell sandwiches at Central Plaza. Sandhu said eMocha had been selling sandwiches since its opening and told him to discuss the issue with Chang. Chang later told Sandhu that Quiznos had complained about eMocha’s sandwich sales and told Sandhu to solve the problem, saying that Quiznos might sue eMocha. The record indicates that Quiznos had a provision in its lease agreement giving it the exclusive right at Central Plaza to “engage in the sale of delicatessen and submarine type sandwiches.”

According to Sandhu, Chang began visiting eMocha and complaining about its sales of sandwiches. In March 2006, he became more persistent and demanding because, he said, Garcha was threatening to sue him. Chang and Garcha started coming to the café

during business hours and taking photographs. In August 2006, Chang visited eMocha when Sandhu was absent and began questioning eMocha's employees about its sandwiches. Three days later, Sandhu closed eMocha because he and/or his employees had been harassed since November 2005, his customers and employees were talking about what was happening, and he was being threatened by Chang with lawsuits.

The 1987 Conditional Use Permit and Staff Report

A 1987 resolution of the City's planning commission approving the use permit application of Central Plaza was introduced into evidence at trial and is contained in the record. The commission issued a conditional use permit for construction of a three-building mixed use development consisting of a warehouse building, a retail building, and a "sales/service building." Also admitted as evidence was the 1987 staff report to the commission about the Central Plaza project, which is also contained in the record. The report identifies Building B as a "sales/service building" and indicates that the applicant's proposal that it be allowed to operate restaurants and "delis" under the "business services" classification would be acceptable:

"Regarding other retail uses for the project, the Zoning Ordinance allows the general category of 'business services, and retail sales uses necessary to serve other uses in the MS district' as a permitted use. . . . In order to identify and clarify the types of intended retail uses included in the category of 'business services,' the applicant has submitted a list of potential uses for the project. In the [Development Review Committee's] opinion, 'business services' should be interpreted as broadly as possible so that the retail center may take advantage of the high visibility on Alvarado-Niles Road and so that the center has the best chance of succeeding. However, these uses still must be within the scope of the above-stated category."

The report then lists 16 proposed uses by the applicant, including "Food—Restaurants, Delis, Ice Cream/Yogurt, etc." The report indicates that the Development Review Committee supported this proposed use.

Mark Leonard's August 2007 Letter

In August 2007, months after eMocha had closed and Sandhu had filed suit against Chang and Central Plaza, Sandhu received a letter from Mark Leonard, writing as the City's Economic and Community Development Director. Leonard wrote in relevant part:

“This letter is to inform you that the Central Plaza project . . . received Use Permit . . . and Site Development Review . . . approval for a three building Mixed Use project. As previously stated, Building A was approved for Retail and Restaurant uses, Building B for Office and Showroom uses, and Building C for Warehouse and Distribution Uses.

“As Ms. Malloy explained in her letter dated August 8, 2007, eMocha received business license approval as a business service use and not as a restaurant or fast food business. When it came to the City's attention that eMocha was operating outside the scope of their business license, we sought the property owner's assistance in removing eMocha from the site.

“Please feel free to contact me with any questions you may have[.]”

Joan Malloy's Testimony

Joan Malloy testified that she was the manager of the City's planning department during the relevant time period. She further testified that the property was in an “MS zone” that was a split zone of “special industrial” and “light industrial.” It was her understanding of the use permit issued for the property “that the front buildings . . . could accommodate a limited amount of restaurant use, and other . . . uses . . . that would require a special use permit review and approval.” This was “focused” on Building A. Although she did not have the file with her, her recollection was that Building B was set aside in the use permit for “business uses.”

Malloy said that she had had contact with Sandhu regarding his café, but could not recall a specific meeting, recalling only “general discussions about the Internet location . . . on that property.” She did not think Sandhu had applied for a use permit for a restaurant in Building B. She did not “recall specifically” Sandhu asking her what he needed to do in order to establish his business.

Malloy thought that a new use permit or an amendment of the original use permit would be required to operate a restaurant in Building B. She thought that according to the municipal code, which contained the zoning laws, the planning department was the decision-making body regarding use permits, although “[h]istorically” she thought it had been handled differently. The City did not determine whether a business was a restaurant based on sandwiches constituting 30 or 40 percent of sales. Given a description by Central Plaza’s counsel of a facility preparing a sandwich upon a customer’s order and posting boards listing “sandwiches, smoothies, lunch specials, and so on,” she said, “This appears to be a restaurant.”

Malloy was shown Sandhu’s application for a business license and testified that markings on the document indicated it had been approved by the planning department for “business service,” which was not the same as “restaurant.” To her knowledge, eMocha was never approved by the department for anything other than “business service.”

Malloy was shown trial exhibit No. 22, which the record before us indicates is the four-page description of eMocha prepared by Sandhu. Malloy testified that she “may” have seen the document in her file before, but could not “recall it specifically.” Malloy acknowledged it had her office phone number written at the top, and appears to have the words “Joan for original plans” written there as well.

Malloy also was shown various correspondence from August 2007. She was shown a letter from Chang to her asking about the permitted uses for the buildings, and said it looked “familiar.” She acknowledged that she replied in a letter stating the property had a use permit for a three-building mixed use development that included a “sales service building,” and that she included the planning commission resolution with her letter. Chang replied, asking about the use limitations for Building B and whether or not eMocha had a permit or needed a permit for his Internet café. She replied by letter on August 8, 2007, confirming that eMocha was approved as a “business service use and not a restaurant,” and that eMocha had indicated to the City that the business was an

“Internet/computer service.”⁴ She testified that she based this last statement in her letter “on previous information provided, that this was a—to be a business serving use Internet.” She further testified that, as indicated in her letter’s reference to “ancillary” activity, coffee and snacks were identified as a “[s]econdary, not primary” activity.

On cross-examination, Malloy also testified that, regardless of what was stated on the eMocha business license, the planning department’s approval was for “business services,” not “retail sales,” which was a designation made by the City’s administrative services department. She did not know if the City had a license category for restaurants and, when shown a fee schedule for business licenses, acknowledged that she did not see such a category listed.

Malloy also testified on cross-examination that she spoke with Sandhu when he originally came into the City and had discussions “about whether eMocha was an appropriate business.” Malloy again asserted that eMocha “had presented themselves as being a computer-serving service, and the food was ancillary.”

However, Malloy also acknowledged that she had initialed the plans for eMocha that Sandhu provided to the City and signed off on them in April 2004. She did not conclude from them that eMocha would operate as a restaurant. She did not recall a specific meeting at which Sandhu presented his written description of eMocha. However, she acknowledged that she had received email in 2004, sent also to Mark Leonard, from a City planner indicating that eMocha was serving sandwiches, but that no action was taken regarding the issue.

Malloy further stated on cross-examination that for permitted uses at the property, “we would refer back to the original permit,” which was the 1987 resolution of the planning commission. She said staff reports were helpful in the making of use determinations. She acknowledged that the business license issued to eMocha was for

⁴ Central Plaza quotes from Malloy’s letter in its opening brief and identifies it as a trial exhibit, but does not cite to the record provided to this court. We disregard this letter in the absence of a proper record citation. (*Grant-Burton, supra*, 99 Cal.App.4th at p. 1379; Cal. Rules of Court, rules 8.224, 8.204(a)(1)(C).)

“retail sales,” the same as the classification given to Quiznos, but repeated that this was a decision of the City’s administrative services department and that the planning department looked “to the municipal code to evaluate whether or not a use is consistent with the permitted uses of the district.”

Closing Argument

In closing argument, eMocha’s attorney contended that Malloy had signed off on eMocha’s plans, which plans referred to the project being an occupancy “Class B restaurant.” Sandhu had obtained approvals from various City departments, and had been issued a business license for “retail sales,” the same classification given to Quiznos. Furthermore, eMocha was serving sandwiches from 2004 to 2006, and the City knew about it. Chang was also aware that eMocha was going to serve sandwiches, and never claimed breach of lease. Counsel further contended that, contrary to the statement by Leonard in his August 2007 letter, the City never did anything to try and remove eMocha, as there was no evidence of a notice of violation, “no files, no documentation, aside from [Leonard’s] letter, that the planning department sought assistance from Mr. Chang in removing eMocha from the site.”

Central Plaza’s attorney responded in closing argument with contentions that, among other things, while eMocha was allowed to sell pre-prepared sandwiches without a use permit, it was not allowed to sell deli sandwiches as a restaurant without a use permit. He further argued that eMocha had been approved to provide business services, not operate as a restaurant, and that Sandhu’s initial submissions to the City, upon which approvals for eMocha were based, did not indicate he would sell deli sandwiches as a primary part of his business.

The Jury’s Verdict and Central Plaza’s Motions

The jury deliberated and issued a special verdict, finding that Central Plaza breached the covenant of quiet enjoyment and quiet possession, caused the constructive eviction of eMocha, and was negligent. The jury found that there had been no concealment by Central Plaza. It awarded \$207,967 in lost future profits damages. The

jury determined that Central Plaza was not entitled to recover lost rent as alleged in its cross-complaint.

Central Plaza then moved for judgment notwithstanding the verdict (JNOV) and, in the alternative, for a new trial, both on the ground that the lost profits damages were illegal because eMocha did not have a valid use permit issued by the City, making the operation of a fast food restaurant illegal. The court denied both motions by written orders. The court's denials included the following statement:

“The jury’s verdict reflects a determination by the jury that plaintiff’s operation of his business was not illegal. As plaintiff points out, no witness from the planning department, and no one from code enforcement, testified at trial that plaintiff’s business was an illegal business. Moreover, . . . the August 30, 2007 letter from Mark Leonard, was considered by the jury and presumably rejected as a basis for concluding that the continued operation of the business would have been illegal.”

Judgment was entered and a timely notice of appeal was filed by Central Plaza.

DISCUSSION

On appeal, Central Plaza argues that the trial court erred in denying both its JNOV motion and motion for a new trial because “[w]hether the business was illegal or not was not a matter for determination by the jury. It was a function for the trial court to determine that the operation of a fast food restaurant in the lease space without a conditional use permit was illegal.” Central Plaza further argues that, based on purportedly undisputed facts, “the only conclusion the trial court could have reached was that Tenant operated a restaurant without the required use permit in violation of [the City] zoning laws, but that despite this violation, future lost profit damages could properly be awarded for conduct in violation of zoning laws.” According to Central Plaza, it is an issue of “first impression concerning whether or not lost profits from a business which is illegal under zoning laws where the landlord is claimed to have made the business unprofitable through other causes, may result in recoverable damages.” Central Plaza argues the answer is no.

We find Central Plaza’s arguments unpersuasive for various reasons. We need not discuss all of them, however, because most importantly, Central Plaza does not establish that the undisputed facts show that eMocha violated any zoning laws, nor that there was a related legal issue for the court to determine, rather than factual issues for the jury’s consideration. Central Plaza, as appellant, has the burden to affirmatively establish error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564. The most fundamental principle of appellate review is that “ ‘[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Ibid.*) Central Plaza has not met its burden.

Specifically, after correctly pointing out that the construction of a statute and its application to conceded facts is a question of law (see. e.g., *Estate of Madison* (1945) 26 Cal.2d 453, 456; *Neal v. State of California* (1960) 55 Cal.2d 11, 17), Central Plaza fails to cite a single zoning law for our consideration. Instead, it makes characterizations of the *evidence* apparently admitted at trial, some for which Central Plaza does not provide citations to the record, and contends, based on these characterizations, that a court could only conclude that there was a violation of law. We disagree.

First, Central Plaza discusses the planning commission’s 1987 approval of a conditional use permit for the property. It cites to a trial exhibit consisting of the minutes of the 1987 planning commission meeting to contend that the applicant’s list of possible uses, which, as we have already discussed, included a proposal to operate restaurants and delis that staff found were acceptable “business services,” was intended for Building A, where Quiznos was located, but not Building B, where eMocha was located. However, Central Plaza does not provide a proper citation to the record for these minutes. Therefore, we disregard this contention. (*Grant-Burton, supra*, 99 Cal.App.4th at p. 1379; Cal. Rules of Court, rules 8.224, 8.204(a)(1)(C).)

Even if we were to consider this contention, it is not indisputable. The 1987 staff report to the planning commission indicates that proposed uses such as the operation of restaurants and delis were acceptable “business services” that should be allowed in

Building B. Malloy's testimony indicated that such staff reports were helpful in determining the scope of a use permit. Central Plaza fails to explain why the jury could not rely on this evidence in evaluating the scope of Central Plaza's conditional use permit.

Next, Central Plaza asserts that "[i]n 2007, Union City Planning Director Joan Malloy and Economic and Community Development Director Mark Leonard determined that when Tenant's business license was granted in 2004, restaurant uses [were] permitted in Building A but not Building B. Tenant's counsel went to great lengths at trial trying to broaden the 1987 use permit allowing the operation of a restaurant in Building A to allow the same used in Building B. While he was successful in obfuscating the issue, he never refuted the foregoing facts. There is no substantial evidence that a fast food restaurant can be operating in Building B without a conditional permit." Central Plaza further asserts that "Landlord only had a use permit allowing for the operation of restaurants in Building A as a result of the initial approval process for the mixed use development."

There are two problems with these particular contentions. First, Central Plaza cites to a trial exhibit that apparently contained Malloy's August 8, 2007 letter. However, as we have discussed, Central Plaza does not provide a citation to the record for this letter and, therefore, we disregard Central Plaza's reliance on it. (*Grant-Burton, supra*, 99 Cal.App.4th at p. 1379; Cal. Rules of Court, rules 8.224, 8.204(a)(1)(C).)

Regardless, even if we were to consider these representations about the letter, and also Malloy's related testimony that a restaurant was not a permitted use in Building B under the property's conditional use permit, this evidence does not establish that eMocha operated in violation of zoning laws for several reasons. Malloy did not indicate that a determination of a violation was ever made; and, indeed, to the contrary, the evidence indicates that Malloy herself, on behalf of the planning department that she managed, approved the plans submitted to the City by Sandhu that referred to eMocha as a "restaurant" and indicated it would contain a panini grill, after Malloy, Leonard, and

others had been given an extensive description of Sandhu's plans, which stated his intentions to operate a full service café that served sandwiches.

Furthermore, Malloy indicated that she was testifying about permitted uses from memory only, based on the City's records, and acknowledged that staff reports were helpful in determining the scope of previously issued permits. As we have discussed, the staff report regarding the original use permit indicates that permitted uses for "business services" in Building B should include restaurants and delis, as requested by the applicant. Thus, Malloy's statements about permitted uses in Building B were not indisputable or represented as determinations of use permit or zoning law violations, and were contradicted by her own previous approval on behalf of the planning department of eMocha's plans after extensive disclosures by Sandhu about his intentions to operate as he did.

Second, as eMocha points out, Mark Leonard's August 2007 letter does not indisputably establish that eMocha violated any use permit laws. The text of Leonard's letter, from which we have quoted, states in relevant part that the conditional use permit granted to Central Plaza allowed Building B to be used for "Office and Showroom uses" and that "eMocha received a business license approval as a business service use and not as a restaurant or fast food business." However, Leonard's letter does not refer to any zoning laws that had been violated, state that eMocha lacked any required use permit, nor establish that any determination of illegality had been made.

Moreover, both contentions stated in Leonard's letter are contradicted by evidence in the record. As we have discussed, the 1987 planning commission resolution indicates that the commission approved a conditional use permit for "a sales/service building" in Building B, not just "Office and Showroom uses." Also, as we have discussed, regardless of Leonard's assertion about the nature of eMocha's business license (or Malloy's testimony about the planning department's approval of "business services"), the evidence in the record indicates that eMocha was issued a business license for "retail sales," the same classification provided to Quiznos. Furthermore, even if eMocha's business license limited its activities to "business services," again, the 1987 staff report

prepared for the planning commission indicates that among the acceptable “business services” for Building B was the operation of restaurants and delis. Central Plaza fails to explain why we should at all discount any of this substantial evidence, which indicates that eMocha’s activities were within the scope of the conditional use permit approved for the property.

Finally, Central Plaza explains away the lack of action by the City in response to eMocha’s supposed zoning violation by citing evidence purportedly showing that the City indicated in 2007 that it was under the assumption that eMocha was operating what was primarily an internet/computer service that provided coffee and snacks as an ancillary activity. Once more, however, Central Plaza cites to a trial exhibit, apparently Malloy’s August 8, 2007 letter, without providing a citation to it in the record before us. Therefore, we disregard the contention. (*Grant-Burton, supra*, 99 Cal.App.4th at p. 1379; Cal. Rules of Court, rules 8.224, 8.204(a)(1)(C).)

However, even if we were to consider these representations about the letter, and also Malloy’s related testimony about her recollection of what eMocha’s business was going to be, this evidence was also contradicted by substantial evidence in the record. That is, Sandhu testified that he told the attendees at the planning committee meeting in 2004, including Malloy and Leonard, about his plans to operate a full service café that served sandwiches; he further testified that he reviewed plans at the meeting that referred to his project as a “restaurant” that would include a panini grill; Malloy acknowledged that she had approved the plans Sandhu submitted to the City; and Malloy acknowledged that in 2004 she received email stating that eMocha was selling sandwiches. Sandhu’s testimony further indicated that he repeatedly asked of City officials what he was required to do to open his business, and there was never any mention of a use permit.

In short, Central Plaza does not establish that there was a legal issue for the court, rather than the jury, to decide and, contrary to its claim that undisputed facts established a violation of zoning laws, there was substantial evidence to support the conclusion that no such violation occurred because eMocha’s activities came within the 1987 conditional use permit approved for the property and were approved by the City’s planning

department with knowledge of Sandhu's intentions to operate a "restaurant" and "café" that served sandwiches.

As Central Plaza acknowledges, we ordinarily review a trial court's ruling on a JNOV motion by determining whether it appears from the record, viewed in the light most favorable to the party who secured the verdict, that any substantial evidence supports the verdict. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 284.) " " " 'If there is any substantial evidence, or reasonable inferences to be drawn therefrom in support of the verdict, the motion should be denied.' [Citations.]" [Citation.]' [Citation.] In general, " "[t]he purpose of the motion for [JNOV] is not to afford a review of the jury's deliberation but to prevent a miscarriage of justice in those cases where the verdict rendered is without foundation." [Citation.]' " (*Ibid.*) As our discussion indicates, there was substantial evidence to support the jury's verdict. While Central Plaza urges that we apply a de novo standard of review because "the sole issue on appeal is the interpretation of a statute and the application of statutory language to undisputed facts," it fails completely to establish that this is the case. Therefore, Central Plaza has not established that the trial court erred in denying its JNOV motion.

As Central Plaza also acknowledges, "[o]rdinarily, a trial court has complete discretion in ruling on a motion for a new trial. Its ruling will not be disturbed absent an abuse of discretion." (*Shelbauer v. Butler Manufacturing Co.* (1984) 35 Cal.3d 442, 452.) According to Central Plaza, such an abuse of discretion occurred here "because future lost profits for operating a fast food restaurant in contravention of zoning laws are not recoverable in a court of law." However, Central Plaza has not shown an abuse of discretion because it has not established that there were any violations of zoning laws. Therefore, Central Plaza has not established that the trial court erred in denying its motion for a new trial.

In light of our conclusion, we need not discuss the remainder of the issues debated between the parties.

DISPOSITION

The judgment is affirmed. Central Plaza is ordered to pay eMocha's costs of appeal.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.