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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SAID QASSEM ANAM,

Plaintiff and Appellant,

v.

WARREN AVENUE ASSOCIATES, L.P.,
et al.,

Defendants and Respondents.

A145125

(Alameda County
Super. Ct. No. HG13675291)

In this action for breach of contract and wrongful eviction, plaintiff Said Qassem Anam (Plaintiff) appeals the trial court's order granting summary judgment to defendants Warren Avenue Associates, L.P., and Walter R. Wallner, Jr. (Defendants). We affirm.

BACKGROUND

The following facts are undisputed: In 2005, Plaintiff purchased a pizza business owned by a third party and located on certain commercial property owned by Defendants (the Property) and leased to the third party. In June 2006, Sulton Mahmud Razawi entered into a written agreement with Defendants to lease the Property (the Razawi Lease). The term of the Razawi Lease ran from June 1, 2006 to May 31, 2009. In November 2009, Defendants and Nissar Quraishi entered into a new written lease agreement for the Property. Defendants did not provide notice to Plaintiff.

In opposing summary judgment, Plaintiff submitted evidence that before the Razawi Lease was executed, Plaintiff had attempted to lease the Property himself. According to Plaintiff, Defendants told him his credit score was too low and

recommended Plaintiff get a friend or family member to sign the lease agreement. Plaintiff subsequently informed Defendants that Razawi would sign the lease. Plaintiff paid rent during the term of the Razawi Lease. After the term of the Razawi Lease expired, Plaintiff's business remained on the Property and Plaintiff paid rent for June 2009. In May 2009, Plaintiff, who was about to go overseas for two years, entered into an agreement with Quraishi whereby Quraishi would operate Plaintiff's business, keeping any profits, and pay rent to Defendants; in exchange, he paid Plaintiff a monthly fee.

In 2013, Plaintiff filed this action against Defendants. The operative third amended complaint alleges causes of action for breach of contract and wrongful eviction.¹ The breach of contract cause of action identifies the Razawi Lease as the breached contract. Defendants moved for summary judgment. The trial court granted the motion. With respect to the breach of contract cause of action, the trial court concluded Plaintiff was not a third party beneficiary of the Razawi Lease; alternatively, the court found the Razawi Lease expired before any breach occurred. As for the wrongful eviction cause of action, the trial court found Plaintiff had no possessory rights to the Property; was not a party in possession as required by Code of Civil Procedure section 1172; and, to the extent a tenancy at will had been created after the Razawi Lease term expired, this tenancy was terminated by Plaintiff's attempted sublease to Quraishi. This appeal followed.

DISCUSSION

“We review the trial court's decision [granting summary judgment for the defendants] de novo, considering all of the evidence offered in connection with the motion—except that which the court properly excluded—and the uncontradicted inferences the evidence reasonably supports. [Citation.] In resolving the motion we construe defendants' evidence strictly and plaintiffs' evidence liberally, and resolve any

¹ The parties interchangeably use the terms wrongful/unlawful eviction, unlawful ejection, and forcible entry to refer to this cause of action. We assume, as they do, there is no material difference between these terms for our purposes. For convenience, we use the term wrongful eviction throughout.

doubts as to the propriety of granting the motion in plaintiffs' favor as the opponent.” (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 674–675 (*DiCola*)). “ ‘Although our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in plaintiffs’ brief. [Citations.] Issues not raised in an appellant’s brief are deemed waived or abandoned.’ ” (*Schmidt v. Bank of America, N.A.* (2014) 223 Cal.App.4th 1489, 1511.)

I. *Breach of Contract*

Plaintiff identifies the Razawi Lease as the basis for his breach of contract claim, but concedes this contract “terminated” on May 31, 2009. The alleged breach took place in November 2009, when Defendants entered into a lease with Quraishi and failed to notify Plaintiff. As Plaintiff’s counsel conceded at oral argument, because the alleged breach took place after the Razawi Lease terminated, Plaintiff’s breach of contract claim based on the Razawi Lease fails.²

II. *Wrongful Eviction*

Plaintiff contends that a tenancy at will was created following the termination of the Razawi Lease, and he was therefore entitled to at least 30 days notice of termination. Plaintiff has not shown the trial court’s ruling to be in error.

First, Plaintiff does not dispute that an element of the wrongful eviction claim is his possession of the Property. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1039 [“The first requirement for tort recovery [for wrongful eviction] is a showing that the plaintiff was ‘in peaceable possession’ of the premises.”]; see also Code Civ. Proc., § 1172 [forcible entry/detainer plaintiff must show “that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer”].) In his opening brief on appeal, Plaintiff’s sole argument on this issue is that he was entitled to possession at the time Defendants leased the Property to Quraishi because Quraishi had breached his

² Because of this conclusion, we need not decide whether there is a triable issue of fact regarding Plaintiff’s status as a third party beneficiary of the Razawi Lease or whether Razawi assigned any of his rights under the Razawi Lease to Plaintiff.

agreement with Plaintiff by failing to make the monthly payments to Plaintiff.³ Plaintiff did not raise this argument below⁴ and has cited no evidence in the record to support the claim. “ [I]n reviewing a summary judgment, the appellate court must consider only those facts before the trial court, disregarding any new allegations on appeal. [Citation.] Thus, possible theories that were not fully developed or factually presented to the trial court cannot create a “triable issue” on appeal.’ ” (*DiCola, supra*, 158 Cal.App.4th at p. 676; see also *Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384 [“ ‘It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant’s contentions on appeal. [Citation.] If no citation “is furnished on a particular point, the court may treat it as waived.” ’ ”].)

Second, Plaintiff claims he established a tenancy at will by paying rent for June 2009.⁵ Assuming this to be the case, a tenancy at will is not assignable and is terminated if the tenant attempts to assign his or her interest. (10 Miller & Starr, Cal. Real Estate (4th ed. 2015) § 34:28 [“[a] tenant at will does not have a transferable interest, and the tenancy is terminated by an attempted assignment”]; *McLeran v. Benton* (1887) 73 Cal. 329, 339 [“A tenancy at will is not assignable. If a tenant at will attempt[s] to underlet or surrender, he thereby determines his will, and relinquishes the estate.”].) Plaintiff’s sublease to Quraishi therefore terminated any tenancy at will. Plaintiff argues Defendants were still obligated to provide him with notice of termination. Civil Code section 789, governing the termination of a tenancy at will, provides only that such a tenancy “may be terminated by the landlord’s giving notice in writing to the tenant”

³ To the extent Plaintiff belatedly raises additional arguments regarding possession in his reply brief, we decline to consider them. (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 814–815.)

⁴ In his brief to the trial court, Plaintiff argued the Razawi Lease granted him possession.

⁵ On appeal, Plaintiff suggests the tenancy was month to month rather than at will. He cannot raise this argument now, however, because in the trial court he argued solely that the tenancy was at will.

Here, Plaintiff terminated the tenancy by his sublease, and he provides no authority that a landlord must provide notice if the tenancy is terminated by the tenant.⁶

Plaintiff has failed to demonstrate the trial court's grant of summary judgment was in error.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

⁶ Because of this conclusion, we need not address Defendants' alternative argument that Quraishi was acting as Plaintiff's agent when he signed the November 2009 lease.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.

(A145125)