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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

NEWAY MENGISTU,

Plaintiff and Appellant,

v.

CROSS ROADS PROPERTIES I, LLC,
et al.,

Defendants and Respondents.

B231117

(Los Angeles County
Super. Ct. No. BC414935)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Gregory W. Alarcon, Judge. Affirmed.

Neway Mengistu, in pro. per., for Plaintiff and Appellant.

Lorraine Anderson for Defendants and Respondents.

On June 1, 2009, Neway Mengistu filed a complaint against Cross Roads Properties I, LLC and several individual defendants (collectively, defendants), alleging causes of action for breach of contract and intentional tort and seeking damages of \$100,000. The action related to a rental agreement Mengistu had entered into with Cross Roads Properties I. At the same time as defendants answered the complaint, Cross Roads Properties I filed a cross-complaint against Mengistu, alleging in a cause of action for breach of contract that Mengistu owed it past due rent, plus costs and attorney fees. After a bench trial, the trial court ruled that Mengistu, who presented no evidence or witnesses on his complaint, failed to prove his case and that Cross Roads Properties I established that Mengistu had breached the rental agreement. The court entered judgment in favor of Cross Roads Properties I on Mengistu's complaint and on its cross-complaint, awarding it \$2,581.56 in unpaid rent, plus \$1,420 in costs and \$2,000 in attorney fees. Mengistu appealed from the judgment. Although Mengistu does not challenge the award on the cross-complaint, he contends the judgment should be reversed because the trial court erroneously denied a continuance of the trial and a jury trial on his complaint and failed to rule on his request for an additional waiver of court fees. We disagree with Mengistu and thus affirm the judgment.

In January 2010, at a case management conference, the trial court scheduled the final status conference for June 18 and the trial for June 22. At the June 18 final status conference, defendants' counsel represented that Mengistu had not answered the cross-complaint or discovery requests. Mengistu said that he was not prepared for trial and, although he had requested a jury trial, did not pay jury fees or file any documents for trial. He also did not serve any witness subpoenas or notice any parties to appear at trial. Three days later, on June 21, Mengistu filed an ex parte application to continue the trial. In his application, Mengistu maintained that a continuance was warranted because his appeal to the appellate division of the superior court from the judgment against him in a related unlawful detainer action between Cross Roads Properties I and him still was pending and he did not want to commence discovery in this case until resolution of the unlawful detainer proceeding. Mengistu also said that he believed defendants were going

to move to compel him to answer discovery responses in this case and planned to request a trial continuance at the hearing on that motion, but defendants never filed such a motion. The court denied the ex parte application. The denial of the application was not an abuse of discretion. (*Lucas v. George T. R. Murai Farms, Inc.* (1993) 15 Cal.App.4th 1578, 1586 [trial court's ruling on request for continuance reviewed for abuse of discretion].) Mengistu did not demonstrate that the unlawful detainer proceeding somehow precluded his case against defendants from going forward. In addition, even if he believed defendants were going to file a motion to compel, nothing prevented him from pursuing his case against them, either by preparing for trial on June 22, a date which he had known about for five months, or timely requesting a continuance with a showing of good cause. (See *Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 172 [party requesting continuance has burden of showing good cause].) In any case, the court proceeded first with trial on the cross-complaint, effectively giving Mengistu a continuance of the trial on his complaint until August 5, and Mengistu still was unprepared for trial on that later date.

Nor did the trial court improperly deny Mengistu a jury trial. As noted, Mengistu did not pay jury fees, and he said he was not prepared for trial. The court gave Mengistu some additional time by trying the cross-complaint first. Yet, even after defendants had presented evidence on the cross-complaint, Mengistu still was not ready. When questioned by the court as to whether he planned to testify in support of his case, Mengistu did not answer. Under these circumstances, the court did not err by declining to call in a jury and determining Mengistu had not proved his case.

Reversal of the judgment also is not warranted based on the trial court's failure to rule on Mengistu's request for an additional waiver of court fees. Mengistu applied for and received a waiver of fees in connection with the filing of his complaint. He filed a request for an additional waiver of fees on June 22, apparently asking the court to order and pay for a reporter's transcript in the related unlawful detainer proceeding. The court denied the request on the ground that it could not order the transcript and notified Mengistu that he had 10 days to ask for a hearing in order to show the court more

information. Mengistu did not further pursue that request. Instead, he filed another request for an additional waiver of fees on July 13, three weeks after the scheduled trial date, seeking a waiver of jury fees and expenses and asking the court to “issue [s]ubpoenas for witnesses to appear at trial to testify.” The court did not rule on that request. It asked Mengistu whether he planned to testify in the trial of his complaint against defendants, and Mengistu did not answer, telling the court only that he needed to subpoena witnesses. Given the court properly exercised its discretion in denying Mengistu a continuance of the trial, its failure to rule on his July 13 request for an additional waiver of fees did not prejudice Mengistu. Trial on the cross-complaint was underway, and trial on Mengistu’s complaint was set to follow. No time existed to subpoena the witnesses sought by Mengistu for the jury trial he desired but had not timely pursued. Moreover, as to the request regarding the witness subpoenas, even if the court could pay for service of subpoenas on the witnesses, Mengistu did not itemize the requested expenses, such as by identifying the witnesses and the cost of subpoenaing them. (See Cal. Rules of Court, rule 3.56(6) [trial court may waive “[o]ther fees or expenses as itemized in the application”].)¹

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.

¹ Mengistu also faults the trial court for failing to compel individual defendants to appear at trial. But, had Mengistu wanted certain individual defendants to appear at trial, he simply needed to serve their attorney with notice. (Code Civ. Proc., § 1987, subd. (b).) He did not do so.