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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CRYSTAL HOWARD,

Plaintiff and Appellant,

v.

BLAKE CHAMPION et al.,

Defendants and Respondents.

B234337

(Los Angeles County
Super. Ct. No. YC061855)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dudley W. Gray II, Judge. Affirmed.

Law Office of Stuart E. Cohen and Stuart E. Cohen for Plaintiff and Appellant.

Brian R. Condon for Defendants and Respondents.

Appellant Crystal Howard appeals from a judgment after a jury trial verdict in favor of respondents Ramona and Blake Champion (mother and son). The court awarded attorney fees to respondents. Appellant argues the jury was not properly instructed on her cause of action for unfair business practices and that the court erred in awarding attorney fees. We conclude that a judgment rendered in a previous unlawful detainer action precludes appellant's claim for unfair business practices and the lease entitles respondents to attorney fees.

FACTUAL AND PROCEDURAL SUMMARY

Respondents own property in Playa Del Rey. Before renting a unit to appellant, respondent Ramona Champion erected "partition walls" that converted an open area dining room to an enclosed room. Respondents did not obtain any permits for the work. In November 2008, after the walls had been erected, appellant and respondents entered into an agreement to lease the unit. Appellant stopped paying rent in October 2010 after discovering the unit was a one bedroom unit converted into a two bedroom unit. In November 2010, respondents served appellant a three-day notice to pay or quit. She was evicted in January 2011.

The unlawful detainer case was tried by the court, resulting in a judgment for possession and damages including unpaid rent. In granting respondents' motion for summary judgment in the unlawful detainer case, the court ruled that appellant had not presented sufficient evidence to establish a right to rent reduction or relief from her obligation to pay rent. Thereafter, appellant brought the present case, seeking repayment of all the rent she had paid during her tenancy, including the rent paid as a result of the unlawful detainer judgment. Appellant filed her action against respondents in March 2010, alleging breach of oral contract, breach of written contract, negligence, fraud, and unfair business practices. The court sustained the demurrer and granted respondents' motion for judgment on the pleadings as to three of the counts. Respondents argued in their demurrer that appellant's claim for unfair business practices was barred by res

judicata and collateral estoppel. At trial, the court did not allow appellant's expert witness to testify and rejected her proposed jury instructions regarding permit requirements because they were in improper form. The jury returned a verdict for respondents on the remaining counts for fraud and unfair business practices. The trial court awarded attorney fees to respondents. Appellant filed a timely appeal.

DISCUSSION

Appellant appeals only from the verdict on her claim that the illegal conversion of the unit was an unfair business practice. She claims the jury was not properly instructed on the applicable law related to the permits required for the conversion and unfair business practices. Appellant has not specifically stated her position on what constitutes an unfair business practice, but, she cites case law for the proposition that conversions performed without the appropriate building permit and without a certificate of occupancy are illegal, and bar the landlord from collecting rent. Respondents contend appellant's claim is barred by res judicata and collateral estoppel because she previously litigated these issues as an affirmative defense in the unlawful detainer action. Appellant counters that her claim is not barred because she did not have a "full and fair" opportunity to litigate it in the unlawful detainer proceeding. We disagree.

““The doctrine of *res judicata* gives certain *conclusive effect* to a former *judgment* in subsequent litigation involving the same controversy.” [Citation.] The doctrine “has a double aspect.” [Citation.] “In its primary aspect,” commonly known as claim preclusion, it “operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]” [Citation.] “In its secondary aspect,” commonly known as collateral estoppel, “[t]he prior judgment . . . ‘operates’” in “a second suit . . . based on a different cause of action . . . ‘as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.’ [Citation.]” [Citation.] “The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the

same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]” [Citation.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) In this context, the phrase “cause of action” means “the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citation.]” (*Id.* at p. 798.)

The res judicata effect of an unlawful detainer proceeding is narrow, but substantial. “Generally speaking, an unlawful detainer judgment has limited res judicata force because it typically follows a summary proceeding focused only on deciding a party’s right to immediate possession of property.” (*Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371.) “But when litigants to an unlawful detainer proceeding fully try other issues besides the right of possession, the unlawful detainer judgment is conclusive as to those other litigated issues. [Citations.]” (*Ibid.*)

In the unlawful detainer action, appellant argued as an affirmative defense that the conversion was illegal because respondents did not obtain the required permits, did not obtain a certificate of occupancy, and did not comply with the Los Angeles Rent Stabilization Ordinance. She maintained this barred them from collecting rent on the illegal unit. The judge recognized her argument but awarded damages to respondents because appellant failed to provide evidence in support of her claim: appellant “submits no evidence that [respondents have] not obtained a certificate of occupancy. . . . [Appellant] also has submitted no evidence of any non-compliance with the Los Angeles Rent Stabilization Ordinance, and has submitted no admissible evidence (i.e., non-hearsay) of any improper electrical wiring, or any admissible evidence (i.e., non-hearsay) that the ‘addition’ was done without the proper permits.” Since appellant specifically raised the defense and the court rejected it, the unlawful detainer judgment collaterally estops her from relitigating whether permits and a certificate of occupancy were required.

But her claim for recovery of rent paid is based on her claim that respondent was not entitled to charge rent because the rented unit was “illegal” due to the lack of permits and a certificate of occupancy. Consequently, she is barred from relitigating those issues unless the unlawful detainer action denied her a “full and fair” opportunity to prove her case.

In applying collateral estoppel, courts may consider whether the party against whom the earlier case was decided had a “full and fair” opportunity to litigate the issue. (*Roos v. Red* (2005) 130 Cal.App.4th 870, 880 (*Roos*)). “[T]he courts have recognized that certain circumstances exist that so undermine the confidence in the validity of the prior proceeding that the application of collateral estoppel would be ‘unfair’ to the defendant as a matter of law.” (*Ibid.*) These circumstances exist “if there is reason to doubt the quality, extensiveness, or fairness of procedures” in the prior litigation. (*Ibid.*, quoting *Kremer v. Chemical Construction Corp.* (1982) 456 U.S. 461, 481.) This includes when the second action “affords the defendant procedural opportunities unavailable in the first action that could readily cause a different result. [Citation.] [Footnote omitted.]” (*Roos*, at p. 880.)

Appellant contends she was not able to fully and fairly litigate the issue in the unlawful detainer action because she could not present expert testimony and she was limited to her own declaration and the statements of others. She also argues respondents have not provided any evidence that she had a “full and fair” opportunity to litigate the issue. The latter argument fails because “the principles of appellate review require[] appellants to affirmatively demonstrate error to overcome the presumptions in favor of the trial court’s ruling” (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal. App. 4th 550, 564.) The burden of demonstrating that the hearing was not “full and fair” thus lies with appellant.

We do not agree that the procedures in the unlawful detainer action were inadequate to provide appellant with a “full and fair” hearing. The judge indicated appellant failed in her defense because she failed to provide evidence that respondents

had not submitted a certificate of occupancy, that they did not comply with the Los Angeles Rent Stabilization Ordinance, that the wiring was improper, or that the conversion was done without the proper permits. Appellant has not pointed to evidence showing she was denied the opportunity to properly prove her allegations. She states that since she was not able to call upon expert testimony, she was not able to have a “full and fair” hearing. However, the expert testimony she sought to present was on what the law is, and expert opinion evidence is neither required nor permitted for that purpose. Appellant only needed to direct the court to the proper statutes or ordinances and present evidence as to the changes respondents made to the property.

Appellant next asks that we consider evidence that was not available in the unlawful detainer action or at the trial. The evidence, apparently, was that after the eviction, respondent applied for a permit for the work that had been done to this unit. However, “the existence of ‘new evidence’ normally does not bar the application of collateral estoppel.” (*Roos, supra*, 130 Cal.App.4th at p. 888.) Further, the evidence she wishes to introduce was that permits were required prior to the conversion. She could have shown this by directing the court to the applicable statutes or ordinances. The proffered new evidence is not cognizable on appeal.

Finally, appellant contends the trial court erred in awarding attorney fees to respondents. Specifically, she argues the award was incorrect because it was based on a contract theory under Civil Code section 1717, while the claims presented to the jury were for fraud and unfair business practice. Respondents point out that the language of the rental agreement authorizes the court to grant attorney fees in any action between the parties. The rental agreement states, “In a dispute between landlord and tenant which gives rise to any action in court, the losing party will pay the court costs and reasonable attorney fees of the successful party.” We conclude the award was proper.

Civil Code section 1717, subdivision (a) states: “In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing

party”, then the prevailing party is entitled to attorney fees. (Civ. Code, § 1717, subd. (a).) The language of the contractual provision determines whether an award of attorney fees is proper on a tort claim. (*Gil v. Mansano* (2004) 121 Cal.App.4th 739, 743.) To determine whether a contractual fee agreement provides for attorney fees in a tort action, the ordinary rules of contract interpretation apply, under which we infer the mutual intent of the parties from the plain meaning of the contractual language in the absence of any ambiguity in that language. (*Ibid.*) In the absence of extrinsic evidence to interpret the attorney fee provision of a contract, “the appellate court determines de novo whether the contractual attorney fee provision entitles the prevailing party to attorney fees.” (*Ibid.*)

This case concerns a dispute between the landlord and tenant, in their roles as such. The contract specifically applies the attorney fee provision to “any action in court.” The language is sufficiently broad to permit the recovery of attorney fees in both contract and tort actions pertaining to the landlord-tenant relationship as was the suit for damages in this case. The trial court did not err in awarding respondents attorney fees.

DISPOSITION

We affirm. Respondents are to have their costs on appeal, including attorney fees on appeal pursuant to Civil Code section 1717.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.