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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE ORGANIC PANIFICIO, LLC, et al.,

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES, et al.,

Defendants and Respondents.

B243421

(Los Angeles County
Super. Ct. No. BC452335)

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

Lang, Hanigan & Carvalho and Timothy R. Hanigan, for Plaintiff and Appellant.

Office of the County Counsel, Tracy Swann, Senior Deputy County Counsel, for Defendants and Respondents County of Los Angeles, Richard Bruckner, Paul Wong, Carmen Sainz and Steven Napolitano.

Soltman, Levitt, Flaherty & Wattles and Philip E. Black for Defendants and Respondents Marina City Club Condominium Owners Association, Tony Lief and Nate Holden.

The Organic Panificio, LLC and its owner and manager Charles Colby brought this action against the County of Los Angeles, several of its employees and several private parties after the County obtained a preliminary injunction ordering plaintiffs to cease operating a nightclub without the required conditional use permit. The basis of the complaint was that the County was enforcing its zoning ordinance against plaintiffs' business while allowing similarly situated businesses to operate nightclubs without the required permits. The trial court sustained the demurrers of the County and its employees to four of the five causes of action without leave to amend and granted the defendants' motion for summary judgment as to the fifth cause of action. The court entered judgment for all defendants and plaintiffs filed a timely appeal. We affirm the judgment.

FACTS AND PROCEEDINGS BELOW

The material facts are not in dispute.

In January 2008, The Organic Panificio, LLC (OP) subleased property in Marina del Rey to be "used solely for the operation of a fine dining restaurant, bar area and a casual dining/coffee shop/deli take-out restaurant, catering, banquets and special events[.]" OP also agreed "to use the [p]remises in accordance with . . . all Government Restrictions (as hereinafter defined)[.]" The sublease defined the term Government Restrictions to include "any and all . . . ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, [and] rules . . . of any governmental entity, agency or political subdivision, now in force or hereafter adopted, which are applicable to the [p]remises . . . or the use thereof . . . including without limitation . . . all rules and regulations of the County of Los Angeles related to . . . the [p]remises[.]"

The property OP leased sits within a commercial zone that permits its use as a restaurant and bar but not as a nightclub. Operating a nightclub on the premises requires a conditional use permit. The County's zoning ordinance defines a nightclub as "any bar, cocktail lounge or restaurant, other than a cabaret, wherein live entertainment is provided and an occupant load of at least 200 people is established."

In 2008, OP began operating a nightclub on the premises without a conditional use permit. The County learned that OP was operating a non-permitted nightclub from complaints about the noise from nearby residents. In May and June 2009, the County Planning Department staff met with plaintiff Colby and explained to him that he needed to obtain a conditional use permit in order to operate a nightclub on the premises. In May 2010, OP applied to the planning department for a “clean hands waiver” of the nightclub prohibition while it pursued an application for a conditional use permit. The request for a waiver was denied in June 2010. OP never filed the application for the permit.

In September 2010 the County obtained a preliminary injunction enjoining OP’s use of the premises for a nightclub without a conditional use permit. Later that month OP closed its entire business operation on the premises.

In January 2011, OP and Colby brought this action against the County, some of its employees and several private parties who they blame for interfering with their nightclub operation. The operative complaint alleges that the County, the master landlord of the property, breached the covenants of quiet enjoyment and good faith and fair dealing by, among other things, requiring that plaintiffs obtain a conditional use permit to operate a nightclub on the property and failing and refusing to issue a clean hands waiver to plaintiffs pending plaintiffs’ application for a conditional use permit. It further alleges that the County defendants intentionally and negligently failed to disclose to plaintiffs before they entered into the sublease that previous tenants of the premises had been forced to cease or curtail their restaurant and nightclub activities due to complaints by nearby residents including the private defendants named in this action. Finally, the complaint alleges a cause of action under 42 U.S.C. section 1983 for violation of plaintiffs’ civil rights on the theory that the County allows other similarly situated businesses to operate nightclubs without conditional use permits and there is no rational basis for the selective enforcement of the zoning law against plaintiffs. According to the

complaint, the private party defendants conspired with the County defendants to violate plaintiffs' civil rights.

The court sustained without leave to amend the County defendants' demurrers to the causes of action for breach of the covenants of quiet enjoyment and good faith and the causes of action for failure to disclose facts about the property. The County and the private defendants then moved for summary judgment on the civil rights cause of action. The court granted the County defendants' motion on the ground that the court's preliminary injunction against operation of the nightclub was a superseding or intervening cause of any harm suffered by plaintiffs and therefore plaintiffs could not establish an entitlement to damages. The court denied the private defendants' motion because they failed to submit a separate statement of undisputed facts. (Code Civ. Proc., § 437c, subd. (b)(1).) Nevertheless, the court accepted the parties' stipulation to a judgment for the private defendants on the civil rights claim on the same ground as the summary judgment for the County defendants.

DISCUSSION

The plaintiffs admit that they suffered no damages from the County defendants' various warnings and administrative proceedings regarding the nightclub and that they began to suffer damages, if at all, only after the court issued a preliminary injunction in the County's underlying action to enjoin further operation of the nightclub without a conditional use permit. Following the issuance of that injunction, plaintiffs ceased all operations on the premises.

In light of plaintiffs' admission, the court granted the defendants' motion for summary judgment as to the civil rights cause of action. The court reasoned that as a matter of law plaintiffs could not establish they were entitled to damages from the defendants because the chain of causation had been broken by an independent superseding cause in the form of the preliminary injunction in the County's underlying action. (See *Manta Management Corp. v. City of San Bernardino* (2008) 43 Cal.4th 400, 412 (*Manta*).

The court's ruling was correct as to the civil rights cause of action and its ruling supports the judgment in favor of the defendants on the other causes of action as well.¹

In *Manta*, the plaintiff converted its comedy club into an adult cabaret. The City of San Bernardino sought to enjoin the operation of the cabaret on the ground that the business was a public nuisance that violated the City's zoning laws. The trial court issued a preliminary injunction which enjoined Manta from operating the cabaret pending trial over Manta's objection that the zoning ordinance and its implementation violated Manta's free speech rights under the California Constitution. Manta appealed the trial court's order granting the preliminary injunction, and filed a cross-complaint against the City under 42 USC section 1983 of the Federal Civil Rights Act. The complaint sought damages for lost profits caused by the City's implementation of the ordinance. The City's ordinance was held to be unconstitutional by the trial court and Manta was awarded damages. Our Supreme Court reversed the damage award. The court held that "where a court is provided with appropriate facts to adjudicate a motion for preliminary injunction or a motion for a stay pending appeal, the courts' intervening exercise of independent judgment breaks the chain of causation for purposes of section 1983 liability." (*Manta, supra*, 43 Cal.4th at p. 412.) Applying this rule to the facts before it, the court held that the lower court's intervening exercise of independent judgment in issuing the preliminary injunction broke the chain of causation for purposes of liability under section 1983. (*Ibid.*)

As the court noted in *Manta*, a defense based on an independent supervening cause of harm is not limited to actions under 42 USC section 1983. (*Manta, supra*, 43 Cal.4th at pp. 411-412, discussing *Brewer v. Teano* (1995) 40 Cal.App.4th 1024.) In *The Luckman Partnership, Inc. v. Superior Court* (2010) 184 Cal.App.4th 30, for example, the plaintiff sued Luckman after he fell through a suspended ceiling in the building where he was installing telecommunications equipment. Luckman designed the

¹ For this reason we need not separately address the court's order sustaining the County defendants' demurrers to those causes of action.

suspended ceiling but, after the Northridge earthquake, the ceiling was removed, redesigned and rebuilt by a different firm. Citing *Manta, supra*, the appellate court ordered the trial court to grant Luckman's motion for summary judgment. The court held: "To the extent that liability for [plaintiff's] injury arises from the appearance of the ceiling, the redesign of the ceiling was the proximate cause of the injury, so that Luckman cannot be liable." (*Id.* at p. 35.) Nor is the supervening cause defense limited to tort actions. In *Brookings L. & B. Co. v. Manufacturers' Co.* (1916) 173 Cal. 679, 683-684, the court declared "the law is definitely settled . . . that damages under any contract are limited to those which may be fairly considered as arising from the breach of the agreement itself or which both parties must have contemplated, when making the contract, as likely to flow from a breach."

Plaintiffs contend that the preliminary injunction in the underlying action did not break the chain of causation because the court that issued the injunction was not "provided with appropriate facts to adjudicate [the] motion" as required by the Supreme Court's opinion in *Manta, supra*, 43 Cal.4th at p. 412. *Manta* held that the "general rule of superseding causation does not apply when the judicial officer reached an erroneous decision as a result of being pressured or materially misled as to the relevant facts." (*Ibid.*) Here, plaintiffs argue, the judge that issued the injunction against operation of their nightclub was misled by the County's failure to disclose that other nightclubs in the same zone as OP's were operating without a conditional use permit. Plaintiffs further argue that the court lacked the appropriate facts to adjudicate the motion for injunctive relief because the court denied plaintiffs a continuance in which to gather evidence to support their claim of selective enforcement.

We reject plaintiffs' arguments. Even if the court had been provided with evidence showing that other businesses in the same zone as OP were operating nightclubs without the required permits, that evidence alone would not have required the court as a matter of law to deny the County the injunction it requested. "Unequal treatment which results simply from laxity of enforcement . . . of a statute does not deny

equal protection and is not constitutionally prohibited discriminatory enforcement.” (*Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 832, citing *Wayte v. United States* (1985) 470 U.S. 598, 608-610; see also *Oyler v. Boles* (1962) 368 U.S. 448, 456 [“the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation” so long as “the selection was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification”].)

At the hearing on the preliminary injunction, the court did not abuse its discretion in denying OP a continuance to produce evidence that other similarly situated businesses were operating nightclubs without permits. As we discussed above, this evidence by itself would not have been material to the issuance of a preliminary injunction. Furthermore, plaintiffs had ample opportunity prior to the hearing to obtain and submit evidence that other nightclubs in the area were violating the zoning ordinance. According to plaintiff Colby’s declaration filed in opposition to the defendants’ motion for summary judgment, he conducted an “investigation” five months prior to the hearing in which he learned that nine other nightclubs in Marina del Rey were operating without a permit. Despite this knowledge plaintiffs waited until the time of the hearing to orally request a continuance to conduct discovery. Finally even though the court denied the request for a continuance, it invited plaintiffs to move to dissolve the injunction under Code of Civil Procedure section 533, if they could show a material change in the facts upon which the injunction was granted. The plaintiffs did not make such a motion nor did they appeal the order granting the injunction.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P.J.

We concur:

CHANEY, J.

MILLER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.