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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WIRING CONNECTION, INC.,

Plaintiff and Appellant,

v.

GRACE H. AMATE,

Defendant and
Respondent.

B264113

(Los Angeles County
Super. Ct. No. YC069523)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

Stone & Stone and Stanley H. Stone for Plaintiff and Appellant.

Tredway, Lumsdaine & Doyle, Roy J. Jimenez and Brandon L. Fieldsted for Defendant and Respondent.

* * * * *

Appellant Wiring Connection, Inc., appeals from a judgment in favor of respondent Grace H. Amate. The trial court found respondent had breached the lease she had entered into with appellant, but appellant had failed to prove damages. We affirm.

BACKGROUND¹

In August 2013, appellant, an electrical contracting company, entered into a lease for a property in Gardena owned by respondent. The lease was for five years five months at a base rent of \$6,252 per month.

Respondent never delivered possession of the premises to appellant. Instead, she leased the property to another business and denied appellant further access. Appellant then leased a different property for a three-year period at a monthly rent of \$7,500.

Appellant brought suit for breach of contract. During a bench trial, the court stated that it would calculate damages as “the fair rental value of [respondent’s] property, less the agreed rent,” citing *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875 (*Foreman*) and *New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831 (*New West*).

Respondent called a real estate broker as an expert witness. The expert testified that the fair rental value of

¹ A court reporter was not present for the morning session on the first day of trial. At the direction of the trial court, the parties filed a joint statement summarizing the testimony during that session. The statement serves as an “agreed statement” incorporated into the reporter’s transcript under California Rules of Court, rules 8.130(h) and 8.134(a). We reject respondent’s argument that appellant has not presented an adequate record on appeal.

respondent's property was equal to or less than the agreed rent of \$6,252 per month, and the fair rental value of the second property appellant leased was equal to the agreed rent of \$7,500. The expert acknowledged he did not review any comparable properties when evaluating fair rental value.

Appellant offered evidence of the rent agreed to in its lease with respondent, the rent respondent's previous tenant had paid (\$4,500 per month), and the rent appellant was paying for the property it leased after respondent purportedly breached. Appellant did not call an expert witness and offered no testimony regarding the fair rental values of either property. During closing, appellant argued that it was entitled to the difference between what it would have paid in rent over five years at respondent's property, and what it would pay over five years at the property it leased instead, an amount calculated at \$76,836.

The court found that respondent had breached the lease. On the issue of damages, the court found respondent's expert's testimony unreliable because he had not evaluated comparable properties. The court stated that absent "an expert who could tell me what the fair market value of the subject property owned by [respondent] was so that I could calculate the difference between that and the rent that was actually negotiated in the agreement," appellant had not met its burden of proof on damages. The court stated that it was not happy with the result, given what it considered to be an "egregious[] breach[]," but was "bound by the case authority and that is all that I can do."

Appellant timely appealed.

DISCUSSION

Appellant argues that the court should have calculated damages as the "difference of fair rental value of \$6,252 monthly

rental in the Amate lease and the fair rental value of the new lease of \$7,500 monthly.” Appellant further argues that the record contained sufficient evidence of the fair rental value of the properties to support a finding in favor of appellant. Appellant thus challenges both the measure of damages selected by the trial court, and the trial court’s conclusion that appellant had not proven fair rental value. We reject both challenges.

“[W]hether a certain measure of damages is permissible given the legal right the defendant has breached, is a matter of law, subject to de novo review.” (*New West, supra*, 187 Cal.App.4th at p. 843.) But “the trial court’s choice among several legally permissible measures of damages, under the specific circumstances of the case, is a matter of discretion.” (*Ibid.*)

Here, the trial court calculated damages as “the fair rental value of [respondent’s] property, less the agreed rent.” Our Supreme Court specifically approved this measure of damages in a case in which a landlord failed to deliver possession of leased premises. (*Foreman, supra*, 3 Cal.3d at p. 884; accord, *New West, supra*, 187 Cal.App.4th at p. 844.) Thus, this “measure of damages [was] permissible given the legal right the defendant ha[d] breached.” (*New West, supra*, at p. 843.)

The court did not abuse its discretion in choosing this approved method. Although appellant proposed an alternative—the difference between the rent agreed to by respondent and the rent appellant actually paid at the new property—appellant cited no legal authority in support of this method (nor does appellant do so now on appeal). Indeed, when respondent proposed using the measure of damages from *Foreman*, the trial court invited appellant to do further research to counter the proposal and

appellant refused. Under these circumstances, we find no abuse of discretion.

As for whether the court erred in finding appellant had not proven damages, “where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) “Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*Ibid.*)

Here, it was appellant’s burden to prove damages under the applicable measure, which required proof of the fair rental value of respondent’s property. Appellant offered no evidence other than the amount of agreed rent, and the amount of rent respondent’s previous tenant had paid, neither of which the court had to accept as equivalent to fair rental value. And while respondent’s expert offered testimony regarding fair rental value (finding it to be at or below the agreed rent), the court quite reasonably deemed this testimony unreliable for lack of analysis of comparable properties. None of this evidence was “‘of such a character and weight’” as to compel a finding in favor of appellant as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.)

We note that even had the trial court accepted appellant’s position that the agreed rent accurately reflected fair rental value, or the expert’s testimony that the fair rental value was at or below the agreed rent, it would not have affected the outcome. The measure of damages was the fair rental value of respondent’s

property less the agreed rent, so a finding that fair rental value was equal to or less than the agreed rent would result in zero damages. Thus, even under appellant's own interpretation of the facts, the judgment for respondent was correct.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.²

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

² Respondent has requested attorney fees on appeal. The trial court is in a better position to determine both entitlement to and amount of attorney fees in this case. (See *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1267.) Respondent may seek appellate attorney fees through an appropriate motion in the trial court.