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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTINE CARLSON, Plaintiff and Respondent, v. ARTHUR CORONA, Defendant and Appellant.	B264709/B267343 (Los Angeles County Super. Ct. No. NC059134)

APPEALS from a judgment and order of the Superior Court for Los Angeles County, Michael P. Vicencia, Judge. Affirmed.

Law Office of W. Paul Tobin and W. Paul Tobin for Defendant and Appellant.

Epps & Coulson, Gabriel M. Courey and Dawn M. Coulson for Plaintiff and Respondent.

Plaintiff Christine Carlson, as executor of her deceased boyfriend's estate, sold an apartment building to defendant Arthur Corona. Carlson, who had lived with her boyfriend in one of the apartments (Unit 1) in the building for 30 years, agreed as part of the sale to move out of Unit 1 and into a smaller apartment in the building (Unit 2). There was a short escrow for the sale, however, and Carlson was unable to move all of her possessions from Unit 1 and the parking spaces assigned to that apartment before escrow closed. After escrow closed, Corona took various items from Unit 1 and its assigned parking spaces and refused to allow Carlson access to Unit 1, asserting that anything left in the apartment belonged to him as part of the sale. Carlson sued, alleging statutory causes of action under landlord-tenant law (Civ. Code,[1] §§ 789.3, 1965) and other causes of action. Following a bench trial, the court entered judgment against Corona, awarding Carlson over $78,000 in damages. The court subsequently ordered Corona to pay Carlson over $91,000 in attorney fees.

Corona appeals from the judgment, and contends that (1) there never was any landlord-tenant relationship between Carlson and Corona with respect to Unit 1, and therefore all of her claims (and particularly her statutory claims) fail; (2) Carlson did not establish any violation of section 789.3 or section 1965; (3) Carlson abandoned the property she left in Unit 1, and she did not have any property rights in the property once escrow closed; and (4) there was insufficient evidence to support Carlson's claim for intentional infliction of emotional

[1] Further undesignated statutory references are to the Civil Code.

distress. Corona also appeals from the order awarding attorney fees, contending that (1) the trial court abused its discretion by awarding more than $91,000 in fees when the total award for violating the statutes giving rise to the right to attorney fees was just over $11,000; and (2) there is no valid judgment awarding fees. We do not find merit in any of these contentions. Accordingly, we affirm the judgment and the post-judgment order awarding attorney fees.

BACKGROUND

A. *Events Leading Up To Lawsuit*

Carlson's boyfriend, Tony Perkov, owned a three-unit apartment building in San Pedro, California. Perkov and Carlson lived together in Unit 1 for 30 years, until Perkov's death in November 2012. As executor of Perkov's estate, Carlson negotiated the sale of the building to Corona in July 2013.[2] At the time of the sale, Carlson was still living in Unit 1, which took up the entire top floor. She also stored certain of her belongings in the parking spaces assigned to Unit 1.[3] Of the remaining two apartments in the building, only one was occupied at the time of the sale. As part of the sales agreement, Carlson agreed to move from Unit 1 to the unoccupied Unit 2, where Corona agreed to allow her to live rent-free for a year. According to Carlson, Corona also

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[2] Unless otherwise indicated, all dates are from the year 2013.

[3] There are seven parking spaces in the building. At the time of the sale, Carlson used four parking spaces and the other tenant in the building used the other three.

agreed to have his crew help her move her belongings from Unit 1 to Unit 2.

Escrow for the sale opened on July 7. Mike Tedesco, the real estate agent who represented both Carlson and Corona, told Carlson that escrow could last six to eight weeks. Carlson therefore was shocked when Tedesco told her on July 22 -- just over three weeks after escrow opened -- that escrow would be closing the next day, and that she needed to turn over the keys to Unit 1. She told Tedesco that she had not finished moving her belongings out of Unit 1 (she still had three-quarters of her belongings there), but Tedesco told her that he was taking care of it, and had paid Corona $400 to help her move her things.

Carlson saw Corona only once after the close of escrow. She heard him upstairs in Unit 1, so she went up to talk to him. He was there with his wife. Carlson apologized that she still had so many things in the apartment, and Corona told her not to worry about it, that he would take care of it (which she understood to mean that he would arrange to have her things moved down to Unit 2). While they were talking, Carlson saw that Corona's wife was holding one of Carlson's gift bags and was putting things from the apartment into it.

On or around August 1, Carlson contacted Corona by email to ask about retrieving her belongings from Unit 1. Corona told her that he was going out of town for a few weeks and would talk to her when he returned. On August 2, Carlson sent an email to Catherine Balcom, Corona's secretary, with a copy to Corona, asking for the return of two Eames chairs that had been taken from her parking spaces in the

garage. Carlson had moved the chairs, which were worth around $5,000 each, down to the garage about a month before escrow closed; she wanted her handyman to look at them to see if he or someone he knew could refurbish them. She told Balcom that her handyman went to look at them on the day she sent the email, and they were gone.[4] She also told Balcom that she really needed to get into Unit 1 to get her belongings because she had nothing to wear and no dishes.

Corona responded to Carlson's email on the same day it was sent. He told Carlson that Tedesco had paid him to remove all of the things from the garage, which he was told were trash. He also stated that "[e]verything left in the unit is also [m]y property" because the building was sold "as is." Nevertheless, he said that he was "willing to work" with Carlson. He instructed her to make a detailed list of what she wanted to remove from Unit 1, and stated, "let[']s figure out a mutually acceptable solution."

On August 27, Carlson emailed Corona and asked when she could get her belongings from Unit 1. Corona responded, saying, "We need to talk. I will be back this Saturday and I will contact [y]ou then." On that Saturday, August 31, Corona emailed Carlson, asking her to submit her inventory of things she wanted to retrieve. He also informed her that she needed to provide him with a signed "hold harmless letter" and tell him the amount of time she needed to remove the requested

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[4] Carlson noted that she had an additional Eames chair, along with an ottoman, still in Unit 1.

items. Finally, he stated, "My price is the other ottom[a]n[5] and a complete release to any claim of ownership of anything that was left on the[] property after close of escrow. The ball is in [y]our court, as soon as I receive the above and agree to the form, of [y]our submission, I will allow [y]ou to enter the apartment for the agreed amount of time."

On September 10, Carlson emailed Corona, telling him that he could keep the two Eames chairs and ottoman he took from the garage, and asking if she could have her movers move her things out of Unit 1 on September 15; she indicated that she would need six hours, from noon until 6:00 p.m. Corona responded the next day. He told her that he needed a signed hold harmless letter from her and "[t]he other ottoman." Carlson sent Corona an email a few hours later, telling him that the other ottoman was in Unit 1.

Carlson and Corona exchanged several emails on the evening of September 14 and throughout the day on September 15. First, Corona sent Carlson an email stating, "What is with the Ottom[a]n? No tickie no laundry." Carlson asked him what he meant, and Corona said, "You told [m]e that [y]ou had the ottom[a]n in your possession. I told [y]ou from day one that [y]ou would need to deliver it to [m]e as part of [m]y allowing [y]ou to enter unit 1. No ottom[a]n no entry." A few minutes later, Corona sent Carlson another email telling her to have the ottoman delivered to his office by 10:00 the next day (September 15), or

[5] At the time escrow closed, Carlson had three Eames chairs, two in the parking garage and one in Unit 1, and two ottomans, both of which were in Unit 1.

their "deal will need to be renegotiated." Carlson responded later that evening that even if she had the ottoman, she did not have the physical ability to deliver it to him.

Shortly after 9:00 a.m. the next morning (September 15), Corona wrote to Carlson, telling her to have the movers deliver the ottoman to his office by 11:00 a.m., or she would not be allowed into Unit 1. Carlson responded that the movers were not scheduled to arrive until noon, and that she could not get into Unit 1 to retrieve the ottoman. Corona told her that there were no ottomans in Unit 1, and that he would not allow Carlson into the apartment until she delivered another ottoman to him. Carlson cancelled the movers, and wrote to Corona that she and her boyfriend owned three Eames chairs and two ottomans, and that she had photos that Tedesco took of every room, which showed there were only two ottomans in the apartment. Corona responded that he had the two ottomans that were in Unit 1, and that she needed to get him another ottoman to match the others. He suggested she find one on eBay and have it shipped directly to him, and they would set up a time for her to retrieve her belongings once he received it. Carlson continued to try to get Corona to let her retrieve her belongings, and Corona continued to refuse to allow her access to Unit 1.

B. *The Lawsuit*

On October 15, Carlson filed a petition for injunctive relief under section 789.3 and a complaint for damages and an injunction. The complaint alleged causes of action for (1) violations of section 1965,

(2) violations of section 789.3, (3) conversion, (4) trespass to chattels, (5) intentional infliction of emotional distress (IIED), (6) intrusion into private affairs, and (7) injunctive relief and other equitable remedies. Carlson apparently moved ex parte for injunctive relief (the record does not include the motion). Although the ex parte motion was denied, on October 28, the trial court signed an order authorizing Carlson to enter and remove all of her possessions from Unit 1.

Corona filed a cross-complaint against Carlson, alleging claims for breach of oral contract, damages under section 1987, and trespass. The cross-complaint alleged that Carlson agreed to vacate Unit 1 and move into Unit 2, taking all of her personal property and belongings, that Carlson moved into Unit 2 but failed and refused to remove her belongings, and that as a result, Corona has been unable to have Unit 1 cleaned, remodeled, and rented, and he will have to pay to remove Carlson's belongings. Carlson filed a demurrer to the first and third causes of action (breach of oral contract and trespass); the trial court sustained the demurrer to the breach of oral contract claim and overruled the demurrer to the trespass claim.

The case was tried before the court. Carlson testified about the events leading up to the sale of the building, the sale, her efforts to retrieve her belongings from Unit 1, and the costs she incurred to replace certain items she was unable to retrieve from the apartment. She also called Corona as a witness, and presented an expert witness to testify regarding the value of the Eames chairs and ottomans.

Corona admitted that he was experienced in real estate; he used to be a real estate broker, and he had purchased 30 properties over the

past 20 to 25 years. He admitted that the transaction by which he purchased Carlson's building did not include a written agreement to purchase the personal property of any of the tenants of the building, but he testified that it was his understanding that whatever was left in Unit 1 after the close of escrow was his property.[6] He also admitted that he changed the lock on Unit 1 around two weeks after the close of escrow. With regard to the Eames chairs, Corona testified that he went into the garage when he viewed the property before purchasing it, and saw that there was "a pile of stuff" -- including the Eames chairs -- stored there. He said he believed that all of it was trash, and that he was paid $450 by Tedesco to haul it away. He had workers help him haul the items away, and told them they could have whatever they wanted. He kept the Eames chairs, which he knew were valuable. He took them to an upholstery shop, and paid around $4,000 to have them refurbished.

Carlson's expert witness, Jaime Corbacho, testified about the value of the three Eames chairs and two ottomans. She determined that the cost to replace the chairs and ottomans with used chairs and ottomans was $10,916, and the cost to replace them with new chairs and ottomans was $19,186.

Corona presented only one witness, Catherine Balcom. Balcom testified that she met Carlson at Unit 1 on October 31 (after the court had signed the order authorizing Carlson to retrieve her belongings).

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[6] He denied telling Carlson that he would help her move her belongings out of Unit 1.

Carlson, with the help of Balcom and a helper Balcom had brought with her, spent seven hours moving things from Unit 1 to Unit 2. At the end of the day, Balcom asked Carlson to go through the entire apartment to make sure she had taken everything she wanted; Carlson did so, and said she had everything.

Following closing arguments by counsel, the trial court gave its ruling. With regard to the first cause of action for violation of section 1965, the court found that Carlson had a landlord-tenant relationship, first with her boyfriend's estate, then with Corona. The court found that Corona assumed all the obligations of the estate upon his purchase of the building, including the obligation to give Carlson access to the apartment to remove her belongings, and that he violated section 1965 by refusing to give her that access. With regard to the second cause of action, the court found Corona violated section 789.3 by willfully preventing Carlson from getting reasonable access to the property by changing the lock and by removing her personal property -- the chairs -- from the premises. The court found that Corona's removal of the chairs, and his wife's taking of property from Unit 1[7] constituted conversion (the third cause of action) and trespass to chattels (the fourth cause of action). With regard to the IIED claim (the fifth cause of action), the court found that Corona's conduct was outrageous and was intended to cause Carlson emotional distress. Based upon Carlson's testimony and

[7] As noted, Carlson testified that when she went to see Corona when he was in Unit 1, she saw Corona's wife taking things from the apartment and putting them in a gift bag.

the court's own observations of Carlson, the court found that Carlson suffered emotional distress.[8] The court found for Corona on the sixth cause of action (intrusion into private affairs), and noted that it had ruled previously on Carlson's request for an injunction (the seventh cause of action).

On the issue of damages, the court found that the value of the items Carlson had to purchase due to her inability to get her belongings out of Unit 1 was $6,687, and the value of the chairs and ottomans that Corona converted was $10,916. In addition, the court found that Carlson was entitled to statutory damages under section 789.3 in the amount of $9,900 for the days in which Corona denied her access to her belongings, and $1,250 for five identified wrongful acts,[9] for a total of

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[8] The court observed, that "while Ms. Carlson should be admired for keeping it together as well as she did, anyone who saw her testify in person would see how difficult this was, how much she suffers today as a result of what happened to her. [¶] Emotional distress is one of those things it's hard to put your finger on it, but in this case, it's clearly there and it continues."

[9] Sections 789.3 and 1965 both provide for actual and statutory damages. Under section 789.3, the statutory damages are an amount not to exceed $100 for each day the landlord remains in violation of the statute. (§ 789.3, subd. (c)(2).) The court found that Corona denied Carlson access to Unit 1 for 99 days, and therefore awarded her $9,900 under this provision. The court also found that Corona committed five wrongful acts (changing the locks and denying Carlson access, taking her chairs from the garage, taking the ottomans from Unit 1, refurbishing the chairs after being told that Carlson wanted them returned, and extortion), and awarded Carlson $250 for each of those acts, stating that the award also was under section 789.3. That statute, however, does not have such a provision. Instead, section 1965 provides for statutory damages in an amount not to exceed $250 for each bad faith violation of the statute. (§ 1965, subd. (e)(2).) Corona does not challenge the statutory damages on appeal, and therefore we need not determine whether the award was proper under either statute.

$28,753 in compensatory and statutory damages. Finally, the court awarded $50,000 in emotional distress damages, denied Carlson's request for punitive damages, and found that Carlson was entitled to attorney fees under sections 789.3 and 1965.[10] With regard to the cross-complaint, the court found that Corona did not meet his burden of proof on either of his remaining claims and found in favor of Carlson.

On April 6, 2015, the court entered judgment in favor of Carlson and against Corona in the amount of $78,753. The judgment as signed by the court also stated that Carlson shall recover attorney fees pursuant to sections 1965 and 789.3 and costs, with blank lines to fill in the amounts. On April 13, 2015, the court clerk wrote the amount of costs ($2,462.25) on the line for costs, and "0" on the line for attorney fees, with the notation "pursuant to memorandum of costs, judgment is ordered amended 4-13-15 by D. Oura."[11] Corona timely filed a notice of appeal from the judgment, and the appeal was assigned case No. B264709.

C. *Attorney Fees*

On April 24, 2015, Carlson filed a motion for attorney fees under sections 789.3 and 1965, and rule 3.1702(b) of the California Rules of

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[10] The court ordered that the amount of attorney fees would be determined by a noticed motion.

[11] In her memorandum of costs, Carlson wrote "$0.00" in the space for attorney fees, with the notation, "The court awarded Plaintiff statutory attorneys' fees, which will be presented in a separate, noticed Motion."

Court. She requested $91,344.50 in fees, asserting that the fees were reasonable and necessary to the successful prosecution of her statutory claims. Corona opposed the motion on the grounds that it was untimely, it was barred by collateral estoppel because the judgment stated that Carlson was awarded $2,462.25 in costs and zero in attorney fees pursuant to the memorandum of costs, and the fees were excessive in light of the statutory damages Carlson was awarded.

On August 4, 2015, the trial court granted Carlson's motion and awarded her $91,344.50 in attorney fees. Two days later, Carlson filed a notice of ruling, to which she attached a proposed amended judgment. The court did not sign the proposed amended judgment. Instead, the court clerk wrote the amount of fees awarded on the appropriate blank line on the original judgment, with the notation "Judgment amended to include attorney fees of $91,344.50 per court order of 8-4-15 by D. Oura."

Corona filed a notice of appeal, stating he was appealing from the "judgment" entered on August 6, 2015. There was no judgment entered on that date. Instead, we will find that the appeal is taken from the August 4, 2015 post-judgment order awarding Carlson attorney fees. The appeal was assigned case No. B267343.

We ordered that this appeal (case No. B267343) be consolidated with the appeal from the judgment (case No. B264709) for purposes of oral argument and decision.

DISCUSSION

A. *Appeal From the Judgment*

As noted, Corona contends on appeal that (1) Carlson failed to meet her burden of proof as to all of her claims because she failed to show there was a landlord-tenant relationship between Carlson and Corona with respect to Unit 1; (2) Carlson failed to establish any violation of section 1965 or section 789.3 regardless whether she can show that she was Corona's tenant; (3) Carlson's conversion and trespass to chattels claims fail because she abandoned the property she left in Unit 1, and did not have any rights to the property once escrow closed; and (4) there was insufficient evidence that Corona's conduct caused Carlson the kind of severe emotional distress required to prevail on an IIED claim. We address each issue in turn.

1. *Substantial Evidence Supports the Trial Court's Finding That Carlson Was a Tenant in Unit 1*

Corona argues that Carlson failed to meet her burden to show that there was a landlord-tenant relationship between Carlson and Corona with respect to Unit 1. In making this argument, Corona relies upon the definitions of "Landlord" and "Tenant" found in section 1980, subdivisions (a) and (f). Those provisions state that: "'Landlord' means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest" (§ 1980, subd. (a)), and "'Tenant' includes any paying guest, lessee, or sublessee of any premises for hire" (§ 1980, subd. (e)). Corona contends that Carlson did not (and could not) establish that she was his

tenant in Unit 1 because she did not live in Unit 1 after escrow closed, she never paid any rent to him, and there was no agreement between them for her use of that apartment. He also contends that Carlson did not establish that she was a tenant of her boyfriend or her boyfriend's estate, because only her boyfriend or the estate could prove that fact. Corona is mistaken.

First, Corona's reliance upon the definitions in section 1980 is misplaced. Section 1980, which is in Chapter 5 of Division 3, Part 4, Title 5 of the Civil Code, sets forth definitions of terms "[a]s used in this chapter." (§ 1980.) Neither section 1965 nor section 789.3 is part of Chapter 5. Therefore, those definitions do not apply in this case. Indeed, section 789.3 expressly applies to tenancies beyond the section 1980 definitions. (See, e.g., § 789.3, subd. (b) [applies to "occupancy under any lease or other tenancy or estate at will"].)

Second, the trial court found that regardless of whether Carlson paid rent to Corona (or to her boyfriend or his estate before the sale) or had an agreement with him, she was a tenant at will of the estate, and Corona assumed the obligations of the estate with regard to that tenancy upon his purchase of the building. Substantial evidence supports the court's finding.

"'A tenancy at will is an estate which simply confers a right to the possession of premises leased for such indefinite period as both parties shall determine such possession shall continue. . . . The tenant at will is in possession by right with the consent of the landlord either express or implied, and he does not begin to hold unlawfully until the termination of his tenancy. . . .' [Citation.] . . . 'A permissive

occupation of real estate, where no rent is reserved or paid and no time agreed on to limit the occupation, is a tenancy at will.' [Citations.]" (*Covina Manor, Inc. v. Hatch* (1955) 133 Cal.App.2d Supp. 790, 792-793.)

In this case, Carlson testified that she lived with her boyfriend in Unit 1 for 30 years, and continued to live there after he died. This evidence is sufficient to show an implied agreement giving her a right to the possession of the apartment, and therefore she was a tenant at will during her boyfriend's and then the estate's ownership of the property. The fact that her boyfriend was the owner/landlord and also lived in the apartment does not mean that Carlson was not a tenant at will. (See, e.g., *Daluiso v. Boone* (1969) 71 Cal.2d 484, 501 [tenancy at will exists where both owner and tenant live on the property under an implied agreement that both had the right to possess the property jointly].)

Carlson also testified that Corona agreed, both before and after the close of escrow, to help her move her belongings out of Unit 1 and into Unit 2, and that three-quarters of her possessions remained in Unit 1 after the sale of the property was complete. This testimony shows that Carlson remained an occupant of Unit 1 immediately after the sale, and suggests an implied agreement that Carlson's occupancy of Unit 1 was intended to continue until her belongings were moved down to Unit 2. Thus, substantial evidence supports the trial court's finding that Carlson was a tenant of the estate, and continued to be a tenant in Unit 1 after Corona purchased the building.

Finally, Corona's contention that only Carlson's boyfriend or his estate could prove that Carlson was a tenant (as opposed to a visitor or

guest) when they owned the building makes little sense. Corona does not cite to any law (and we have found none) that limits proof of a landlord-tenant relationship to evidence presented by the landlord, rather than the tenant. But in any event, the prior landlord here *did* present evidence of Carlson's tenancy, because Carlson was the executor of her boyfriend's estate, the owner/landlord at the time Corona purchased the building.

2. *Carlson Presented Sufficient Evidence to Establish Violations of Section 1965 and Section 789.3*

a. Section 1965

Section 1965 provides, in relevant part: "A residential landlord shall not refuse to surrender, to a residential tenant . . . any personal property not owned by the landlord which has been left on the premises after the tenant has vacated the residential premises and the return of which has been requested by the tenant . . . if all of the following occur: [¶] (1) The tenant requests, in writing, within 18 days of vacating the premises, the surrender of the personal property and the request includes a description of the personal property held by the landlord and specifies the mailing address of the tenant. [¶] (2) The landlord . . . has control or possession of the tenant's personal property at the time the request is received. [¶] (3) The tenant, prior to the surrender of the personal property by the landlord and upon written demand by the landlord, tenders payment of all reasonable costs associated with the landlord's removal and storage of the personal property. The landlord's demand for payment of reasonable costs associated with the removal

and storage of personal property shall be in writing and shall either be mailed to the tenant . . . or shall be personally presented to the tenant . . . within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost." (§ 1965, subd. (a).)

Corona argues there was no violation of this statute because Carlson never gave him a list describing the personal property she wanted Corona to surrender. However, emails that Carlson introduced into evidence show that she notified Corona in writing no later than August 1 -- nine days after she turned over the key to Unit 1 -- that she wanted access to the apartment to retrieve her belongings. The following day, she wrote that she needed to retrieve the belongings as soon as possible because she had nothing to wear and no dishes; she also specifically demanded that Corona return her Eames chairs. Thus, at the very least, Carlson identified several items that she wanted Corona to surrender: her clothes, her dishes, and the Eames chairs. We conclude these emails provide sufficient evidence to establish that Carlson satisfied the requirement under section 1965, subdivision (a)(1) to describe the personal property she asked to be returned. And, in light of the evidence that Corona refused to grant Carlson access to Unit 1 until ordered by the trial court to do so in late October and refused to return the Eames chairs -- and in the absence of evidence that Corona satisfied the demand for payment requirements under section 1965, subdivision (a)(3) -- we hold that substantial evidence supports the trial court's finding that Corona violated section 1965.

b. Section 789.3

Section 789.3 provides in relevant part: "a landlord shall not, with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence, willfully: [¶] (1) Prevent the tenant from gaining reasonable access to the property by changing the locks . . . ; [¶] . . . or [¶] (3) Remove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant." (§ 789.3, subd. (b).)

Corona argues that section 789.3 did not apply in this case because nothing he did was done with the intent to evict Carlson, since she voluntarily moved from Unit 1 to Unit 2. He also argues he did not violate the statute by changing the lock on Unit 1 because it was his right as the new owner to do so. We disagree.

As we observed in part A.1, *ante*, substantial evidence supports the trial court's finding that Carlson occupied Unit 1 under a tenancy at will. Although she had begun her move from Unit 1 to Unit 2, she had not completed it at the time escrow closed. Therefore, she continued to occupy both Unit 1 and Unit 2. By refusing to give Carlson access to Unit 1 to retrieve her belongings and declaring in his August 2 email that "[e]verything left in [Unit 1] is also [m]y property" because the building was sold "as is," Corona evidenced his intent to terminate Carlson's occupancy in that apartment. This evidence, along with Corona's admissions that he changed the lock on Unit 1 and took Carlson's chairs from her designated parking space, and Carlson's testimony that she saw Corona's wife taking some of her personal

belongings from Unit 1, is sufficient to support the trial court's finding that Corona violated section 789.3.

Corona's argument that, as the new owner of the building, he had the right to change the lock on Unit 1 ignores the circumstances present here and the plain language of the statute. While it certainly is true that a new owner (or any owner) may change the lock on an apartment in an apartment building he or she owns, the statute unambiguously states that the owner cannot do so when the apartment at issue is currently occupied by a tenant and the owner intends to terminate the tenant's occupancy, as in this case.

3. *The Evidence Established That Carlson Did Not Abandon the Property She Left in Unit 1*

Corona's contention that Carlson abandoned the property she left in Unit 1 and therefore had no rights to it once the sale of the building was completed is contrary to the evidence presented at trial. Carlson testified that she told Tedesco -- the agent for both Carlson and Corona -- the day before escrow closed that she still had three-quarters of her belongings in Unit 1, and that Tedesco told her that he had paid Corona to help her move her belongings. Carlson also testified that Corona himself had told her that he would help her move her belongings from Unit 1 to Unit 2. Although Corona denied making any such statement, and testified that Tedesco's payment was just for hauling away some of the "trash" stored in Carlson's parking spaces, the trial court found that Corona's testimony was not credible. In short, the evidence shows that Carlson asserted her property rights to her belongings left in Unit 1

both before and after escrow closed, and did not abandon those belongings.

4. *Substantial Evidence Supported the Trial Court's Finding That Carlson Suffered Severe Emotional Distress Caused by Corona's Outrageous Conduct*

The Supreme Court has instructed that "[a] cause of action for intentional infliction of emotional distress exists when there is """"(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct."""" [Citations.] A defendant's conduct is 'outrageous' when it is so ""extreme as to exceed all bounds of that usually tolerated in a civilized community."" [Citation.] . . . [¶] Liability for intentional infliction of emotional distress "'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." [Citation.]' [Citations.] . . . [¶] With respect to the requirement that the plaintiff show severe emotional distress, this court has set a high bar. 'Severe emotional distress means "'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" (*Potter v. Firestone Tire & Rubber Co.* [(1993)] 6 Cal.4th [965], 1004.)" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.)

Corona contends that Carlson's IIED claim fails because the evidence does not support the trial court's finding that he engaged in outrageous conduct and that Carlson suffered severe emotional distress as a result. He is incorrect.

There was evidence presented at trial that during the short escrow period, Corona knew that Carlson had not been able to move all of her possessions (including her clothes and dishes) from the apartment she had shared with her boyfriend for 30 years. There also was evidence that Corona took Carlson's Eames chairs when he was asked to haul "trash" from the garage, knowing that the chairs were quite valuable, and without checking with Carlson to see if she intended to throw them away. Yet when Carlson asked for the return of the chairs and for access to Unit 1 so she could retrieve her belongings, Corona asserted that the chairs and her belongings in Unit 1 now belonged to him, and would only allow Carlson to retrieve some of those belongings from the apartment (he and his wife already had removed some of them for themselves) if Carlson purchased and delivered to him an ottoman to match the chairs he had improperly taken from her. There is no question that such conduct "is so ""extreme as to exceed all bounds of that usually tolerated in a civilized community.""" (*Hughes v. Pair*, *supra*, 46 Cal.4th at p. 1051.)

In arguing that Carlson failed to show that she suffered the kind of severe emotional distress required to recover on an IIED claim, Corona observes that there was no evidence that he caused or threatened to cause any physical harm to Carlson. He contends that Carlson's testimony that she was devastated, frustrated, and very

stressed due to Corona's conduct does not satisfy the standard for emotional distress because "[p]eople in Los Angeles are stressed every day . . . [and] are expected to deal with it," and that frustration "is something almost everyone in this society has to deal with." We disagree.

First, "physical injury [or the threat of physical injury] is not a prerequisite for recovering damages for *serious* emotional distress, especially when, as here, there exists a 'guarantee of genuineness in the circumstances of the case.'" (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1079.)

Second, Corona's dismissive rejection of Carlson's testimony ignores the trial court's findings based upon its own observations. As the court explained when finding that the emotional distress Carlson suffered met the standard for an IIED claim, "anyone who saw her testify in person would see how difficult this was, how much she suffers today as a result of what happened to her. [¶] Emotional distress is one of those things it's hard to put your finger on it, but in this case, it's clearly there and it continues." We did not observe Carlson's testimony and therefore are not in a position to overrule the trial court's conclusion that she suffered severe emotional distress as a result of Corona's outrageous conduct. (See *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397 [deferring to jury and trial judge's conclusions regarding the severity of plaintiff's emotional distress based upon their observations of plaintiff's testimony].)

B. *Attorney Fee Appeal*

Corona advances two arguments in his appeal from the attorney fee award. First, he argues the trial court abused its discretion by awarding fees equal to more than eight times the amount of damages awarded under the statutes giving rise to Carlson's right to recover attorney fees. Second, he argues there is no valid judgment awarding attorney fees because the minute order from the hearing in which the trial court awarded fees is not a judgment, and the original judgment, which had blanks for the costs and attorney fees amounts, was improperly modified by the court clerk. His first argument is based upon a misunderstanding of the facts, and his second is based upon a misunderstanding of the law.

1. *Amount of Fees vs. Amount of Damages*

Section 789.3 and section 1965 each provide for an award of attorney fees to the prevailing party in a lawsuit for violation of the statute. (§ 789.3, subd. (d) ["In any action under subdivision (c) the court shall award reasonable attorney's fees to the prevailing party"]; § 1965, subd. (e)(3) ["The court may award reasonable attorney's fees and costs to the prevailing party"].) Corona concedes that Carlson is entitled to attorney fees under the statutes, but asserts that the amount of fees awarded was improper because "total amount of money awarded to CARLSON pursuant to statute was $11,150," but the trial court awarded more than eight times that amount -- $91,344.50 -- in attorney fees, without allocating the fees between the statutory and non-statutory claims.

There are two problems with Corona's argument.

First, his assertion that Carlson was awarded only $11,150 for his violations of sections 789.3 and 1965 is incorrect. While it is true that the court awarded a total of $11,150 in statutory damages, those are not the only damages that were awarded under the statutes, because section 1965 provides for recovery of some of a tenant's actual damages, and section 789.3 provides for recovery of *all* actual damages, in addition to the statutory damages. (See § 789.3, subd. (c) ["Any landlord who violates this section shall be liable to the tenant in a civil action for all of the following: [¶] (1) Actual damages of the tenant. [¶] (2) An amount not to exceed one hundred dollars ($100) for each day or part thereof the landlord remains in violation of this section"]; § 1965, subd. (e) ["Any landlord who retains personal property in violation of this chapter shall be liable to the tenant in a civil action for all the following: [¶] (1) Actual damages not to exceed the value of the personal property, if the personal property is not surrendered . . . within a reasonable time after the tenant's request for surrender of the personal property. . . . Three days is presumed to be a reasonable time in the absence of evidence to the contrary"].) Thus, *all* of the damages awarded to Carlson -- including the compensatory and emotional distress damages -- were awarded under at least one of the statutes. (See *McNairy v. C.K. Realty* (2007) 150 Cal.App.4th 1500, 1505-1506 [where statute allows a tenant to recover "actual damages," tenants are entitled to recover compensatory damages, including damages for emotional distress].) Although Carlson's attorney fee award still exceeds her entire damages award, the difference between the two --

$91,344.50 versus $78,753 -- is not so great as to shock the conscience; thus, the court did not abuse its discretion by awarding more in attorney fees than the amount of damages Carlson recovered. (See, e.g., *Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1508 ["Although the award is large in proportion to the amount of damages awarded, it does not shock the conscience but is justified by other factors. Consequently, there was no abuse of discretion in the award"].)

Second, in light of the fact that Carlson was entitled under section 789.3 to recover all of her damages, both actual and statutory, the trial court was not required to allocate the attorney fees between her statutory and non-statutory claims, because her non-statutory claims merely sought to recover her damages for the same conduct on which her statutory claims were based, and the non-statutory claims did not raise any issues that were not common to the statutory claims. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130 ["Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed"].)

2. *The Minute Order Awarding Attorney Fees Was Valid*

Corona's second argument challenging the attorney fee award is premised on the purported absence of a valid judgment. He contends the minute order granting Carlson's motion for fees is not a judgment, and the original judgment is not valid insofar as it includes the fee award because the judgment was improperly modified by the court

clerk. His contention is easily disposed of, because his original premise reflects a misunderstanding of the law.

Whether the minute order is a "judgment" is irrelevant, because regardless what it is called, it is a valid, appealable, post-judgment order.[12] (Code Civ. Proc., § 904.1, subd. (a)(2) [an order made after an appealable judgment is appealable]; *Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015 ["postjudgment orders granting or denying motions for attorney fees are deemed to be appealable"]; *Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1248 [a minute order is an appealable order unless it directs the preparation of a written order].) Because the minute order is a valid and appealable order, we need not address Corona's assertion that the modified original judgment is not valid because the court clerk added the cost and attorney fee award, except to note that the clerk's modifications did not constitute a substantial change to the judgment. (See *Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 222 ["'[w]here the judgment is modified merely to add costs, attorney fees and interest, the original judgment is not substantially changed'"].)

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[12] In any event, we note that the Code of Civil Procedure provides that "'Judgment' means a judgment, order, or decree entered in a court of this state." (Code Civ. Proc., § 680.230.)

DISPOSITION

The judgment and post-judgment order awarding attorney fees are affirmed. Carlson shall recover her costs, including attorney fees in an amount to be determined by the trial court, on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.