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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARIANNE NGUYEN et al.,

Plaintiffs and Respondents,

v.

DAVID M. TRUONG,

Defendant and Appellant.

G046856

(Super. Ct. No. 30-2012-00539279)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed.

Law Offices of Frank Barilla and Frank Barilla; David M. Truong, in pro. per.; and Attlesey & Storm and Keith A. Attlesey for Defendant and Appellant.

Duringer Law Group and Eric J. Bautista for Plaintiffs and Respondents.

INTRODUCTION

David Truong, M.D., appeals from an unlawful detainer judgment entered in favor of Marianne Nguyen and her husband. Truong leased office space in a commercial building owned by the Nguyens beginning in September 2009. In January 2012, he was served with two three-day notices to quit, one based on his failure to pay rent and the other based on his failure to pay late fees. After a short bench trial, the trial court awarded judgment in the amount of \$33,385.

Truong has appealed from this judgment on several grounds. By failing to conform to some of the basic requirements of an appeal, he has waived a good many of them. The ones he has not waived lack merit. We therefore affirm the judgment.

FACTS

Nguyen and her husband own a commercial building in Westminster. In September 2009, Nguyen entered into a written lease with Truong for one of the building's medical offices. The lease term was supposed to be five years. Nguyen and Truong agreed to reduce the term to one year, and Truong altered the lease by striking out "5" and handwriting "one" in the sentence regarding the lease term.¹

The lease provided for escalating rent. The initial rent of \$2,300 per month increased between \$70 and \$80 per month for the each of the four years following the initial term. This provision was not altered when the parties changed the lease term from five years to one year. Truong also had to pay a share of the property's operating expenses, which share came to \$325 per month. This payment was waived during the first year of the lease term.

¹ At trial, both Nguyen and Truong testified that the change was made at Truong's behest because he wanted to "wait and see" how things worked out.

The one-year term expired on August 31, 2010. Truong continued to occupy the premises and to pay rent sporadically after that date, although never in the amount specified in the lease. As of the date of trial, he was still in possession.

Nguyen and her husband initiated the unlawful detainer suit against Truong in January 2012. They asked for \$27,677 in unpaid rent² and \$1,300 in unpaid late fees for the period between February 1, 2011, and February 1, 2012, and \$100 per day for the fair rental value from February 1, 2012.

Truong testified at the unlawful detainer trial that the written lease was a sham and that he had agreed orally to pay only \$1,000 per month for the premises before he moved in. He testified that Nguyen's husband had tricked him into subsequently signing the lease by telling Truong that he needed it to show to another tenant, so that the other tenant would not know Truong was getting a special deal.

The court entered judgment for the Nguyens in the amount of \$33,385. The judgment included awards for back rent, holdover damages, costs, attorney fees, and late fees. The court declined to enforce the oral agreement to which Truong had testified because of the parol evidence rule.

DISCUSSION

Truong has identified approximately five issues on appeal.³ He asserts that rendering judgment in favor of Nguyen's husband in addition to Nguyen herself was error, because the lease was in Nguyen's name only. In addition, the amount of the judgment was incorrect because he never received notice of an increase in rent after the lease expired. Truong also maintains that the three-day notices were defective because they were not properly served and asked for incorrect amounts. Finally, he disputes the

² At trial, rent was calculated at \$2,625 per month. Nguyen evidently did not increase the rent for the period between September 1, 2011, and January 2012, when the unlawful detainer was filed. The unlawful detainer complaint itself specified rent in the amount of \$3,025 per month after September 1, 2011, but this was not the amount of rent presented at trial.

³ We say "approximately" because Truong's opening brief identifies only one "Argument," but includes five complaints that we can discern as separate and distinct.

amount of the rent, stating that it should have been \$1,000 per month instead of the amount claimed by Nguyen.

We begin with some basic rules of appellate review, one of which is that a judgment is presumed correct. It is the appellant’s task to point out errors, to explain how the court erred, and to support the explanation with relevant authority.⁴ (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.) Another rule is that we do not reweigh evidence. Our role is to determine whether there is substantial evidence, contradicted or uncontradicted, to support the judgment. If there is, we must affirm. (*Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 611-612.) Failure to adequately raise an issue in the trial court precludes raising it for the first time on appeal. (*366-386 Geary St., L.P. v. Superior Court* (1990) 219 Cal.App.3d 1186, 1199.) And issues raised for the first time in a reply brief will not be considered. (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1477.)

In this case, pervasive violations of the rules of appellate practice influence the scope of our review. Rule 8.204(a)(2)(C) of the California Rules of Court restricts the summary of significant facts in an appellant’s opening brief to matters in the record. Truong’s statement of facts, however, contains numerous examples of embroideries without any citations to the record. Some of the “facts” for which he does provide record citations turn out to be distortions or out-and-out flights of fancy. The argument section of the opening brief does not “[s]tate each point under a separate heading or subheading summarizing the point” and support each point by argument and authority. (See Rule 8.204(a)(1)(B).) The section operates more as stream-of-consciousness musings. “The purpose of requiring headings and coherent arguments in appellate briefs is ‘to lighten the labors of the appellate [courts] by requiring the litigants to present their cause

⁴ Truong incorrectly asserts that the standard of review is abuse of discretion. The case he cites to support this assertion, *Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, concerns the review of a discovery order, not a judgment. (*Id.* at p. 1123.)

systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.’ [Citation.]” (*Opdyk v. California Horse Racing BD.* (1995) 34 Cal.App.4th 1826, 1830, fn.4.) “We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

As will become apparent below, Truong’s failure to isolate his issues and support them with cogent argument and authority has caused him to waive several of them. In addition, one of his key issues was not raised below. We have tried to figure out Truong’s arguments as best we can, but we are not called upon to work harder than Truong himself did to correct any possible errors in the trial court’s decision.

I. Judgment in Favor of Nguyen’s Husband

Truong claims on appeal that the trial court erred by entering judgment for Nguyen’s husband as well as for Nguyen herself. Only Nguyen signed the lease, he argues, so the judgment should be in her favor only. The lease identifies Nguyen alone as the “landlord,” but she testified at trial that both she and her husband owned the property.

Truong simply asserts that the trial court erred by entering judgment in favor of Nguyen and her husband, instead of Nguyen alone. He does not explain why, in light of the testimony that both hold title to the property, both of them were not real parties in interest (see Civ. Proc. Code § 367) and entering judgment for both of them was error. He has presented no argument or authority to support his position. He has waived this issue.

II. Notice of Rent Increase

As stated above, what was originally supposed to be a five-year lease was modified by mutual agreement to a one-year lease. The lease expired, and Truong continued in possession while paying rent, which the landlord accepted. As Civil Code

section 1945 provides, “If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.”

Truong claims that Civil Code section 827 required Nguyen to give him 30 days’ notice before raising the rent. Section 827 applies when the landlord changes the terms of the lease.⁵ In this case, however, the lease terms did not change. The lease provided for a yearly increase in rent. Under Civil Code section 1945, by staying on after the lease expired, Truong is presumed to have renewed the lease on the same terms, including the increases in rent. (See *Shenson v. Shenson* (1954) 124 Cal.App.2d 747, 752-753 [terms of original lease apply to tenant holding over with landlord’s consent].)

If a landlord changes a lease’s terms, a tenant must be notified, so that he or she can decide whether to accept the new terms, such as increased rent. A tenant holding over after a lease has expired already knows its terms and needs no additional notice. No notice to Truong under Civil Code section 827 was required.

III. Defective Notices

Nguyen served two three-day notices on Truong. One was a notice to pay rent or surrender possession, specifying \$27,677 as back rent. The other was a notice to perform or quit, for failing to pay \$1,301.10 in late fees. Truong maintains that these notices were not properly served and they recited incorrect amounts. They were therefore defective.

⁵ Civil Code section 827, subdivision (a), provides in pertinent part: “Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.”

A. Proper Service

Truong failed to support his contention that the notices were improperly served with any argument or authority at all. His argument on this issue consists of part of one sentence: “Appellant further contends that the trial court erred and abused its discretion in relying on Code of Civil Procedure Section 1161 et seq. in rendering judgment against Appellant in that the amounts set forth in the Three Day Notices, *that were not properly served*, contained the wrong amount” (Italics added.) Having failed to present *any* argument or authority regarding improper service, Truong has waived this issue.

B. Incorrect Amount on Notice⁶

Code of Civil Procedure section 1161, subdivision (2), permits a landlord to obtain only one year’s worth of unpaid back rent through the unlawful detainer procedure. If the landlord wants to collect more than this amount, he or she must use the more cumbersome and time-consuming suit for breach of contract. (*Cal-American Income Property Fund IV v. Ho* (1984) 161 Cal. App.3d 583, 585.) Accordingly, Nguyen sought only rent owing for the year before the three-day notice was served, on January 13, 2012.

During the trial, Nguyen presented her ledger and testified as to the amounts owing and paid by Truong. The ledger was admitted into evidence, as was a similar chart of Truong’s checks. With a few minor exceptions, both of the documents were in agreement about what Truong had paid and when he had paid it.

Now Truong argues that the \$27,677 specified in the notice to pay rent due between February 1, 2011, and February 1, 2012, or surrender possession was incorrect because it failed to take into account the amounts Truong had paid during that 12-month

⁶ Truong’s opening brief provides no argument or authority to support any error with respect to the notice to quit for unpaid late fees; the argument on this issue in his reply brief will therefore not be considered. (See *In re Marriage of Khera & Sameer, supra*, 206 Cal.App.4th at p. 1477.)

period, most notably a \$14,800 credit applied to his account in lieu of Nguyen's husband's repaying some money he supposedly owed to Truong. Subtracting these payments from the \$27,000 claimed in the notice would yield a discrepancy far greater than the 20 percent variance permitted by Code of Civil Procedure section 1161.1, subdivision (e).

Truong never objected to the amount of rent specified in the notice to pay rent or surrender possession on this basis. His sole objection to the amount of rent was based on his contention that the rent was supposed to be \$1,000 per month. Moreover, according to Nguyen's payment history, Truong was in arrears on his rent from the day he moved in. Nguyen was entitled to apply the payments he made between February 1, 2011, and February 1, 2012, to the earliest unpaid rent, from 2009 on. (See *Smith v. Renz* (1954) 122 Cal.App.2d 535, 538 [installment payment usually applied to part first coming due to be paid]; cf. Civ. Code § 1479 [application of payments on multiple obligations when not specified].) Even if Truong had raised this issue in the trial court, it would have availed him nothing.

IV. Amount of Rent

Finally, Truong maintains that the trial court should have accepted his testimony that the true amount of the rent was \$1,000 per month, not the amounts set forth in the lease. The court ruled that Truong had signed a document containing an integration clause; any testimony about a prior oral agreement contradicting the terms of the document violated the parol evidence rule, an issue Truong does not address.

Truong, in effect, challenges the evidence on which the trial court based its judgment. As we have already stated, we do not reweigh evidence. Substantial evidence supported the trial court's conclusion that Truong signed a lease obligating him to pay \$2,300 per month between September 1, 2009, and August 31, 2010. Each subsequent September, until 2014, the rent increased. When the lease expired in August 2010, Truong stayed on, presumptively agreeing to the terms of the lease, including the rent

increases. Ample evidence supported the trial court's conclusion about the correct amount of the rent, and we may not substitute our own judgment for that of the trial court.⁷

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.

⁷ Truong mentioned two other issues in his opening brief – the overruling of his demurrer and the trial court's disregard of his evidence that the three-day notices were retaliatory. Because no argument or authority supported either of these contentions, they are both waived.