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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CAROL JORDAN,

Plaintiff and Respondent,

v.

MANUEL A. VIEIRA,

Defendant and Appellant.

H042257
(Santa Cruz County
Super. Ct. No. CV180954)

This appeal concerns a preliminary injunction that prohibits defendant and appellant Manuel Vieira (Defendant) from asserting a legal cause of action to have plaintiff and respondent Carol Jordan's (Plaintiff) mobilehome declared a nuisance under the Mobilehome Residency Law (MRL). The injunction also prohibits Defendant from interfering with the sale and occupancy of the mobilehome, which is located at Cabrillo Mobile Homes Estates (the Park) in the City of Capitola. The trial court issued the preliminary injunction after Plaintiff sought to enjoin any action by Defendant that would interfere with (1) her contractual rights in the purchase of the mobilehome and (2) her right to keep and occupy the mobilehome in the Park.

Defendant argues the trial court exceeded its jurisdiction when it enjoined his right to assert a legal cause of action under the MRL. He also argues the preliminary injunction is mandatory in nature because it alters the status quo between the parties, and that review of a mandatory injunction requires closer scrutiny. He urges this court to find

the trial court abused its discretion when weighing the balance of harms to find in Plaintiff's favor.

Plaintiff agrees with Defendant that the assertion of a legal cause of action under the MRL may not be enjoined by a preliminary injunction. But Plaintiff otherwise argues the injunction is proper to maintain the status quo between the parties to prevent interference with her right to possession of the mobilehome in the Park until her claims are adjudicated at trial.

We agree that a preliminary injunction may not enjoin the assertion of a legal cause of action under the MRL. Accordingly, we will strike the language “, including the assertion of rights to have the manufactured home located at Space 29 of the Cabrillo Mobile Home Estates, 930 Rosedale Avenue, Capitola, California, declared a nuisance under California Civil Code § 798.87(b),” from the injunction.¹ With this modification, we find the injunction is prohibitory in nature, not mandatory, and we conclude the trial court did not abuse its discretion when it weighed the balance of harms between the parties. We will affirm the trial court's order granting the preliminary injunction as we have modified it.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. PLAINTIFF'S PURCHASE OF A MOBILEHOME IN DEFENDANT'S PARK

Defendant is the owner of the Park. Plaintiff arranged to purchase a mobilehome located in the Park from nonparties Janine Turnage and Rowland Yorba (Sellers), along with an assignment of Sellers' 12-year lease.² Sellers submitted a resident's notice of

¹ The terms “mobilehome” and “manufactured home” are used throughout the record to describe the property that is the subject of the preliminary injunction. We will use the term “mobilehome” since that term is defined in the MRL to include a manufactured home. (Civ. Code, § 798.3, subd. (a) [term “[m]obilehome includes a manufactured home . . .”].)

² Facts pertaining to the sale of the mobilehome are as alleged in the Complaint or as stated in Plaintiff's declarations. The record does not contain a copy of any written

termination of tenancy. The notice stated Sellers' intent to sell the mobilehome to Plaintiff with the mobilehome to remain in the Park (hereafter, a "sale in place"). The form notice acknowledged that for a sale in place, Park management could require the right of prior approval of the proposed purchaser, and the sale or transfer agreement had to include a copy of a fully executed lease agreement. The notice further stated that the purchaser "shall not have any rights of tenancy" if the purchaser fails to execute a lease agreement.

In response to Sellers' notice of termination of tenancy and the application for tenancy by Plaintiff—which application is not in the record—Defendant's office manager sent a letter to Plaintiff dated October 29, 2014, approving Plaintiff's application for tenancy in the assigned space in the Park but advising "there are items that need to be completed, prior to the approval of the sale of the mobilehome." The office manager attached a letter from Defendant to Sellers, dated October 26, 2014, specifying sixteen repairs or improvements that "must be completed prior to the approval of the sale of your home." Sometime after approving Plaintiff's tenancy application, Defendant learned Plaintiff did not intend to live in the mobilehome. Instead, she intended to provide it as a home for a relative with physical disabilities.

Plaintiff alleges she asked the office manager whether title to the mobilehome could be transferred, and was advised by her that it could be transferred. Plaintiff then paid Sellers and, on November 6, 2014, obtained record title and registration to the mobilehome. Shortly thereafter, Plaintiff began the repairs and improvements listed in the October 26 letter.

Defendant observed construction taking place at the mobilehome, and on November 12, 2014, Defendant's counsel sent Sellers a cease and desist letter. The letter noted the "unpermitted and unapproved ongoing construction" at the mobilehome and

sale agreement, nor are the contractual terms of the sale reflected verbatim in the Complaint or in any declaration or document offered by Plaintiff.

demanded Sellers cease all construction and obtain required permits and approvals before starting construction or making modifications to the mobilehome. Defendant subsequently learned that Plaintiff had obtained record title to the mobilehome.

Defendant's counsel served a second cease and desist letter on November 14, 2014, designated as a seven-day notice pursuant to Civil Code section 798.56, which authorizes termination of a tenancy in a mobilehome park on specified grounds. The November 14 notice demanded that Sellers transfer title back into their name, obtain permits and authorization for construction, and complete all repairs and improvements listed in the October 26 letter. It gave Sellers seven days to remedy the violations or face termination of their tenancy. The letter also warned of potential liability for legal fees and indicated that pursuant to Civil Code section 798.87, subdivision (b), the "substantial violation of a Park rule shall be deemed a public nuisance."

Plaintiff contends that Defendant's counsel also contacted her and informed her that only Sellers could obtain permits and carry out repairs, that title needed to revert back to Sellers, and that Plaintiff had "no standing" with the Park. With the assistance of counsel, Plaintiff responded that she would assist Sellers in all aspects of compliance and would execute any documents necessary for her tenancy, including assumption of the balance of the twelve-year lease. She continued making repairs to the mobilehome. She later obtained a permit from the California Department of Housing and Community Development (HCD) for work relating to the deck.

Defendant served another seven-day cease and desist notice on November 22, 2014, which restated the warnings and demands of the earlier notices and listed an additional violation for painting. Citing noncompliance with the prior notices, on December 19, 2014, Defendant served Sellers with a 60-day notice of termination of tenancy pursuant to section 798.56, subdivision (d). The termination notice required Sellers to vacate the Park premises within 60 days and to remove or sell the mobilehome.

Plaintiff eventually had the deck of the mobilehome inspected by HCD. HCD issued a permit noting its approval of the deck. The permit is dated January 14, 2015.

B. TRIAL COURT PROCEEDINGS

Plaintiff filed suit on January 27, 2015, before expiration of the 60-day notice period, seeking injunctive and declaratory relief, and damages for interference with contract. By verified complaint, Plaintiff alleged the following facts. In September 2014, she contracted to purchase the mobilehome and lease assignment from Sellers, received conditional acceptance of her tenancy from the Park and verbal confirmation that title could be transferred, and based on that information, paid Sellers, obtained title, and tried to comply with the repairs and improvements specified by Defendant in a letter dated October 26, 2014. Defendant, however, imposed additional conditions beyond those of the October 26 letter and demanded payment of his legal fees. As of January 14, 2015, Plaintiff and Sellers had HCD inspect the deck and had notified Defendant that all required items listed in the October letter were complete. Defendant, however, disputed that the mobilehome was in compliance with all regulations set forth in Title 25 of the California Code of Regulations (Title 25), accused Sellers of delay, and argued that his attorney's fees had not been paid.

Plaintiff sought: (1) injunctive relief to prevent Defendant from continuing to add conditions precedent to completion of the mobilehome sale, and from taking steps to have the mobilehome deemed a nuisance under section 798.87; (2) declaratory relief that Plaintiff met all conditions in the October 26 letter, complied with Park rules, and was entitled to acceptance as a resident of the Park, legal owner of the mobilehome, and the responsible tenant of the leasehold through 2023; and (3) damages for interfering with and delaying completion of Plaintiff's contract with Sellers for sale of the mobilehome.

Plaintiff immediately obtained a temporary restraining order and order to show cause regarding the issuance of a preliminary injunction. Plaintiff based her requested relief on Code of Civil Procedure section 526, subdivision (a)(3), which authorizes a

court to enjoin an act “during litigation, that a party . . . threatens, or is about to do, . . . in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.”

Defendant opposed the request. He argued that Plaintiff had failed to demonstrate interference with a contractual right, since the Park never approved the sale or title transfer of the mobilehome, and that Plaintiff had failed to demonstrate harm that could not be remedied by damages, including from Sellers. Defendant also argued the balance of harms favored the Park, because violations persisted at the mobilehome, for which Defendant could be held liable pursuant to HCD regulations under Title 25.

At the initial hearing held on February 19, 2015, the trial court stated its tentative finding that Plaintiff’s reasonable probability of success was “maybe a little better than 50/50, maybe a preponderance, but . . . [not] overwhelming.” As to harm, the court noted Plaintiff’s potential loss of living space and monetary losses, but identified its primary concern was Defendant’s potential liability for Title 25 violations. After limited argument, the court continued the matter to allow Plaintiff to file a reply brief and procure an inspection report from HCD to address the court’s concerns.

At the second hearing held on March 3, 2015, the court considered supplemental declarations from both parties. Plaintiff offered a February 26, 2015 report of inspection completed by an HCD inspector. The HCD report listed as “complainant’s allegations” the repairs and improvements from Defendant’s October 26 letter, and provided findings and determinations for each required repair and improvement. The report stated “no concerns or hazards” for each itemized issue. The report also separately stated that “[t]he remaining concerns regarding obtaining permits, plans and specifications for required work by the Park Operator are regarded as Civil issues and not included here.”

Defendant, on the other hand, offered the declaration of a code consultant and former chief investigator for HCD, Jack Kerin. Kerin found “multiple conditions in violation of Title 25,” including “potentially dangerous alterations” to gas piping and the

mobilehome deck and landing. Kerin declared that even a single violation “could cause HCD to revoke the Park’s permit to operate” and placed the Park at risk of liability. In a supplemental declaration, Kerin disputed the accuracy of the HCD report. He opined that while code enforcement had some discretion whether to pursue a violation, the Park operator had no such discretion under Title 25 and could not allow a violation to persist.

After oral argument, the trial court found that Kerin’s declaration raised “a lot of possibilities,” but the HCD report satisfied the court’s concern about potential harm to the Park. The court granted Plaintiff’s request for preliminary injunction and required posting of a bond. The preliminary injunction states: “[D]uring the pendency of this action or until further order of the Court, Defendant, individually and doing business as [the Park] . . . [is] enjoined from taking any actions, including the assertion of rights to have the manufactured home located at Space 29 of the [Park], declared a nuisance under California Civil Code § 798.87(b), tending to interfere with the contractual rights of Plaintiff and Janine Turnage in the sale of and right to occupancy of the manufactured home at that location.”

Defendant timely appealed the court’s order pursuant to Code of Civil Procedure section 904.1(a)(6).

II. DISCUSSION

Defendant argues the trial court erred in granting the preliminary injunction on seven grounds: (1) the court exceeded its jurisdiction by enjoining Defendant’s enforcement of a valid statute; (2) injunctive relief is unavailable to enjoin causes of action at law; (3) the injunction is mandatory in effect, not prohibitory, and therefore requires closer scrutiny; (4) Plaintiff lacked standing to assert tenancy rights because her purchase of the mobilehome was invalid and Defendant never approved her tenancy; (5) Plaintiff failed to show a probability of prevailing on the merits because she had no tenancy rights; (6) injunctive relief for Plaintiff was inequitable due to her deceitful conduct in acquiring title; and (7) the balancing of harms did not favor Plaintiff.

A. GENERAL PRINCIPLES RELATING TO PRELIMINARY INJUNCTIONS

The trial court weighs two interrelated factors in determining whether to grant a preliminary injunction: “(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678 (*Butt*) [citing *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 (*Common Cause*)].) The “greater the plaintiff’s showing on one factor, the less must be shown on the other” to support issuance of an injunction. (*Butt*, at p. 678 [citing *King v. Meese* (1987) 43 Cal.3d 1217, 1227-1228].) If there is no possibility the plaintiff would ultimately prevail on the merits, there can be no preliminary injunction “regardless of the balance of interim harm.” (*Butt, supra*, p. 678.)

A court’s consideration of a preliminary injunction does not adjudicate the ultimate rights in controversy, but allows the trial court to determine, “ ‘balancing the respective equities of the parties, [and] pending a trial on the merits, [whether] the defendant should or . . . should not be restrained from exercising the right claimed by him.’ ” (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528 [citations].) “The general purpose of such an injunction is the preservation of the status quo until a final determination of the merits of the action.” (*Ibid.*)

B. STANDARD OF REVIEW

A challenge to the granting of a preliminary injunction “may trigger any or all three standards of appellate review.” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 408 (*Luu*).) Generally, when the trial court’s ruling rests on evaluating and weighing the substantive factors of likelihood of success on the merits and relative harms, that ruling will not be disturbed on appeal absent a finding of abuse of discretion. (*Ibid*; *Butt, supra*, 4 Cal.4th at pp. 677-678 [appellate review limited to whether trial court’s decision was an abuse of discretion].) But to the extent the court’s ruling “depends on legal rather than factual questions, [] review is de novo.” (*O’Connell v. Superior Court*

(2006) 141 Cal.App.4th 1452, 1463; *Luu, supra*, at p. 408.) Finally, “insofar as the court resolved disputed issues of fact, its findings are reviewed under the substantial evidence standard, i.e., they will be sustained unless shown to lack substantial evidentiary support.” (*Luu, supra*, at p. 409.) On a substantial evidence review, “we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court’s order.” (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625.)

C. STATUTORY FRAMEWORK

This appeal implicates rights and protections specific to mobilehome park tenancies. The Mobilehome Residency Law, Civil Code sections 798-799.11, “ ‘extensively regulate[s] the landlord-tenant relationship between mobilehome park owners and residents.’ ” (*Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1279 (*Sequoia Park*); *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 591 (*Andrews*).) The MRL “comprises almost a hundred statutes governing numerous aspects of the business of operating a mobilehome park.” (*Sequoia Park*, at p. 1279.) The provisions relevant to our discussion include sections 798.55 and 798.56 (protections from and grounds for terminating tenancy), sections 798.87 and 798.88 (governing actions and remedies), and sections 798.73.5, 798.74, and 798.15 (relating to the sale or purchase of a mobilehome in a park, and repairs and improvements to mobilehomes).

“In order to protect mobilehome park tenants, the Legislature conferred upon them certain protections from eviction, while authorizing a mobilehome park owner to terminate a mobilehome park tenancy in specified circumstances.” (*Andrews, supra*, 125 Cal.App.4th at p. 591.) Section 798.55 declares the Legislature’s intent to protect “owners of mobilehomes occupied within mobilehome parks . . . from actual or constructive eviction” due to “the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes,

and the cost of landscaping or lot preparation.” (§ 798.55, subd. (a)(1).) To that end, mobilehome park management “may not terminate or refuse to renew a tenancy, except” in specified circumstances. (*Id.*, subd. (b)(1).) The statutory grounds authorizing termination of a mobilehome park tenancy include the “[f]ailure of the homeowner or resident to comply with a reasonable rule or regulation of the park that is part of the rental agreement or any amendment thereto.” (§ 798.56, subd. (d).)

In addition to conferring the right to terminate a tenancy, the MRL authorizes a mobilehome park owner to respond to a violation of park rules or regulations by legal action. This includes seeking injunctive relief in the superior court to enjoin a continuing or recurring violation (§ 798.88; *Andrews, supra*, 125 Cal.App.4th at p. 592), as well as initiating a civil action or abating a public nuisance. (§ 798.87, subs. (b), (c) [“substantial violation of a mobilehome park rule shall be deemed a public nuisance . . . [which] may only be remedied by a civil action or abatement” by park management and others].)

The MRL also authorizes certain acts by mobilehome park management in the event of a sale in place. Section 798.74 provides that “management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park,” but strictly limits the grounds for approval. Section 798.73.5 authorizes park management to require certain repairs and improvements for a sale in place, limited to matters based on a local ordinance or state statute or regulation relating to mobilehomes. (§ 798.73.5, subd. (a)(2).) Section 798.15 discusses rental agreements and provides annual notice to homeowners of certain rights and responsibilities under the MRL, including that park management may require certain upgrades for a sale in place and may deny approval of a buyer, but only for reasons prescribed by law. (§ 798.15, subd. (i)(10).)

D. PRELIMINARY INJUNCTION RULING

1. Injunctive relief may not limit judicial process

Defendant argues the preliminary injunction wrongfully enjoins his legal cause of action under the MRL because injunctive relief may not enjoin a cause of action at law. Plaintiff states she would stipulate that the injunction does not prevent Defendant from asserting a nuisance cause of action in a cross-complaint.

Citing *Taliaferro v. Industrial Indem. Co.* (1955) 131 Cal.App.2d 120, 122 (*Taliaferro*) for the proposition that the “prosecution of a cause of action at law will not be enjoined because the plaintiff seeking the injunction has a good defense to it where that defense may be interposed in the threatened action,” the parties agree that a preliminary injunction should not prohibit a cause of action at law. Plaintiff insists, however, that the injunction is otherwise proper because it prevents Defendant from acting outside of a lawsuit, such as using “self-help measures to abate the alleged nuisance.”

We agree with the parties that the trial court erred by enjoining Defendant’s assertion of a nuisance cause of action under the MRL. In *Taliaferro*, for example, the appellate court affirmed a judgment of dismissal upon a demurrer of the plaintiff’s complaint, which sought to enjoin the defendant’s threatened collection action. (*Taliaferro, supra*, 131 Cal.App.2d at p. 121.) The plaintiff alleged that the threatened lawsuit and attachment of business property would constitute an unlawful and illegal interference with his business. (*Ibid.*) The court found these allegations insufficient to sustain a complaint for injunctive relief and damages. The court reasoned: “ ‘The writ (of injunction) will not lie to enjoin a judicial proceeding where the complainant may obtain all the relief to which he is entitled by way of answer, defense, cross-complaint or intervention in such proceeding.’ ” (*Taliaferro*, at p. 122. [citations omitted].)

In *Manchel v. Los Angeles County* (1966) 245 Cal.App.2d 501 (*Manchel*), the court addressed a permanent injunction against the county to prevent enforcement of a

local ordinance that criminalized certain card games. Noting “that equity is concerned only with the protection of civil and property rights, and is intended to supplement, and not usurp, the functions of the courts of law,” the court concluded the plaintiff’s pleadings failed to allege any basis for an injunction because the plaintiffs had an “adequate remedy at law” through the ordinary channels of a criminal defense or appeal in the event of a prosecution. (*Manchel, supra*, 245 Cal.App.2d at p. 505.)

In this action, the preliminary injunction seeks to prevent alleged interference with Plaintiff’s contractual rights in the sale of and right to occupy the mobilehome by prohibiting “any actions, including the assertion of rights to have the ...[mobilehome], declared a nuisance under California Civil Code § 798.87(b).” This language effectively prohibits Defendant from asserting a nuisance cause of action under the MRL. (See §§ 798.87, subs. (b), (c).) This is improper because the action being enjoined (e.g., seeking a nuisance determination) is one for which there is a remedy at law, as provided in section 798.87, subdivision (b). Where a remedy is provided by law, the prospect of Defendant pursuing that remedy through the judicial process cannot be considered a violation of Plaintiff’s rights that would justify the issuance of a preliminary injunction under Code of Civil Procedure, section 526, subdivision (a)(3). (See Code Civ. Proc. § 526, subd. (a)(3) [court may enjoin an act during litigation that threatens to violate rights of another party respecting the subject of the action, and tending to render judgment ineffectual].)

Like the plaintiffs in *Taliaferro* and *Manchel*, Plaintiff’s ability to assert the rights she alleges in the lawsuit are not diminished or eliminated by the filing of a nuisance claim by Defendant. Instead, whether substantial violations of Park rules have occurred—constituting a nuisance under the MRL—bears directly on the subject of the litigation and should be decided therein, whether by “answer, defense, cross-complaint,” or the filing of a separate action the trial court could relate to the first. (See *Taliaferro, supra*, 131 Cal.App.2d at p. 122.) Because the preliminary injunction impinges on

Defendant’s right under section 798.87, subdivision (b) to bring “a civil action” for public nuisance, we will strike the phrase “, including the assertion of rights to have the manufactured home located at Space 29 of the [Park], declared a nuisance under California Civil Code § 798.87(b),” from the injunction. With this modification, we need not resolve Defendant’s other jurisdictional argument that under *City of Los Angeles v. Superior Court* (1959) 51 Cal.2d 423, 430, the trial court exceeded its jurisdiction by “attempt[ing] to enjoin the . . . enforcement of a valid public statute or ordinance.”

2. The modified injunction offers only prohibitory injunctive relief

Our modification to the preliminary injunction also disposes of Defendant’s contention that the injunction, though prohibitory in terms, is mandatory in effect. Defendant argues that the preliminary injunction is mandatory in nature because it changed the status quo by taking away Defendant’s existing statutory rights, and because it elevated Plaintiff’s status to that of a presumed tenant.

When a preliminary injunction “mandates an affirmative act that changes the status quo,” it is subject to closer scrutiny for abuse of discretion. (*Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295.) Mandatory relief “ ‘is not permitted except in extreme cases where the right thereto is clearly established and it appears that irreparable injury will flow from its refusal.’ ” (*Ibid.*, quoting *Hagen v. Beth* (1897) 118 Cal. 330, 331.)

“Whether an injunction is prohibitory or mandatory in character is not always easy of determination.” (*Byington v. Superior Court of Stanislaus County* (1939) 14 Cal.2d 68, 70.) To determine whether relief is mandatory or prohibitory, courts look not to the designation or form of the language, but to the terms and effect of the injunction. (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13; *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 84.) Mandatory relief will “compel the performance of a substantive act or a change in the relative positions of the parties,” whereas prohibitive relief “seeks to restrain a party from a course of conduct or to halt a

particular condition.” (*Mobile Magic Sales, supra*, at p. 13.) Unlike a mandatory injunction, a “prohibitory injunction is self-executing” and therefore is not automatically stayed by appeal. (*Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374; *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835 (*Paramount*).

Having already determined it necessary to strike the language prohibiting Defendant from taking action under section 798.87, subdivision (b), we refrain from determining whether that aspect of the trial court’s preliminary injunction was mandatory or prohibitory. We find the remaining language of the injunction is prohibitive. The status quo that Plaintiff seeks to preserve is her position as buyer of the mobilehome and prospective tenant of the space in the Park. The order enjoins Defendant from taking any actions “tending to interfere with the contractual rights of Plaintiff and [Sellers] in the sale of and right to occupancy of the manufactured home at that location.” Thus, its simple effect is to “ ‘ ‘preserv[e] the subject of the litigation, ... to leave the parties in the same position as they were prior to the entry of the judgment. [Citation.]’ ” (*Paramount, supra*, at pp. 835-836, quoting *Dosch v. King* (1961) 192 Cal.App.2d 800, 804.)

Defendant contends the injunction mandated a change in Plaintiff’s position by elevating Plaintiff “to the status of an assignee of a lease that was already terminated, by presuming a ‘right to occupancy’ for [Plaintiff] therein.” (Underscoring omitted.) We disagree.

The MRL defines “tenancy” as “the right of a homeowner to the use of a site within a mobilehome park.” (§ 798.12.) Although Defendant had already terminated Sellers’ tenancy as of the date the trial court granted the preliminary injunction, the mobilehome continued to occupy its space in the Park. The order preserved the status quo as to Plaintiff’s claimed title and tenancy rights, regardless of Sellers’ tenancy status. The order did not mandate affirmative action or change the status of the parties’ claimed rights, as would be the case if it had directed Defendant to approve the sale of the

mobilehome and assign tenancy rights to Plaintiff. Thus, the trial court's preliminary injunction order, as modified, was prohibitory in nature.

3. Merits of the preliminary injunction

Defendant argues that Plaintiff lacks standing to assert injunctive relief because the transfer of record title and purported fulfillment of Sellers' obligations to complete the sale in place were unlawful and do not enable her to assert tenancy or related rights under the MRL. Defendant also argues that Plaintiff is unlikely to prevail on the merits of her action, and that the balancing of harms does not favor Plaintiff.

a. Standing

"The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause, supra*, 49 Cal.3d at p. 439.) "The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant [citations]." (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.) Whether a plaintiff has standing is typically resolved by reference to the allegations in the complaint. (*People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 420.) The court examines "a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751, quoting *Allen v. Wright* (1984) 468 U.S. 737, 752.) "For standing to seek the prospective relief of an injunction, a plaintiff must show a likelihood he [or she] will be harmed in the future if the injunction is not granted." (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1004 (*Blumhorst*).)

Defendant argues that Plaintiff lacks standing to assert a right to approval of her tenancy under section 798.74 because the condition precedent of her tenancy failed (1) when she received transfer of title without Sellers having made the required repairs, and (2) due to the termination of Sellers' tenancy. Defendant has misconstrued "tenancy

rights” as a prerequisite for standing. If tenancy rights were a prerequisite to standing, no plaintiff could establish standing to adjudicate the denial of its tenancy rights, as non-tenants (i.e., persons whose tenancy was denied) would lack standing to sue.

Defendant’s argument appears to rest on the notion that the record resolves as a matter of law the status of Plaintiff’s tenancy at the time the trial court granted the preliminary injunction. But Plaintiff’s allegations are that Defendant continued to impose conditions precedent to the mobilehome sale and her assumption of the existing lease which, in effect, defeated her attempts to work with Sellers to comply with those conditions. These allegations support Plaintiff’s position that, as the “purchaser of a mobilehome” under section 798.74, she may pursue a claim directly against Defendant for his actions. The complaint also alleges that Defendant conditionally approved her tenancy application, then allegedly changed or added to the conditions of approval. (See *Common Cause, supra*, 49 Cal.3d at p. 439; *Killian, supra*, 228 Cal.App.3d at p. 1605 [only parties with a real interest in a dispute have standing to seek its adjudication].)

We conclude that Plaintiff has standing as a “purchaser of a mobilehome.” The contract at issue, to which Plaintiff alleges interference, is not the lease agreement between Sellers and Defendant, but Plaintiff’s contract with Sellers for sale of the mobilehome. Defendant’s reliance on cases involving a challenge to a contract by an “unrelated third party” is therefore misplaced. (See, e.g., *Lafferty v. Wells Fargo Bank* (2013) 213 Cal.App.4th 545, 570 [buyers of defective motorhome lacked standing to assert declaratory and injunctive relief under a dealer agreement assigning motorhome financing because they were not intended third party beneficiaries of the assignment].) Defendant also cites *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 515 (*Jenkins*), which our Supreme Court has since disapproved in *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 934 (*Yvanova*). *Yvanova* addressed the standing of a borrower to challenge a nonjudicial foreclosure if the borrower was not a party to the assignment of the deed of trust. (*Yvanova*, at p. 928.) The court concluded

that a borrower in those circumstances had standing to challenge an assignment of the deed of trust, expressly disapproving *Jenkins* on that point. (*Id.* at p. 939, fn. 13.)

We further find that Plaintiff has alleged future harm sufficient to state a basis for prospective relief, in that requiring removal of the mobilehome before a trial on the merits would permanently deprive her of the subject matter of her contract with Sellers. (See *Blumhorst, supra*, 126 Cal.App.4th at p. 1004.) Here, that subject matter is Plaintiff's claimed interest in real property, which as we discuss below, is presumed to be unique such that monetary damages are insufficient to compensate for its loss. (See Civ. Code, § 3387 [presumption that breach of agreement to transfer real property cannot be adequately relieved by pecuniary compensation].)

b. Plaintiff's likelihood of success

The first of two interrelated factors a trial court evaluates when considering a preliminary injunction is the likelihood that the plaintiff will prevail at trial. (*Butt, supra*, 4 Cal.4th at p. 678.) Defendant asserts Plaintiff is unlikely to succeed on the merits for several reasons, including that (1) Plaintiff does not allege a cause of action for interference with contract, (2) Plaintiff has no legitimate title or interest in the mobilehome remaining in place in the Park, and (3) Plaintiff's "deceitful conduct" in procuring a tenancy precludes relief. The trial court addressed the merits factor briefly at the initial hearing on the motion and concluded that Plaintiff's reasonable probability of success was "maybe a little better than 50/50, maybe a preponderance," but not "overwhelming."

Defendant contends that Plaintiff fails to state a cause of action for interference with contract. But we have already concluded that Plaintiff has sufficiently alleged her status as a real party in interest with a direct stake in the matter, and she is a person who faces potential future harm absent a temporary injunction. We further conclude, based on our independent review of the complaint, that Plaintiff alleges facts sufficient to maintain a cause of action for interference with contractual relations. The elements of that cause

of action are: “ ‘(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.’ ” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55, quoting *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

Plaintiff’s verified pleading states that she: (1) contracted with Sellers to purchase in place the mobilehome and assume the tenancy; (2) Defendant was informed of Plaintiff’s intentions and approved her tenancy conditional on specified repairs to the mobilehome; (3) Defendant intentionally “upped the ante” on fulfillment of Plaintiff and Sellers’ agreement by adding conditions, including demanding payment of attorney’s fees, sending notices, and threatening to terminate the tenancy; (4) Defendant’s actions disrupted and delayed performance of the contract; and (5) such interference has damaged Plaintiff economically and placed her at risk of losing the mobilehome and her claim to tenancy.

Defendant argues that because Sellers prematurely transferred title to Plaintiff, the agreement is already fully performed and Defendant’s actions could not have interfered with the sale of the mobilehome. But this ignores the allegation that Sellers “agreed to transfer title . . . for \$85,000 *and to cause the assignment of a 12-year lease for Space 29 [in the Park].*” (Italics added.) Thus, the contract included an assignment of the lease, which has yet to be fully performed. Nor can we conclude that Plaintiff has no interest in the mobilehome in place in the Park.

As to the mobilehome itself, Plaintiff acknowledges in the complaint that she obtained record title before completion of the required improvements and repairs. Defendant challenged the premature transfer of title below, but on appeal appears to concede Plaintiff’s ownership of the mobilehome and focuses only on Plaintiff’s interest

in maintaining the mobilehome *in place* in the Park.³ Turning to Plaintiff's claimed tenancy interest, Defendant points to his authority, as Park owner, to impose conditions on approval of the sale in place pursuant to section 798.15 of the MRL, and to independently approve Plaintiff's tenancy application pursuant to section 798.74. Plaintiff responds that Defendant unlawfully withheld approval, in violation of section 798.74.

Resolving the available facts in the light most favorable to Plaintiff, we find substantial evidence to support the trial court's ruling of Plaintiff's likelihood of prevailing on the merits. (See *14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402 [appellate court presumes trial court made appropriate factual findings and reviews the record for substantial evidence to support the rulings].) Pursuant to section 798.74, subdivision (a), Defendant was authorized to require the right of prior approval of Plaintiff, as a purchaser of a mobilehome that would remain in the Park, but was restricted in considering any factor other than Plaintiff's financial ability to pay the rent, or likely non-compliance with Park rules and regulations based on prior tenancies. (Civ. Code, § 798.74, subd. (a); see also *Banuelos v. LA Investment, LLC* (2013) 219 Cal.App.4th 323, 326 [protections of section 798.74 apply to a "purchaser" of a mobilehome in the park].) It appears Plaintiff met section 798.74's qualifications for approval, because Defendant's October 29, 2014 letter stated that the Park had "reviewed your application and approved your tenancy in space #29 in the Park." Moreover, Plaintiff's declaration submitted below stated that she and her counsel provided assurances to Defendant that, having been accepted by the Park, she would assist Sellers to satisfy the conditions required for Defendant to approve the sale, would take financial

³ Defendant argues that Plaintiff is free to remove the mobilehome coach from the Park at any time. Defendant also states that Plaintiff filed the underlying lawsuit "to address and confirm that Seller's tenancy in Appellant's mobilehome park was terminated and to address any alleged assignment of that tenancy to Respondent."

responsibility for the twelve-year lease, and would execute any other required documents. Defendant does not contradict these facts. Together with the evidence of Plaintiff's subsequent efforts to fulfill the conditions, the available facts serve as substantial evidence that Plaintiff's tenancy claim has a likelihood of success on the merits.

Defendant insists, however, that Plaintiff obtained the Park's initial approval by deceit because she later revealed her intent to allow a disabled relative to reside in the mobilehome. But Plaintiff's tenancy application is not part of the record. Furthermore, Defendant has not cited any provision of the lease, Park rules, or statute that require the prospective tenant to be the occupant of the mobilehome. It is Defendant's burden on appeal to support factual assertions by appropriate reference to the record. (Rule of Court, rule 8.204(a)(1)(C).) Without more, we reject Defendant's suggestion that granting of the preliminary injunction furthered oppressive or fraudulent conduct. While "a fraudulently procured contract cannot be the subject of the tort of interference with a business or contractual relationship," the evidence does not support the application of that rule here. (Cf. *Renaissance Realty, Inc. v. Soriano* (1981) 120 Cal.App.3d Supp. 13, 18 [judgment in favor of plaintiff realty company for tortious interference with property sale must be reversed because plaintiff had negotiated a secret commission in the subject sale agreement, rendering the agreement fraudulently conceived].) There is no allegation that the agreement between Plaintiff and Sellers was fraudulently conceived. In the event Defendant is able to discover evidence of fraud or dishonesty, such evidence could support a justification defense, but it does not negate the existence of a cause of action. (See *Collins v. Vickter Manor, Inc.* (1957) 47 Cal.2d 875, 883 [privilege, if any, to disrupt contractual relations "is a matter of defense"]; *Freed v. Manchester Service, Inc.* (1958) 165 Cal.App.2d 186, 190 ["Unless it appears on the face of the complaint that a defendant's conduct was justified, justification is an affirmative defense"].)

Citing *State v. McGlynn* (1862) 20 Cal. 233, Defendant argues that injunctive relief to protect property during litigation will not lie when the party seeking the relief

has no title to, or legal interest in, the property. For the reasons stated above, the record does not support Defendant's claim that Plaintiff lacks title to the mobilehome or a potential tenancy interest at the Park. Defendant also cites *14859 Moorpark, supra*, 63 Cal.App.4th 1396 for the proposition that an attempt to circumvent statutory requirements prerequisite to convey a title interest will not satisfy the "probability of success on the merits" factor. But *14859 Moorpark* is distinguishable. In *14859 Moorpark*, the appellate court ruled as a matter of law that a developer would not be able to prevail in its quiet title action for a condominium complex because the parties had bypassed the statutory process for judicial partition of the condominium common areas before the complex could be sold. (*14859 Moorpark, supra*, 63 Cal.App.4th at pp.1406-1407.) In that case, application of the statutory process precluded any possibility of the developer prevailing on the merits. (*Ibid.*) Here, we have concluded that the statutory provisions of the MRL do not resolve Plaintiff's claimed interest in tenancy as a matter of law. Rather, substantial evidence suggests that Plaintiff might have met the statutory requirements for tenancy, or was not able to meet the requirements due to Defendant's alleged actions.

We conclude Plaintiff has asserted a viable cause of action for interference with contractual relations. We find the trial court did not abuse its discretion in finding that Plaintiff had established a probability of prevailing on the merits of her claims, and substantial evidence supports Plaintiff's alleged interest in tenancy. (See *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69 ["[T]he granting or denial of a preliminary injunction on a verified complaint, together with oral testimony or affidavits, even though the evidence with respect to the absolute right therefor may be conflicting, rests in the sound discretion of the trial court, and that the order may not be interfered with on appeal, except for an abuse of discretion".].)

c. Balance of harms

The second of the interrelated factors a trial court evaluates when considering a preliminary injunction is the “relative interim harm to the parties from issuance or nonissuance of the injunction.” (*Butt, supra*, 4 Cal.4th at p. 678.) Defendant argues that Plaintiff cannot prevail on a claim of title to the mobilehome in place, rendering even irreparable damage to the alleged property interest insufficient for issuance of an injunction. (*14859 Moorpark, supra*, 63 Cal.App.4th at p. 1408 [court will not issue injunction to delay harm that, “ ‘although irreparable, is also inevitable’ ”] [citations].) This argument is not persuasive in light of the trial court’s finding that Plaintiff has established the requisite probability of prevailing on the merits with respect to her alleged interest in a tenancy at the Park.

Defendant also asserts that because Plaintiff never intended to live in the home, she does not face a loss of housing to warrant the extraordinary remedy sought. Defendant argues that Plaintiff should instead seek monetary relief against Sellers for her alleged losses on the mobilehome and any repairs and improvements. Plaintiff, on the other hand, argues that without a preliminary injunction, Defendant was likely to remove the mobilehome and had threatened “self-help” measures, such as asserting a “bogus ‘warehouseman’s lien’ ” to sell the mobilehome. Plaintiff also responds that the loss of her property interest, including her tenancy, could not be adequately relieved by monetary compensation.

Plaintiff has not substantiated Defendant’s alleged threats of “self-help” to remove the home by reference to or documentation in the record. Although Defendant’s notices warned that violations of Park rules constituted a public nuisance, which under the statute may be remedied by civil action or abatement, there is no evidence in the record that Defendant threatened to abate the purported nuisance. We will therefore disregard Plaintiff’s allegations of threatened self-help. (See *Reserve Insurance Co. v. Pisciotta*

(1982) 30 Cal.3d 800, 813 [appellate court generally considers “only matters which were part of the record at the time the judgment was entered”].)

We conclude, however, that with respect to Plaintiff’s general argument regarding harm, based on Defendant’s notices threatening and ultimately terminating tenancy, the record supports Plaintiff’s claim. The seven-day notices expressly warned that failure to correct the issues specified therein constituted grounds for terminating the tenancy. And the 60-day notice purported to terminate Plaintiff’s tenancy, demanded Sellers quit the Park premises, and required sale or removal of the mobilehome, at the owner’s expense, within 60 days. Although the letter was addressed to Sellers, Plaintiff already held record title to the mobilehome. Therefore, the effect of the terminated tenancy, insofar as it demanded the mobilehome owner to quit the Park premises and remove the home, threatened to harm Plaintiff.

The harm to Plaintiff’s property interest from the purported termination of her tenancy is apparent from the MRL itself. In enacting the MRL, the Legislature pronounced the harms posed by eviction. Section 798.55 states: “(a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.” (§ 798.55, subd. (a).) To that end, subdivision (b)(1) provides that “[t]he management may not terminate or refuse to renew a tenancy, except for a reason specified in this article.” (§ 798.55, subd. (b)(1).) In light of these statutory findings, we find the threatened removal of the mobilehome supports the balance of harm in Plaintiff’s favor.

As to compensation, “it is assumed every piece of property is unique and that the buyer’s remedy by way of damages is inadequate.” (*Glynn v. Marquette* (1984) 152 Cal.App.3d 277, 280.) Section 3387 codifies the presumed uniqueness of real

property in the context of specific performance, providing “[i]t is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation.” (§ 3387.) The mobilehome in place in the Park, including assignment of a twelve-year lease, is a unique real property arrangement to which this presumption applies.

That Plaintiff herself did not intend to live in the mobilehome does not negate the presumption affecting uniqueness of the property. (§ 3387 [presumption is conclusive when party seeking performance intends to occupy single-family dwelling property; otherwise it is a presumption affecting the burden of proof].) The trial court was apprised of Plaintiff’s statements that she did not intend to inhabit the mobilehome, but it nonetheless concluded the balance of harm favored Plaintiff. We also find Plaintiff’s admitted intent to provide the mobilehome as a residence for a relative does not change the irreparable harm Plaintiff would endure if she were to lose access to her property interest before being able to adjudicate the merits of her claim.

We are also not persuaded by Defendant’s suggestion that Plaintiff, as record title holder, is free at any time to remove the mobilehome from the Park. The potential damage to the home and high cost of removal, as declared in the MRL, renders this suggested remedy impractical and inefficient. (See § 798.55, subd. (a); see also *Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 26 Cal.App.4th 1139, 1146 [“Because of the high cost of moving mobilehomes, they are anything but mobile”].) It also ignores Plaintiff’s claimed interest in both the mobilehome and tenancy in the Park.

Finally, Defendant does not pursue on appeal the primary argument he made before the trial court in comparing relative harm to the parties: Whether purported violations at the mobilehome presented a potential liability risk for the Park. We deem forfeited any challenge to the trial court’s finding that the HCD report adequately addressed concerns regarding potential harm to Defendant. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not

raised or supported by argument or citation to authority, we consider the issues waived”].) The trial court’s findings that the HCD report addressed its concerns, and that the Kerin declaration raised “possibilities” but no concrete or immediate risk to the Park, remain undisturbed on appeal.

In sum, we find no abuse of discretion in the trial court’s weighing of respective harms and further conclude that the required removal of the mobilehome posed a threat of harm to Plaintiff’s claimed property interest, for which monetary compensation would not provide an adequate remedy.

III. DISPOSITION

The trial court is directed to modify its order by striking the language “, including the assertion of rights to have the manufactured home located at Space 29 of the Cabrillo Mobile Home Estates, 930 Rosedale Avenue, Capitola, California, declared a nuisance under California Civil Code § 798.87(b),” from the injunction. As modified, the order is affirmed. Each party shall bear its own costs.

Márquez, J.

WE CONCUR:

Rushing, P. J.

Premo, J.

No. H042257
Jordan v. Vieira