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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ADOLPHUS HANKINS et al., Plaintiffs, Cross-defendants and Appellants, v. SHLOMO BOTACH et al., Defendants, Cross-complainants and Respondents.	B145033 (Los Angeles County Super. Ct. No. BC213054)

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

Adolphus Hankins and Betty Hankins, in pro. per., for Plaintiffs, Cross-defendants and Appellants.

David Schechet for Defendants, Cross-complainants and Respondents.

Plaintiffs and cross-defendants, Adolphus Hankins (plaintiff) and Betty Hankins (collectively plaintiffs), appearing in pro. per., appeal from a judgment after court trial, awarding Shlomo Botach and Botach Management (collectively defendant) $8040.05 as a net recovery after offsets in cross-actions involving landlord-tenant disputes. We affirm the judgment.[1]

FACTS

We briefly summarize the transactions in question as disclosed at trial, mindful of the rule that all conflicts be resolved and proper inferences drawn in favor of the judgment. (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 544.) In July 1996, plaintiff entered into a one-year lease with defendant for one of a group of stores on La Brea Avenue in Inglewood, at which plaintiffs intended to operate a take-out barbecue restaurant. The initial rent was $1,200 per month, to increase by $100 in August 1997; defendant thereafter increased it to $1,400 after plaintiffs assumed month-to-month tenancy. The lease provided that the premises were let "as is."

After entering the lease, plaintiff consulted the city department of building and safety, and learned that initiating the restaurant business would require an approved tenant site plan and substantial improvements. These included removal of the untempered glass surrounding the premises, installation of plumbing and a sewer line and connection, and addition of a handicap rest room. The required improvements, plus other restructuring and equipment necessary for the barbecue operation, cost in the neighborhood of $130,000.

To reduce expense, plaintiff personally performed as much of the work as he could. The business did not open until May 1998. During construction and thereafter, plaintiff frequently fell behind in his rent payments. In the summer of 1998, defendant

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[1] Because plaintiffs have presented an abbreviated clerk's record, we have taken judicial notice of the superior court file.

commenced unlawful detainer proceedings in municipal court on account of rent due. A default judgment ensued. Although plaintiff made payments in July and August, as defendant requested, the payments did not discharge all the arrears, and defendant continued to press the proceeding. On September 30, 1998, plaintiff was evicted from the premises under a writ of possession.

There were defects, however, in the unlawful detainer case. The complaint did not name plaintiff as defendant; rather, it named Jeffrey King, a friend of plaintiff's who had paid the initial security deposit, and also "Adolphus King." a mixing of plaintiff's first name with Jeffrey King's surname. In addition, according to plaintiff and King, neither had been served with the complaint. On October 19, 1998, the municipal court granted plaintiff's motion to vacate the default judgment, and quashed service. Defendant also agreed to dismissal of the case as to King.

After paying defendant $5,000 which he apparently owed, plaintiff regained possession and recommenced business operations in mid-November 1998. He voluntarily moved out, however, in May 1999, with rent still owing. At trial, plaintiff attributed his leaving to his inability to negotiate a satisfactory new lease with defendant.

Plaintiffs ultimately sued defendant for contract and tort damages, and defendant cross-complained for rent and other charges allegedly due, totalling $16,140.05. Plaintiffs' principal claims were that defendant had fraudulently failed to disclose the condition of the property as requiring extensive modifications for a food establishment, and that the eviction had damaged plaintiffs, personally and in their business.

During cross-examination of plaintiff, defendant's counsel suggested subtracting from defendant's claim legal fees relating to the unlawful detainer ($1,500), rent for the one and one-half months plaintiff had been evicted from the property ($2,100), and lost profits for the same period, based on plaintiff's testimony about monthly profits ($4,500), leaving $8,040.05 due defendant. The trial court ultimately found plaintiffs obligated to defendant, in that net amount. The court allocated plaintiffs' offset as $7,500 damages on account of the eviction and $600 for excessive water costs paid.

DISCUSSION

Plaintiffs principally contend that the trial court awarded inadequate damages on account of the eviction, and more generally that the judgment as a whole is not supported by substantial evidence. These contentions are effectively barred at the threshold, for several reasons. First, claims of excessive or inadequate damages may not be maintained on appeal unless first raised by motion for new trial, and plaintiffs did not make such a motion. (Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2001) ¶ 8:278, p. 8-131.) Second, an appellant who challenges the sufficiency of the evidence must set forth in the opening brief all of the material evidence, favorable and unfavorable, on pain of waiving the issue. (*Id*., ¶¶ 8.70-8.71, p. 8-29.) Not only have plaintiffs failed to do this, the limited recitals of facts they do provide are substantially lacking in citations to the record, as required by former rule 15(a), California Rules of Court. That is another ground for waiver. (See Eisenberg et al., *supra*, ¶ 9:36, p. 9-10 – 9-11.)

In any event, review of the record establishes that the court's disposition of plaintiffs' various claims either was supported by substantial evidence or mandated by absence of it. The evidence was in conflict with regard to defendant's disclosures or representations about the condition of the premises, and there was also evidence that plaintiff, who visited the site with King (an electrician) before signing the lease, knew or should have known of those matters. Moreover, the trial court found that plaintiff was so notified before he made improvement expenditures. Plaintiffs' claim for $130,000 for loss of their "initial investment" lacks basis, in that the investment remained intact after the temporary eviction, and plaintiffs later voluntarily abandoned the premises, and took with them certain of the improvements. The further claims for business losses of $350,000 and deflection of a $200,000 investor are not supported by evidence. Whether to award punitive damages was entirely within the trial court's discretion. The record does not contain evidence establishing plaintiffs' claim for legal fees for the unlawful detainer. Nor does it show that -- or in any event how much -- plaintiffs were

overassessed for their share of water costs (which paragraph 11 of the lease required them to pay), beyond the $600 that the court ordered reimbursed. Finally, plaintiffs' conclusory disagreement with defendant's tabulation of rent owing, and their assertion of laches, are also undocumented.

Plaintiffs' remaining contention is that the court's statement of decision did not adequately deal with the issues in dispute. This contention is precluded by plaintiffs' failure to object to the statement of decision below. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130.) Moreover, plaintiffs have failed here to specify the alleged shortcomings of the statement.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs.

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COOPER, J.*

We concur:

NOTT, Acting P.J.

DOI TODD, J.

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* Presiding Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.