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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

COURT OF APPEAL - SECOND DIST.

FILED

Jul 19, 2021

DANIEL P. POTTER, Clerk

Tim Lovell Deputy Clerk

MOUNIR LEBBAD,

Plaintiff and Appellant,

v.

RAJI DONAT, et al.,

Defendants and Respondents.

B304992

(Los Angeles County
Super. Ct. No. EC063450)

APPEAL from judgment of the Superior Court of Los Angeles County, Ralph C. Hofer, Judge. Affirmed.

Mounir Lebbad, in pro. per., for Plaintiff and Appellant.

Forry Law Group and Craig B. Forry for Defendant and Respondent Raji Donat.

Singer Law Group and Daniel I. Singer for Defendants and Respondents EDF Capital, LLC and Red Leaf Management.

Appendix A

INTRODUCTION

On December 30, 2014, plaintiff and appellant Mounir Lebbad filed a complaint against defendant and respondent Raji Donat, alleging he was forcefully evicted from his residence in North Hollywood.¹ On July 9, 2019, Lebbad filed the operative 10th amended complaint (10AC). Although it is not entirely clear from his notice of appeal, Lebbad, acting in propria persona, apparently appeals from the judgment entered in favor of defendants following the trial court's: (1) grant of defendants' motions for judgment on the pleadings on the 10AC; and (2) denial of Lebbad's ex parte application to file a 13th amended complaint.

Lebbad's 64-page opening brief is sometimes difficult to comprehend. As best we can tell, however, his sole assignment of error on appeal is the trial court erred by purportedly dismissing the action for failure to bring it to trial within five years, as required by Code of Civil Procedure section 583.310.² That mischaracterizes the trial court's orders, however. Because Lebbad fails to affirmatively demonstrate error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from the operative complaint. On April 18, 2013, Lebbad rented an apartment unit in North Hollywood, California (the "property"). On April 1, 2014, Donat

1 The other parties named in the initial complaint (plaintiffs Robert Faulkner and Pedro Soto, and defendant Levon Sandukhtyan) are not parties to this appeal. Lebbad added defendants and respondents Red Leaf Management (Red Leaf) and EDF Capital, LLC (EDF) in his seventh amended complaint. We refer to Donat, Red Leaf, and EDF collectively as "defendants."

2 All further undesignated statutory references are to the Code of Civil Procedure.

purchased the property from the previous owner. After Lebbad filed a complaint with the Los Angeles Department of Building and Safety (LADBS) regarding a "strange odor" at the property, on June 17, 2014, LADBS issued a "Substandard Order and Notice of Fee" for the property, informing Donat of the following: the property was permitted only for a single family dwelling; the construction which had subdivided the property into twelve units was unlawful; Donat must remove all (presumably unpermitted) construction and return the property to its permitted use; and relocation assistance may have to be paid to the tenants if eviction is required to comply with the order.

On July 7, 2014, Donat removed the stove from Lebbad's apartment without notice. On the same day, Donat's "mini hard drive with irreplaceable data on it . . . vanished" A few days later, Donat filed an unlawful detainer action against Lebbad. Donat voluntarily dismissed the unlawful detainer without prejudice on October 8, 2014.

On December 3, 2014, Donat sealed the main entrance door to Lebbad's apartment, took the closet out, and "turned it into a smaller entrance door to [his] unit from the [inside] of the dwelling[] thus rendering [his] unit with [p]oor [a]ir [c]irculation, [c]ausing [l]ack of [a]dequate [o]xygen inside [his] living space"

Based on these allegations, Lebbad claims Donat "force[fully] evict[ed]" him by rendering the property uninhabitable and failing to provide relocation assistance. Red Leaf and EDF purchased the property on December 27, 2017. Red Leaf and EDF sold the property to Jewel City Development, Inc. on August 17, 2018.

Lebbad filed his initial complaint on December 30, 2014. Lebbad filed the 10AC on July 9, 2019, alleging causes of action for (1) breach of contract; (2) rent abatement; (3) intentional infliction of emotional distress; (4) negligence; (5) violation of Civil Code section 1942.4; and (6) malicious prosecution. In

response, Donat filed a motion for judgment on the pleadings on the ground that none of the causes of action in the 10AC stated facts sufficient to constitute a cause of action against Donat. Red Leaf and EDF also filed a motion for judgment on the pleadings.³

On November 12, 2019, Lebbad filed an ex parte application for leave to file a 13th amended complaint.⁴

On November 15, 2019, the trial court heard Lebbad's ex parte application for leave to file a 13th amended complaint and defendants' motions for judgment on the pleadings. The court denied Lebbad's ex parte application on the following grounds: "1) Request is [m]ade too near the 11/18/2019 Trial Date[;] 2) Case is too near the Five Year Statute of Limitations[;] 3) Thirteenth Amended Complaint [s]eeks to [a]dd [p]arties and [c]onduct after the filing date of the Complaint." The court also granted defendants' motions for judgment on the pleadings, finding the allegations in the 10AC were insufficient to state a cause of action against defendants. Specifically, the court held each cause of action failed as a matter of law on the following grounds: (1) the "removal of the stove [from Lebbad's apartment] and sealing of the door [to the exterior of the building from Lebbad's apartment] was mandated by the Los Angeles Building and Safety Department" and defendants' "compliance with orders [cannot] be a breach of the lease" (breach of contract); (2) Lebbad "has not [paid] rent for the past four years" and Lebbad failed to

3 We note the record on appeal does not appear to include the motion for judgment on the pleadings filed on behalf of Red Leaf and EDF, but does include Lebbad's opposition to their motion. Red Leaf and EDF's moving papers are not necessary, however, to resolve this appeal.

4 The trial court denied Lebbad's ex parte application for leave to file a 12th amended complaint. It is unclear whether Lebbad moved for leave to file an 11th amended complaint, or whether the 12th and 13th amended complaints were simply misnumbered.

provide “authority that all rent paid for his unit is recoverable as excessive rent” (rent abatement); (3) there was “no ‘extreme and outrageous conduct’” (intentional infliction of emotional distress); (4) there was no causal connection between the “complaint regarding alleged vandalism [removal of the digital storage device], and there is no breach of duty” (negligence); (5) Lebbad did not allege “any actual damages and has not requested damages sum [sic] as attorneys’ fees” (violation of Civil Code section 1942.4); and (6) Donat’s conduct “does not rise to the level of [m]alicious [p]rosecution. There was no adjudication on the merits in [Lebbad’s] favor resulting from [Donat’s] dismissal of the [u]nlawful [d]etainer action” (malicious prosecution).

The court entered judgment in favor of defendants on December 20, 2019. Lebbad timely filed a notice of appeal, stating he was appealing from: “Court Dismissed Operational Complaint due to (5 years Statute Concerns) and Denied Plaintiff’s right to amended [sic] the Complaint to add Defendants’ Latest Partner ‘Jewel City Development, [I]nc’ who Unlawfully Evicted the Plaintiff while this Case is Pending.”

DISCUSSION

A. Fundamental Procedural Principles

It is a fundamental rule of appellate review that a trial court’s order or judgment is presumed correct, and the appellant bears the burden to demonstrate prejudicial error. “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) All contentions of error asserted in appellant’s brief must include coherent analysis and discussion, supported by pertinent authority reflecting the logical and legal analysis by which the appellant reached the conclusions he urges us to adopt. (*Berger v. California Ins. Guarantee Assn.* (2005) 128

Cal.App.4th 989, 1007.) Appellant's arguments must "be tailored according to the applicable standard of appellate review." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388), and failure to do so may be considered a concession that an assertion lacks merit. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.)

That Lebbad is self-represented does not exempt him from these rules. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) He is entitled to "the same, but no greater consideration than other litigants and attorneys. [Citation.] [Citation.]" (*Id.* at p. 1247; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639, fn. omitted [self-represented litigant is bound by the "same restrictive rules of procedure as an attorney. [Citation.]"].)

B. Analysis

We first address the threshold question of which issues are properly before us on appeal. Despite Lebbad's 59-page recitation of the facts, both the three-page argument section of his opening brief, and the "statement of appealability," are limited to his contention that he: "[e]stablished with the [t]rial [c]ourt that it was impractical, [i]mpossible or [f]utile to [e]nd this action and/or [b]ring this [a]ction to [t]rial within the [f]ive [y]ears [sic] limit due to [unspecified] [c]ourt [i]rregularities from 2014 to 2016." He makes no argument, however, that he alleged sufficient facts in his 10AC to state a cause of action, or that his proposed 13th amended complaint could cure the deficiencies in his 10AC. Lebbad therefore forfeited these arguments on appeal. (See *Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 295 [failure to raise any argument concerning a claim of error on appeal in the opening brief forfeits the argument].)

Accordingly, the only issue on appeal is whether the court erred by purportedly dismissing the 10AC pursuant to section

583.310.⁵ But Lebbad seems to have misunderstood the court's ruling. The trial court did not dismiss Lebbad's action on the basis that he failed to bring the case to trial within five years, as required by section 583.310. Rather, it entered judgment in favor of defendants based on its conclusion that the 10AC did not state facts sufficient to state a cause of action against the defendants. (§ 438, subd. (c)(1)B)(ii).) Moreover, as *one* reason for denying Lebbad's ex parte application for leave to file a 13th amended complaint, the court noted that, at the time he filed his application (over 4 years and 10 months after he filed his initial complaint) the case was "too near the [f]ive [y]ear [s]tatute of limitations."⁶ But Lebbad ignores the lower court's two other, independent reasons for denying leave to file a 13th amended complaint (i.e., the request was made too close to the trial date, and Lebbad sought to add "[p]arties and [c]onduct after the filing date of the [C]omplaint). And, as stated above, Lebbad does not even attempt to explain how he could cure the defects in his 10AC. Accordingly, even if Lebbad could demonstrate certain time periods should be excluded from the five-year calculation because it was impractical, impossible or futile to bring the action to trial within five years,⁷ Lebbad has not shown the trial court abused its discretion by denying leave to file a 13th amended complaint. (See *Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111 ["The trial court's denial of leave to amend is reviewed for abuse of discretion. [Citation.]".]) We

5 Section 583.310 states: "An action shall be brought to trial within five years after the action is commenced against the defendant."

6 The parties agree the trial court was likely referring to the five-year rule set forth in section 583.310.

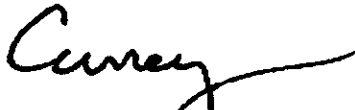
7 Under section 583.340, subdivision (c), the five-year limit may be tolled if "[b]ringing the action to trial . . . was impossible, impracticable, or futile."

therefore conclude Lebbad failed to meet his burden of demonstrating the court erred by entering judgment in favor of defendants. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["it is appellant's burden to affirmatively show error" by "present[ing] meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]"]; *Satchmed Plaza Owners Assn. v. UWMC Hospital Corp.* (2008) 167 Cal.App.4th 1034, 1045 ["We must uphold the decision of the trial court if it is correct on any ground. [Citation.]"].)

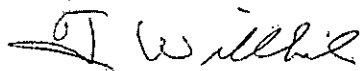
DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

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CURREY, J.

We concur:



WILLHITE, Acting P.J.


COLLINS, J.

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

DIVISION 4

COURT OF APPEAL - SECOND DIST.

FILED

Aug 03, 2021

DANIEL P. POTTER, Clerk

S. Veverka Deputy Clerk

ROBERT FAULKNER,
Plaintiff and Respondent,

v.

RAJI DONAT,
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MOUNIR LEBBAD,
Appellant.

B304992

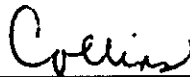
Los Angeles County Super. Ct. No. EC063450

THE COURT:*

Appellant's motion to consider augmentation of the record and petition for rehearing are denied.



*WILLHITE, Acting P.J.



COLLINS, J.



CURREY, J.

Appendix B

SUPREME COURT
FILED

OCT 27 2021

Jorge Navarrete Clerk

Deputy

Court of Appeal, Second Appellate District, Division Four - No. B304992

S270560

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MOUNIR LEBBAD, Plaintiff and Appellant,

v.

RAJI DONAT, et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Exhibit 3
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