2024 WL 3533979 (Cal.App. 1 Dist.) (Appellate Brief)
Court of Appeal, First District, California,
2 Division.

1429 GRANT AVENUE, LLC, Plaintiff / Respondent,

v.

Angelina GREEP, Defendant / Appellant.

No. A166801.
July 10, 2024.

Appeal from the Superior Court for San Francisco County, Case No. CUD-22-668843,
Department 501, Judge Ronald Evans Quidachay

Respondent's Brief

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*8 *INTRODUCTION*

Appellant ANGELINA GREEP (“Appellant” or “Greep”) portrays herself as an innocent bystander caught among a former property owner ((non-party WB Coyle (“Coyle”)), and her co-parent (non-party Andrew Linton (“Linton”)) on the one hand, and a greedy and aggressive landlord (Respondent 1429 GRANT AVE, LLC) on the other.

In fact, Greep is the former co-squatter/co-conspirator of Linton. Linton concocted a scheme with bankruptcy debtor Coyle, where the former would receive occupancy of the subject property (1427-1431 Grant Ave./28 Bannam Pl. in San Francisco, California ("the Property")) (4 CT 910-912), while the latter could continue to extract value out of it. Ms. Greep's involvement in that scheme is now well-documented.

This unlawful detainer case was the crescendo of 7 years of litigating against Linton for possession of the Property, in state and federal court. (That case is 1429 Grant Ave, LLC v. Linton, San Francisco Superior Court Case No. CGC-17-557123, hereafter "the Linton Action") Respondent litigated against Linton only because Linton solely contended to be a tenant on a purported 2015 Lease,[1] when Coyle's bankruptcy trustee located and asserted control over the asset. (3 CT 688-715.)

In fact, while Respondent was litigating against Linton, Greep attempted to wedge some issue preclusion in the Linton ***9** Action by litigating her "rights" under the 2015 Lease. She did this with a petition at the San Francisco Rent Board for reduction of rent based on diminished housing services. (No one was paying rent for any portion of the Property (3 CT 646 at p. 2, ln. 19-26). This petition had the clear goal of frustrating Respondent's efforts in the Linton Action.

The Rent Board had to first determine that she was a tenant before it could adjudicate any tenant rights, and so it bifurcated the petition and decided she was not a tenant, abstaining from the merits (3 CT 764-777). Specifically, it framed the issue this way: "The issue presented is whether tenant petitioner Angelina Greep is a co-tenant who had a direct landlord-tenant relationship with the landlord respondent or is a subtenant or a squatter who has no standing to file the instant tenant petition against the landlord respondent." (3 CT 775 at p. 12, ln. 24-26.) It then concluded, "the tenant petitioner has failed to establish that she had a direct landlord-tenant relationship with either the prior or present landlord". (3 CT 777 at p. 14, ln. 16-17.) She did not appeal that decision/petition for writ of administrative mandate, and it became final. Greep continued to occupy the Property under the aegis of Linton's litigation defense.

Years later, on the eve of trial in the Linton Action, the Hon. Judge Curtis E.A. Karnow presided over a judicially-supervised agreement where Linton and Respondent agreed to a simple exchange: Respondent would provide $250,000 to Linton if Linton returned possession to Respondent. (4 CT 980-982.) Linton then claimed to have "vacated" but remained in possession (vicariously, ***10** he would later claim, by his co-parent Greep), and he demanded the $250,000. (4 CT 984-986.) Respondent moved to enforce the obligation to provide possession of the Property (while Linton moved for the money even though he did not perform). Judge Karnow denied Linton's motion and ordered him to deliver full possession of the Property to Respondent. (3 CT 781-785.) This performance was technically overdue, but the Order To Enforce clarified the parties' obligations - if there were any honest doubt - and provided slightly more time for Linton to do the right thing.

Linton still did not vacate, claiming a supposed inability to remove his co-parent and children from the Property, so Respondent initiated contempt proceedings against Linton in the Linton Action (3 CT 789-793) and commenced the present action against Greep. (1 CT 19.) Linton swore he was out of possession (even though Judge Karnow did not find this credible). (3 CT 781, p. 3, ln. 10-20.) Greep swore the same thing, insisting she was a tenant in her own right under the 2015 Lease (and expressly disclaimed rights as a "subtenant"). Ultimately, Judge Karnow discharged the contempt proceedings, concluding that Respondent had not established that Linton had the "ability" to remove her from the Property beyond a reasonable doubt (3 CT 781, p. 3, ln. 21-26), given Greep's claim that she had her *own* rights under the 2015 Lease. (*Ibid*.) She demanded an *additional* $117,500.00 from Respondent to vacate. (4 CT 988.)

Meanwhile, Respondent initiated this action and served Appellant with the complaint and summons. Respondent also complied with the "prejudgment claimant" procedures of ***11** Cal. Code Civ. Proc., § 415.46, requiring any other interested occupant to join this action as a defendant. (1 CT 7-8.) However, Linton did not seek to intervene. Obviously he was physically there, but he could not claim to "occupy" while he was evading contempt by insisting he was out. (3 CT 781, p. 3, ln. 10-20.) Respondent defaulted "all other occupants" in this action on June 21, 2022. (AOO 1 CT 8.) Linton could no longer become a party to this action, and Respondent's claim for possession no longer turned on any rights that Linton purportedly had.

This action therefore progressed against Greep only. Respondent served discovery on Greep, who responded clearly and unequivocally that she was not a "subtenant" of Linton's. (4 CT 1084, 4 CT 1096-7; 4 CT 1105, 4 CT 1111.) This was consistent with her representations in the contempt proceedings in the Linton Action where she insisted he could not remove her from the Property because she was a co-tenant, not a subtenant. (4 CT 1034, p. 159, ln. 5-13.)

Respondent then moved for summary judgment on the alternative theories that either she was a licensee (authorized to access by Coyle or Linton or whoever was then in "possession") but that the license was revoked when Linton vacated and Respondent would no longer suffer her access; or, she was a mere subtenant of Linton - and one who was not approved by the landlord - and thus subject to eviction on the basis that no "tenant" was in possession. The trial court entered judgment for Respondent. (4 CT 1158-1159.)

***12** The problem for Greep (and Linton (and their shared attorney, Tony Flores)) is that they overplayed their hand. They participated together in facilitating Linton's violation of a settlement agreement and an order to enforce that settlement agreement. They later participated together in pretending he had "vacated" the Property, when he just unilaterally changed his title to "guest of Greep" and continued living there. They participated together in the present action, opposing summary judgment on the basis that Linton still maintained all his rights under the 2015 Lease - to be her out-of-possession champion in possession, even though he never intervened in this action to assert these reborn claims.

The trial court (the Honorable Judge Ronald Evans Quidachay) found that Respondent carried its burden of proof in establishing that Greep was not a "tenant" at the Property but either a licensee whose license was revoked or (at most) a subtenant of Linton, but one who was "not approved by the landlord". It found that Greep failed to create a triable fact as to Respondent's prima facie case or any defense. In her efforts, she produced no documentary evidentiary support, she presented a late filed brief, and she made implausible arguments at hearing.

Judgment for Respondent was the right result - supported by the law and the facts. The scam is over. Possession has been restored to Respondent. Linton has failed to enforce the settlement agreement he materially breached (3 CT 781-785; Request for Judicial Notice ("RJN") at Ex. 3) to the point of being sanctioned at the trial court level for continuing to try (RJN at Exs. 1-2), ***13** though he continues to try (RJN Ex. 6). But at least this chapter of the ongoing saga can come to an end. The Court should affirm the trial court.

STANDARD OF REVIEW

"Summary judgment is generally appropriate 'if all the papers submitted show that there is no triable issue as to any material fact' and that it 'is entitled to a judgment as a matter of law.' (Code Civ. Proc., § 437c, subd. (c).) A plaintiff moving for summary judgment bears the initial burden of "showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action." (Id., subd. (p)(1).) Once the plaintiff has met that burden, the burden shifts to the defendant to "set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Ibid.) 'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.'
(*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

"We typically review the record de novo to independently determine whether triable issues of material fact exist. (Guz v. Bechtel National, Inc. (2000) 24 Cal.4th 317, 334, 100 Cal.Rptr.2d 352, 8 P.3d 1089.) 'We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.' (Wilson v. 21st Century Ins. Co. (2007) 42 Cal.4th 713, 717, 68 Cal.Rptr.3d 746, 171 P.3d 1082.) The appellant, however, still 'has the burden of showing error, even if he did not bear the burden in the trial ***14** court. (Claudio v. Regents of the University of California, supra, 134 Cal.App.4th at p. 230, 35 Cal.Rptr.3d 837.)" (*640 Octavia, LLC v. Pieper* (2023) 93 Cal. App. 5th 1181, 1188-89.)

"As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed." *640 Octavia, LLC, supra*, 93 Cal. App. 5th at 1188.

LEGAL ARGUMENT

I. *APPELLANT'S OWN LITIGATION ERRORS DEMAND THAT JUDGMENT BE AFFIRMED*

A. *Appellant Submitted No Documentary Evidence, and as Her Written Opposition Was Late, Her Supporting Declarations Were Properly Ignored*

Summary judgment motions in unlawful detainers are heard on five court day's notice (Cal. Code Civ. Proc. § 1170.7), plus at least two additional court days' for service (Cal. Rules of Ct., rule 3.1351(a)). Responding parties may oppose orally, but written opposition, if any is to be filed and served the court day *before* the hearing. (Cal. Rules of Court, rule 3.1351(b), (c).) Respondent originally filed and served its motion for summary judgment for hearing on November 3, 2022 with hearing set for Thursday, November 10, 2022 (3 CT 621). The presiding judge then continued the hearing to Monday, November 28, 2022 (1 CT 14.)

***15** Assuming arguendo that this continuance extended the deadline to file written opposition to the court day before the *continued* hearing (the Rules of Court are silent on this), Appellant still received ten additional court days to file her written opposition by Wednesday, November 23, 2022 (Cal. Rules of Ct., rule 3.1351(c)). However, she did not file or serve until the day of the 9:30am hearing, on November 28, 2022, which was substantially late under any analysis.

As explained below, appellant's supporting declarations were rife with factual conclusions that simply do not comport with the orders and decisions at earlier stages of litigation in the Linton Action and the rent board, and are flatly inconsistent with their earlier representations. In any event, the trial court appropriately ignored them for being late. (Appellant does not argue here that the trial court abused its discretion in declining to consider the late-filed brief, and instead gaslights that *Respondent's* papers were somehow untimely. (AOB at 10).)

Appellant submitted *no* documentary evidence whatsoever choosing instead to rely on what Respondent had submitted (RT at p. 34, ln. 7-24.), while drawing audacious conclusions from those documents. Appellant argues on appeal that "No evidentiary objections were made by Plaintiff during the MSJ" (AOB at 10). First, Appellant did not proffer any documentary evidence to object to. Indeed, *nothing* was provided timely in advance of the hearing, and the record does not indicate that any actual evidence was entered into the record on Appellant's behalf at the hearing.

***16** Appellant also argues that "[e]videntiary objections not made at the hearing shall be deemed waived" (AOB at 18), citing to Cal. Code Civ. Proc., § 437c(b)(5), but Section 437c(b) does not apply in unlawful detainers (see, Cal. Code Civ. Proc., § 437c(s)).

Nonetheless, a party opposing summary judgment is permitted to orally oppose the motion at hearing ((Cal. Rules of Ct., rule 3.1351(b)), and indeed, Appellant did just this with *oral argument*. But because she failed to proffer any *evidence* in support of her opposition, she understandably was not capable of creating a triable issue of fact.

B. *Appellant's Opening Brief Ignores One of the Court's Alternative Bases for Entering Judgment for Respondent, and Her Appeal Must Therefore Necessarily Fail*

As stated above, Respondent argued that Greep was not a "tenant" but that she was either (1) a licensee whose license was revoked, or (2) a subtenant of Linton's who was not approved by the landlord (or both). The trial court granted summary judgment for Respondent after accepting both bases. (4 CT 1160-1165.)

In her opening brief, however, Greep simply does not address the "revoked licensee" basis for the judgment. (4 CT 1161 (p. 2, ln. 4) - 4 CT 1163 (p. 4, ln. 26).) "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." *Holden v. City of San Diego* (2019) 43 Cal. App. 5th 404, 418. Because the order entering summary judgment is supported by both theories, her failure to engage all of them here is fatal.

***17** II. *THE TRIAL COURT WAS CORRECT IN CONCLUDING THAT GREEP WAS EITHER A SUBTENANT WHO WAS NOT "APPROVED BY THE LANDLORD" OR A LICENSEE WHOSE LICENSE TO OCCUPY THE PROPERTY HAD BEEN REVOKEED, AND IT PROPERLY ENTERED JUDGMENT FOR RESPONDENT ON THOSE BASES*

A. *Greep Is Not a "Subtenant Approved by the Landlord", and Respondent Therefore Terminated Whatever Right of Possession She Might Have Had as Linton's Contractual Privy*

A tenant is someone who "hires" property, i.e., exchanges value for its temporary use, with reversion to the owner. (Cal. Civ., § 1925, 1940(a).) Generally speaking, "a subtenant is not directly liable to the landlord, there being neither privity of estate nor contract (the sublease creates a new estate, and is a contract between the tenant and subtenant)". (*Vallely Invs., L.P. v. BancAmerica Com. Corp.* (2001) 88 Cal. App. 4th 816, 823.)

However, San Francisco law defines "tenant" to include "subtenancy approved by the landlord" (San Francisco Administrative Code ("Rent Ordinance"), § 37.2(t)). By contrast, it excludes from the definition of "tenant" a subtenancy that is *not* approved by a landlord. For those unapproved subtenants, property owners can evict where "The tenant holding at the end of the term of the oral or written agreement is a subtenant not approved by the landlord". (Rent Ordinance, § 37.9(a)(7).)

By the time of the motion for summary judgment, Greep had been consistent in insisting that she was *not a subtenant*. At Linton's contempt hearing, when their shared counsel, Tony Flores, was examining her about why her "co-equal" rights with ***18** Linton prevented Linton from removing her from the Property, she testified as follows:

"Q. And what's the basis for your claim to reside there?

"A. The basis is that Andrew [Linton] and I moved there together at the same time and we are co-tenants, and that at no point was I ever a subtenant or a subsidiary of Andrew [Linton]". (4 CT 1034, p. 159, ln. 5-13.)

In response to discovery in this action, Requests for Admission Nos. 41 and 42 (4 CT 1084) asked Appellant to "Admit that YOU did not request approval from WB COYLE to be a subtenant at the PROPERTY" and "Admit that YOU did not request approval from Bannam Place, LLC to be a subtenant at the PROPERTY", respectively. Greep's responses were "Admit" and "Admit, because Defendant is an original tenant", respectively. (4 CT 1096-7.)

For special interrogatory no. 13, "IDENTIFY all DOCUMENTS evidencing approval of YOU as a subtenant of the PROPERTY" (4 CT 1105), Greep responded "Not applicable. Defendant is not a subtenant." (4 CT 1111.)

"[W]hen discovery, properly used, makes it perfectly plain that there is no substantial issue to be tried, section 437c, Code of Civil Procedure, is available for prompt disposition of the case. Furthermore, it is clear that the non-moving party's admissions may be used to establish that no material factual issues remain to be resolved by trial." (*Cory v. Golden State Bank* (1979) 95 Cal. App. 3d 360, 366; int. cit./quot. om.)

***19** For his part, Linton had also been consistent in claiming that Appellant was a co-tenant, not a "subtenant". (4 CT 1023 (p. 96, ln. 14) - 4 CT 1024 (p. 97, ln. 7.) The clear purpose of this charade was for Linton to attempt to get all the benefits of the settlement agreement while suffering none of its obligations. He could "vacate", she could be a "co-tenant", he could enforce Respondent's obligation to pay, but remain as her "guest" (or whatever label).

Both Linton and Greep attempted a 13th hour pivot to fit her into a "subtenant" box, with both claiming in their declarations in support of her opposition that she was now approved (by Linton) as a subtenant. (4 CT 1141 (p. 18, ln. 4-5); 4 CT 1143 (p. 20, ln. 9-11).) Clearly, however, this gamesmanship would not make her approved by *Respondent* as a subtenant, and it could not erase the many years and iterations of statements to the contrary.

The trial court considered significant other testimonial and documentary evidence in reaching the conclusion that Greep was not an approved subtenant. (4 CT 1164 (p. 5, ln. 2-27).) Then, based on her own statements and discovery responses, the trial court observed Greep's admissions that she was "not a 'subtenant' " adding that "whether or not that might be the case, she cannot now claim that she is *approved* as a subtenant, in order to resist this action" (4 CT 1165 (p. 6, ln. 6-8).) The trial court correctly concluded that her rights *at most* were those of a subtenant who was "not approved by the landlord", finding that Respondent provided proper notice and terminated any right of possession on that basis (4 CT 1165 (p. 6, ln. 6-10)).

***20 B.** *Greep Was Also Barred from Relitigating Her Status as a Tenant*

As stated above, Greep previously tried to litigate the issue of whether she was a "tenant" at the Property at the Rent Board. The Rent Board determined she was not. (3 CT 764-777.) The Rent Board administrative law judge ("ALJ") concluded that "petitioner Angelina Greep has not established that she at any time has had a direct relationship with the landlord, and therefore she has no standing to assert a decrease housing services claim against the landlord respondent". ((3 CT 777 (p. 14, ln. 6-9).)

Any appeal of this decision would have been due by the fifteenth day after the October 22, 2018 Decision, if Greep wanted to obtain a final administrative order upon which she could petition the superior court. ((3 CT 777 (p. 14, ln. 19-24).) Greep did not appeal the Decision to the Rent Board Commission and did not (and therefore could not) petition for writ of administrative mandate.

A petition for writ of administrative mandate pursuant to Cal. Code Civ. Proc., § 1094.5 is the *exclusive* procedure to review a final agency decision. *Rasooly v. City of Oakley* (2018) 29 Cal. App. 5th 348, 353. Because Greep did not timely pursue this, the Decision on Standing is final. "Ordinarily, where an administrative tribunal has rendered a quasi-judicial decision that could be challenged by administrative mandamus pursuant to Code of Civil Procedure section 1094.5, a party's failure to pursue that remedy will give rise to collateral estoppel. Failure to pursue administrative mandamus *precludes litigation of claims* ***21** *that were actually litigated in a prior proceeding* or that could have been litigated." *Bowman v. California Coastal Com.* (2014) 230 Cal. App. 4th 1146, 1151 (int. quot. om.; emph added.).

Her failure to win the underlying decision or successfully appeal and reverse it prevents her relitigation of the issue of whether she is a tenant. "Collateral estoppel may be applied to decisions made by administrative agencies' if the decisions 'possess a judicial character' " *Pacific Lumber Co. v. State Water Resource Control Bd.* (2006) 37 Cal. 4th 921, 944; cit. om.) "[R]es judicata and collateral estoppel require three common elements: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. Collateral estoppel also requires the additional elements that the issue to be precluded was actually litigated and necessarily decided. The 'necessarily decided' requirement generally means only that the resolution of the issue was not 'entirely unnecessary' to the judgment in the initial proceeding." *Zevnik v. Superior Court* (2008) 159 Cal. App. 4th 76, 82-83 (int. cit./quot. om.). The Decision on Standing satisfies each element:

1: Greep is asserting the identical claim in this action as she did in the Decision on Standing - namely, that she is a tenant on the 2015 Lease. (This is seen in the general denial in her answer and her 23rd affirmative defense. (1 CT 107.)) Her position has been that she is a co-tenant on the 2015 Lease, and that as a co-tenant, ***22** she is owed certain rights (as applied here, the right not to be evicted as an unapproved subtenant following the departure of her "co-tenant" Linton).

2: As explained above, following an evidentiary hearing at the Rent Board, and a decision based on Greep's petition, she did not timely appeal or take a writ on the Decision on Standing, and it is therefore a final judgment on the merits. She was also represented by counsel, presented whatever evidence she wished to present (including offering more evidence after the hearing), and presumably had the best access to present evidence of her own supposed tenancy in the first place.

3: Greep is the same party asserting the same interest as at the Rent Board.

4: As stated in the Decision on Standing, "[a]t the hearing on the issue of standing, all individuals present had a full opportunity to present relevant evidence and argument. Those who testified did so under oath." (3 CT 765 (p. 2, ln. 4-6.) While the petition was technically one for housing services, the ALJ bifurcated the petition (3 CT 764 (p. 1, ln. 26-28)), viewing Greep's status as a tenant on the 2015 Lease as a threshold issue before any further evidence was taken on the housing services themselves (3 CT 764 (p. 1, ln. 26) - 3 CT 765 (p. 2, ln. 4). Thus, not only was the issue of Greep's status as a "tenant" on the "2015 Lease" actually litigated and necessarily decided, it was the *only* thing that the ALJ decided.

Rather than engage this unassailable point, Appellant invites the Court to ignore the conclusion of the Decision on ***23** Standing - and to ignore her failure to appeal it or challenge it in the property manner - and to instead draw unsupported inferences in her favor from testimony she provided to the ALJ. See, e.g., AOB 17: "Any reasonable person can infer from this testimony that the landlord approved of Defendant's occupancy. Why would he discuss repairs with a tenant/occupant if he did not approve of their occupancy? It is not the type of conversation one would have with someone you did not approve of." She also attempts to just reimagine the language of the Decision on Standing. She argues, "The Plaintiff and Defendant attended the hearing at the same time. The ALJ stated: 'A landlord's knowledge that the tenant was living at the unit and discussing repairs with her...' See 2 CT 233: 25-28. The discussion by the ALJ regarding conversations between the landlord and Defendant creates a triable issue of material fact." (AOB 23-24.)

In fact, this excerpt did not say that Respondent *was aware* of Greep or had a conversation with her. It was the ALJ making a rule statement and explaining why that still would not establish a direct landlord-tenant relationship. (3 CT 776 (p. 13, ln. 21-28.)) Clearly, none of this is "evidence", and in any event, these were not the issues "actually litigated and necessarily decided" at the rent board, and are therefore irrelevant.

In fact, at the trial court, Greep attempted to thwart the Decision on Standing altogether, relegating it to mere "hearsay". (RT at p. 19, ln. 11-22.) The issue is not whether the Decision on Standing was hearsay or whether an exception might apply, as these sections of the evidence code "deal only with the evidentiary ***24** use of judgments in those cases where the substantive law does not require that the judgments be given conclusive effect". (*Mueller v. J. C. Penney Co.* (1985) 173 Cal. App. 3d 713, 721, fn.10, finding an analysis of hearsay exceptions irrelevant when "collateral estoppel is the issue" (*Ibid.*).)

Respondent provided sufficient evidence to establish that Greep was not a tenant on the 2015 Lease *aside* from the Decision on Standing. But as a consequence of the foregoing, the requirements of res judicata and collateral estoppel are established, and it was already conclusive that Greep was not a "tenant" at the Property by the time of the hearing.

C. *Greep, to the Extent She Was Somehow Authorized To Occupy the Property, Was a Mere "Licensee", Whose License Was Revoked.*

Initially, Appellant did not address this argument at all in her opening brief. "When an ***appellant fails to raise a point***, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Holden v.*

City of San Diego (2019) 43 Cal. App. 5th 404, 418; emph. added.) The trial court found that Respondent had established its right to possession under the two alternate theories of (1) unapproved subtenant, and (2) revoked licensee. (4 CT 1160-1165.) Appellant's failure to address this is a waiver of the argument.

Moreover, "a judgment or order will be affirmed if it is correct on any theory" (*Bailon v. Superior Ct.* (2002) 98 Cal. App. 4th 1331, 1339, as modified on denial of reh'g (June 27, 2002)), therefore, Appellant's neglect in addressing this independent ***25** basis for the order granting summary judgment proves fatal for her appeal.

In any event, where Appellant failed to establish that she was an approved subtenant (or tenant), she also failed to establish any contractual/tenancy-based possessory interest at all. As a result, the trial court also entered judgment for Respondent on the theory that Appellant could only have been a licensee whose license had been revoked.
"A 'license' is a personal, ***revocable*** and generally nonassignable privilege conferred (either orally or in writing) to do a particular act (or acts) upon the land of another. It is a nonpossessory right to use the property as specified between the parties." (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1040; emph. added.)

"A tenant must also pay rent." (*640 Octavia, LLC v. Pieper* (2023) 93 Cal. App. 5th 1181, 1195.) "[A]n occupant of a rental unit who does not have the right to exclusive possession and the concomitant obligation to pay rent does not meet the generally accepted common law definition of a tenant." (*640 Octavia, LLC, supra*, 93 Cal. App. 5th at 1195, citing *Danger Panda, LLC v. Launiu* (2017) 10 Cal. App. 5th 502, 513.) "One key characteristic that distinguishes a tenancy from a mere license is the right to ***exclusive possession as against the whole world, including the landowner***." (*640 Octavia, LLC, supra*, 93 Cal. App. 5th at 1195; emph. added.)

When Linton surrendered possession to pursue enforcement of the settlement agreement (3 CT 781-785) and hid behind Greep as his possessory champion, the pair contended that she had possessory rights as a tenant on the 2015 Lease. But she failed to ***26** establish that she was a tenant/co-tenant on the 2015 Lease (and therefore had no obligation to pay the *landlord*). She also failed to establish that she was Linton's subtenant with an obligation to pay him. (And in fact, she vigorously argued against this proposition until her 13th hour, irreconcilable pivot in her opposition declaration that she now *was* a subtenant, if only that would allow her to stay there. (4 CT 1141 (p. 18, ln. 4-5); 4 CT 1143 (p. 20, ln. 9-11).)

With no definable obligation to pay rent (to anyone) and no cognizable basis for a right of exclusive possession, the trial court was correct to conclude that Greep had occupied as a mere licensee (4 CT 1161 (p. 2, ln. 4-5), and that Respondent had revoked that right (4 CT 1163 (p. 4, ln. 25-26)). The Court need look no further than the above, which demonstrates that the Appellant has no viable basis for appeal, and that if she did, she failed to properly support it. Even if the Court entertains her invitation to look past this, however, the judgment should still be affirmed because she is not a tenant.

III. *GREEP WAS NOT A TENANT ON THE LEASE FOR THE PROPERTY*

Respondent must reiterate that *no one* was a "tenant" on a "lease" for the Property. The purported lease is dated May 1, 2015 (4 CT 910). The Coyle bankruptcy trustee initiated an adversary proceeding on November 26, 2014 (3 CT 688) to assert control of the bankruptcy estate over the Property.

27** Moreover, "The commencement of a case under section 301, 302, or 303 of this title ***creates an estate. Such estate is comprised of all the following property, ***wherever located and by whomever held*** . . . all legal or equitable interests of the debtor in property ***as of the commencement of the case***." (11 U.S.C. § 541(a)(1); emph. added.) As the Property was effectively in Coyle's bankruptcy estate from as of its *commencement*, and prior to the purported 2015 Lease, neither Coyle nor one of his affiliated LLCs was able to create a leasehold interest in the Property in *anyone*.

Nonetheless, Greep chooses the 2015 Lease - its existence, validity, and inclusion of her as a tenant - for the basis for her claim of occupancy. Respondent will therefore explain why she still would not be a tenant, even Assuming arguendo that the 2015 Lease was a valid instrument.

Rather than litigate the validity of the 2015 Lease, WB Coyle's bankruptcy trustee entered a settlement agreement with WB Coyle (and the pretextual LLC owner of the Property, Bannam Place, LLC) to cooperate with the sale of the Property "as is" - i.e., subject to whatever rights Linton purported to have under the 2015 Lease. (3 CT 688-715.)

Coyle had been the original owner of the Property (3 CT 659), before transferring it to Bannam Place, LLC. He then claimed to have sold Bannam Place, LLC to his brother-in-law, Lance Patrick, who is therefore also party to the settlement agreement, among the group identified as the "Patrick Defendants". However, even if this transfer truly took place, Coyle maintained control over the ***28** Property afterward as the "agent" for Bannam Place, LLC (4 CT 910-912; 3 CT 766 (p. 3, ln. 14-17).)

In the paragraph of that settlement agreement titled "¶2. Representations and Warranties Regarding Occupant" (3 CT 689), the parties acknowledged the representation of the "Patrick Defendants" that "Andrew Linton entered into a lease to occupy the Property in May 2015," and "[t]he Patrick Defendants represent and warrant that the only lease for the Property that they have authorized is [the 2015 Lease]". Further, "The Patrick Defendants represent and warrant that the Patrick Defendants authorized the lease for the Property and that there are ***no agreements, understandings, amendments, or modifications*** to [the 2015 Lease] whether written, oral, or implied." (3 CT 689.)

That settlement agreement was approved by the bankruptcy court. (3 CT 717-718.) Respondent then purchased the Property subject to the warranties in the settlement agreement and the order authorizing sale (4 CT 970-972), which dictated among other things that "The Patrick Defendants are ordered to cooperate in all respects with the Trustee's sale of the real property commonly known as 1427-1431 Grant Avenue/28 Bannam Place, San Francisco, California" (3 CT 718 (p. 2, ln. 9-11).)

In other words, it was out of the power of Coyle, Bannam Place, LLC, etc. to create any other instrument or any amendment/modification to the 2015 Lease that could have made Greep a tenant on that lease. (It was on that basis that the Hon. Judge Ronald Evans Quidachay granted Respondent's motion for ***29** judgment on the pleadings in the Linton Action invalidating a later, purported written amendment to the 2015 Lease. (3 CT 758-759.)

Turning to the 2015 Lease itself, it defines "OWNER" as Bannam Place, LLC (with WB Coyle as agent) and "TENANT" as Andrew Linton. (4 CT 910.) It does *not* state that Greep is a tenant. It did not even *acknowledge her existence*.

" 'The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. (Civ.Code, § 1636; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible. (Civ.Code, § 1639.)' (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955.) 'The words of a contract are to be understood in their ordinary and popular sense....' (Civ.Code, § 1644.)" (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 979.)" *Grey v. Am. Mgmt. Servs.*, 204 Cal. App. 4th 803, 806-07, 139 Cal. Rptr. 3d 210, 212-13 (2012)

The plain language of the 2015 Lease clearly did not evince an intention to create a landlord-tenant relationship with an "Angelina Greep".

"The landlord-tenant relationship is created by a contract between the parties. This contract, known by a variety of names, may be oral or written and express or implied. The contract must show (expressly or from the facts) that the parties intend to create a landlord-tenant relationship and must contain the following: ***a designation of the parties***, a description of the premises, the rent to be paid, the time and manner of payment, and the term for which the tenant will rent ***30** the property." *Santa Monica Rent Control Bd. v. Bluvshtein* (1991) 230 Cal. App. 3d 308, 316 (int. cit. om.; emph. added)

Clearly, the 2015 Lease itself regards Linton - and only Linton - as the lessee. Greep is not a party to the contract, or even mentioned in the contract. The purported "rent" payments to Coyle/Bannam Place, LLC were from Linton, not Greep. (4 CT 1064-1074.) She is simply not a tenant.

Greep nonetheless contends that this was all in error and she was really *meant* to be a tenant on the 2015 Lease, but this is fatal to Greep's position *as a matter of law*, because the 2015 Lease has an "integration clause".
"Under state law, the terms of a final, integrated contract 'may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.' (Code Civ. Proc., § 1856, subd. (a).) . . . The court determines whether the parties intended the contract to be a final and complete expression of their agreement. (Code Civ. Proc., § 1856, subd. (d).) 'The crucial issue in determining whether there has been an integration is whether the parties intended their writing to serve as the exclusive embodiment of their agreement. The instrument itself may help to resolve that issue.' (*Masterson v. Sine* (1968) 68 Cal.2d 222, 225.) The existence of an integration clause is a key factor in divining that intent. (See *Founding Members, supra*, 109 Cal.App.4th at pp. 953-954, 135 Cal.Rptr.2d 505.) '***This type of clause has been held conclusive*** on the issue of integration, so that parol evidence to show that the parties did not intend the writing to constitute the sole agreement will be excluded." *Grey v. Am. Mgmt. Servs.* (2012) 204 Cal. App. 4th 803, 806-07. (Emph. added.)

***31** *See, also, Julius Castle Rest. Inc. v. Payne* (2013) 216 Cal. App. 4th 1423, 1439:
"The parol evidence rule is not an evidentiary rule. Thus, under the rule, the act of executing a written contract supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument. And extrinsic evidence cannot be admitted to prove what the agreement was, not for any of the usual reasons for exclusion of evidence, but because ***as a matter of law*** the agreement is the writing itself. Such evidence is legally irrelevant and cannot support a judgment." (Emph. added.)

The 2015 Lease states, "Entire Agreement: The foregoing constitutes the entire Agreement between the parties and may be modified only in writing signed by both OWNER and TENANT." (4 CT 912.) Again, owner and tenant refer to Bannam Place, LLC and Linton respectively. This clause is conclusive that Greep is not a tenant on the 2015 Lease (or any other party or real party in interest, for that matter).

For good measure, Linton did not regard Greep as a tenant on the 2015 Lease around the time of its supposed creation either. Only a few months after Coyle's bankruptcy trustee settled the adversary proceeding to sell the Property (3 CT 688-715; 3 CT 717-718), Linton began to weaponize his new instrument. He filed the lawsuit Linton v. Sigal, et al., San Francisco Superior Court Case No. CGC-16-553411 ("the Sigal Action"), taking aim at the attorney for the bankruptcy trustee, the listing broker, Bannam Place, LLC (the "owner" on the 2015 Lease) and WB Coyle. (3 CT 723.)

***32** In the Sigal Action, Linton alleged
"¶16. On or about May 1, 2015 Plaintiff moved into the Premises as Defendants' tenant, pursuant to a written rental agreement (hereinafter referred to as

"Agreement"). Exhibit A

"¶17. The Premises is a three story, four unit rent controlled building located in the North Beach/Telegraph Hill neighborhood of San Francisco consisting of three residential units and one commercial store front.

"¶18. Plaintiff and or ***Plaintiffs' subtenants*** occupy each of the four units."

(3 CT 726 (p. 4, ln. 3-8); emph. added.)

In other words, Linton has identified some *subtenants* (not co-tenants), and he did not identify any other "tenants". Greep is not a party to that lawsuit (or even mentioned by name).

Eventually, with other parties dismissed, Linton used the husk of the Sigal Action to further his scheme. Even though the "Patrick Defendants", Coyle and Bannam Place, LLC had just entered a settlement agreement with the bankruptcy trustee not to create other instruments at the Property, they joined Linton in using the Sigal Action to stipulate to entry of judgment directing that a new, September 30, 2016 lease agreement ("the 2016 Lease") is "valid and fully enforceable *as to the parties hereto*" ((4 CT 959); emph. added.) (Obviously they were not forthright in their application about the existing settlement contract with the bankruptcy trustee, but the Hon. Judge Quidachay prudently added "as to the parties hereto" to the proposed order by hand to minimize mischief.)

***33** Nothing purporting to be the 2016 Lease was attached to any of the pleadings in the Sigal Action (and would not appear until later in the Linton Action). Greep is not a party to the Sigal Action (or even mentioned). If Linton had regarded Greep as a tenant at the time, her absence from the lawsuit would be misjoinder. (Cal. Code Civ. Proc., § 389.) Understandably, she does not appear in the settlement agreement either, even though she later claimed to be a real party in interest as a new "co-tenant" when this "settlement lease" finally manifested. (4 CT 936-957.)

Put simply, there is no conceivable way that Greep has the relationship of "tenant" of the Property with Respondent or any predecessor. When the trial court ordered judgment in favor of respondent, and against Greep, on the theory that she was at most an unapproved subtenant or a former licensee, it is because this is the hypothetical zenith of what her relationship to the Property could have been: inferior even to Linton's fictitious one and insufficient to resist the owner's claim of right to possession. The trial court correctly determined that she was not a tenant, and Greep failed to sustain her burden of demonstrating otherwise.

IV. *LINTON'S SUPPOSED RIGHTS UNDER THE 2015 LEASE ARE IRRELEVANT TO THIS ACTION; IN ANY EVENT, THOSE RIGHTS WERE DULY EXTINGUISHED BY LINTON'S TENDER OF POSSESSION*

Appellant fixates on the role of Linton and the 2015 Lease as of the commencement of these proceedings as if this affects the outcome of the case. In the Linton Action, Greep coyly hid behind the 2015 lease. She would champion a right of possession for their ***34** common benefit. He would feign performing on the settlement agreement to demand the $250,000 in settlement proceeds via motion to enforce settlement. Her occupancy was the shield and his feigned tender of possession was the sword in this gambit.

The pair were disabused of their scheme. First, the Hon. Judge Karnow acknowledged Linton's *claim* that he had moved out, but he first explained in the Order To Enforce that compliance with the settlement agreement actually required him to get Greep (and all occupants) out of the Property. (3 CT 783 (p. 3, ln. 7-12).)

Later, Judge Karnow acknowledged Linton's *representation* that he had surrendered his rights under the settlement agreement in the contempt proceedings. (3 CT 791, p. 3, ln. 16-17.) Indeed, Linton likely would have been in contempt of court for violating the order to enforce the settlement agreement if he did not at least engage in the theatrics of surrendering possession (or, what Judge Karnow referred to as a "a fig leaf, an unbelievable intimation that he has no agency in his movement on and off the premises". (3 CT 791, p. 3, ln. 17-18.) "Certainly in the lay sense, if not the technical sense at issue, Linton displays utter contempt for the Order." (3 CT 791, p. 3, ln. 18-19.)

Ultimately, Linton was spared contempt because he deferred to Greep's rights under the 2015 Lease to keep both of them in possession: "perhaps Plaintiff awaits results in the unlawful detainer case against Greep and if that is successful, evict her. Linton will follow, he says. Id. at 7: 8-9. And if he does not, I will entertain a new affidavit in support of contempt." (3 CT 792 (p. 4, ln. 24) - 3 CT 793 (p. 5, ln. 2).)

***35** When Respondent recovered possession of the Property via this action, and Linton tried again to move to enforce the settlement agreement and obtain the funds (a year after his performance was due), Judge Karnow ruled, "The motion is denied. It would be entirely unfair to foist this agreement on plaintiff now. Linton breached the agreement. He did not deliver the premises when and as promised, and plaintiff did not secure the expected benefit of the bargain. (RJN at Ex. 3, p. 1, ln. 13-16.)

Meanwhile, Greep failed to establish at the trial court level that she had any rights under the 2015 Lease. So, Greep pivots in this appeal: *Whether or not* she has rights under the 2015 Lease, Respondent supposedly needed to establish that it terminated Linton's lease, e.g., with a notice under Cal. Civ., § 1946. (AOB 13.) She concludes, "There is no support for Plaintiff's assertion of the legal conclusion that LINTON moving out of the premises terminated his leasehold interest".

First, Respondent is under no obligation to establish in this action that Linton's purported lease was terminated, because Linton did not appear as a party-defendant to assert his rights. Respondent served the complaint, summons and a "prejudgment claim of right of possession" (Judicial Council form CP 10.5 adopted pursuant to Cal. Code Civ. Proc., § 415.46), via special order on May 23, 2022. (1 CT 7.) This effected service on Greep and "all other occupants".

"All other occupants" is a statutory placeholder for would-be parties in intervention, set forth in Cal. Code Civ. Proc., § 415.46. If an occupant of real property contends that they have a bona fide ***36** right of possession, they can file a timely prejudgment claim and, if the claim is established, "the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant" (Cal. Code Civ. Proc., § 1174.3).

Respondent filed a proof of service of the complaint, summons and prejudgment claim on June 7, 2022 (1 CT 7-8), and when no prejudgment claimant stepped forward, Respondent defaulted "all other occupants" on June 21, 2022 (1 CT 8; RJN Ex. 7).

Of course, Linton was still *physically* at the Property at the time of the prejudgment claim, but he did not file one. This was tactical: he needed to stick to his story that he had performed on the settlement agreement, and he needed to profess that he had done everything in his power to move out, so he could avoid being held in contempt. (3 CT 789-793.) Then, on December 2, 2022, Respondent obtained the writ for execution for possession of real property (1 CT 16; see, also, RJN at Ex. 5), and Linton was locked out (along with Greep) via the writ of execution (1 CT 16; RJN Ex. 5).

"Pursuant to Code of Civil Procedure § 415.46, no occupant of the premises retains any possessory interest of any kind following service of the writ of possession. *See* Cal.Code Civ. Proc. § 715.020(d) (explaining that 'if the summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, ***no occupant of the premises***, whether or not the occupant is named in the judgment for possession, ***may object to the enforcement of the*** ***37** ***judgment*** ...')" (*In re Perl* (9th Cir. 2016) 811 F.3d 1120, 1129; emph. added.). In short, Linton (and whatever rights he may have had) are irrelevant to this action. Greep's rights to the Property live and die on *her* relationship to the Property alone.

Second, assuming arguendo Linton had a tenancy to terminate, he stipulated to its termination via the settlement agreement. (4 CT 980-982.) Tenants may waive their rights in the context of "the settlement of a legal claim that was made for valuable consideration in return for termination of litigation." (*Kaufman v. Goldman* (2011) 195 Cal. App. 4th 734, 745.) "For this reason, we also disagree with defendant's assertion that the remedy of possession 'constitutes an unenforceable waiver' of Civil Code section 1953, which requires notice and hearing to terminate a tenancy." (*Ibid*.)

In *Kaufman*, an unlawful detainer defendant settled the litigation, exchanging consideration for a promise to vacate. She did not timely vacate and argued, among other things, that the agreement was unenforceable and that notice of termination was required. The trial court entered judgment for the landlord and the Court of Appeal affirmed, stressing that,
"When parties to pending litigation enter into a settlement, they enter into a contract. Such a contract is subject to the general law governing all contracts . . . Courts seek to interpret contracts in a manner that will render them lawful, operative, definite, reasonable, and capable of being carried into effect . . . It is important to recognize there is a strong public policy favoring settling of disputes." (*Kaufman, supra*, 195 Cal. App. 4th at 745; int. quot./cit. om.)

***38** Similarly in the Linton Action, Linton settled litigation seeking possession in a judicially supervised settlement agreement, promising to vacate by a date certain. This agreement was clearly capable of extinguishing whatever rights he had to the Property in and of itself. (Indeed, "a month-to-month tenancy must be terminable at the pleasure of the parties; if it is not, it would never terminate, being continuous in nature." *Miller & Desatnik Mgmt. Co. v. Bullock* (1990) 221 Cal. App. 3d Supp. 13, 18.) And that agreement did extinguish that right, which Judge Karnow later found. (RJN Exs. 3, 4.)

Further, assuming arguendo that notice was required, Appellant is mistaken in contending that notice was not given or that notice ought to have been given by *Respondent*. [AOB at 13, citing to Cal. Civ., 1946] Section 1946 contemplates notice being given by *tenants* as well as landlords, and Linton gave notice to Respondent that he moved out of the Property. (4 CT 984-986.)

Appellant labels as "catch-22" (AOB at 7) the notion that Respondent could claim Linton had surrendered possession for purposes of evicting Greep, but claim he had not surrendered possession for purposes of refusing to pay him.

As explained above, Respondent evicted Greep because only Greep claimed to be in possession, without being able to establish any cognizable *right* to that possession. (4 CT 1160-1165.) Respondent evicted Linton (as "all other occupant") because he failed to respond to the service of a prejudgment claim of right to possession. (1 CT 7-8.)

***39** Meanwhile, Linton *tendered* his possession so he could move to enforce the settlement agreement and demand the $250,000.00. (4 CT 984-986; 3 CT 781-785.) (*See, Dorcich v. Time Oil Co.* (1951) 103 Cal. App. 2d 677, 682-83: "A surrender by operation of law occurs when the parties do something which would not be valid unless the lease was terminated, and which estops them from disputing the surrender.") He maintained this posture during contempt proceedings to avoid being held in contempt (3 CT 791, p. 3, ln. 16-18), and did all of this as part of a scheme to exalt Greep's role in the 2015 Lease so she could attempt to extract another $117,500.00 in settlement funds (4 CT 988; 3 CT 647 (p. 3, ln. 13-24). When Linton failed in his attempt to enforce the settlement agreement again *after* Respondent recovered possession in this action (RJN at Ex. 3), it is only because he did the wrong thing at every turn, materially breaching the settlement agreement by failing to deliver on his solitary obligation to return possession to Respondent.

But ultimately, Respondent need not litigate Linton's rights in this action. This appeal is not about Linton's rights under the 2015 Lease because he chose not to be party to this action. This appeal is about Greep's alleged right of possession to the Property, and the trial court correctly concluded that she had none.

CONCLUSION

Respondent entered a settlement agreement with Linton to receive *actual possession* of the Property. Instead, it got a scheme where Linton and Greep tried to wield labels and a far-fetched story to overcome Respondent's substantive rights under the ***40** settlement agreement and to the Property. Where Greep became the pair's "second bite at the apple" to exact a bigger settlement than the one Linton already entered, their ability to remain in possession of the Property fell entirely on the possessory rights she was able to establish in herself.

As the trial court correctly ruled, she had none. She was not even a party to the lease *Linton* made up. She was not his subtenant because she failed to establish she acted as his subtenant (e.g., with the payment to Linton of rent), and because she expressly rejected that label to serve her earlier litigation position. *A fortiori*, she could not establish herself as an *approved* subtenant. Or she was only ever a mere licensee - someone invited into the Property by the person already in possession (apparently Linton). But when Linton attempted to tender his right of possession to take the first bite of the apple, she could no longer hide behind his supposed lease rights. Respondent certainly did not license her access to the Property. And so Respondent served an eviction notice on these theories and commenced this action for possession of the Property.

***41** At the trial court level, Greep failed to introduce evidence to create a triable issue of material fact, and so the court entered summary judgment for respondent. Therefore here, Greep fails to meet her burden to show any error that could have led to a different result. The judgment should be affirmed.

Respectfully Submitted,

Dated: July 10, 2024

ZACKS & FREEDMAN, PC

/s/ Justin A. Goodman

By: Justin A. Goodman

Attorneys for Respondent 1429 Grant Ave, LLC

Footnotes

1 Respondent refers to this as the "2015 Lease" (4 CT 910-912) for the sake of convention, but has maintained that it is an invalid, fraudulent instrument. It has never been adjudicated valid or invalid as a lease.

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