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Court of Appeal, First District, Division 4, California.

PARK LANE ASSOCIATES,
LP, Plaintiff and Respondent,

v.

Joseph ALIOTO et al.,
Defendants and Appellants.

A145019
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(San Francisco County Super. Ct. No. CUD–14–650445)

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Opinion

Schulman, J. *

*1 After plaintiff Park Lane Associates, LP (Park Lane) won summary judgment against defendants Joseph and Michele Alioto (the Aliotos) in this unlawful detainer action under the Ellis Act ([Gov. Code, § 7060 et seq.](#)), judgment for restitution of possession of the Aliotos' apartment was entered in Park Lane's favor. The Aliotos moved for a new trial. While their motion was pending, Park Lane obtained a judgment against the Aliotos in a previously-filed unlawful detainer action for failure to pay rent, and a return on a writ of possession was

filed with the court confirming the Aliotos had vacated the apartment. After Park Lane filed a request for judicial notice of these facts, the trial court denied the Aliotos' motion for new trial as moot. The Aliotos now appeal from the judgment, and from the orders granting summary judgment and denying a new trial. We agree with the trial court that the action is moot and dismiss the appeal.

I. BACKGROUND

Beginning in 2007, the Aliotos leased an apartment in a building located at 1100 Sacramento Street, San Francisco, California (the building). At some point, Park Lane became the building's owner. On October 22, 2013, Park Lane served all building tenants, including the Aliotos, with an eviction notice, advising that it planned to withdraw the building's residential units from the rental market pursuant to the Ellis Act and that their tenancy would terminate effective February 21, 2014. Included with each notice was a check for payment of one half of that tenant's required relocation assistance. Two days later, on October 24, 2013, Park Lane filed a notice of intent to withdraw residential units from the rental market with San Francisco's Rental Stabilization and Arbitration Board (the Rent Board). The same day, it served a copy of the notice, with an explanatory cover letter, on all tenants including the Aliotos.

On November 15, 2013, Park Lane filed a notice with the county recorder advising that it intended to withdraw the building's rental units from the rental market, effectively deed restricting the building from future residential rental use. Later the same month, the Aliotos advised Park Lane they were asserting their rights under the Ellis Act to a one-year extension of the eviction date based on their senior status. Park Lane replied by letter in December 2013, acknowledging the Aliotos' claims, demanding documentation of their eligibility for an extension, and enclosing checks providing the first halves of the additional relocation payments required for seniors under the Rent Ordinance. Park Lane notified the Rent Board of the extension claim at the same time. Later in December, Park Lane sent the Aliotos a second letter, advising that it did not dispute their claim for an extension, and that their eviction date was extended to October 24, 2014. Park Lane simultaneously notified the Rent Board of these points.

The extended eviction date—October 24, 2014—came and went, but the Aliotos did not move out of the apartment. On October 30, 2014, Park Lane filed an unlawful detainer

action, seeking restitution of possession of the apartment, forfeiture of any rental agreement, and damages in the amount of \$550 per day from October 25, 2014, until the date of entry of judgment. The Aliotos answered the complaint, asserting numerous affirmative defenses. On November 12, 2014, Park Lane filed a motion for summary judgment, seeking only judgment for restitution of the premises, and not damages. After reviewing the parties' briefs and holding a hearing, on December 8, 2014, the trial court granted the motion, entering judgment for Park Lane for restitution of possession of the apartment.

*2 The Aliotos filed a motion for a new trial on December 22, 2014, contending the trial court erred in granting summary judgment. Park Lane opposed the motion on the merits. It also contended the matter was moot because, in an earlier unlawful detainer action against the Aliotos for nonpayment of rent—*Park Lane Associates, LP v. Joseph Alioto et al.* (Superior Ct. San Francisco County, 2013, No. CUD-13-647251) (the earlier action)—Park Lane secured a judgment entitling it to possession of the apartment and, on January 20, 2015, a return on a writ of possession issued in that matter was filed indicating the Aliotos had vacated the premises.¹ Park Lane requested that the trial court take judicial notice of three documents from the earlier case: a June 9, 2014 order that entered and then stayed a judgment in Park Lane's favor for possession of the apartment, finding that the Aliotos breached a written settlement agreement and stipulation for entry of judgment; a November 26, 2014 order lifting the stay, and authorizing Park Lane to enforce the judgment, because the Aliotos did not submit a timely rent payment for September 2014; and a return on a writ of possession indicating that the Aliotos were served with a notice to surrender the premises on December 23, 2014, and that Park Lane was restored to possession of the apartment on January 7, 2015. The Aliotos did not oppose Park Lane's request for judicial notice and did not directly address the mootness question in the reply brief they filed in support of their motion for a new trial, although they contended they were “entitled to re-possession of their unit” and a jury trial.

The trial court held a hearing on the Aliotos' motion for a new trial. At the hearing, Park Lane's counsel reiterated the matter was moot, advising “We don't have a claim for unlawful detainer at this point,” because the Aliotos no longer were in possession of the disputed property. As the tenancy was “no longer at issue,” counsel contended, there would be no point in granting the motion for a new trial. The Aliotos disagreed, advising that they had appealed the judgment in

the earlier action. On February 17, 2015, the trial court denied the Aliotos' motion for a new trial as moot. Finding that Park Lane had been restored to possession of the apartment after a writ of possession issued in the earlier action, the trial court concluded “possession [is] no longer at issue in this action” under the Ellis Act.²

The Aliotos filed a timely notice of appeal challenging the trial court's orders granting summary judgment and denying the motion for a new trial. While this appeal was pending, this Court affirmed the trial court's judgment in the earlier action. (See *Park Lane Associates, LP v. Joseph Alioto et al.* (Jan. 25, 2018, A144383) [nonpub. opn.]³)

II. MOOTNESS

“California courts will decide only justiciable controversies. [Citations.] The concept of justiciability is a tenet of common law jurisprudence and embodies “[t]he principle that courts will not entertain an action which is not founded on an actual controversy” [Citations.] Justiciability thus “involves the intertwined criteria of ripeness and standing. A controversy is ‘ripe’ when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.” [Citation.] But “ripeness is not a static state” [citation], and a case that presents a true controversy at its inception becomes moot “‘if before decision it has, through act of the parties or other cause, occurring after the commencement of the action, lost that essential character’ ” [citation].” [Citation.]” (*Fairview Valley Fire, Inc. v. Department of Forestry & Fire Protection* (2015) 233 Cal.App.4th 1262, 1272.)

*3 “[A] moot case is one in which there may have been an actual or ripe controversy at the outset, but due to intervening events, the case has lost that essential character and, thus, no longer presents a viable context in which the court can grant effectual relief to resolve the matter.” (*Association of Irrigated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1222.) “The duty of every court ‘is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions’ ” (*Id.* at p. 1223.) Accordingly, “‘[w]hen events render a case moot, the court ... should generally dismiss it.’ [Citations.]” (*Id.* at pp. 1223–1224.)

“ ‘The pivotal question in determining if a case is moot is ... whether the court can grant the [appellant] any effectual relief. [Citations.] If events have made such relief impracticable, the controversy has become “override” and is therefore moot.’ [Citation.]” (*Fairview Valley Fire, Inc. v. Department of Forestry & Fire Protection, supra*, 233 Cal.App.4th at p. 1272.) Before the trial court, the Aliotos offered only one argument disputing this action was moot. At the hearing on their motion for a new trial, they pointed out they had appealed the judgment in the earlier action. If the judgment had been reversed, the Aliotos might have been restored to possession of the apartment. But, as noted, this did not occur. Instead, the judgment was affirmed, confirming Park Lane’s legal entitlement to possession of the apartment.

In their opening brief in this appeal—filed before this Court affirmed the judgment in the earlier action—the Aliotos stated that they were appealing the trial court’s order denying their motion for a new trial, but then did not address the mootness issue, which was the basis for the trial court’s ruling. They did succinctly deny mootness in their reply brief, but did not explain their failure to do so in their opening brief. The Aliotos, therefore, forfeited the mootness issue. (See *Nick v. City of Lake Forest* (2014) 232 Cal.App.4th 871, 879 [arguments raised for the first time in appellate reply briefs are forfeited absent good cause]; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [“ ‘Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief of an appellant’ ”].)

Even if this were not the case, however, we would reject the Aliotos’ mootness argument on the merits because it does not address the pivotal issue, namely, whether reversal of the judgment in this case would provide them any “effectual relief.” Rather than addressing this point, the Aliotos present a non sequitur, contending settlement of an unlawful detainer action does not necessarily resolve all disputes arising from the landlord-tenant relationship. The Aliotos requested judicial notice of the “Settlement Agreement With Stipulation For Entry of Future Judgment” (the settlement agreement) that Park Lane filed with the trial court in the earlier action. The Aliotos submit the document is relevant because, in it, they reserved their right to assert defenses to the Ellis Act. Their appeal here of Park Lane’s Ellis Act unlawful detainer action is not moot, they contend, because they reserved the right to defend it.

Park Lane opposed the request for judicial notice, contending the settlement agreement is not relevant in resolving the

mootness issue, and we agree. The fact the Aliotos previously may have reserved their right to defend this unlawful detainer action does not address the question of whether, having since vacated the apartment following a judgment authorizing their eviction, they now have any basis to claim possession. Park Lane asserted in its respondent’s brief the answer was no and, again, we agree. Case law confirms that this appeal is moot because the Aliotos are no longer in possession of the apartment. (See, e.g., *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1078–1079 [return on writ of possession issued in an eviction action, indicating tenants had vacated the premises, rendered moot a separate public nuisance action a city had filed against the same tenants challenging their use of the property]; *Hosea v. Brather* (1945) 71 Cal.App.2d 826, 830 [tenant’s appeal in unlawful detainer action, challenging a judgment of restitution of the premises, became moot while the appeal was pending because the tenant vacated the premises after the lease expired].)

*4 It remains to determine the proper disposition of this matter. “Ordinarily ... when a case becomes moot pending an appellate decision, ‘the court will not proceed to formal judgment, but will dismiss the appeal.’ [Citations.]” (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134 (*Paul*)). In some instances, however, courts have concluded it is appropriate instead to reverse the judgment “solely for the purpose of restoring the matter to the jurisdiction of the superior court, with directions to the court to dismiss the proceeding.” (*Ibid.*) In *Paul*, for example, the court adopted this approach to avoid implying a ruling on the merits, after the appeal of a trial court judgment ruling a state regulation unconstitutional was mooted by promulgation of new regulations. (*Id.* at pp. 131–132, 134.)

We invited supplemental briefing from the parties regarding the proper disposition of this appeal if affirmance in the earlier action rendered this appeal moot, and have considered the briefs that they submitted. Park Lane contends dismissal of the appeal is appropriate, distinguishing *Paul*, because this case does not involve subsequent legislative action. We note that affirmance here also would not imply agreement with a judgment that a regulation or other law was unconstitutional. (See *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590–591 [although a reviewing court ordinarily will dismiss the appeal if the case becomes moot, when the controversy is rendered moot through “subsequent legislative or administrative action” the court may adopt the alternative applied in *Paul*].)

Park Lane also contends dismissal of the appeal is appropriate here because the case became moot as a result of the Aliotos' actions. Judgment was entered against the Aliotos, and they were evicted, in the earlier action, Park Lane points out, because they breached the settlement agreement and then failed to pay their rent on time. (See *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles*, 2 Cal.App.5th at p. 591 [dismissing appeal after case became moot as a result of the appellant's actions].) The Aliotos oppose dismissal of their appeal. Rather than citing or discussing case law addressing the proper course if the appeal was moot, they simply deny that their actions mooted the appeal and then attempt to reargue the mootness issue. As the Aliotos present no substantive argument supporting a deviation from the norm, we conclude it is appropriate to

adopt the ordinary procedure here (see *id.* at p. 590), and dismiss the appeal.

III. DISPOSITION

The appeal is dismissed.

We concur:

[Ruvolo, P.J.](#)

[Streeter, J.](#)

All Citations

Not Reported in Cal.Rptr., 2018 WL 1128088

Footnotes

- * Judge of the Superior Court of California, County of San Francisco, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- 1 We grant Park Lane's request for judicial notice of the complaint that it filed in that earlier action, but deny its request that we also take judicial notice of other pleadings in that and other matters involving the Aliotos, because the pleadings are not relevant or necessary to our analysis. We deny the Aliotos' request for judicial notice of the settlement agreement in prior litigation between the parties as unnecessary to our decision.
- 2 Although the trial court did not expressly rule on Park Lane's request for judicial notice, it implicitly granted the request by stating in its order that it had considered "the papers, all records on file in this action and oral argument," and by referencing the result in the earlier action as a basis for its decision.
- 3 We take judicial notice of this Court's decision to affirm the judgment in the earlier action. ([Evid. Code, §§ 452, subds. \(a\), \(d\), 459, subd. \(a\).](#))