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

PARK LANE ASSOCIATES, L.P., Plaintiff and Respondent,

v.

David W. GREENE et al., Defendants and Appellants.

A145572
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Filed 2/27/2018

(San Francisco County, Super. Ct. Nos. CUD14650224, CUD14650889, CUD14650890, CUD14650891, CUD15651179)

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Opinion

Rivera, J.*

***1** Defendants David W. Greene, Jeanne Lawrence, Stephanie Lawrence, John Baldwin, K. Michael Forrest, Nhu Forrest, Tanya Powell, and Doris Dubois (Tenants) appeal the judgment of possession entered in favor of plaintiff Park Lane Associates, L.P. (Park Lane) following a jury trial in five consolidated unlawful detainer actions filed under the Ellis Act (Gov. Code, § 7060 et seq.). Tenants contend reversal is required because the trial court committed prejudicial error by excluding relevant evidence, and approving a flawed special verdict form. We shall affirm the judgment.

I. BACKGROUND[1]

In May 2011, Park Lane acquired the luxurious rental property where Tenants lived, located at 1100 Sacramento Street in San Francisco (the building). Constructed in 1924, the building had eight floors that contained 33 large residential units, including two penthouses, two floors that contained parking, five elevators, and an ornate lobby with a garden. The building was covered by the San Francisco Residential Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code, chapter 37 (the Rent Ordinance), which limits rent increases and restricts the grounds upon which a landlord may evict tenants. (See, e.g., *Danger Panda, LLC v. Launiu* (2017) 10 Cal.App.5th 502, 505–506.)

Russell Flynn, a managing member of the general partnership that ran Park Lane, testified Park Lane initially planned to simply manage the building as a rental property, although he thought at the time Park Lane might attempt to convert the building to a tenancy in common (TIC) in five or six years, when the real estate market might be stronger. In a TIC conversion, Flynn explained, residents of each of the 33 units would own 3.3 percent of the building, and residents would agree to give each other the exclusive right to occupy their particular units. (See, e.g., *Tom v. City and County of San Francisco* (2004) 120 Cal.App.4th 674, 677.) In November 2011, Flynn testified, two building residents requested a meeting to ask about his plans for the building. In the meeting, the two residents told Flynn they represented a larger group of residents who wanted to buy the building when the market picked up, to convert it to a TIC. They said the group would use the Ellis Act to evict any residents who did not want to buy.[2] Asked what he would do, Flynn responded that he had never "done a TIC" or invoked the Ellis Act and was not sure he wanted to begin doing so. Flynn testified he understood the residents might take the latter statement as an indication he did not intend to evict anyone, and he agreed it would have been fine with him at that point to have a "critical number" of residents buy into an eventual TIC, while allowing others to remain as renters.

***2** After that meeting, Flynn testified he thought more about converting the building to a TIC. Real estate sales in the area were slow at the time, he testified, but many building residents paid monthly rent as high as $10,000 and $12,000, and he thought it was entirely possible he could convince most to buy into a TIC. Resident buy-in would be important, Flynn testified, because Park Lane would have had to sell several units simultaneously at the outset to pay off existing loans on the property. Significant capital improvements also would be necessary, he testified, for example, to rebuild the elevators, redo the electrical system, and replace original windows.

The building's previous owner had begun the process required for conversion to a TIC, Flynn testified, by applying for a public report that would make certain required disclosures protecting future buyers.[3] Shortly after acquiring the building, Flynn testified, Park Lane began the process to renew the report before it expired, working with a title company. As part of that process, on March 1, 2012, a Park Lane representative completed a document answering various questions. The completed document included the following questions and answers: "[Question:] 'Do you intend to rent/lease any of the units? [Answer:] Yes. [¶] [Question:] If yes, list units to be rented/leased. Answer: All units rented until sold.' " The second answer, Flynn testified, meant Park Lane would continue renting units in the building until it did the TIC conversion. The response gave future purchasers notice, Flynn testified, that they were buying an interest in a building that still had renters. At that time, Flynn testified, Park Lane did not intend to invoke the Ellis Act and it could not otherwise evict existing residents.

The following month, April 2012, Flynn testified, he and his nephew, Chris Dressel—also a managing member of the general partnership that ran Park Lane—met with all residents to lay out a plan for conversion of the building to a TIC and to explain the associated renovation work. At this meeting, someone asked what would happen to residents who wanted to continue living in the building without purchasing their units or accepting a buyout. Flynn testified he responded that "everybody in the building would have to either purchase or relocate," and then explained his understanding of the Ellis Act. At that point, however, Flynn testified, he assumed he would be able to persuade most residents to buy their units, so did not expect to use the Ellis Act.

After this meeting, Flynn testified, Park Lane representatives discovered information included in the previous owners' application for the public report was inaccurate, including engineering drawings with apartment measurements. Because of this, every inch of the building had to be re-measured, Flynn testified, before Park Lane could develop prices to be used in offering residents buyouts. This work was completed by March 2013, and Flynn and Dressel then met with most of the residents individually between March and May 2013 to try to convince them to buy their units. Flynn testified they offered to sell the units to residents at a guaranteed discounted rate of ten percent below the price non-residents would pay for identical building units if the residents joined the critical first purchasing group, allowing Park Lane to pay off its existing debt on the property. In July, Flynn testified, he followed up by having his office send all building residents, including all Tenants, a letter advising that: Park Lane intended to invoke the Ellis Act; it remained interested in selling residents their units at a discounted price; it was willing to discuss the possibility of entering settlement agreements with residents, effectively paying them to vacate their units; and all residents were encouraged to contact Park Lane's broker with any individual questions.

***3** In the meantime, Flynn testified, Park Lane had stopped renting corporate and short-term rentals in the building when they became vacant, and by September 2013, had accumulated and completely renovated 12 vacant units. The title company returned the completed application for the public report to Park Lane for signature in this period, Flynn testified, and, without reading it, he instructed another Park Lane representative to sign it. The completed application included the following questions and answers: "[Question] Does the applicant intend to rent rather than to sell or lease lots/units in the subdivision?" "[Answer] Yes." "[Question] If yes, approximately how many lots/units will be rented?" "[Answer] all units until sold." The Park Lane representative's signature is dated September 11, 2013, and the document's first page bore a stamp indicating the state Department of Real Estate received it the following day, on September 12, 2013. A few days later, on September 16 or 17, 2013, Park Lane hosted a grand opening party. The response was "incredibly positive," Flynn testified, and Park Lane received large offers on two of the units ($3.8 million and $7 million, respectively). After both prospective buyers coincidentally sought representation by an attorney who represented a tenant, however, Flynn testified, they backed out and the deals fell out of escrow the same month.

Around October 1, 2013, with no other sales in progress, Flynn testified, he spent a day with Dressel reviewing the risks involved in the project. Flynn testified he thought Park

Lane "might be left holding the bag" if there was more resistance than he had anticipated to converting a luxury apartment building to a TIC; maybe they "should consider just keeping [it] as a rental project." As they had not formally instituted eviction procedures required under the Ellis Act at that point, Flynn testified, this remained an option. The same week, however, he testified, a bank agreed to provide critical funding for the project, which would allow buyers to finance their purchases of interests in the TIC. Flynn testified this gave him "incredible confidence" in the project's prospects, and he told Dressel, "we're going forward."

On October 10, 2013, therefore, Flynn testified, Park Lane sent all residents, including Tenants, a letter, reminding them it planned to invoke the Ellis Act and advising that they could still purchase their units at a discounted price until October 21, 2013. Then, on October 22, 2013, Park Lane sent all residents, including Tenants, another letter giving them formal notice under the Ellis Act, and enclosing checks providing half the required relocation expenses. Two days later, on October 24, 2013, Park Lane filed a formal notice with San Francisco's Residential Rent Stabilization and Arbitration Board (the Rent Board) advising that it intended to withdraw all of the building's residential units from the rental market. The same day (October 24, 2013), Park Lane served a copy of this notice on residents, including Tenants. Flynn testified that he had been a licensed real estate broker since 1972, understood "very, very clearly" he could never re-rent units in the building once he had filed the Ellis Act notice with the Rent Board, and knew there could be criminal penalties for doing so.[4] Further, Flynn testified, it would have made no sense for him to re-rent the units, because buyer response to the TIC conversion had "been overwhelming"; in fact, he testified, it was the third highest-selling residential project in San Francisco.

***4** The same month that Park Lane issued its Ellis Act notices (October 2013), the state Bureau of Real Estate issued an "Amended/Renewed" "Final Public Report," providing consumer information about Park Lane's TIC conversion project. Flynn testified that the title company forwarded a copy of the report to him, but he did not read it. State personnel prepared the report relying on the information Park Lane submitted, Flynn testified, but they used different language. On the third page, as paragraph eight, the final report stated: "THE PROJECT SPONSOR INDICATES, IN ADDITION TO ITS SALES PROGRAM, THAT HE WILL RENT ANY UNSOLD UNITS IN THE DEVELOPMENT." Flynn testified this did not accurately convey the information Park Lane had provided. Although Park Lane did intend to continue renting units to existing residents as required by the Rent Ordinance until it could legally take action to ask them to move, Flynn testified, it did not intend to re-rent vacated units that it could not sell.

After Park Lane sent the Ellis Act notices, most remaining building residents purchased their units or moved out. Tenants did not do either, and Park Lane consequently filed unlawful detainer actions to regain possession of their apartments. The actions were consolidated for a four-day jury trial. After the trial concluded, the jury deliberated for less than two hours, before returning a unanimous verdict in Park Lane's favor. The trial court subsequently entered judgment for restitution as against all Tenants. Tenants then filed a motion for judgment notwithstanding the verdict or, alternatively, for a new trial, which Park Lane opposed. The trial court denied Tenants' motion, and this timely appeal followed.

II. DISCUSSION

Tenants submit the trial court effectively denied them a fair trial and due process, requiring reversal per se, by excluding from evidence two documents they needed for impeachment purposes. The trial court also committed reversible error, Tenants contend, by erroneously approving a special verdict form that conflicted with jury instructions and incorrectly stating the law regarding the Ellis Act, and then denying Tenants' motion for a mistrial after the special verdict form was submitted to the jury. We address these arguments in turn below.[5]

A. Order Excluding Evidence

Tenants contend they were denied a fair trial and due process, requiring reversal per se, because the trial court excluded from evidence the following documents, which they intended to use to impeach Park Lane witnesses: (1) the February 2006 application for a public report that the Lembis, representatives of the building's prior owner, submitted to the state Department of Real Estate (the Department) ; and (2) the October 2006 final public report the Department subsequently issued (collectively, the Lembis materials).

Before addressing these contentions, "[w]e begin by noting a few cardinal principles of appellate review. We start with the presumption the judgment is correct. [Citation.] An appellant has the burden to demonstrate error. [Citation.] An

appellant who fails to cite accurately to the record forfeits the issue or argument on appeal that is presented without the record reference. [Citation.]" (*Alki Partners*, *supra*, 4 Cal.App.5th at p. 589.) As noted, under California Rules of Court * rule 8.204(a)(1)(C), "each brief must '[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.' The purpose of this rule is to enable appellate justices and staff attorneys to locate relevant portions of the record expeditiously. [Citation.]" (*Alki Partners*, *supra*, 4 Cal.App.5th at pp. 589–590.)

***5** Tenants did not comply with this rule. In the "Argument" section of their opening brief, Tenants assert the trial court erred in excluding the 2006 materials. But they do not provide basic information necessary for any evaluation of this claim. They do not cite any portion of the record confirming that they attempted to introduce the documents at trial, or that the trial court denied their request.[6] They do not discuss or disclose the basis for the trial court's ruling excluding the documents. They do not even provide a record citation for the Lembis final report, although they submit the document was so critical to their case that its exclusion, when combined with the exclusion of the 2006 application, compels reversal of the jury verdict.[7] Further, while Tenants discuss the potential impeachment value of the two documents, they do not explain the relevant legal context in this section of their brief, i.e., how the proposed impeachment, if credited, would have assisted them in defending these actions, by avoiding their eviction under the Ellis Act. (See rule 8.204(a)(1)(B) [appellate briefs must "support each point by argument and, if possible, by citation of authority"]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["When an appellant ... asserts [a point] but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].) Tenants' impeachment discussion also contains numerous unsupported factual assertions.

These omissions are fatal to Tenants' argument that the trial court's exclusion of the 2006 materials compelled reversal. (See, e.g., *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 89 [appellant forfeited his claim that objectionable testimony should have been excluded by failing to provide record citations assisting the court in locating the objectionable testimony]; *Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928 ["party on appeal has the duty to support the arguments in the briefs by appropriate reference to the record, which includes providing exact page citations"; the court "may disregard any factual contention not supported by proper citations to the record"]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [it is not the role of the reviewing court to independently seek out support for appellant's conclusory assertions, and such contentions may be rejected without consideration]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["An appellate court is not required to examine undeveloped claims, nor to make arguments for parties"].) "As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error" (*Alki Partners*, *supra*, 4 Cal.App.5th at p. 590), a responsibility that, by definition, here required at a minimum: citation to the portion of the record where the trial court made the allegedly erroneous legal ruling; some discussion of the trial court's reasoning in making the ruling; some explanation of the manner in which the proposed impeachment of Park Lane representatives using the excluded evidence would have assisted Tenants in defending these unlawful detainer actions, i.e., an explication of the relevant legal framework; and citations to evidence supporting the factual allegations upon which that legal argument was premised. By failing to provide this basic information in their opening brief, Tenants forfeited the argument that the trial court erred in excluding the Lembis materials.

***6** Further, although Tenants' opening brief did offer an (incomplete) legal argument addressing one of the grounds that the trial court relied on for its ruling, relevancy, it did not address the trial court's additional conclusions that: (1) under Evidence Code section 352, any probative value the 2006 materials might have was outweighed by the probability their admission would create a substantial danger of confusing the issues or misleading the jury; and (2) the Lembis application obtained from the Department had not been certified or authenticated as required. In their reply brief, Tenants belatedly and cursorily address these points, again without discussing the trial court's reasoning. By waiting until their reply brief to address these points for the first time, however, Tenants forfeited their chance to challenge these evidentiary rulings on those grounds. (See, e.g., *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218, fn. 3 [the failure of a party to "mention the many evidentiary objections that were sustained to his supporting declarations and documents" results in a waiver of the "propriety of the trial court's evidentiary rulings"]; *City of Merced v. American Motorists Ins. Co.* (2005) 126 Cal.App.4th 1316, 1328–1329 [a party cannot raise new facts or claims for the first time in a reply brief].) Those rulings provide an adequate basis for excluding the Lembis materials.

(See, e.g., *People v. Anderson* (2012) 208 Cal.App.4th 851, 879 [upholding decision to exclude a document that would probably confuse, distract, or mislead the jury]; Evid. Code, § 1401, subd. (a) ["Authentication of a writing is required before it may be received in evidence"].)

Finally, even if Tenants had not forfeited their right to challenge the trial court's ruling excluding the Lembis materials, the argument would fail on the merits because Tenants failed to show resulting prejudice, i.e., that it was "reasonably probable they would have obtained a more favorable result absent the errors." (*People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 29.) Although Tenants contend reversal per se is required, obviating the need to show prejudice, because the court's evidentiary ruling prohibited a fair trial, we disagree. Unlike in the cases Tenants cite, the trial court here did not "arbitrarily cut[ ] off the presentation of evidence" (*In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 294), deny Tenants the right to offer any relevant evidence on a material issue (*Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1247–1248), or prevent them "from offering evidence to establish their case" (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677). The decision to exclude materials that a different building owner submitted or secured six years earlier did not here have the effect of denying Tenants a fair trial.

Tenants, therefore, were required to show a reasonable probability they would have obtained a more favorable result at trial if the Lembis materials had been admitted; but, they failed to do so. Tenants maintain Park Lane representative Russel Flynn did not actually intend to withdraw the entire building from the rental market; rather, fearing a financial loss if he could not sell all of the units, they submit, Flynn planned to re-rent any vacated units that did not sell. To prove this claimed secret plan at trial, Tenants pointed to Park Lane's response in its own application for a public report indicating "[a]ll units [would be] rented until sold," and also to the subsequent public report's characterization of that response (i.e., the project sponsor indicated it would "RENT ANY UNSOLD UNITS"). Both documents were admitted into evidence at trial; Tenants' counsel cross-examined Flynn regarding them, and discussed the significance of the documents in his closing argument. Apparently crediting Flynn's testimony, however—that Park Lane had not made a final decision to invoke the Ellis Act at the time it completed and submitted the relevant paperwork, and that its answers merely were intended to provide notice that renters remained in the building—the jury returned a unanimous verdict in Park Lane's favor after less than two hours of deliberations.

We do not agree with Tenants that it is reasonably probable the jury would have reached a diametrically different result, returning a verdict in their favor, if the court had allowed admission of the Lembis materials. Those materials showed that a prior building owner answered a similar question about renting units in the future differently, stating simply "no"; the final report the prior owner obtained made no mention of units being rented. Tenants do not convincingly explain, however, how a prior owner's response on a public report application seven years earlier would have assisted the jury in better assessing *Park Lane's intent* at the time it invoked the Ellis Act. Tenants have not persuaded us that anything in the Lembis materials would have convinced jurors to reject Flynn's testimony explaining Park Lane's answer in its own materials, which they evidently found credible, and to conclude instead that Park Lane secretly planned to violate the Ellis Act by re-renting units it could not sell. (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1538 ["When evidence is improperly excluded, 'the error is not reversible unless " 'it is reasonably probable a result more favorable to the appellant would have been reached absent the error' " ' "].)

B. The Special Verdict Form

***7** Tenants further contend the trial court prejudicially erred by using a special verdict form that conflicted with the jury instructions and incorrectly stated the law regarding the Ellis Act.

The trial court gave the following jury instruction regarding the Ellis Act: "The Ellis Act is a California law that allows a property owner to go out of the landlord business and evict all of its tenants. A property owner must follow specific procedures, provide its tenants proper notice, relocation payments and file and record documents that are required by the law. If these procedures are properly followed, all tenants must vacate their dwelling units within 120 days of the commencement of the process, or in the case of tenants who are older than 62 or disabled, within one year of the filing of a document known as a Notice of Intent to Withdraw with the City's Rent Board. [¶] It is a defense to an Ellis Act filing if, by a preponderance of the evidence, a tenant proves the landlord's filing was not 'bona fide,' that is, as of the date of the filing October 24, 2013, the landlord intended *to offer vacated units to new tenants*." (Italics added.) The italicized words in the jury instruction are taken from our Supreme Court's decision in *Drouet*. (See *Drouet*, *supra*, 31 Cal.4th at

p. 597 ["[A] tenant who believes the landlord's invocation of the Ellis Act [ ], is phony and that the landlord actually intends to offer the vacated units to new tenants may controvert the landlord's statement of intent"].)

The special verdict form provided to the jury posed two questions regarding the Ellis Act: "1. Did Plaintiff Park Lane Associates prove by a preponderance of the evidence that it complied with the requirements of the Ellis Act to terminate the tenancies of the Defendants?" "2. As of October 24, 2013 when Plaintiff filed the Notice of Intent to Withdraw (NOITW) did the Defendants prove by a preponderance of the evidence that Plaintiff Park Lane Associates intended to re-rent apartments to other tenants *after Defendants vacated their units?*" (Italics added.)

Tenants contend the italicized language included in the second question conflicted with the jury instructions, which were correct, and also with the *Drouet* decision, by requiring them to prove Park Lane intended to re-rent their specific units, when it should have sufficed for them to prove Park Lane intended to re-rent any vacated unit. We reject Tenants' interpretation of the special verdict form. The words that Tenants highlight from the verdict form—"after Defendants vacated their units"—described a temporal condition, not an action or its object. The preceding phrase included the action —"intended to re-rent"—and the unqualified object of that action "apartments." The special verdict form did not, for example, state that Tenants had to prove Park Lane intended to re-rent "their apartments" or "Defendants" apartments. The temporal reference—"after Defendants vacated their units"—referred to the point at which Park Lane would have completed its expressed purpose under the Ellis Act, i.e., withdrawing the entire building from the rental market. The question effectively asked, therefore, whether Tenants had proved that Park Lane intended to re-rent units once existing building residents had been displaced. (See *Drouet*, *supra*, 31 Cal.4th at p. 590 [The Ellis Act does not "permit a landlord to withdraw from rent or lease less than all of the accommodations in a building"].) This was not error. Nor was the special verdict form inconsistent with the jury instruction, which required proof Park Lane "intended to offer vacated units to new tenants."

***8** Tenants rely on *Byrum v. Brand* (1990) 219 Cal.App.3d 926, but it is inapposite. There, the Court of Appeal concluded the trial court impermissibly had added an element—*intent* —in the special verdict form's statement of the requirements for establishing a claim of breach of fiduciary duty, contrary to the jury instructions the court had given. (*Id.* at pp. 938–939 ["the breach of fiduciary duty theory ... did not require an intent to fail to disclose material facts"].) By requiring a showing of intent, the Court of Appeal reasoned, the special verdict form included an "incorrect statement of the law [that] could more probably than not have served to confuse and mislead the jury," requiring reversal. (*Ibid.*) Here, in contrast, as discussed, the special verdict form did not include an error of law; nor do we consider it likely that the disputed phrase confused the jury.

Further, even if inclusion of the phrase constituted error, it was harmless. (See *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1244 ["a defective special verdict form is subject to harmless error analysis"].) Tenants had a full jury trial "before a fair and unbiased trial judge and jury." (*Id.* at p. 1245.) Under our state Constitution, " '[n]o judgment shall be set aside ... as to any matter of procedure, unless after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' " (*Ibid.*, quoting Cal. Const., art. VI, § 13; see also Code Civ. Proc. § 475 ["The court must, in every stage of an action, disregard any error ... or defect, in the ... proceedings which, in the opinion of said court, does not affect the substantial rights of the parties"].) Here, Park Lane presented evidence that, by September 2013, it had allowed 12 units to become and remain vacant as it prepared to launch the TIC conversion. The following month, just before it formally invoked the Ellis Act, a large bank agreed to provide critical funding for the project, which would allow buyers to finance their purchases of interests in the TIC, a fact that Flynn testified gave him "incredible confidence" in the project's prospects. Flynn testified he had many years of experience in the real estate industry, and understood "very, very clearly" he could never re-rent units in the building once he had filed the Ellis Act notice with the Rent Board. The only evidence Tenants point to as suggesting a contrary intent is the public report application, in which Park Lane indicated it would continue renting "all units until sold" and Flynn provided a credible explanation of that answer during his testimony. The uncontradicted evidence established the TIC conversion was a great success; no evidence was presented indicating Park Lane ever re-rented or attempted to re-rent a single unit. Given these facts, it is not reasonably probable that Tenants would prevail at a new trial if the special verdict form presented to the jury were modified to omit the phrase "after Defendants vacated their units."[8]

III. DISPOSITION

The judgment is affirmed.

We concur:

Ruvolo, P.J.

Streeter, J.

All Citations

Not Reported in Cal.Rptr., 2018 WL 1063911

Footnotes

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 With few exceptions, the factual assertions Tenants included in the Statement of Facts in their opening brief were either unsupported by references to evidence in the record or were supported by documentary material that was neither offered nor admitted into evidence at trial. The first practice violates the California Rules of Court, rule 8.204, which in subdivision (a)(1)(C) provides that each brief must " '[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears' "; we, therefore, disregard Tenants' unsupported factual assertions. (See, e.g., *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590 (*Alki Partners*).) Further, in reviewing the liability aspect of a judgment based on a jury verdict, we do not consider material not admitted at trial. (*Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 815.)

2 Under the Ellis Act, a landlord may "go out of the residential rental business by withdrawing the rental property from the market" and, "[i]f necessary, the landlord may institute an action for unlawful detainer to evict the tenants and recover possession of the property. [Citation.]" (*Drouet v. Superior Court* (2003) 31 Cal.4th 583, 587 (*Drouet*).)

3 Under the Subdivided Lands Act (Bus. & Prof. Code, § 11000 et seq.), subdividers, including those seeking to create TICs, generally must apply for a public report from the state Bureau of Real Estate (*id*, § 11010, subd. (a)), formerly the Department of Real Estate. (See *Daro v. Superior Court* (2007) 151 Cal.App.4th 1079, 1093–1095; Bus. & Prof. Code, §§ 11010–11018.2.)

4 Under the Ellis Act, if "units withdrawn from the market are subsequently offered again for rent, local governments may require landlords to offer the units at the lawful rent in effect at the time the notice of intent to withdraw was filed" and, if re-rented within 10 years, may require landlords to offer the units first to the displaced tenants. (*Drouet*, *supra*, 31 Cal.4th at p. 590, citing Gov. Code, § 7060.2, subd. (a); see also *Drouet*, *supra*, at p. 598 ["San Francisco has eliminated the incentive for sham Ellis Act evictions by adopting ordinances strictly limiting the landlord's right to re-rent the withdrawn property to others, to raise the rent, or to sell the property unencumbered by these limitations"], citing S.F. Admin. Code, § 37.9A, subds. (a), (c), (d), (g); Gov. Code, §§ 7060.2, 7060.3.)

5 Although Tenants indicated in their opening brief they also were appealing the trial court's order denying their motion for judgment notwithstanding the verdict or, in the alternative, for a new trial, they include no legal arguments specifically addressing that post-judgment order and we, therefore, deem any challenge to the order to be abandoned. (*Mangano v. Verity, Inc.* (2009) 179 Cal.App.4th 217, 222, fn. 6.)

* All further references to rules are to the California Rules of Court.

6 The "Procedural History" portion of Tenants' opening brief does contain citations to two passages of the trial transcript in which the trial court made some rulings related to the 2006 materials, although Tenants do not there discuss or explain the court's rulings. Such citations do not cure the failure to cite relevant portions of the record in the argument section of the brief. (*Alki Partners*, *supra*, 4 Cal.App.5th at p. 590, fn. 8.) "Rule 8.204(a)(1)(C) is intended to enable the reviewing court to locate relevant portions of the record 'without thumbing through and rereading earlier portions of a brief.' [Citation.] To provide record citations for alleged facts at some points in a brief, but not at others, frustrates the purpose of that rule, and courts will decline to consider any factual assertion unsupported by record citation at the point where it is asserted. [Citation.]" (*Ibid*.)

7 After Park Lane noted in its respondent's brief that Tenants had provided no citation to the portion of the record where the Lembis final report appeared, Tenants belatedly corrected that particular omission in their reply brief, claiming the omission had been inadvertent. The explanation is contradicted by the numerous other factual assertions that Tenants included in their opening brief without any accompanying citation to the record.

8 In light of our conclusions upholding the trial court's ruling on the evidentiary issue and the special verdict form, we need not address Park Lane's contentions that this appeal was barred by claim and issue preclusion arising from the judgment entered in a related case that some of the Tenants filed against Park Lane. We deny as unnecessary Park Lane's request for judicial notice of documents filed with the court in that other action.

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