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Court of Appeal, First District, Division 5, California.

Eddie TSANG, Plaintiff and Appellant,

v.

SAN FRANCISCO LANDMARK  
RESTAURANT, INC.,

Defendant and Respondent.

No. A111349.

|

(San Francisco County Super. Ct. No. 04-612503).

|

Aug. 7, 2006.

#### Attorneys and Law Firms

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#### Opinion

[REARDON](#), J.\*

\*1 In this appeal, we must determine whether [Civil Code section 1717](#) permits a posttrial award of attorney fees to the prevailing party in an unlawful detainer action where the superior court determines prior to trial that the lease agreement, which contains the attorney fee provision on which the award is based, has been terminated. We hold that the award of attorney fees is proper.

Eddie Tsang, a landlord, appeals from an award of attorney fees made to his tenant, San Francisco Landmark Restaurant, Inc. (SFLR), after SFLR prevailed in an unlawful detainer

action brought by Tsang. Tsang initially claimed that SFLR was in breach of a written sublease that contained a reciprocal attorney fee provision, but the superior court ruled shortly before trial that the sublease had been terminated. Tsang claims that the SFLR is not entitled to an award of attorney fees under [Civil Code section 1717](#) because it failed to prove that the terms of the tenancy that came into being after termination of the sublease provided for attorney fees. He also argues that the award was improper because his action did not concern the validity of the sublease but rather his right to recover possession of the premises. We reject both arguments and affirm.

#### Factual and Procedural Background

The property at issue in this appeal is a commercial condominium unit located at 728 Pacific Avenue in San Francisco. Eddie Tsang and his wife own the property as cotrustees of an inter vivos trust. Tsang purchased the property on November 1, 2004, from a general partnership called Miriwa Center Investments. SFLR is the tenant at the property.

SFLR originally took possession in 1993 under a written sublease (the Sublease).<sup>1</sup> Under the terms of the Sublease, SFLR was obligated to pay a base rent of \$14,600 per month plus one half of the condominium owners' association dues charged against the premises. Although the Sublease required SFLR to pay half of the condominium association dues, it appears that SFLR only paid these dues for a few months in 1993 and did not pay the dues thereafter.

The Sublease also contained an attorney fee provision which read: “**21. Attorney's Fees.** If any action or other proceeding arising out of this sublease is commenced by either party to this sublease concerning the sublease premises, then as between Sublessor and Sublessee, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or other proceeding by the prevailing party.” (Bold in original.)

In December 1995, Tsui Heng Village Restaurant filed an unlawful detainer action against SFLR alleging nonpayment of rent. On January 12, 1996, at the plaintiff's request, the superior court entered a default judgment in favor of Tsui Heng Village Restaurant. A writ of possession was issued, but it was returned unserved, and SFLR remained in possession

of the premises. According to testimony in the trial of Tsang's action against SFLR, Tsui Heng Village Restaurant and SFLR entered into a stipulation that permitted SFLR to remain in possession.<sup>2</sup>

\*2 After Tsang became owner of the property in November 2004, his counsel served a three-day notice on SFLR, demanding payment of alleged rent arrearages and one half of the condominium association dues. When SFLR did not comply with the terms of the notice, Tsang filed an unlawful detainer action based on nonpayment of rent. His complaint claimed that SFLR was a tenant under a written agreement made with his predecessor in interest. Tsang's complaint also stated that “[a] written agreement between the parties provides for attorney fees[,]” and the complaint's requests for relief included a demand for “reasonable attorney fees.”

In the days immediately preceding trial, a dispute emerged as to whether SFLR's tenancy was, in fact, governed by the Sublease. At the outset, SFLR appeared to contend that it was in possession pursuant to the Sublease, but that its obligations thereunder had been modified by a subsequent oral agreement with its prior landlord. Thus, in its answer SFLR admitted that it had entered into possession under a written multi-year sublease in or about 1993. However, SFLR denied that it had agreed to pay the amount of rent claimed in the complaint, and it asserted in its affirmative defenses that the Sublease had been “materially altered and changed into a new agreement under the doctrine of novation.” During discovery in the action, SFLR was asked to identify all documents comprising the rental agreement, and it identified only the Sublease and master lease. In addition, when asked to “**IDENTIFY all DOCUMENTS** that are part of each modification to the agreement,” (bold in original) SFLR's response referred only to oral discussions that it claimed had altered its obligations as a tenant. SFLR's general manager, Nancy Ho, testified in deposition that SFLR was a tenant at the property by virtue of the Sublease.<sup>3</sup>

Nevertheless, it appears that very shortly before the trial of this action, the parties became aware of the judgment entered in the 1995 unlawful detainer action.<sup>4</sup> On March 2, 2005, the day before trial, SFLR filed a motion in limine asking that the court enter judgment against Tsang because the unlawful detainer judgment had terminated the Sublease by operation of law. After hearing argument on the motion, the trial court ruled that the Sublease was terminated by entry of judgment in the 1995 unlawful detainer action. The trial court noted that “Plaintiff is running a serious risk that they can't prove that

defendant holds under the 1993 lease.” Despite the emergence of this new evidence and the trial court's in limine ruling, Tsang did not amend his complaint.

The case proceeded to trial the following day, and Tsang argued that after the judgment in the 1995 unlawful detainer action terminated the Sublease “the former landlord and the tenant entered into an agreement. They entered into [ ] an agreement to reinstate the sublease, the terms.... [W]e're going to show, through our evidence, that the terms of that new tenancy were exactly the same as the sublease.” For its part, SFLR argued that it was not obligated to pay one half of the condominium association fees because SFLR had paid them for only two months following the inception of its tenancy, after which Tsang's predecessor in interest had ceased to demand that they be paid. SFLR also contended that in 2003, Tsang's predecessor in interest had agreed orally to reduce the rental payments to \$10,800 per month.

\*3 On March 7, 2005, the jury returned a verdict in favor of SFLR, finding that the defendant did not owe Tsang the amount of money stated in the three-day notice. The trial court entered judgment against Tsang and in favor of SFLR “for the sole cause of action pled in the complaint for unlawful detainer.” The judgment further stated that “Defendant shall also be entitled to costs of suit as allowed by law.”

SFLR then moved for an award of attorney fees. It relied upon the attorney fees provisions in both the Sublease and the master lease. Citing [Civil Code section 1717](#) (hereafter, [section 1717](#)) and a line of cases holding that a prevailing party may recover fees in an action on a contract where the prevailing party successfully defends the litigation by arguing the inapplicability, invalidity, unenforceability, or nonexistence of the contract, SFLR claimed that it was entitled to a fee award under paragraph 21 of the Sublease despite the trial court's in limine ruling that the Sublease had been terminated. In opposition, Tsang argued that [section 1717](#) did not apply because SFLR had failed to prove that Tsang would have been entitled to attorney fees had he prevailed in the action. In Tsang's view, after the termination of the Sublease, SFLR became a month-to-month tenant, and “under this new oral tenancy agreement, there was no attorney's fee provision.” Thus, neither Tsang nor SFLR would be entitled to recover attorney fees “because their relationship was not governed by a contract containing an attorney's fee clause.”

After a hearing, the trial court granted SFLR's request for attorney fees. Tsang filed a notice of appeal from the order granting attorney fees.

## Discussion

On appeal, Tsang advances two reasons why SFLR should not be entitled to fees. First, he contends that SFLR may recover attorney fees only if it can meet its burden of proving that Tsang would have been entitled to an award of fees had he prevailed. Tsang argues that SFLR has not done so because the trial court held that the Sublease containing the attorney fee provision had been terminated, and there was no evidence that the subsequent tenancy agreement contained a provision for attorney fees. Second, Tsang asserts that SFLR cannot rely on the line of cases awarding fees to a party who prevails in a contract action by showing that the contract is inapplicable, invalid, unenforceable, or nonexistent, because Tsang's action against SFLR did not concern the validity of the Sublease, but rather the recovery of possession of the leased premises. After discussing the principles that guide our review, we will address these arguments in turn.

### A. Standard of Review

Tsang's appeal challenges only the legal basis for the trial court's award of attorney fees to SFLR.<sup>5</sup> The determination of the legal basis for an award of attorney fees is a question of law that this court reviews de novo. (*City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 399.) Where, as here, the relevant facts are not in dispute, we examine the applicable statutes and provisions of the lease to determine whether SFLR is entitled to fees. (*Excess Electronix v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 705.)

### B. Agreements for the Award of Attorney Fees and Section 1717

\*4 A prevailing party is generally entitled to recover its costs in any action or proceeding. (Code Civ. Proc., § 1032, subd. (b).) Recoverable costs ordinarily do not include attorney fees, however, unless such fees are specifically authorized by statute or agreement. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 127-128; see also Code Civ. Proc., § 1021.) Recoverable litigation costs will therefore include attorney fees “only when the party entitled to costs has a legal basis, independent of the cost statutes and grounded in an

agreement, statute, or other law, upon which to claim recovery of attorney fees.” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 (*Santisas*), citing Code Civ. Proc., § 1033.5, subd. (a) (10).)

Under Code of Civil Procedure section 1021, parties have the right to enter into agreements for the award of attorney fees in litigation. (*Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1342.) Section 1717 ensures mutuality of remedy for attorney fee claims under such contractual provisions. (*Santisas, supra*, 17 Cal.4th at p. 610.) Section 1717, subdivision (a) provides: “In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.”

Courts construing section 1717 have made clear that it ensures mutuality of remedy in two situations, only the second of which concerns us here. First, where the contract provides for recovery by one party, but not the other, section 1717 makes the contract's unilateral right to attorney fees reciprocal. (*Santisas, supra*, 17 Cal.4th at pp. 610-611.) Second, section 1717 also applies to permit recovery of attorney fees by the prevailing party in an action on a contract where “the prevailing party defends the litigation ‘by successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of the same contract.’” (*Santisas, supra*, p. 611, quoting *North Associates v. Bell* (1986) 184 Cal.App.3d 860, 865 (*North Associates*)). Denying attorney fees to parties who defeat contract claims by proving that they were not parties to the contract or that it was never formed would undermine the statute's goal of mutuality of remedy. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 870.) Thus, to ensure mutuality of remedy, “the statute must generally apply in favor of the party prevailing on a contract claim whenever that party would have been liable under the contract for attorney fees had the other party prevailed.” (*Id.* at pp. 870-871.)

C. Because Tsang Would Have Been Entitled to Attorney Fees Had He Prevailed, Section 1717 Permits an Award of Fees to SFLR.

\*5 Tsang argues that SFLR cannot recover attorney fees because SFLR has failed to prove that Tsang would have been entitled to attorney fees had he prevailed. In Tsang's view, the attorney fees provision of the Sublease is essentially

irrelevant to our inquiry because of the trial court's ruling that the 1996 judgment terminated the 1993 Sublease. Tsang maintains that after the judgment in the unlawful detainer action, SFLR remained in possession under a tenancy created by Tsui Heng Village Restaurant's practice of accepting rental payments from SFLR. Tsang claims that because there was no evidence that this *subsequent* tenancy agreement contained an attorney fees provision, SFLR has failed to meet its burden of demonstrating that he would have been entitled to attorney fees had he prevailed. As a consequence, under the mutuality principle established by [section 1717](#), SFLR is not entitled to fees. In effect, Tsang argues that although he filed his complaint based upon a contract (the Sublease) containing an attorney fees provision, his action was not based upon that contract because of the trial judge's in limine ruling that the Sublease had been terminated.

We reject this argument for two reasons. First, a party's entitlement to attorney fees under [section 1717](#) turns upon the pleadings, not the evidence. (*Manier v. Anaheim Business Center Co.* (1984) 161 Cal.App.3d 503, 508 [“Whether a party is entitled to attorneys fees for the purpose of invoking [Civil Code section 1717](#) depends not on the evidence adduced at trial or some interim proceeding, but on the pleadings”], disapproved on another ground in *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295, 1306-1307; *Jones v. Drain* (1983) 149 Cal.App.3d 484, 487 [“the clarity of the entitlement to attorney's fees ... must turn on the pleadings”], disapproved on another ground in *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295, 1306-1307; see also *Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443, 451 (*Dell Merk*) [determining whether party who prevailed against bank was entitled to attorney fees “requires an examination of the claims made by Bank in its complaint in intervention”].) To determine whether SFLR is properly entitled to an award of attorney fees, we ask whether Tsang would have been entitled to fees had he prevailed in his action against SFLR. (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 680.) That is, we examine what would have happened had Tsang been afforded the relief sought in his complaint. (See *Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 545 (*Milman* ).)

There can be no question that Tsang would have been entitled to an award of attorney fees if he had prevailed on his original claim that SFLR was a tenant under the Sublease and that it was in breach of that agreement. Under the plain terms of the Sublease, “[i]f any action or other proceeding arising out of this sublease is commenced by either party

to this sublease concerning the sublease premises, then as between Sublessor and Sublessee,<sup>[6]</sup> the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or other proceeding by the prevailing party.” Tsang clearly recognized this because his complaint prayed for an award of attorney fees based upon the Sublease. (See *Real Property Services Corp. v. City of Pasadena* (1994) 25 Cal.App.4th 375, 383 (*Real Property Services Corp.*) [party's prayer in complaint for award of attorney fees pursuant to contract demonstrated its expectation that it would be awarded fees if it prevailed].) Because Tsang would have been entitled to a fee award had he prevailed on this complaint, under the reciprocity principle of [section 1717](#), SFLR is entitled to an award of attorney fees because it is the prevailing party. (*Real Property Services Corp.*, *supra*, at pp. 383-384.)

\*6 Second, even if we look not at Tsang's pleadings, but rather at the theory under which he proceeded to trial, SFLR would still be entitled to an award of attorney fees. Even after the trial court ruled that the Sublease had been terminated, Tsang did not amend his complaint to reflect this fact, nor did he abandon his claim for attorney fees. (Cf. *Artesia Medical Development Co. v. Regency Associates, Ltd.* (1989) 214 Cal.App.3d 957, 963 [no attorney fees awarded against party that abandoned claim for attorney fees and announced such position before final judgment].) Indeed, he pressed forward despite the trial judge's explicit warning that “Plaintiff is running a serious risk that they can't prove that defendant holds under the 1993 lease.” Tsang's counsel argued to the jury that “the terms of that new tenancy were *exactly the same as the sublease.*” (Italics added.) If Tsang had succeeded in proving that this was the case, he would have prevailed on his claim that SFLR owed monthly rent of \$14,600 plus one half of the condominium association fees assessed against the unit, the same amount set forth in the Sublease. Had Tsang been able to prove that those terms remained in effect after termination of the Sublease, there is no reason to assume that the provision regarding attorney fees would not also have remained in effect. (See *North Associates, supra*, 184 Cal.App.3d at p. 867 [after trial court determined that lease containing attorney fee provision had terminated, subsequent month-to-month tenancy on same terms remained subject to attorney fee provision].) Having argued that the terms of the new tenancy were exactly the same as those of the Sublease, there is no basis for Tsang's assertion that the terms of the new tenancy did not include the attorney fees provision. (See *id.* at p. 866.)



Tsang makes much of the fact that the Sublease containing the attorney fee provision was terminated, but contrary to his assertions, the case law is clear that the termination of the Sublease does not bar an award of attorney fees to SFLR. For example, in *Care Constr., Inc. v. Century Convalescent Centers, Inc.* (1976) 54 Cal.App.3d 701 (*Care Constr.*), disapproved on another ground in *Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 496, plaintiff Care sued Century alleging that Century had breached its lease with Care. (*Care Constr., supra*, at p. 703.) The lease provided that the lessee would pay the lessor's reasonable attorney fees in the event of any litigation. (*Id.* at p. 704.) After trial, the court concluded that there was no binding lease between the parties. (*Id.* at p. 703.) Century then requested an award of attorney fees on appeal, and Care contended that since the trial court had found that there was no valid lease, then no attorney fees could be awarded to Century. (*Id.* at p. 705.) The court rejected this contention, holding that “where there is an action on a purported lease which contains a provision for attorney's fees for the lessor ... the lessee is entitled to attorney's fees under [Civil Code, section 1717](#), if he succeeds in defending on the theory that there was no valid or enforceable lease.” (*Care Constr., supra*, at p. 707.)

\*7 Similarly in *North Associates, supra*, the landlord (North Associates) leased commercial premises to Bell. (*North Associates, supra*, 184 Cal.App.3d at p. 861.) Bell exercised an option to extend the lease for six months, but after the expiration of the extension period, Bell continued to occupy the premises month to month. (*Id.* at p. 862.) The parties attempted to negotiate a new lease, but their negotiations failed and North Associates sued to recover possession. (*Id.* at pp. 862-863.) Bell defended the suit claiming that he continued to occupy the premises under extensions of the original lease. (*Id.* at p. 863.) The trial court awarded possession to North Associates after finding that the parties' original lease had expired. (*Ibid.*) It also awarded attorney fees to North Associates. (*Id.* at p. 864.) Bell contended on appeal that North Associates was not entitled to an award of fees because the trial court had determined that the original lease, which contained an attorney fees clause, had expired or been terminated. (*Ibid.*) Division Three of this court disagreed, holding that Bell's contention in his pleadings and at trial that his continued occupancy was under an extension of the original lease, which contained an attorney fees provision, provided sufficient justification for the award of fees. (*Id.* at p. 866.) Because Bell would have been entitled to an award of attorney fees under the

original lease had he prevailed, North Associates was entitled to fees, even though the trial court found that the original lease was no longer in effect. (*Id.* at pp. 865-866; cf. *City and County of San Francisco v. Union Pacific R.R. Co.* (1996) 50 Cal.App.4th 987, 1000 [rejecting claim that attorney fee provision of lease could not be enforced after cancellation of lease; lease expressly contemplated that its provisions would control parties' dispute after cancellation].)

In this case, had Tsang prevailed on his complaint, he would certainly have been entitled to an award of attorney fees. The attorney fees provision in the Sublease grants attorney fees to the party prevailing in litigation arising out of the Sublease. It is true that Tsang proceeded to trial on a slightly different theory because the trial court ruled that the Sublease had been terminated by the judgment in the 1995 eviction action. Nevertheless, it was Tsang's theory that the terms of SFLR's new tenancy were exactly the same as under the Sublease. Had he prevailed on that claim at trial, he would have been entitled to an award of attorney fees. In such circumstances, the reciprocity rule of [section 1717](#) dictates that SFLR, the prevailing party, is likewise entitled to attorney fees.

D. *SFLR Is Entitled to an Award of Attorney Fees Because Tsang's Unlawful Detainer Action “Involved” a Contract.* Tsang's second challenge to the attorney fee award is equally unavailing. He concedes that a party is entitled to attorney fees if it prevails in a contract action by showing that the contract is inapplicable, invalid, unenforceable, or nonexistent. Nevertheless, he claims that this rule does not apply to this case because the parties in this case did not litigate the validity of the Sublease. Rather, according to Tsang, they litigated Tsang's right to possession of the premises under the “post-1996 judgment tenancy agreement created by conduct.”

\*8 Tsang's argument ignores the fact that the parties did indeed litigate the validity of the Sublease. After hearing the arguments of the parties, the trial court ruled in limine that the Sublease had been terminated by the judgment in the 1995 unlawful detainer action. Tsang then went to trial arguing that a new tenancy agreement had taken the place of the Sublease but that its terms were exactly the same as those of the Sublease. In the end, SFLR prevailed on *both* the issue of the validity of the Sublease and on its liability for the amounts Tsang claimed were due under the “post-1996 judgment tenancy agreement created by conduct.” Thus, the action below did involve the validity of the Sublease, and SFLR prevailed in the action.

Nothing more is required to justify an award of attorney fees to SFLR. “As long as an action ‘involves’ a contract, and one of the parties would be entitled to recover attorney fees under the contract if that party prevails in its lawsuit, the other party should also be entitled to attorney fees if it prevails, even if it does so by successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of the same contract.” (*North Associates, supra*, 184 Cal.App.3d at p. 865; accord, *Milman, supra*, 22 Cal.App.4th at p. 545 [parties that prevailed in contract action by showing that their signatures on alleged contract were forged entitled to award of fees under § 1717 because action “involved” a contract].) The propriety of the attorney fee award does not depend upon the reason for the underlying judgment. (*Real Property Services Corp. v. City of Pasadena* (1994) 25 Cal. App.4th 375, 384, fn. 7.)

Tsang cites *M. Perez Co., Inc. v. Base Camp Condominiums Assn. No. One* (2003) 111 Cal.App.4th 456, 467 (*M. Perez*) for the rule that “a prevailing party is entitled to attorney fees only if it can prove it would have been liable for attorney fees had the opponent prevailed.” Although *M. Perez* correctly states the rule, that case does not assist Tsang. *M. Perez* is fundamentally a case about judicial estoppel. (See *id.* at pp. 463, 468-470.) The contract at issue in *M. Perez* contained an *indemnity* provision, and the court held that “[s]uch a clause is not a prevailing-party-attorney-fee provision within the meaning of Civil Code section 1717[.]” (*Id.* at p. 463.) The prevailing party did not assert a right to attorney fees directly under the contract. (*Ibid.*) Instead, it claimed that its opponent was judicially estopped to deny that the contract contained an attorney fee provision because the opponent had itself made a request for attorney fees. (*Ibid.*) The court disagreed, explaining that “where the contract does not contain an attorney fee provision, even though the plaintiff seeks attorney fees, success by the plaintiff on the breach of contract claim does not entail a finding of a valid attorney fee provision. The prevailing party would not be entitled to

attorney fees.” (*Id.* at pp. 467-468.) *M. Perez* went on to hold that a party's initial request for attorney fees does not estop that party from later denying that the contract in question provided for an award of attorney fees. (*Id.* at p. 469.)

\*9 Consistent with the holding of *M. Perez*, we agree that Tsang's request for attorney fees in his pleadings does not estop him from arguing that there was no attorney fee provision to support an award of fees. Our holding that SFLR is entitled to an award of fees rests not on estoppel, but on the indisputable fact that the action below “ ‘involve[d]’ a contract”-the Sublease. (*North Associates, supra*, 184 Cal.App.3d at p. 865.) SFLR therefore has proved that it would have been liable for attorney fees had Tsang prevailed on the claim asserted in his complaint. It is undisputed that the Sublease contained an attorney fees provision. It is also undisputed that Tsang sued SFLR based upon the Sublease and that SFLR prevailed by demonstrating that the Sublease had been terminated. It is therefore clear that Tsang's unlawful detainer action “ ‘involve[d]’ a contract.” (See *Dell Merk, supra*, 132 Cal.App.4th at p. 455 [California courts liberally construe term “on a contract” as used in § 1717].) Because SFLR has proved that it would have been liable for attorney fees had Tsang prevailed, is entitled to a fee award as the prevailing party in Tsang's unlawful detainer action.

#### Disposition

The judgment is affirmed. Respondent shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a)(1), (2).)

We concur: SIMONS, Acting P.J., and GEMELLO, J.

#### All Citations

Not Reported in Cal.Rptr.3d, 2006 WL 2245423

#### Footnotes

- \* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- 1 The principal tenant at the property was Tsui Heng Village Restaurant, which had leased the property from Miriwa Center Investments in 1979 pursuant to what the parties to this appeal term the “Master Lease.” Tsui Heng Village Restaurant then sublet the property to SFLR in March 1993.
- 2 Although a witness testified that the 1995 unlawful detainer action had been resolved by a stipulation, the document itself was never produced, and its terms are unknown.

- 3 In its amended responses to plaintiff's form interrogatories, SFLR noted that it did not concede the genuineness or authenticity of the Sublease and stated that Nancy Ho had not seen a copy of the document until late 2004. Ho testified similarly in her deposition and at trial.
- 4 It is unclear from the record why documents relating to the earlier eviction action did not emerge until just prior to trial. Tsang asserts on appeal that during discovery SFLR intentionally misled him into believing that the Sublease was the controlling lease. Despite this claim, Tsang points us to nothing in the record that would suggest that SFLR had knowledge of these documents when it responded to his discovery requests. We therefore find no support for his charge SFLR intentionally misled him.
- 5 Although Tsang argued below that the amount of fees claimed was unreasonable, he makes no such argument in this court.
- 6 Although Tsang was not a signatory to the Sublease, he filed his unlawful detainer complaint as the assignee of the Sublease between Tsui Heng Village Restaurant and SFLR. On appeal, Tsang admits that he is the successor in interest to Tsui Heng Village Restaurant.