APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CUCAMONGA HOLDINGS, INC.,	No. BV 033364
Plaintiff and Respondent,	Inglewood Trial Court
v.	No. 19IWUD02401
PRINCESS OBIENU,	
Defendant and Appellant.	**OPINION**

This is an appeal by the tenant from a judgment entered in favor of the landlord following an unlawful detainer court trial. The tenant attacks the judgment on multiple grounds, all lacking merit. Accordingly, we affirm the judgment.

BACKGROUND

On November 15, 2019, Cucamonga Holdings Inc. (plaintiff) filed an unlawful detainer complaint[1] against Princess Obienu (defendant) seeking possession of the premises occupied by defendant and located in the City of Inglewood. Defendant's November 25, 2019 filed answer raised the following affirmative defenses: breach of the implied warranty of habitability, retaliatory eviction, violation of the March 5, 2019 enacted Inglewood Temporary Rent

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[1]The complaint was not designated for inclusion in the record.

Stabilization Ordinance No. 19.07, defective notice and complaint, discrimination and failure to provide reasonable accommodations.

A court trial commenced on January 15, 2020 where plaintiff presented its case and the defense started its case before the trial was continued to January 22, 2020.[2] When the trial resumed, defendant, plaintiff's representative "Ken" and plaintiff's maintenance worker Andrew Hollman testified. Various exhibits were also presented by both sides and reviewed by the trial court. The pertinent trial testimony as framed by the issues on appeal is as follows.[3]

According to defendant, at the time she moved into the premises she informed Ken of her medical problems, including her severe allergy to dust mites. During the tenancy, her rent was raised from its original amount in 2018 to $1,600 per month, and on a later date was increased to $1,850 when her husband temporarily stayed with her to recuperate following surgery and before returning to Laos. Plaintiff filed a prior unlawful detainer action against defendant for unpaid rent that was eventually dropped. Defendant did not know the correct amount of rent—$1,600 or $1,850—to pay starting in September 2019 because of the prior eviction action. She was waiting for plaintiff to give her a three-day notice so that she would know the amount. On November 6, 2019, defendant sent Ken a text message concerning a reduction in rent and renewal of the agreement. She did not receive a response to her text message. According to defendant, Ken "never responds to my texts." Defendant denied receiving the three-day notice by mail, posting or personal service. The three-day notice was attached to the summons and complaint that defendant acknowledged receiving.

Defendant identified her habitability complaints as follows: Chipping paint—it affected her emotionally and mentally to look at chipping paint; she was concerned that it may contain

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[2]The record includes an electronic recording of the second day of trial but not for the first day of trial.

[3]The trial court stated on the second day of trial that plaintiff had proved its prima facie case by presenting evidence that defendant occupied the premises pursuant to a written agreement signed in August 2016; on November 7, 2019, plaintiff caused defendant to be served with a three-day notice to pay past-due rent of $6,400 or quit; defendant failed to comply with the notice; and it filed the unlawful detainer complaint after expiration of the three-day period.

lead and pose a health risk for her 10-year-old daughter; she had never seen her daughter place a paint chip in in her mouth and had not spoken with her daughter about not doing so; defendant did not know if the paint contained lead and had not taken any steps to have the chips analyzed for lead. Dust mites—she has a severe allergic reaction when exposed to dust mites, it can "knock her out"; there are no dust mites inside of her apartment; the dust mites get into her vehicle because the parking area is not maintained; they also caused her daughter to get a sore throat. Roof gutters—the lack of outside roof gutters has an emotional impact on her. Mold—the mold in her apartment, that was remediated in early January 2019, was not properly handled because it grew back; she did not know what type of mold it was and did not have it tested to determine if it was mold; she had a face-to-face discussion with "him" on November and did not mention the mold or any of the habitability issues. Warped closet door—the condition of the door makes the room look shabby and it affects her emotionally to see the clothes that are stored in the closet; occasionally the door falls to the floor; the door is made of "Formica" and is warped by the weather; the problem with the door is not because it is overloaded with clothes; and it was in its current condition when she moved into the unit. Parking disturbances—strangers often park close to defendant's entrance and block her parking space; she has complained, but no action has been taken. Parking common area—is very filthy. Laundry room—it is located in a common area, is very filthy and contains dust mites; defendant was "knocked out" for three days once because of the dust mites that are in the laundry room. Ants—there are ants, mosquitos and tiny roaches that come into defendant's apartment from the outside. She told Andrew about the tiny roaches. Her daughter was bitten by ants as evidenced by a photo taken in October 2019 and presented to the court. Plaintiff uses an extermination service but, according to defendant, she never knows when the service is coming, and they will not tell her what type of spray is being used.

In regard to her request for accommodations, defendant testified that she informed Ken of her medical problems and dust mite allergies and need for accommodations. She sought access to the water spigot so that she could water outside her apartment to control dust mites, and an on-site laundry facility to eliminate the need to carry heavy loads to an off-site laundry.

Ken told her that he could not provide accommodations and later told her that they would not renew her lease.

Defendant's apartment was inspected by the Health Department on November 20, 2019, and on December 13, 2019. The initial inspection found a "mold like growth" in the flooring area, bedroom and living room and peeling paint in small patches. The latter report stated that all violations had been abated. The report was received into evidence.[4]

Defendant presented for the court's consideration "proof" from a doctor concerning her dust mite allergy. The court commented that it did not see a connection between the letter and the apartment.

Ken denied having any conversations with defendant about her health problems. He denied receiving any text messages from defendant. Starting 2017, and in response to the number of texts he had received from defendant, Ken provided defendant with the telephone number for the maintenance person and then blocked his phone from receiving text messages from defendant. He received no complaints from defendant concerning the apartment. Plaintiff employs an extermination service that sprays the exterior of the building and the interior of apartments when it is aware of a need.

Andrew opined that the matter in defendant's apartment was not mildew because mildew has fur; he does not know what it was. He washed the matter with bleach and it came right out. He had photos taken on November 13, 2019 after he cleaned the areas that he presented to the court. While he was in defendant's apartment cleaning in response to defendant's mold complaint, it was very hot because the heat was turned on, all the windows were closed, and defendant was cooking. All of the walls were "sweaty," with droplets, from the high humidity. There were no leaks or malfunctioning pipes in defendant's apartment. Andrew opened a window in response to the high heat. He described defendant as becoming upset and instructing him to close the window because of her allergies to dust.

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[4]The trial exhibits were not transmitted to this court.

As previously stated, the trial court found for plaintiff and against defendant. The court explained its ruling as follows: Plaintiff proved its case which included the declaration of the registered process server concerning service of the three-day notice. The court did not believe defendant when she testified that she did not receive the three-day notice until served with the summons and complaint. Defendant did not prove her affirmative defenses. Her evidence focused primarily on what transpired outside of the apartment and the evidence did not provide a sufficient defense. The court awarded plaintiff possession of the premises, forfeiture of the agreement, $6,400 for past-due rent, and $2,773.33 for holdover damages. The court delayed enforcement of the judgment until February 2, 2020.

On January 22, 2020, the clerk served the parties by mail with a document entitled "Notice of Entry of Judgment." Thereafter, defendant filed a series of ex parte motions.[5] On February 26, defendant filed a notice of appeal from the judgment, the post judgment orders

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[5]On January 29 (all unspecified date references are to the year 2020) an ex parte notice of motion and motion for reconsideration (Code Civ. Proc., § 1008, subd. (a)) (all unspecified statutory references are to the Code of Civil Procedure) of the January 22, 2020 order and relief from the judgment (§ 473, subd. (b)). On January 29, the trial court denied the motion for reconsideration but did not rule on defendant's motion for relief from the judgment.

On January 31, defendant filed an ex parte motion for stay of execution of the judgment (§§ 918, 1176, subd. (a)), and an ex parte notice of motion and motion for reconsideration (§ 1008, subd. (a))[5] of the January 22, 2020 order and relief from the judgment (§ 473, subd. (b)). On the same date, the parties were present in court and defendant presented the court with a cashier's check in the amount of $6,400 and stated that she had her personal checkbook to pay, if necessary, the balance of the judgment. The trial court viewed the motion as a motion for relief from forfeiture and granted relief on the condition defendant pay specified amounts via certified funds. Payment of the past due rent, holdover damages and attorney fees were payable on January 31 and the rent for February 1 was payable by February 3. All payments were to be tendered in open court. There was no ruling from the court on defendant's motion pursuant to section 473, subdivision (b).

On February 7 defendant filed an ex parte notice and motion for reconsideration of the January 22 and 29 orders (§ 1008, subd. (a)) and relief from judgment (§ 473, subd. (b)). The motion was continued to February 10, and on that date the court denied the motion for reconsideration and for relief from the judgment. The court found that defendant failed to make the payments as specified by the court and denied defendant's motions.

On February 14, defendant filed an ex parte motion for stay of execution of judgment (§§ 918, 1161, subd. (2), 1174.2, 1941, 1942.4, 1942.5 & 1176, subd. (a)). At the time of the hearing, the writ of possession had issued. The court granted defendant a 40-day stay of the judgment on the condition she paid $7,306.77 to plaintiff in open court on February 21.

that issued on January 22, 29, 31, February 10 and 14, and from the judgment entered on October 19, 2019 in the "original case that led to this present case that is being appealed."

DISCUSSION[6]

The discernible issues raised by defendant in her opening brief are that the three-day notice was not validly served, and that plaintiff violated Civil Code sections 1942.3 to 1943.5, Assembly Bill No. 3088 and the City of Inglewood's March 5, 2019 enacted Temporary Ordinance No. 19-07. We address each contention seriatim.

The three-day notice

A tenant is guilty of unlawful detainer when he or she remains in possession of the premises after defaulting in the payment of rent due under the rental agreement, and after being served with a written notice stating such amount and the place at which payment is to be made. (§ 1161, subd. (2); *North 7th Street Associates v. Constante* (2016) 7 Cal.App.5th Supp. 1, 4.) Service of a three-day notice is an essential prerequisite to a judgment declaring a lessor's right to possession under section 1161. (*Borsuk v. Appellate Division of Superior Court* (2015) 242 Cal.App.4th 607, 616.) A landlord is required to allege and prove proper service of the three-day notice and without such proof the landlord cannot obtain a judgment for possession. (*Liebovich v. Shahrokhany* (1997) 56 Cal.App.4th 511, 513.) Stated another way, a landlord must strictly comply with the statutory scheme governing the summary proceedings for obtaining possession of real property. (§§ 1159-1170; *Borsuk v. Appellate Division*, *supra*, at p. 611.)

Section 1162 sets forth the manner for service of a three-day notice and provides for three alternative methods of service of a notice to pay or quit. The statute provides in relevant

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[6]We invited the parties to brief the issue of whether the appeal was timely filed. Defendant filed a supplemental brief and plaintiff did not. We have determined that the appeal is timely. A motion for reconsideration after a judgment is entered is not a valid motion and does not extend the time to file an appeal. (*Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236-1237.) However, defendant's motion for relief from judgment operated to extend the time to file a notice of appeal of the judgment. (Cal. Rules of Court, rule 8.823(c); *Matera v. McLeod* (2006) 145 Cal.App.4th 44, 56-57.) The trial court did not rule on defendant's initial motion.

part as follows: "Except as provided in subdivision (b), the notices required by Section[] 1161 . . . may be served by any of the following methods: [¶] (1) By delivering a copy to the tenant personally. [¶] (2) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence. [¶] (3) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated." (§ 1162, subd. (a).)

Here, the record as to service of the three-day notice is limited to the trial court's summary of the testimony from the unreported day of trial that the notice was served by a registered process server and defendant's testimony denying service. "The return of a process server registered . . . upon process or notice establishes a presumption, affecting the burden of producing evidence of the facts stated in the return." (Evid. Code, § 647.) This statutory presumption imposed upon defendant the burden to offer evidence to rebut the presumed fact. (Evid. Code, § 606.) Because the trial court expressly disbelieved defendant's testimony denying service, the statutory presumption remained and was not rebutted. (*Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 940; *Palm Property Investments, LLC. v. Yadegar* (2011) 194 Cal.App.4th 1419, 1426-1427.) The process server's return is not included in the record. We are required to presume that it supports the trial court's decision in this regard. (*Taylor v. Nu Digital Marketing, Inc.* (2016) 245 Cal.App.4th 283, 287-288.) Likewise, we are bound by the trial court's credibility determinations. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 518.)

Civil Code sections 1942.3, 1942.4 and 1942.5

In regard to her breach of the implied warranty of habitability defense, in her opening brief, defendant cites verbatim the above referenced statutes. Defendant's reliance on the statutes are not supported by any statements, references to trial testimony or arguments. To be

clear, defendant has simply presented statutes for this court to read. We deem defendant's argument, to the extent she is asserting that she proved her habitability defense, as forfeited.

Pivotal to the results we reach herein is that, as to this issue,[7] defendant failed in her opening brief to sustain her burden on appeal of overcoming the presumption of correctness and establishing that the trial court committed reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; Cal. Const., art. VI, § 13.) The appealing party "must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority. [Citations.]" (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) "'This requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court's role to construct theories or arguments that would undermine the judgment . . . .' [Citation.]" (*Lee v. Kim* (2019) 41 Cal.App.5th 705, 721.) Simply stated, it is not our function to act as counsel on appeal for plaintiff, and we decline to do so. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.) When a party presents an issue on appeal without citation to authority and a developed argument, we may deem the issue forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.) We do so here.

Assembly Bill No. 3088

Defendant's eviction was not contrary to legislation enacted to protect tenants during the COVID-19 pandemic. Assembly Bill 3088, the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 was enacted on August 31, 2020, with various statutory provisions governing evictions.[8] One such provision imposed limitations on failure to pay rent evictions for the time period between March 1, 2020 and January 31, 2021. (§ 1179.02, subd. (a).) Defendant's eviction occurred prior to the effective date of the Act and accordingly cannot be used to defeat the judgment.

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[7]We are not suggesting that defendant's opening brief adequately addresses any of her identifiable issues. To the contrary, this appeal barely survives a summary affirmance on the theory of forfeiture. For each of the issues we do address, defendant advances a modicum of argument.

[8]See section 1179.01 et seq.

City of Inglewood Temporary Ordinance No. 19-07

Lastly, defendant complains that the cited municipal ordinance limits rent increases to 5 percent per year on certain residential properties located within the city limits. The effective date for the ordinance was March 5, 2019, and it governed "[a]ll rental increases on or after the date of final passage and adoption of this interim ordinance . . . ." (City of Inglewood Temporary Ord. No. 19-07, §§ 2, 9, at <https://www.cityofinglewood.org/DocumentCenter/View/13385/Ordinance-19-07?bidId=>.) The interim ordinance did not apply to defendant's tenancy because the rent increase that raised the rent to $1,600 occurred prior to its operative date. Although the temporary rent increase to $1,850 took place after the effective date of the ordinance, the rent increase was rescinded and was not used to calculate the past-due rent stated in the three-day notice. To the extent defendant is contending that under the ordinance she was not subject to eviction, the argument fails. Section 2A of the ordinance specifically allows evictions based on the non-payment of rent to proceed.

DISPOSITION[9]

The judgment is affirmed. Plaintiff to recover its cost on appeal.

P. McKay, P.J.

We concur:

Ricciardulli, J.

Richardson, J.

[9]The oral argument for the appeal took place on April 1, 2021, and defendant failed to appear either in person or remotely. The court has an established procedure requiring the court's support staff to immediately notify the court when a party scheduled to appear for oral argument telephones the court during the hearings. The court received no communications prior to or during the hearing that defendant had called the court complaining of being unable to appear remotely because of technical problems or was seeking telephonic relief from the court. On April 12, 2021, defendant filed a request to submit in writing the arguments she would have made had she appeared remotely. The request was based on matters outside the record and not supported by a declaration. The request is denied.

C E R T I F I C A T E O F T R A N S M I T T A L

L.A. Superior Court Central

Appellate

CUCAMONGA HOLDINGS VS. PRINCESS OBIENU	BV033364

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A copy of the following:

( ) Order of this Date	(✓) Opinion
( ) Memorandum Judgment	( ) Order Denying Rehearing/Certification
( ) Order Appointing Counsel	( ) Order RE Continuance
( ) Order Dismissing Appeal	( ) Remittitur
( ) Notice Fixing Brief Dates	( ) Notice Setting Cause for Hearing

has been transmitted to above named parties (✓) and trial court ~~appeal clerk.~~ Judge.

Dated: JUN 16 2021 By _____, Deputy