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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AIR COMBAT USA, INC.,

Plaintiff, Cross-defendant and Appellant.

v.

CITY OF FULLERTON,

Defendant, Cross-complainant and Appellant;

INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY,

Cross-complainant;

MICHAEL BLACKSTONE,

Cross-defendant.

G059914, G060345, G060585

(Super. Ct. No. 30-2017-00952643)

O P I N I O N

Appeals and cross-appeal from a judgment and postjudgment order of the Superior Court of Orange County, James L. Crandall, Judge. Affirmed in part, reversed in part, and remanded. Motion to augment record granted.

Sheppard, Mullin, Richter & Hampton, Todd E. Lundell, Karin D. Vogel, and Valerie E. Alter for Plaintiff, Cross-defendant, and Appellant.

Jones & Mayer, Gary S. Kranker and Krista MacNevin Jee for Defendant, Cross-complainant, and Appellant.

* * *

After leasing a hangar at a municipal airport for five years and investing significant resources to remodel the premises, Air Combat USA, Inc. (Air Combat) attempted to exercise a contractual option to extend its lease with the city of Fullerton (the City) for another 30 years. The City maintained the lease had already expired and eventually forced the aviation company to move out. When vacating the premises, Air Combat removed and damaged various fixtures and other items of property on the premises.

Air Combat sued the City for breach of contract and specific performance, and the City (and its public entity insurance pool)[1] filed a cross-complaint for conversion and punitive damages. After the trial court made specific factual findings about the option's expiration date and granted a nonsuit on the City's request for punitive damages, a jury awarded Air Combat $1.2 million in damages on its contract claim (including $500,000 for future economic losses), and awarded the City $10,000 on its conversion claim. Air Combat then asked the court to order specific performance of the option; the

[1] Cross-complainant Independent Cities Risk Management Authority is referred to collectively with the City.

court declined to do so and entered a judgment based on the jury verdict. The court also awarded Air Combat about $1.2 million in attorney fees. These cross-appeals followed.

We affirm the judgment and postjudgment fee order, finding no reversible error in the trial court's interpretation of the lease, its various in limine rulings, its refusal to compel specific performance of the option, or its attorney fee award to Air Combat. However, we conclude the court erred in refusing to instruct the jury on the City's claim for punitive damages on its conversion cause of action. Accordingly, we remand the matter for a new trial on that issue only.

FACTS

Apparently inspired by the movie Top Gun (Paramount Pictures 1986), Michael E. Blackstone founded Air Combat to provide civilians the experience of being a fighter pilot for a day. Over the next three decades, Air Combat flew thousands of guest pilots on missions in 27 different cities throughout the United States. By 2015, the company had more than 30 employees and annual revenues of about $1.8 million.[2]

Air Combat's home base was at the Fullerton municipal airport, where it leased hangar space from the City. In 2011, Air Combat moved its operations to a new location at the Fullerton airport that had previously been occupied by the Orange County Fire Authority (OCFA).

These new premises required about $100,000 in renovations and improvements. The City agreed Air Combat would have access to the leased premises

[2] The City's opening brief omits many facts summarized in this section. We remind the City's counsel that an appellant has a '"duty to fairly summarize all of the facts in the light most favorable to the judgment,"' and that '"burden . . . "grows with the complexity of the record."'" (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739; see Cal. Rules of Court, rule 8.204(a)(1).) In this case, where the record is over 14,000 pages and the briefs are collectively over 300 pages, the importance of a complete factual summary with accurate record references cannot be overstated.

rent-free for three months so it could begin refurbishments. Because of the dilapidated condition of the premises, Air Combat was also able to negotiate a low monthly rent of $1,084 per month with annual increases of 3 to 5 percent.

OCFA surrendered the premises in late February or early March 2011, but left behind two significant items: (1) an OCFA training helicopter fixed to a raised platform, and (2) a large steel platform inside the hangar (the so-called "blue cage"). OCFA and Air Combat agreed OCFA could leave the helicopter on the premises until it could be moved to OCFA's new location. Meanwhile, the City gave Air Combat access to the premises in early March so it could begin the necessary improvements.

The City's attorneys prepared, and Air Combat signed, a five-year lease with an "Effective Date" of June 1, 2011. The lease included an option for Air Combat to extend the initial five-year term by 30 years, provided that Air Combat exercise its option in writing at least 60 days before the expiration of the lease's "Initial Term." The lease defined the Initial Term as the five-year period beginning on the first day of the next month three months after OCFA vacates the premises.[3]

Air Combat moved into the new leased premises sometime in June 2011. Despite the ongoing construction, it was able to conduct business there by the end of the month. On July 1, 2011, OCFA returned with a large crane to remove the helicopter. Air Combat began paying rent to the City later that month.

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[3] To quote the lease: "Initial Term. The initial term of this Lease shall begin on the Commencement Date, and continue for a period of five (5) years (the 'Initial Term'). The Initial Term shall not commence until the Leased Premises is first vacated by the current tenant, [OCFA]. The Initial Term shall officially begin on the first day of the next month, three (3) months after OCFA vacates the Leased Premises (the 'Lease Commencement Date'). [¶] Optional Extension. At the expiration of the Initial Term, Tenant shall have an option to extend the term of this Lease for an additional thirty (30) years. This option must be exercised in writing, at least sixty (60) days prior to the end of the Initial Term."

Air Combat's founder passed away in 2015. He left Air Combat to his son, Michael J. Blackstone (Blackstone), in trust. Over the next year, Blackstone's uncle challenged the trust in court in an attempt to obtain ownership and control of the company; this resulted in a fair bit of "family drama" and internal turmoil within Air Combat.[4]

While Blackstone was defending his ownership rights to Air Combat, confusion developed concerning the lease's expiration date and the deadline for Air Combat to exercise the renewal option. Although the City now maintains the lease expired on July 1, 2016, and the option had to be exercised by May 2, 2016, the airport manager Brendan O'Reilly and the City's attorneys expressed beliefs in early 2016 that the lease would not expire until October 2016, meaning the renewal option did not have to be exercised until August 2016.[5]

According to Blackstone, he spoke with O'Reilly on several occasions in May and early June 2016 about Air Combat's desire to exercise the 30-year option. O'Reilly informed him the lease would not expire for several months and assured him Air Combat would "always have a home here."

Meanwhile, on June 16, 2016, a court confirmed Blackstone's ownership of Air Combat, and he assumed control of the company's operations. That same day, Blackstone called O'Reilly to again request help in exercising the option, but O'Reilly

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[4] Blackstone and his uncle had clearly "lost that lovin' feelin'." (Top Gun Soundtrack, Columbia Records 1986.)

[5] O'Reilly contacted the City Attorney in March 2016 asking for clarification about the expiration date, and the City Attorney advised him that the lease would expire on October 1, 2016. Consistent with that information, O'Reilly listed the Air Combat lease's expiration date as October 1, 2016 in a "cheat sheet" he maintained about the various airport leases. O'Reilly also advised an Air Combat employee in a March 2016 e-mail the lease would expire in "October instead of June."

refused. Blackstone reached out to O'Reilly again about a week later, and for the first time O'Reilly responded that the lease had expired in June. Blackstone tried once more on June 30 to inform O'Reilly that Air Combat wanted to exercise its option; O'Reilly again told Blackstone it was too late because the lease had expired.

The City nonetheless permitted Air Combat to remain on the premises as a month-to-month holdover tenant. Meanwhile, the City opened up a formal request for proposal (RFP) process for leasing the premises and allowed Air Combat to submit a proposal for a new lease. Air Combat was not selected as the new tenant, however, and in early April 2017 O'Reilly notified Blackstone that the City was terminating Air Combat's month-to-month tenancy.

Later that month, Air Combat submitted a Tort Claims Act claim for damages to the City, asserting that Air Combat had properly exercised its lease renewal option, the City had nonetheless opened an RFP process for other bidders and then conducted that process in a biased and unfair manner, and the City was improperly terminating Air Combat's tenancy. The City denied the claim in May 2017.

Blackstone unsuccessfully continued his attempts to negotiate a new lease with the City in May and June 2017. Finally, Air Combat vacated the premises in August 2017, and the City approved a lease with a new tenant several months later. According to Blackstone, Air Combat's inability to extend the lease destroyed the company.

As Air Combat was moving out, confusion developed over which items and fixtures Air Combat was required to remove. The lease indicated Air Combat had a duty to redeliver the premises to the City "in substantially the same condition that existed immediately prior to [Air Combat's] entry thereon." Air Combat therefore removed cabinets, windows, walls, sliding glass doors, a staircase and its handrails, simulated blast doors, light fixtures, a drop ceiling, cargo hooks, furniture, and other materials that had not been there before Air Combat began renovations in March 2011.

According to the City, Air Combat took these actions without the City's consent. O'Reilly at one point accused an Air Combat employee of vandalism and called the police.[6] An expert witness for the City testified it would cost about $110,000 to return the premises to the condition they were in after Air Combat's improvements.

In October 2017, Air Combat filed a complaint against the City.[7] In its operative third amended complaint, Air Combat alleged claims for breach of contract and specific performance, asserting that O'Reilly, as the City's representative, repudiated the lease before its expiration and prevented Air Combat from timely exercising its 30-year option. The City in turn filed a cross-complaint against Air Combat and Blackstone for conversion, breach of contract, and negligence based on the removal of fixtures and other damage to the property.

The parties tried the case over 11 days between February and September 2020 with a lengthy delay due to the COVID-19 pandemic. At the outset, the trial court denied the City's motion in limine to exclude evidence on causes of action not fairly reflected in Air Combat's government tort claim form, and it tentatively granted Air Combat's motion in limine to exclude Air Combat's tax returns; we discuss these rulings in more detail below.

At the close of evidence, the parties stipulated that the trial court should decide four preliminary issues: (1) the lease's Commencement Date; (2) the lease's expiration date; (3) the date by which Air Combat was required to exercise its option to

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[6] Local police declined to become involved in what they described as a civil dispute.

[7] Air Combat also sued O'Reilly, but those claims were dismissed on demurrer.

renew; and (4) the date of Air Combat's "entry" to the property.[8] In addressing the first three questions, the court observed that "[t]he beginning of the initial term is based on a compound calculation of four dates. 1. The first day of, 2. the next month, 3. three months after, 4. [OCFA] vacates the leased premises." The court then found that although Air Combat was given access to the property starting in March 2011, the evidence "clearly established" that OCFA did not actually "vacate[]" the property until it removed the helicopter on July 1, 2011. Thus, concluded the court, the lease's Commencement Date was October 1, 2011; the lease expired five years later on September 30, 2016; and Air Combat was required to exercise its option to renew by July 30, 2016. As for the fourth question, the court found that Air Combat's "entry" to the property was March 26, 2011.

Air Combat's claim for breach of contract and the City's cross-claims for breach of contract, negligence, and conversion then went to the jury. The trial court declined to instruct the jury on the City's claim for punitive damages, finding there was no "clear and convincing evidence of the intent to act with malice, oppression, [or] fraud."

The jury found the City had repudiated the lease which prevented Air Combat from exercising its option; it then awarded Air Combat $1.2 million in damages ($700,000 for past economic losses and $500,000 for future economic losses) on its breach of contract claim. As for the City's cross-claims, the jury found Air Combat had improperly removed fixtures and damaged the property when it moved out in 2017, and awarded the City $10,000 in damages.

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[8] The last question was relevant to the City's cross-complaint, as the lease required Air Combat to redeliver the premises to the City "in substantially the same condition that existed immediately prior to [Air Combat's] entry thereon."

Apparently dissatisfied with the jury's award of $500,000 in damages for future economic losses, Air Combat submitted a proposed judgment that included an order for specific performance enforcing Air Combat's contractual right to occupy the leased premises. After hearing oral argument on the issue, the court denied Air Combat's request for specific performance and entered judgment in favor of Air Combat for $1.2 million and in favor of the City for $10,000.

Both parties filed posttrial motions for attorney fees and costs. After substantially reducing the amount sought by Air Combat, the trial court awarded Air Combat approximately $1.2 million in attorney fees.

These cross-appeals followed. The City challenges the trial court's interpretation of the lease provisions, the court's various in limine rulings, its decision not to instruct the jury on punitive damages, and its award of attorney fees to Air Combat. Air Combat challenges the denial of its request for specific performance.

DISCUSSION

1. *The Lease's "Commencement Date"*

A pivotal issue at trial was whether Air Combat made a timely attempt to exercise its option to extend the lease. The lease required Air Combat to exercise the option at least 60 days before the expiration of the lease's "Initial Term," which was defined as the five-year period beginning on the first day of the next month, three months after OCFA vacated the premises: "The initial term of this Lease shall begin on the Commencement Date, and continue for a period of five (5) years (the 'Initial Term'). The Initial Term shall not commence until the Leased Premises is first vacated by the current tenant, [OCFA]. The Initial Term shall officially begin on the first day of the next month, three (3) months after OCFA vacates the Leased Premises (the 'Lease Commencement Date'). [¶] . . . At the expiration of the Initial Term, Tenant shall have

an option to extend the term of this Lease for an additional thirty (30) years. This option must be exercised in writing, at least sixty (60) days prior to the end of the Initial Term." The parties asked the trial court to determine the lease's Commencement Date, the Lease's expiration date, and the date by which Air Combat was required to exercise its option.

The trial court found the lease's "Commencement Date" was October 1, 2011; the lease expired five years later on September 30, 2016; and Air Combat's deadline to exercise its renewal option was July 30, 2016 (well after Air Combat attempted to renew). According to the City, the court should have instead found that the lease's "Commencement Date" was July 1, 2011, the lease expired five years later on July 1, 2016, and Air Combat's renewal option expired on May 2, 2016, well before Blackstone allegedly made an oral request to renew.

In concluding the lease's Commencement Date was October 1, 2011, the trial court reasoned that the lease's Initial Term was to begin on "1. The first day of, 2. the next month, 3. three months after, 4. [OCFA] vacates the leased premises." It then found that OCFA had "vacated" the premises on July 1, 2011—the day OCFA's helicopter was removed. The court also observed that the City and its lawyers had said in 2016 that the lease's Commencement Date was October 1, 2011 (three months after the helicopter was removed) and its expiration date was October 1, 2016, noting also the City alleged in four separate paragraphs of its verified answer that the lease expired on October 1, 2016.

The City asserts the trial court's interpretation of the lease's "Commencement Date" was incorrect and asks us to interpret the lease de novo. According to the City, OCFA "vacated" the premises not in July 2011 when it removed the helicopter, but rather in March 2011 when OCFA turned over its keys to the property and Air Combat was given access to begin improvements. Thus, argues the City, the

lease's Commencement Date was July 1, 2011—the first day of the next month three months after OCFA vacated the premises in March. The City also notes that Air Combat began paying rent in July 2011, which further confirms the lease's Commencement Date was in July.[9] The City reasons the lease's expiration date was five years later on July 1, 2016, and Air Combat's deadline to exercise the renewal option was 60 days before that—i.e., May 2, 2016— *before* Blackstone allegedly asked to renew the lease.

We are not persuaded. Although we interpret a contract de novo if the interpretation turns solely on the contract language and does not involve the credibility of any evidence extrinsic (*Bear Creek Master Assn. v. Southern California Investors, Inc.* (2018) 28 Cal.App.5th 809, 819), when the parties present conflicting extrinsic evidence on the meaning of the contract, as here, we review the trial court's ruling for substantial evidence and will uphold any reasonable construction of the agreement (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 158). In its statement of decision, the court concluded the lease was "ambiguous" as to the Commencement Date and its wording was "cumbersome." The court noted the parties had presented "sharply divergent versions of many of the key events and facts," and said its findings reflected its evaluation of the credibility of each witness who testified. Accordingly, we review the court's ruling for substantial evidence and must affirm if its construction was reasonable.

Substantial evidence supports the trial court's interpretation of the lease. The lease, which was dated June 1, 2011, referred to OCFA as the "current tenant," which suggests OCFA had not yet fully vacated the premises as of June 1. Moreover, OCFA's helicopter remained on the property until July 1, supporting the court's finding

[9] In making this argument, the City relies on the lease's "Rent Commencement Date" provision, which required Air Combat to "pay the Rent for the Leased Premises starting on the Commencement Date."

that OCFA did not "vacate" the premises until that date.[10] The first day of the next month three months after OCFA "vacated" the premises was therefore, as the court concluded, October 1, 2011 (or arguably even November 1, 2011). Accordingly, the court reasonably determined the lease's Commencement Date was October 1, 2011, its expiration date was September 30, 2016, and the renewal deadline was July 30, 2016.[11] That construction is also consistent with the City's repeated admissions in its verified answer that the lease expired on October 1, 2016. On this record, the court's findings on the commencement and expiration dates of the lease and the option renewal deadline are reasonable and must be affirmed.

The City insists the trial court improperly excluded and otherwise disregarded evidence concerning the side arrangement between Air Combat and OCFA allowing the helicopter and blue cage to remain on the premises. According to the City, this evidence shows OCFA in fact "vacated" the premises before July 1. We disagree. As the court made clear in its ruling, it did consider the "side deal between Air Combat USA and [OCFA] that the blue cage would be left" on the premises. However, the court reasonably found that evidence was not dispositive because any such side arrangement between Air Combat and OCFA could not amend the terms of the lease between Air Combat and the City. And in any event, the evidence related to the side deal established the helicopter was the last piece of equipment OCFA intended to remove from the

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[10] We attach no significance to the fact that the blue cage remained on the premises after July 1 because the evidence suggests OCFA abandoned the blue cage.

[11] By our calculation, five years after October 1, 2011, was actually October 1, 2016, not September 30, 2016, and sixty days before October 1, 2016, was actually August 2, 2016, not July 30, 2016. However, the difference of two days does not materially affect the analysis. Whether the deadline to exercise the option was July 30, August 1, or August 2, 2016, the City repudiated the lease in May and June 2016, well before the option expired.

property; thus, it made sense for the court to use the helicopter's July 1 removal date as the date that OCFA "vacated" the premises. The court's interpretation of the lease is supported by substantial evidence.

2. *Air Combat's Compliance with the Tort Claims Act*

The City's next argument concerns the trial court's ruling on the City's motion in limine to exclude evidence in support of all claims not fairly reflected in Air Combat's government tort claim form. In its motion, the City argued Air Combat should not be permitted to pursue its claims because its tort claim form alleged impropriety in the RFP process, not that the City interfered with Air Combat's attempts to exercise the option.

During oral argument on that motion, the trial court expressed concern that the City was attempting to make "a late motion for judgment on the pleadings" and noted that "motions in limine are not belated motions for summary judgment" and are "not late demurrers." The court then found on the merits that Air Combat's claim form, which included the lease as an exhibit, complied with the applicable rules on content and provided sufficient notice to the City of the claims later asserted in the complaint. The court therefore denied the City's motion in limine.

The City challenges that ruling, asserting Air Combat's contract claims were barred as a matter of law because Air Combat's claim form described claims that were "entirely different" than the claims arising from the lease. We disagree.

As an initial matter, we concur with the trial court that motions in limine should not be used as substitutes for dispositive motions. Nearly twenty years ago, this court "caution[ed] against the wholesale disposition of a case through rulings on motions in limine." (*R & B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 333; see *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 740 [cautioning trial courts to be wary of deciding motions in limine that function as nonstatutory motions for

judgment on the pleadings, as doing so can be "a recipe for reversal"]; *Amtower v. Photon Dynamics, Inc*. (2008) 158 Cal.App.4th 1582, 1594 [appellate courts "are becoming increasingly wary" of the use of motions in limine as substitutes for dispositive motions].)

Setting aside that issue, the City's motion failed on its merits because Air Combat's claim form substantially complied with the requirements of the Tort Claims Act. The act requires that before suing a governmental entity, a plaintiff must submit a claim that contains, among other information, "[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted," "[a] general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim," and "[t]he name or names of the public employee or employees causing the injury, damage, or loss, if known." (Gov. Code, § 910, subds. (c), (d), (e).) Since the statute's purpose is "'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation,'" our Supreme Court has held that "a claim need not contain the detail and specificity required of a pleading, but need only 'fairly describe what [the] entity is alleged to have done.'" (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446 (*Stockett*).)

If "the plaintiff ultimately files a complaint against the public entity, the facts underlying each cause of action in the complaint must have been fairly reflected in [the] claim" form. (*Stockett, supra,* 34 Cal.4th at p. 447.) A cause of action is vulnerable to a demurrer if it is based on an entirely different set of facts than those included in the written claim or if there has been a "'complete shift'" in the allegations. (*Ibid.*) "Where the complaint merely elaborates or adds further detail to a claim, but is predicated on the same fundamental actions or failures to act by the defendants, courts have generally found the claim fairly reflects the facts pled in the complaint." (*Ibid.*)

Applying those standards here, we conclude Air Combat's claim form put the City on notice of and fairly reflected the claims set forth in the complaint. Its claim form alleged that "[t]he City is in breach of the Lease Agreement entered into with the entities on behalf of whom this claim is submitted," identified Brendan O'Reilly as one of the persons causing the damage, and listed the place of the damage as the Fullerton Municipal Airport. Air Combat attached a copy of the lease to its claim. Although the one-page narrative attached to the claim form largely focused on the City's RFP process instead of the City's repudiation of the lease or interference with Air Combat's exercise of its option, this was understandable since at the time Air Combat submitted its claim in April 2017, the City was still in the RFP process, Air Combat was still in the premises, and Air Combat was still attempting to renegotiate the lease. In any event, the claim form's focus on the City's allegedly improper RFP process did not limit or negate Air Combat's other allegation regarding the City's breach of the lease. The trial court therefore did not err in denying the City's motion in limine to exclude evidence in support of all claims not fairly reflected in Air Combat's government tort claim form.[12]

[12] In the portion of its brief dealing with its Tort Claims Act arguments, the City advances several other theories about why Air Combat's contract claim was barred as a matter of law, such as Government Code section 818.8 immunity and municipal contracting requirements, and further argues that the trial court erred in declining to give a special instruction on municipal corporate contracts. We decline to entertain these arguments because they were not properly delineated or supported. (*Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368, 377-378, fn. 3 ["'[a]lthough we address the issues raised in the headings, we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument'"]; *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201 [appellant "forfeited the argument by violating the rule that requires each point be presented in an appellate brief under a separate heading"]; see Cal. Rules of Court, rule 8.204(a)(1)(B) [appellate briefs must "[s]tate each point under a separate heading or subheading summarizing the point"].)

3. *The Exclusion of Air Combat's Tax Returns*

The City next contends the trial court improperly excluded Air Combat's tax returns. By way of background, Air Combat produced its tax returns during discovery but later indicated it discovered the returns contained incorrect statements about allegedly fraudulent loans. The City intended to use those inaccurate statements at trial to call into question Blackstone's credibility and Air Combat's damages calculations. Air Combat moved in limine to exclude the tax returns as prejudicial and time consuming. The court granted that motion on a tentative basis, describing the issue as "a classic 352"—suggesting it believed the tax returns' probative value was substantially outweighed by the undue consumption of time or the risk of undue prejudice. (See Evid. Code, § 352.)

The City contends this ruling was erroneous and that the tax returns were relevant to the validity of certain financial data used by the jury in awarding damages. Air Combat counters that the City waived that challenge because the trial court's ruling on the motion in limine was only tentative and the City never pursued the matter further.

We agree the issue was waived. When a trial court issues a tentative pretrial ruling to exclude certain evidence, and the party proffering that evidence elects not to pursue the matter further, the party "forfeit[s] any claim of error based on the exclusion of the [evidence]." (*People v. Ennis* (2010) 190 Cal.App.4th 721, 735-736; see also *People v. Holloway* (2004) 33 Cal.4th 96, 133 ["A tentative pretrial evidentiary ruling, made without fully knowing what the trial evidence would show, will not preserve the issue for appeal if the appellant could have, but did not, renew the objection or offer of proof and press for a final ruling in the changed context of the trial evidence itself"].)

Here the trial court made clear its rulings on the motions in limine were tentative. Before hearing oral argument on the parties' motions, the court explained that trial was meant to provide "an opportunity for [the parties and the court] to get the

evidence rules right," that the court would provide its "preliminary determinations on these evidentiary issues," but that the parties should "feel free" to ask the court to "revisit" those rulings during the trial. After hearing oral argument on Air Combat's motion in limine related to the tax returns, the court indicated its "tentative ruling" was to grant the motion before adding that "if something comes up, we can revisit it." At no point during trial did the City ask the court to revisit that tentative ruling or otherwise modify it.[13] As a result, the City waived any claim of error.

And if we were to consider the challenge on the merits, we would find no error. We review a trial court's ruling on a motion in limine for abuse of discretion. (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1493.) "'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566 (*Denham*)), or when the court's ruling "is 'so irrational or arbitrary that no reasonable person could agree with it'" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773).

It was not unreasonable for the trial court to conclude that admitting the tax returns would be time consuming and unduly prejudicial. The City made clear it intended to use the tax returns to "implicate" Blackstone and expose his "potential perjury," and that its expert would testify about generally accepted accounting principles as applied to the signed tax returns. The court observed the City was attempting "character assassination" based on "irrelevant" and "tangential" material, that there were "ways other than the tax returns" to get information on Air Combat's expenses into

[13] Indeed, when Air Combat's attorney attempted to question an economist about taxes, *the City* objected to the question, and the trial court granted the City's motion to strike the question and answer.

evidence, and that Air Combat had already produced its QuickBooks records. We find no abuse of discretion in that ruling.

4. *The City's Punitive Damages Claim*

The City next challenges the trial court's midtrial ruling granting Air Combat's motion for a directed verdict on the City's punitive damages claim. Before we address the City's arguments, we must provide some additional background information.

As noted, the City's cross-complaint included a cause of action for conversion based on Air Combat's improper removal of property when it vacated the leased premises in 2017, and the City sought punitive damages in connection with that conversion claim. During trial, Air Combat argued "[t]here is no basis for an award of punitive damages." The City asserted in response that the jury could infer malice, oppression, or fraud based on Air Combat's removal of property and the fact that it left the premises in a dangerous condition. The trial court found there was no "clear and convincing evidence of the intent to act with malice, oppression, [or] fraud" and indicated the jury would not be instructed on punitive damages.

The trial court's refusal to instruct the jury on punitive damages was the equivalent of granting a nonsuit on that issue. (*Hoch v. Allied-Signal, Inc*. (1994) 24 Cal.App.4th 48, 58 (*Hoch*) [there is no significant difference between granting nonsuit and refusing to instruct the jury on an issue]; see Code Civ. Proc., § 581c, subd. (a) [authorizing motion for nonsuit at close of plaintiff's case].)

"A nonsuit is proper only if there is no substantial evidence to support a jury verdict in the plaintiff's favor. In determining whether the plaintiff's evidence is sufficient, the court may not weigh the evidence or determine the credibility of witnesses. The evidence favorable to the plaintiff must be accepted as true and any conflicting evidence disregarded. If facts sufficient to support a verdict in the plaintiff's favor may logically and reasonably be inferred from the evidence, the motion must be denied even if

the evidence is also susceptible to conflicting inferences. Nonsuit may be granted only if there is no substantial evidence upon which reasonable minds could differ." (*Hoch, supra,* 24 Cal.App.4th at p. 58.)

"On appellate review of a grant of nonsuit, the same standard applies. 'Only if, after indulging in every legitimate inference favorable to plaintiffs, we find that there is no evidence of sufficient substantiality to support a verdict in plaintiffs' favor, can we uphold the judgment of nonsuit.'" (*Hoch, supra,* 24 Cal.App.4th at pp. 58-59.)

In reviewing a nonsuit on a punitive damages claim, we are mindful that the plaintiff has a higher burden of producing clear and convincing evidence of malice, oppression, or fraud. (Civ. Code, § 3294, subd. (a); *Hoch, supra,* 24 Cal.App.4th at p. 59 ["on a motion for nonsuit, both the trial and appellate courts must view the evidence 'with that higher burden in mind'"].) In cases where there is no clear and convincing evidence that the defendant acted with malice, oppression, or fraud, granting nonsuit and refusing to instruct on punitive damages is appropriate. (See, e.g., *Stewart v. Truck Ins. Exchange* (1993) 17 Cal.App.4th 468, 483; *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 458.) However, "[w]here reasonable minds could differ as to whether the evidence would support punitive damages, the resolution of the conflicting inferences and the weighing of opposing evidence is for the jury; for the court to grant a nonsuit in that circumstance, or the appellate court to affirm a judgment of nonsuit, would be to usurp the jury's function." (*Hoch,* at p. 59.)

We therefore must determine whether reasonable minds could differ on whether the evidence at trial could support punitive damages against Air Combat. Although there was no direct evidence of malice in this case, the City contends the jury could have inferred malice from Air Combat's conduct. (See *Colucci v. T-Mobile USA, Inc*. (2020) 48 Cal.App.5th 442, 455 ["'[m]alice . . . may be inferred from the circumstances of a defendant's conduct"'].)

We agree. As noted, when Air Combat moved out, it removed not only furniture from the premises, but also cabinetry, windows, walls, sliding glass doors, a staircase, and plumbing fixtures, among other things, prompting O'Reilly to accuse an Air Combat employee of vandalism. Although it is possible (as suggested by Air Combat's counsel during oral argument) that the jury would have determined Air Combat's actions were the result of negligence or an honest mistake about the lease's requirement that Air Combat return the premises to their pre-lease condition, it seems to us reasonably possible the jury could have found Air Combat intentionally removed or destroyed the property with malice in retaliation for the City's refusal to extend the lease.

In the end, that question should have been left for the jury. Accordingly, we must remand this matter for a new trial on the issue of the City's entitlement to punitive damages on its conversion cause of action.

5. *Air Combat's Attorney Fee Award*

The City's final challenge concerns the trial court's award of attorney fees to Air Combat. The court found Air Combat was the prevailing party on its complaint. After finding numerous attorney fee billing entries duplicative, unsupported, vague, or otherwise not compensable, and after reducing trial counsel's hourly rates, the court applied the lodestar method of multiplying the number of hours reasonably expended by the attorneys' reasonable hourly rates and awarded a total of $1,229,520 in fees. The City contends the court's reasons for reducing Air Combat's fee recovery show that fees should have actually been denied altogether, or at least reduced more significantly.

This argument ignores the applicable standard of review. "We review attorney fee awards on an abuse of discretion standard. 'The "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless

the appellate court is convinced that it is clearly wrong.'"" (*Laffitte v. Robert Half Internat. Inc*. (2016) 1 Cal.5th 480, 488.)

The trial court's detailed minute order on Air Combat's fee motion reflects that in framing its award, the court carefully considered counsel's billing records, considered the appropriate hourly rates and amount of time spent on tasks, determined many entries were not compensable, and reduced the fees sought accordingly. We see no abuse of discretion.

6. *Air Combat's Entitlement to Specific Performance*

We now turn to Air Combat's cross-appeal, which concerns its entitlement to specific performance. Air Combat's operative complaint included claims for both breach of contract, which is a legal remedy, and specific performance, which is an equitable remedy. Although equitable remedies normally are tried first by a court before any legal remedies are tried to a jury (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1238, 1240), that did not occur in this case. Instead, Air Combat chose to first try its breach of contract cause of action to the jury,[14] which awarded Air Combat $1.2 million in damages ($700,000 for past economic losses and $500,000 for future economic losses).

Air Combat later asked the trial court to order specific performance of Air Combat's contractual right to occupy the leased premises, asserting the jury's award of $500,000 in damages for future economic losses was "inadequate." The court denied Air Combat's request, noting there was an adequate remedy at law and that specific performance would result in a double recovery. Air Combat challenges that ruling. We

[14] Before the matter was submitted to the jury, the trial court asked counsel for both sides, "What do we submit to the jury tomorrow? . . . [¶] . . . After the verdict, will there by something left for the court? At that time, is that when you want me to decide specific performance . . . ?" Counsel did not provide a clear answer.

review the court's denial of specific performance for abuse of discretion. (*Petrolink, Inc. v. Lantel Enterprises* (2022) 81 Cal.App.5th 156, 165–166.)

It is well-settled that to obtain specific performance in a breach of contract action, a plaintiff must show, among other elements, that its remedy at law is inadequate. (*Darbun Enterprises, Inc. v. San Fernando Community Hospital* (2015) 239 Cal.App.4th 399, 409, fn. 5; *Tamarind Lithography Workshop, Inc. v. Sanders* (1983) 143 Cal.App.3d 571, 575.) Air Combat did not make such a showing here. Air Combat's position is not that damages are inadequate as a matter of law, but rather that the damages the jury awarded are inadequate as a matter of fact. Equitable relief is not available under such circumstances. (See *Kazlauskas v. Emmert* (2012) 248 Or.App. 555, 569–572 [vendor who received jury award of damages on contract claim could not establish legal remedy was inadequate and therefore was not entitled to specific performance].)

Air Combat attempts to rely on the statutory presumption that monetary damages are not an adequate remedy for breach of a contract for the transfer of an interest in land. (See Civ. Code, § 3387; see *Vincent v. Grayson* (1973) 30 Cal.App.3d 899, 912, fn. 8 [noting the presumption applies to land transactions "whether by sale or lease"].) However, this presumption is rebuttable. (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 474.) In this case, the jury's award of $500,000 in future damages reflects that monetary damages were available as a remedy, and such damages would compensate Air Combat for its future losses. Thus, to the extent the statutory presumption applies to options to extend a lease (an issue we need not decide), it was successfully rebutted.[15]

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[15] We recognize that normally a plaintiff may pursue two inconsistent remedies concurrently and then make its election of remedies any time before the entry of judgment. (*Denevi v. LGCC, LLC* (2004) 121 Cal.App.4th 1211, 1218, 1221; see Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2022) ¶ 6:249.5, p. 6-82; 3 Witkin, Cal. Procedure (5th ed. 2022) § 179, p. 260.) Our holding

DISPOSITION

The judgment and postjudgment order on attorney fees are affirmed as described herein. The judgment is reversed, and the matter is remanded to the trial court for a new trial only on the City's demand for punitive damages on its conversion cause of action. Each party is to bear its own costs on appeal. (Cal. Rule of Court, rule 8.278, subd. (a)(5).)

GOETHALS, ACTING P. J.

WE CONCUR:

SANCHEZ, J.

DELANEY, J.

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here concerns not an election of remedies issue, but rather the fact the jury's damages award necessarily defeats Air Combat's argument that it has no remedy at law.