

FILED  
San Diego Superior Court

DEC 08 2015

Clerk of the Superior Court  
By: N. Damron

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**  
**APPELLATE DIVISION**

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Plaintiff(s) and Respondent(s),

v.

C.H.E. CAFÉ COLLECTIVE,

Defendant(s) and Appellant(s).

Appellate Division No.: 37-2014-00041374-CL-UD-CTL  
Trial Court Case No.: 37-2014-00026758-CL-UD-CTL  
Trial Court Location: Central Division

**DECISION/STATEMENT OF REASONS  
(CCP § 77(d)) BY THE COURT**

APPEAL from the unlawful detainer judgment following a two-day bench trial by the  
Superior Court of San Diego County, Katherine Bacal, Judge.

**AFFIRMED.**

Oral argument was held on November 18, 2015, and this matter was taken under  
submission.

Appellant's appeal is limited to the applicability of the dispute resolution provisions and  
whether or not Appellant timely and properly requested dispute resolution under the terms of the  
Space Agreement. However, Appellant did not provide a reporter's transcript of the trial, and it  
consequently cannot challenge the sufficiency of the evidence as the evidence is conclusively  
presumed to support the judgment. (*Rutter, Civil Appeals and Writs*, §4:45.)

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1 An appellate court begins with the presumption the judgment is  
2 correct [citation] and the appellant must prepare a record that  
3 adequately establishes the trial court committed prejudicial error.  
4 [Citations.] "Obviously, . . . the presentation of a record which is  
5 clearly insufficient to enable a reviewing court to determine whether  
6 or not the trial court was correct in its ruling is not the equivalent of  
7 demonstrating that the trial court was in error."

8 (*Ritschel v. Fountain Valley* (2006) 137 Cal.App.4<sup>th</sup> 107, 122-123.) And contrary to Appellant's  
9 argument, the trial court's evidentiary rulings, including the limited admission of Exhibit 24, would  
10 be subject to an abuse of discretion standard of review and the absence of a reporter's transcript  
11 again limits review.

12 The trial court initially deferred ruling on Plaintiff's motion in limine to exclude evidence of  
13 dispute resolution at the outset of the trial, noting in the October 15, 2104 minutes: "The Court  
14 further notes that the notice states that no further extensions would be allowed. It appears to the  
15 Court that plaintiff uses 'termination' and 'extension' interchangeably, therefore, the Court defers  
16 ruling on plaintiff's motion in limine and will allow parol evidence to be presented." (CT 373.) The  
17 motion was apparently ultimately denied as there is no further reference in the trial minutes, and the  
18 trial court's October 29, 2014 Statement of Decision states on page 3:

19 The Collective did not provide sufficient evidence that it timely  
20 and properly requested or pursued dispute resolution under the  
21 terms of the Lease. Notwithstanding the admission of Ex. 28,  
22 ¶¶176-178,<sup>1</sup> the Collective failed to carry its burden of proof that  
23 the dispute resolution provisions in the Lease precluded the  
24 termination of the Lease by The Regents.

25 There is nothing in the Statement of Decision, the reporter's transcript of the October 29,  
26 2014 hearing regarding the finalization of the Statement of Decision, the Clerk's Transcript, or the  
27 Exhibits contained in the record on appeal that serves to establish error on the part of the trial court,  
28 let alone reversible error.

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<sup>1</sup> Allegations regarding a renewed request for dispute resolution contained in a separate "Complaint for Declaratory Judgment, Injunctive Relief, and Damages" in unlimited civil case number 37-14-22224, which was filed on behalf of The Che Café Collective and then voluntarily dismissed.

1           Respondent is awarded costs on appeal.

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3           Unanimously affirmed.

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KERRY WELLS

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Presiding Judge, Appellate Division

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GALE E. KANESHIRO

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Judge, Appellate Division

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JOEL R. WOHLFEIL

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Judge, Appellate Division

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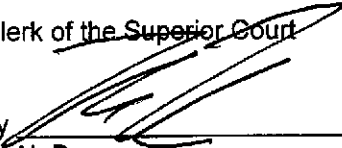
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input checked="" type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		<b>FOR COURT USE ONLY</b>  <b>FILED</b> San Diego Superior Court  <b>DEC 08 2015</b>  Clerk of the Superior Court By: <u>N. Damron</u>
APPELLANT C.H.E. CAFÉ COLLECTIVE		SUPERIOR COURT CASE NUMBER 37-2014-00026758-CL-UD-CTL
RESPONDENT THE REGENTS OF THE UNIVERSITY OF CALIFORNIA		
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b>		APPELLATE DIVISION CASE NUMBER 37-2014-00041374-CL-UD-CTL

I certify that I am not a party to the above-entitled cause, and that I placed a copy of the following document(s):  
 DECISION/STATEMENT OF REASONS (CCP § 77(d)) BY THE COURT dated 12/8/15

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at  
☐ Chula Vista ☐ El Cajon ☐ Ramona ☒ San Diego ☐ Vista, California.

Date: 12/8/15

Clerk of the Superior Court

by  Deputy  
 N. Damron

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