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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CITY OF SAN DIEGO, Plaintiff and Respondent, v. LUIS MEDRANO, Defendant and Appellant.	D071111 (Super. Ct. No. 37-2015-00012821-CU-MC-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

The Law Offices of Nathan Shaman and Nathan A. Shaman for Defendant and Appellant.

Mara W. Elliott, City Attorney, John C. Hemmerling, Assistant City Attorney, and Gabriela Brannan, Deputy City Attorney, for Plaintiff and Appellant.

Luis Medrano appeals from a summary judgment in favor of the City of San Diego (City) in the City's lawsuit against him for an injunction and civil penalties. The lawsuit

arose from the illegal operation of a marijuana dispensary at Medrano's property. Medrano contends the trial court erred in granting summary judgment because the City did not demonstrate he *maintained* a marijuana dispensary, and the City failed to submit admissible evidence to establish the property's zoning classification. We conclude Medrano's appeal lacks merit, and accordingly we affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Medrano owned property located at 4218-4220 Market Street in San Diego, California (Property). Medrano leased the Property to North County Holistic, Inc. and Hakeem Garrett.

In early October 2014, the City's code enforcement division received several complaints of a marijuana dispensary operating at the Property. A City investigator determined the property was located in the Mount Hope Planned District, Subdivision II (MHPD-SUBD-II) zone. The operation of a marijuana dispensary, cooperative or collective is not a permitted use within the MHPD-SUBD-II zone.

City investigators went to the Property, smelled marijuana at the location, and observed people walking out with small bags. In March 2015, an undercover San Diego police officer purchased marijuana at the Property. Inside the Property, the officer observed display cases containing marijuana and a cash register. The officer also saw other customers purchasing marijuana.

In April 2015, the City filed a complaint for an injunction and civil penalties against Medrano.[1] Approximately two months later, the trial court issued a preliminary injunction prohibiting Medrano from operating or maintaining any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including any marijuana dispensary, cooperative or collective at the Property. Despite the injunction, on several occasions between October 2015 and February 2016, a City investigator went to the Property and observed that the marijuana dispensary was still in operation. In December 2015, an undercover San Diego police detective purchased marijuana at the Property.

Effective January 1, 2016, the Property was rezoned to a Commercial-Neighborhood 1-4 (CN-1-4) zone. A marijuana dispensary, collective, or cooperative is not a permitted use within the CN-1-4 zone.

In February 2016, the City moved for summary judgment on its complaint. Medrano opposed the motion and objected to portions of the declarations the City had submitted in support of its motion. As relevant here, Medrano objected to statements by City employees that the Property was located in the MHPD-SUBD-II zone on the ground that the statements lacked foundation because the declarants did not have personal knowledge of the information. Medrano also objected to the City's submission of a parcel information report showing the Property was located in the MHPD-SUBD-II zone

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1 In October 2015, the City amended the complaint to add North County Holistic, Inc. and Garrett as defendants. North County Holistic, Inc. and Garrett are not parties to this appeal.

on the grounds that the document lacked authentication and constituted inadmissible hearsay.

The trial court overruled Medrano's evidentiary objections and entered judgment in favor of the City. The court offered Medrano a separate postjudgment evidentiary hearing on the issue of civil penalties, but Medrano declined that hearing. The court imposed civil penalties against Medrano in the amount of $175,000.[2]

II

DISCUSSION

A. *Standards Applicable to Review of Summary Judgment Rulings*

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment shall be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." (*Ibid.*; see Code Civ. Proc., § 437c, subd. (p)(1).)

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[2] The court also imposed civil penalties in the amount of $600,000 jointly and severally against Garrett and North County Holistic, Inc.

If the plaintiff meets its burden, " 'the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant . . . may not rely upon the mere allegations or denials' of his 'pleadings to show that a triable issue of material fact exists but, instead,' must 'set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.' " (*Aguilar*, *supra*, 25 Cal.4th at p. 849.)

We review a summary judgment ruling de novo to determine whether there is a triable issue as to any material fact and whether the moving party is entitled to judgment as a matter of law. (*Certain Underwriters at Lloyd's of London v. Superior Court* (2001) 24 Cal.4th 945, 972.) "In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment." (*Lenane v. Continental Maritime of San Diego, Inc.* (1998) 61 Cal.App.4th 1073, 1079.) "[W]e are not bound by the trial court's stated reasons for its ruling on the motion; we review only the trial court's ruling and not its rationale." (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.)

B. *The City Was Not Required to Establish Medrano Personally Maintained A Marijuana Dispensary On His Property*

We first address Medrano's argument that the trial court erred in granting summary judgment because the City did not produce evidence that he "maintained" a marijuana dispensary on his property. Medrano does not dispute that there was a marijuana dispensary on his Property or that the San Diego Municipal Code prohibited the operation of a marijuana dispensary on his Property. Instead, Medrano contends the City did not

meet its summary judgment burden because the only evidence it offered to support its claim that he violated the San Diego Municipal Code was that he owned the Property. As we shall explain, we reject Medrano's argument because a violation of the land use restrictions in the San Diego Municipal Code is a strict liability offense.

The San Diego Municipal Code prohibits any person from maintaining or using any premises in violation of the City's Land Development Code. (San Diego Mun. Code, §§ 111.0101, subd. (a), 121.0302, subd. (a).) Under the Land Development Code, the operation of a marijuana dispensary is not a permitted use within the MHPD-SUBD-II and CN-1-4 zones. (San Diego Mun. Code, §§ 1515.0306 [MHPD-SUBD-II], 131.0520, subd. (b) [CN-1-4].) "Violations of the Land Development Code [are] strict liability offenses regardless of intent." (San Diego Mun. Code, § 121.0311.)

In *People Ex Rel. Feuer v. Superior Court (Cahuenga's The Spot)* (2015) 234 Cal.App.4th 1360, the court considered an argument similar to the one before us. (*Id., at* p. 1385.) In that case, a property owner had leased his property to a medical marijuana dispensary. (*Ibid.*) The owner claimed that he could not be held liable for operation of the dispensary because he lacked knowledge that there was a marijuana facility on his property. (*Id.,* at p. 1385.) The Court of Appeal rejected the owner's argument because a violation of the use restrictions in the Los Angeles Municipal Code was a strict liability offense. (*Ibid.*; see *Leslie Salt Co. v. San Francisco Bay Conservation Etc. Com.* (1984) 153 Cal.App.3d 605, 622 ["[W]hether the context be civil or criminal, liability and the duty to take affirmative action flow not from the landowner's active responsibility for a condition of his land that causes widespread harm to others or

his knowledge of or intent to cause such harm but rather, and quite simply, from his very possession and control of the land in question."].)

Here, the City produced evidence that Medrano owned the Property. The City also produced evidence that a marijuana dispensary was operating on the Property in violation of the San Diego Municipal Code. Under the San Diego Municipal Code, the violation was a strict liability offense.[3] (San Diego Mun. Code, § 121.0311.) Thus, as the owner of the Property where an illegal marijuana facility was operating, Medrano was strictly liable for the offense, regardless of his knowledge, intent, or active participation in the operation. (*People Ex Rel. Feuer v. Superior Court (Cahuenga's The Spot), supra*, 234 Cal.App.4th at p. 1385; *Leslie Salt Co. v. San Francisco Bay Conservation Etc. Com., supra*, 153 Cal.App.3d at p. 622.)

C. *The Trial Court Did Not Err in Overruling Medrano's Evidentiary Objections*

We next address Medrano's argument that the City did not submit admissible evidence to establish the Property's zoning classification. Specifically, he contends the trial court should have sustained his objections to declarations from City employees about the Property's zone and the City's parcel information report setting forth the zone. We consider each of these items in turn.

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[3] The San Diego Municipal Code states a " 'Responsible Person' includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property." (San Diego Mun. Code, § 11.0210.)

1. Declarations from City Employees About the Property's Zoning Classification

Medrano argues the trial court erred in overruling his objections to statements in declarations from City employees, Dan Normandin, Leslie Sennett, and Cameron Clark, that the Property was located in the MHPD-SUBD-II zone. Medrano contends the statements were inadmissible because the witnesses lacked personal knowledge to testify about the zone in which the Property is located.

We pause briefly to set forth the relevant portions of Normandin's, Sennett's, and Clark's declarations. In his declaration, Normandin stated that he had been a project manager in the land development code section of the City's development services department for 10 years. The land development code section was responsible for updating and amending the City's zoning regulations. Thus, Normandin was familiar with the regulations in the San Diego Municipal Code relating to land use, zoning, housing, and health and safety issues. As part of his job, Normandin reviewed the San Diego Municipal Code to determine the applicable zone for properties and permitted uses within particular zones.

Sennett declared that she was a senior land development investigator in the City's development services, code enforcement division. She had been employed with the City since 1990 and had been an investigator since 2007. Sennett had received extensive training on the administration and enforcement of zoning regulations contained in the San Diego Municipal Code, including how to read and interpret zoning regulations, zoning maps, tax assessor records, and other City and County of San Diego records related to permitted uses on parcels. Further, Sennett had received extensive training on

the administration and enforcement of regulations relating to land use, zoning, buildings, housing, and health and safety issues. Sennett routinely interpreted regulations and documents to determine permitted uses on properties.

Clark's declaration stated he had been a land development investigator in the City's development services, code enforcement division, since 2014. Clark declared he had received extensive training on the administration and enforcement of zoning regulations, including how to interpret regulations, zoning maps, tax assessor records, and other City and County of San Diego records to determine permitted uses on parcels. He had also received extensive training on the administration and enforcement of regulations relating to land use, zoning, buildings, housing, and health and safety issues. Clark regularly reviewed regulations and documents to determine permitted uses on properties.

We begin our analysis with the standards applicable to evidentiary rulings on summary judgment. Generally, the trial "court's evidentiary rulings made on summary judgment are reviewed for an abuse of discretion." (*Walker v. Countrywide Home Loans, Inc*. (2002) 98 Cal.App.4th 1158, 1169.) However, in *Reid v. Google, Inc*. (2010) 50 Cal.4th 512, our Supreme Court expressly left open the question of whether evidentiary rulings in connection with summary judgment motions are reviewed under a de novo or an abuse of discretion standard. (*Id*. at p. 535.) Under either standard, the trial court here did not err in overruling Medrano's evidentiary objections as to portions of Normandin's, Sennett's, and Clark's declarations.

A motion for summary judgment "must be decided upon admissible evidence in the form of affidavits, declarations, admissions, answers to interrogatories, depositions

and matters of which judicial notice shall or may be taken." (*Hayman v. Block* (1986) 176 Cal.App.3d 629, 638 (*Hayman*); Code Civ. Proc., § 437c, subd. (d).) Declarations and affidavits supporting a summary judgment motion "shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations." (Code Civ. Proc., § 437c, subd. (d); *Hayman*, at p. 638.) The declarant "must cite evidentiary facts, not legal conclusions or 'ultimate' facts." (*Hayman*, at p. 639.) However, a witness may properly testify based on his or her personal experience about the administration and implementation of laws. (*Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1570 (*Bernard*) [sufficient foundation existed for the chief of operations of health care benefits for the California Public Employees' Retirement System (CalPERS) to testify about CalPERS's administration and implementation of the Public Employees Medical and Hospital Care Act].)

Here, Normandin's, Sennett's, and Clark's declarations demonstrated they had personal knowledge of the City's zoning regulations. They were involved in the City's administration and enforcement of zoning classifications and permitted uses. As we detailed above, Normandin was responsible for updating and amending the City's zoning regulations and had experience in determining the applicable zone and permitted uses for properties. Sennett and Clark had received extensive training on the administration and enforcement of zoning regulations and regularly reviewed those regulations as part of their investigations to determine if particular uses at properties were permitted. Based on their experience, training, and review of the regulations and relevant documents,

Normandin, Sennett, and Clark determined the Property was in the MHPD-SUBD-II zone. There was sufficient foundation for Normandin's, Sennett's, and Clark's statement about the Property's zoning classification.

We reject Medrano's contention that Normandin, Sennett, and Clark could not testify about the Property's zoning classification because zoning is a legal concept. Normandin, Sennett, and Clark did not make improper legal conclusions. Instead, based on their training, experience, and involvement with the City's zoning enforcement, they testified about how the City implemented, enforced, and administered its zoning regulations, which included determining a parcel's zoning classification. (*Bernard, supra*, 202 Cal.App.4th at pp. 1570-1571 [employee properly testified about public agency's administration and implementation of law].)

Based on the foregoing, we conclude the trial court properly overruled Medrano's objections to Normandin's, Sennett's, and Clark's statements that the Property was in the MHPD-SUBD-II zone.

2. The City's Parcel Information Report

Medrano next argues the trial court erred in overruling his objection to the City's submission of a parcel information report showing the Property was located in the MHPD-SUBD-II zone on the grounds that the document lacked authentication and constituted inadmissible hearsay. As we shall explain, we reject this argument because the document falls within the business records exception to the hearsay rule.

The hearsay rule requires that hearsay evidence is inadmissible, except as provided by law. (Evid. Code, § 1200.) Evidence Code section 1271, known as the business

records exception to the hearsay rule, provides that "[e]vidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule" if it meets all of the following requirements: "(a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

" 'Whether a particular business record is admissible as an exception to the hearsay rule . . . depends upon the "trustworthiness" of such evidence, a determination that must be made, case by case, from the circumstances surrounding the making of the record. [Citations.]' " (*People v. Matthews* (1991) 229 Cal.App.3d 930, 939.) As to authentication, there must "be sufficient evidence for a trier of fact to find that the writing is what it purports to be, i.e., that it is genuine for the purpose offered." (*People v. Goldsmith* (2014) 59 Cal.4th 258, 267; see Evid. Code, §§ 1400, 1401, subd. (a).)

Here, Clarks' declaration was sufficient to establish the parcel information report fell within the business records exception to the hearsay rule. The writing was made in the regular course of business because it was generated from the City's property tracking system, which contains information about parcel zoning based on the City's official zoning map. The City maintained the document and Clark reviewed it when he was investigating and reviewing documents to determine the Property's zoning classification. He testified as to the document's identity. Lastly, the source of the information and time of preparation indicated trustworthiness and there was sufficient evidence to find that the

document was what it purported to be for purposes of authentication. Accordingly, we reject Medrano's argument that the parcel information report was inadmissible.

D. *The Trial Court's Imposition of Penalties*

Medrano sets forth the standard of review for the trial court's imposition of civil penalties against him, contending appellate courts review the matter for an abuse of discretion. However, other than setting forth a standard of review, Medrano does not explain how the trial court abused its discretion or make any argument about the civil penalties imposed against him.

"Appellate briefs must provide argument and legal authority for the positions taken. 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]' " (*Nelson v. Avondale Homeowners Assn*. (2009) 172 Cal.App.4th 857, 862 (*Nelson*).) "We are not bound to develop appellants' argument for them. [Citation.]" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

Medrano failed to develop or even raise any argument on the issue of the trial court's imposition of civil penalties against him. As such, we conclude the issue is waived. (*Nelson, supra,* 172 Cal.App.4th at p. 862.)

DISPOSITION

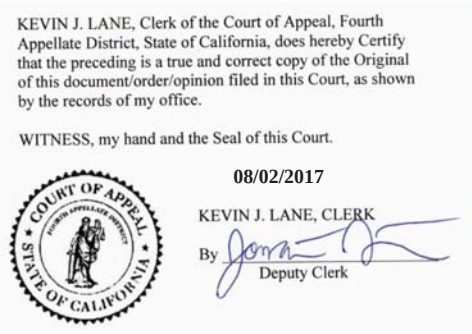
The judgment is affirmed. The City is entitled to costs on appeal.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.


KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

08/02/2017

KEVIN J. LANE, CLERK

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