ARTICLE:
NO BREACH TOO SMALL? CAN A TENANT'S LEASE BE TERMINATED EVEN FOR TRIVIAL DEFAULTS?

By Katie Jones[*]

Is a tenant's failure to provide its landlord with proof of renter's insurance grounds for eviction? For years, one might have responded with the follow up question: "Is the failure to provide proof of renter's insurance a material or trivial breach of the lease?" In California, one recent decision suggests that the follow up question may be irrelevant if the lease includes a clause to the effect that "*any* breach" by the tenant entitles the landlord to terminate the lease. Although this decision now has been reversed, it leaves a number of questions open for further determination.

1. *Juarez I*—The Effect of an "Any Breach" Clause in a Lease.

In *Boston LLC v. Juarez*, 240 Cal. App. 4th Supp. 28 (2015) (*Juarez I*),[1] a published decision of the Appellate Division of the Superior Court of Los Angeles County, the court held that if a lease expressly provides for a forfeiture following "any breach," regardless of materiality, the failure to comply with that provision following a statutory notice to cure or quit allows a landlord to terminate the lease.

The breach at issue in *Juarez I* was the tenant's failure to procure renter's insurance within three days after his receipt of a statutory three-day notice to cure or quit. The parties' lease included the following key provision: "any failure of compliance or performance by Renter shall allow Owner to forfeit this agreement and terminate Renter's right to possession."[2] It was not disputed that the tenant breached his lease by failing to maintain renter's insurance. The *Juarez I* court found that to uphold an express lease provision allowing for the termination of a lease following any breach (regardless of materiality) does not violate

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public policy, despite the fact that decades of jurisprudence have required that a breach of a lease be material in order to justify a forfeiture of the lease.

The *Juarez I* decision was a short-lived but welcome victory for landlords who would prefer not to deal with the uncertainty as to whether a breach is material so as to justify a forfeiture. Tenants, on the other hand, should have had genuine concerns with *Juarez I* over the potential to lose their home or business on a mere technicality in the event their leases included an express forfeiture provision similar to the provision in *Juarez I*.

2. *Juarez II*—"Any breach" clause does not trump "substantial breach" requirement.

The apparent confusion introduced by *Juarez I* was mitigated by the Second District California Court of Appeal, which asserted jurisdiction over the matter pursuant to California Rules of Court, Rule 8.1002 to settle an important question of law, as follows: "Whether a tenant's breach of a [Los Angeles County Rent Stabilization Ordinance "LARSO"] rental contract, regardless of the breach's materiality or impact on the landlord, justifies the landlord forfeiting the agreement and terminating the tenancy."[3] In its February 25, 2016 opinion, also certified for publication, *Juarez II*, 2016 WL 742231 (Cal. App. 2d Dist. 2016) (*Juarez II*), the *Juarez II* court answered this question with a resounding "no"—"a tenant's breach must be material to justify a forfeiture."[4] The court went on to hold that the tenant's obligation to pay for renter's insurance protects the tenant's interest, not the landlord's. Because the failure to obtain a policy could not have harmed the landlord, it therefore was not a material breach of the lease agreement constituting grounds for forfeiture.[5]

3. Continuing Questions after *Juarez II*.

While *Juarez I* was reversed, it still poses concerns for the status of forfeiture law in California: (1) as of this writing it does not appear to have been ordered depublished, although it is clearly no longer good authority and should not be cited; (2) other District Courts of Appeal are not bound to follow *Juarez II*;

and (3) *Juarez II* limited its review to the narrow issue of whether a LARSO rental agreement can be terminated for a trivial breach. Accordingly, while California jurisprudence overwhelmingly supports the *Juarez II* decision, there is still the potential for a different outcome in another Court of Appeal, or in the context of a commercial lease, which more often involves sophisticated parties with varying degrees of bargaining power.

4. The Nature of a Forfeiture in the Landlord-Tenant Context.

To understand the implications of *Juarez I* and *Juarez II*, it is helpful to explore the state of California law on lease forfeitures. A forfeiture is a termination of a contract. It is a draconian result, particularly in the case of contracts where the defaulting party has already completely, or almost completely, performed, but has breached some trivial aspect of the contract. In California, "[t]he law sensibly recognizes that although every instance of noncompliance with a contract's terms constitutes a breach, not every breach justifies treating the contract as terminated . . . . Following the lead of the Restatements of Contracts, California courts allow termination only if the breach can be classified as 'material,' 'substantial,' or 'total.' "[6] Accordingly, California Civil Code section 1422 requires that "[a] condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created." Furthermore, Civil Code section 3275 provides: "Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

In the context of a lease, a "forfeiture" simply means a termination of the lease and return of possession of the leased premises to the landlord—commonly known as an "eviction." Evictions in California are governed by statute. "Those statutory requirements 'must be followed strictly, otherwise a landlord's remedy is an ordinary suit for breach of contract with all the delays that rem-

edy normally involves and without restitution of the demised property.' ''[7]

California's unlawful detainer statute[8] essentially provides that a landlord may evict a tenant of real property when the tenant continues in possession of the real property after a failure to pay rent or perform other conditions or covenants of the lease after three days' notice, in writing, requiring either that the condition or covenant be performed (or paid) or possession of the premises be returned to landlord. Although the unlawful detainer statutes do not specify whether such failure to perform must be a "material" failure or a breach of a "material" covenant, California courts have long applied equitable considerations in determining whether a breach is so substantial as to justify a termination of lease.[9]

The law disfavors forfeiture so much that a court may "relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the Court, ... The application may be made by a tenant or sub-tenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made."[10] However, as a practical matter, many landlords (at least in the commercial context) require tenants to waive the benefits of such statutory relief from forfeiture. Such waivers of Code Civ. Proc., § 1179 have been held enforceable in commercial leases.[11]

5. Legal Analysis in the *Juarez* Decisions.

a. Factual background and *Juarez I*.

The factual circumstances involved in *Juarez I* and *Juarez II* were relatively straightforward. Juan Juarez rented an apartment

from Boston LLC ("Landlord") in 1999. In 2014, Landlord filed an unlawful detainer action to evict Juarez based on a three-day notice that had required Juarez to obtain renter's insurance per the terms of the rental agreement or surrender possession of the premises.[12] Juarez failed to obtain renter's insurance within the three-day period (although he did obtain renter's insurance a few days later). At trial, Landlord relied on a clause in the rental agreement that stated:

> "Owner and Renter agree that Renter's performance of and compliance with each of the terms thereof, . . . constitute a condition on Renter's right to occupy the Premises and any failure of compliance or performance by Renter shall allow Owner to forfeit this agreement and terminate Renter's right to possession."

Based on this "any breach" clause, the trial court deemed *all* breaches of the parties' lease to be material, and would not allow Juarez to present evidence of materiality, or his affirmative defenses of substantial compliance, retaliation, or breach of the covenant of good faith and fair dealing.

On appeal to the Appellate Division, Juarez reiterated his contention that he should have been allowed to present evidence that his breach of the rental agreement was not material. The determination as to "[w]hether a breach is so material as to constitute cause for the injured party to terminate a contract is ordinarily a question for the trier of fact."[13] According to the Restatement (Second) of Contracts Section 241, in determining whether a failure to render or to offer performance is material, the following circumstances are significant:

(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

(d) the likelihood that the party failing to perform or to offer

to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and

(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.[14]

The *Juarez I* appellate division panel acknowledged the long line of California case law requiring a breach to be material in order to justify a forfeiture of a lease, noting that under California law, "[w]hether a particular breach will give a plaintiff landlord the right to declare a forfeiture is based on whether the breach is material."[15] However, the *Juarez I* majority instead focused on the "clear and unambiguous" forfeiture clause in the parties' lease, stating that "it is a general rule a party is bound by contract provisions."[16] The court agreed that the clause requiring renter's insurance would have been assessed for materiality had it not been for the forfeiture clause, which clearly and unambiguously stated that *any failure* of compliance or performance would allow Landlord to terminate Juarez's right to possession. The *Juarez I* court further distinguished the decades of California jurisprudence on the grounds that none of the cases cited by Juarez involved such a forfeiture clause.[17]

Juarez argued in *Juarez I* that the forfeiture clause violated public policy because it would allow evictions for any breach regardless of severity, such as violating the covenant against annoying other tenants. Juarez claimed that allowing evictions for annoying conduct, such as a crying newborn or playing "displeasing music" would violate public policy. But the *Juarez I* court gave short shrift to Juarez's argument, observing that his breach was more substantial than the examples given by Juarez. The court noted that in "evictions based on three-day notices to perform or quit, as in the present case, breaches would only constitute valid grounds for eviction if they were not cured within the notice period, meaning tenants could not be evicted based on single incidents of annoying their neighbors."[18] While California's unlawful detainer statutes do in fact provide tenants with the opportunity to cure a curable breach within three days, in this case,

Juarez could be (and was) evicted for not obtaining renter's insurance within three days of receipt of notice from Landlord, even though the notice was served on a Friday, leaving only Monday for Juarez to obtain renter's insurance and provide evidence of the same to Landlord.

The *Juarez I* court went on to discuss extensively an Arizona Supreme Court decision in *Foundation Dev. Corp. v. Loehmann's*,[19] and determined that it was not bound to follow the out-of-state precedent.[20] *Loehmann's* involved a commercial lease dispute in which the tenant failed to pay a portion of its common area maintenance charges within 10 days of its receipt of a notice from the landlord. The lease contained a clause to the effect that if Loehmann's failed to pay any installment of rent or other charges within 10 days after receipt of notice, the landlord could, prior to Loehmann's cure, elect to terminate the lease.[21] The *Loehmann's* court rejected the claim that a one-day delay was sufficient to warrant termination, stating "we now join the overwhelming majority of jurisdictions that hold the landlord's right to terminate is not unlimited. We believe that a court's decision to permit termination of a lease must be tempered by notions of equity and common sense. We thus hold a forfeiture for a trivial or immaterial breach of a commercial lease should not be enforced."[22]

The *Juarez I* court distinguished *Loehmann's* on the grounds that *Loehmann's* addressed a different question—whether enforcement of a forfeiture clause for a trivial breach would be unconscionable and inequitable. In *Juarez I*, by contrast, Juarez had not raised the issue of unconscionability at trial, instead arguing that the forfeiture clause was invalid because it violated public policy. The *Juarez I* court considered the "public policy" issue to be an entirely separate issue from unconscionability.[23]

The *Juarez I* court also disagreed with Juarez's contention that permitting eviction based on "any breach," rather than only breaches of "lawful obligations," would be a violation of LARSO.[24] The court noted, first, that Juarez did not argue that failure to obtain renter's insurance was not a breach of a lawful obligation,

and second, that because the breach was curable (but had not been cured), the purpose of the ordinance was satisfied.[25]

The dissent in *Juarez I* relied heavily on *Loehmann's* in finding that "[t]he rule created by the majority is contrary to decades of jurisprudence requiring a breach to be material in order to justify a contractual forfeiture,"[26] while at the same time acknowledging in a footnote that "[t]here are no California cases addressing the propriety of forfeiting a *lease* (as opposed to another type of contract) solely based on the tenant's trivial breach."[27] The dissent pointed out that *Loehmann's* did not turn on the defense of unconscionability, but rather the *Loehmann's* court simply acknowledged that "a material provision of a lease may be breached in such a trivial manner that to enforce a forfeiture would be unconscionable and inequitable . . . . *Loehmann's* contains no discussion concerning the defense of unconscionability as such a defense was not at issue."[28]

b. Legal Analysis in *Juarez II*.

In *Juarez II*, the Second District court of Appeal went back to the basics of California law, noting first that case law is clear in California that "a lease may be terminated only for a substantial breach thereof, and not for a mere technical or trivial violation."[29] *Juarez II* did not even reach the public policy issue given its finding that a lease could not be terminated for a trivial breach. Instead, the court found ample authority in California case law to the effect that an "any breach" forfeiture claim will still be construed to require a material breach, and that a mere contract provision implying otherwise will not support a lease forfeiture based on a "slight or trivial violation" by the tenant.[30]

Juarez II relied on the long line of California case law in which "[c]ourts have consistently concluded that 'a lease may be terminated only for a substantial breach thereof, and not for a mere technical or trivial breach.' " Specifically, *Juarez II* relied on *Randol v. Scott*, 110 Cal. 590, 42 P. 976 (1895), an ancient decision involving a forfeiture clause that provided "if default shall be made in any of the covenants herein contained, then it shall be

lawful for the lessor to re-enter the said premises." Despite the forfeiture clause language, the *Randol* court refused to allow a forfeiture for a trivial breach.

The *Juarez II* court went on to hold that the substantive law requiring a material breach is not overridden by the language contained in Code of Civil Procedure § 1161, subd. 3, despite the latter statute's omission of the word "material."[31] Rather, it held that California case law also applies the substantive breach requirement even when the lease includes an "any breach" forfeiture clause.[32]

6. The practical implications of *Juarez I* and *Juarez II*.

a. Both *Juarez I* and *Juarez II* may have persuasive authority in other California courts.

Under the doctrine of stare decisis (which requires all courts exercising inferior jurisdiction to follow decisions of courts exercising superior jurisdiction), an opinion of the Second District Court of Appeal is not binding on the California Court of Appeal districts, but is nonetheless persuasive. Thus, the controlling precedent in most cases that arise in lower courts in California will be the *Juarez II* decision. Also, while California Rules of Court, Rule 8.1115, subdivision (a) permits a party to cite to a published opinion by a superior court appellate division, and it does not appear that the *Juarez I* decision has been depublished at this writing, it seems unlikely that this condition will continue, and improbable that continued citations of *Juarez I* are proper. Even so, although *Juarez I* was reversed and the California superior courts are required to follow *Juarez II* where it applies, the prior existence and awareness of the *Juarez I* decision, which has been widely reported in the legal press, may lead practitioners to assert its logic in other cases.

b. *Juarez I* applied to residential and commercial leases; but *Juarez II* may not reach commercial leases.

Although *Juarez I* involved a residential lease dispute, there was nothing in the opinion limiting the court's decision to residential leases. Since the *Juarez I* court did not tailor its analysis to resi-

dential leases, the analysis of *Juarez I* arguably also applies to commercial leases. However, the ultimate issue addressed in *Juarez II* was specific to residential leases and even more so to a LARSO lease. Relying on *Green v. Superior Court,*[33] *Juarez II* opined that public policy requires even greater protections under a LARSO lease because of the unequal bargaining power between low-income residential tenants and their landlords. *Juarez II* explains that allowing a landlord, such as the one in *Juarez II* to forfeit a lease based on a trivial breach would allow the landlord to strategically circumvent LARSO's "good cause" eviction requirement and violate the public policy goals of providing stable affordable housing to low-income individuals.[34]

On the one hand, it seems only logical that an "any breach" forfeiture provision in a commercial lease might be applied more strictly against a commercial tenant, on the basis that commercial leases are more stringently enforced given the sophistication and bargaining power of the parties to a commercial transaction. On the other hand, given the significant monetary investments made by tenants in various types of commercial leases (particularly in the case of ground leases or other extensive buildouts), to enforce a forfeiture of a lease following a minor breach early in a lengthy lease term would be a tremendous windfall for the landlord and detriment to the tenant.

For example, if *Juarez I* were applied to a ground lease, where a tenant fails to provide a certificate of insurance to the landlord until three days after its cure period expires, the tenant could lose a multi-million dollar investment in real property improvements. It is easy to foresee circumstances in which a national corporate entity needs additional time to process a request for an insurance certificate, a response to an estoppel, or other seemingly innocuous request from a landlord. This result could be particularly troubling for tenants with lease provisions requiring them to provide the landlord with certain documentation on an annual basis without reminder or notice from the landlord (e.g., current copy of tenant's HVAC maintenance contract). Under *Juarez I*, even if the tenant performed a day late, the landlord would be entitled to terminate the lease without giv-

ing the tenant any opportunity to present evidence that the enforcement of such provision is so minor that allowing the termination would violate public policy. On the other hand, the better presumption may be that a commercial tenant has equal or greater bargaining power than the landlord, and if the tenant willingly agreed to a "lease may be terminated for any breach, no matter how small" clause such as was involved in *Juarez I* and *Juarez II*, the tenant will have to live with its bargain and perform the lease without prompting.

Assuming their leases contain a provision similar to that of the lease in *Juarez I and II*, permitting a forfeiture for "any breach," landlords will continue to argue that their remedy is to evict a tenant for a tenant's failure to cure a breach within the applicable time frame provided by the lease and/or California unlawful detainer statutes (depending upon how the lease is drafted) because it will expedite the summary eviction proceedings.

For this reason, to the extent not already in their standard form leases, landlords were encouraged by *Juarez I* to ensure language is now included in their leases to the effect that all breaches are deemed material and will result in a forfeiture of the lease, while tenants with sufficient bargaining power sought to ensure that such language was excluded from the lease. If a tenant does not have the bargaining power to exclude such a forfeiture provision, then such tenant should at least try to negotiate additional time to cure breaches and/or add a requirement that the landlord provide more than one notice to a tenant before being able to affect a forfeiture. Moreover, tenants may want to think twice before agreeing to waive their statutory right of redemption, given that an eviction may result from a minor breach.

As for whether such considerations are no longer significant after the contrary decision in *Juarez II*, the issues are far from clear and the same bargaining issues between commercial tenants and landlords likely will continue to arise even after *Juarez II.*

Conclusion.

The practical implications of the *Juarez* decisions have yet to unfold. Despite the strong language of the *Juarez II* decision, the case law on which it is based is old and much of it not directly on point. Because it arose in a residential context, it is predictable that *Juarez II* will be challenged when applied in a commercial context, especially because in the interval between the *Juarez I* and *Juarez II* decisions, many commercial landlords began even more carefully inserting "any breach" language in their leases. Thus, while *Juarez II* may seem to have replaced the cap on the bottle that was removed by *Juarez I*, it remains to be seen whether it first managed to put the genie back in the bottle.

ENDNOTES:

[1]*Boston LLC v. Juarez*, 240 Cal. App. 4th Supp. 28, 193 Cal. Rptr. 3d 521 (App. Dep't Super. Ct. 2015), judgment rev'd, 2016 WL 742231 (Cal. App. 2d Dist. 2016) (*Juarez I*).

[2]*Juarez I*, 240 Cal. App. 4th Supp. at 28.

[3]*Juarez II*, 2016 WL 742231 (Cal. App. 2d Dist. 2016), slip op. p.*2 (*Juarez II*). (Although *Juarez II* was certified for publication, only slip opinion page cites are available as this article goes to press).

[4]*Juarez II*, slip op. p.*2.

[5]*Juarez II*, slip op. p.*2.

[6]*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d 1032, 1051, 241 Cal. Rptr. 487 (1st Dist. 1987).

[7]*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d at 1071.

[8]Code Civ. Proc., §§ 1161, *et seq*.

[9]*Randol v. Scott*, 110 Cal. 590, 42 P. 976 (1895); *NIVO 1 LLC v. Antunez*, 217 Cal. App. 4th Supp. 1, 5, 159 Cal. Rptr. 3d 922 (App. Dep't Super. Ct. 2013).

[10]*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d at 1062-1063; see Code Civ. Proc., § 1179.

[11]*In re Art and Architecture Books of the 21st Century*, 518 B.R. 43 (Bankr. C.D. Cal. 2014).

[12]Interestingly, Landlord had never demanded performance of

that term before for the 14 years since the lease had been signed. The *Juarez I* court addressed and rejected the obvious "waiver" argument in the unpublished portion of its decision, and the issue was not addressed in the *Juarez II* opinion.

[13]*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d at 1051-1052, citing *Whitney Inv. Co. v. Westview Development Co.*, 273 Cal. App. 2d 594, 601, 78 Cal. Rptr. 302 (4th Dist. 1969); accord *Porter v. Arthur Murray, Inc.*, 249 Cal. App. 2d 410, 421, 57 Cal. Rptr. 554 (4th Dist. 1967); *Associated Lathing & Plastering Co. v. Louis C. Dunn, Inc.*, 135 Cal. App. 2d 40, 49, 286 P.2d 825 (1st Dist. 1955); *Smith v. Empire Sanitary District*, 127 Cal. App. 2d 63, 73, 273 P.2d 37 (3d Dist. 1954); see *Gold Mining & Water Co. v. Swinerton*, 23 Cal. 2d 19, 28, 142 P.2d 22 (1943).

[14]Restatement (Second) of Contracts § 241.

[15]*Juarez I*, 240 Cal. App. 4th Supp. at 526, citing *NIVO 1 LLC v. Antunez*, 217 Cal. App. 4th Supp. 1, 5, 159 Cal. Rptr. 3d 922 (App. Dep't Super. Ct. 2013).

[16]*Juarez I*, 240 Cal. App. 4th Supp. at 526-527, citing *Williams v. California Physicians' Service*, 72 Cal. App. 4th 722, 739, 85 Cal. Rptr. 2d 497 (3d Dist. 1999).

[17]See, e.g., *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d at 1051.

[18]*Juarez I*, 240 Cal. App. 4th Supp. at 528.

[19]*Foundation Development Corp. v. Loehmann's, Inc.*, 163 Ariz. 438, 788 P.2d 1189 (1990).

[20]"Decisions of the courts of other states are regarded as persuasive in varying degrees depending on the point involved." (Witkin, Cal. Proc. (4th ed. 1997) Appeal, § 940, p. 980).

[21]*Foundation Development Corp. v. Loehmann's, Inc.,* 163 Ariz. at 440-441.

[22]*Foundation Development Corp. v. Loehmann's, Inc.,* 163 Ariz. at 446. The cases cited by *Loehmann's* came from the First Circuit Court of Appeals, California, Connecticut, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Vermont, Virginia, and Wisconsin. *Foundation Development Corp. v. Loehmann's, Inc.,* 163 Ariz. at 455.

[23]However, they are two distinct codified concepts. Court action addressing unconscionability in contracts is codified at Civ. Code, § 1670.5 and violation of public policy is addressed in Civ. Code, § 1667. That said, both statutes fall under the ambits of "unlawful contracts."

[24]See L.A. Mun. Code, § 151.09, subd. (A)(2).

[25]In an unpublished portion of the *Juarez I* opinion, the Appellate Division also upheld the trial court's finding of "no waiver" despite the landlord's acceptance of rent for *14 years* without ever requesting evidence of renter's insurance, based on the presence of an anti-waiver clause in the written lease and the trial court's finding that no evidence of waiver of the *anti-waiver clause* had been introduced. The court also addressed and rejected arguments on the breach of the covenant of good faith and fair dealing and retaliatory eviction.

[26]*Juarez I*, 240 Cal. App. 4th Supp. at 531.

[27]*Juarez I*, 240 Cal. App. 4th Supp. at 531, fn. 1.

[28]*Juarez I*, 240 Cal. App. 4th Supp. at 532.

[29]*Juarez II,* 2016 WL 742231 (Cal. App. 2d Dist. 2016) (slip op. p.*5), citing *Keating v. Preston*, 42 Cal. App. 2d 110, 118, 108 P.2d 479 (3d Dist. 1940).

[30]*Juarez II,* 2016 WL 742231 (Cal. App. 2d Dist. 2016) (slip op. p.*5), citing *Keating*, *supra*, 42 Cal. App. 2d at 117 (1940).

[31]*Juarez II,* 2016 WL 742231 (Cal. App. 2d Dist. 2016), (slip op. p.*6). See *Medico-Dental Bldg. Co. of Los Angeles v. Horton & Converse*, 21 Cal. 2d 411, 433, 132 P.2d 457 (1942).

[32]*Juarez II,* 2016 WL 742231 (Cal. App. 2d Dist. 2016) (slip op. pp.*7-8), citing *Randol v. Scott*, 110 Cal. 590, 593, 42 P. 976 (1895).

[33]*Green v. Superior Court*, 10 Cal. 3d 616, 626, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974).

[34]*Juarez II*, slip op. p.*10.

