NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

VINH DUC NGUYEN, Plaintiff and Appellant, v. LAP TANG et al., Defendants and Respondents.	G060155 (Super. Ct. No. 113-CV-245854) O P I N I O N

Appeal from a judgment of the Superior Court of Santa Clara County, Maureen A. Folan, Judge. Affirmed.

Law Office of Richard L. Antognini and Richard L. Antognini for Plaintiff and Appellant.

Arent Fox, Douglas A. Marshall; Millstein & Associates, David J. Millstein, Gerald S. Richelson; Bien & Summers and Elliot L. Bien for Defendants and Respondents.

* * *

This is an appeal following judgment after the trial court granted summary judgment against plaintiff Vinh Duc Nguyen (aka Vince D. Nguyen) and in favor of defendant Vallco Shopping Mall, LLC (Vallco).[1] Nguyen's claims against Vallco relate to a real estate broker's commission on the sale of real property, in this instance, a shopping mall. In essence, Nguyen contends that Vallco, the mall's seller, essentially cheated him out of his commission, or approximately $3.1 million. His complaint alleged various theories of recovery. The court granted summary adjudication on Nguyen's claims for breach of contract and breach of the implied covenant of good faith and fair dealing,[2] but denied summary adjudication as to his fraud and unfair competition claims.[3]

In this appeal, Nguyen offers multiple reasons why he believes the trial court erred in granting summary adjudication on the contract claims. Vallco responds that the statute of frauds expressly bars a real estate commission without a contract or other writing signed by the seller, and the only writing at issue here did not limit Vallco's ability to terminate the agreement, which Vallco eventually did. We find that Vallco met its burden of production sufficient to grant summary judgment, and that Nguyen has failed to demonstrate the existence of a triable issue of material fact. Accordingly, we affirm the judgment.

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[1] The other defendant, Lap Tang, was a former owner of Vallco Mall. His motion for summary adjudication/summary judgment was denied, and Nguyen subsequently dismissed his claims against Tang. Tang is not a party to this appeal.

[2] In this appeal, Nguyen addresses only the breach of contract claim, and therefore, that is the only cause of action we address.

[3] He eventually dismissed his other claims, rendering the summary adjudication decision appealable.

I

FACTS

A. Underlying Facts

While the statement of facts in Nguyen's opening brief almost exclusively cites his own complaint, we draw our statement of facts from the parties' separate statements, as it is the version of the facts most pertinent to the summary adjudication motion. We rely primarily on undisputed facts and note where the parties disagree. In most cases, the disagreements are not particularly important, and we mention them only to provide the reader with additional context.

Nguyen is a licensed real estate broker as well as an attorney. He did business under various names, including Newton Law Group (Newton).

In 2009, Vallco became the owner of the Vallco Mall (the mall), located in Cupertino, California. From 2009 to 2014, much of the mall was vacant. In July 2011, "Nguyen learned that the [m]all was for sale. [He] represented to Vallco through an intermediary that [Newton] had a buyer who was ready to make an offer to purchase the [m]all." Nguyen prepared a form of listing agreement entitled "AGREEMENT ON COMMISSION, NON-DISCLOSURE & NO-CIRCUMVENTION." Under this agreement, Newton would act as broker for sale of the mall. This proposed agreement included a clause that stated that for two years, any sale to a buyer who was disclosed by Nguyen would result in a commission to him. Vallco did not agree to these terms.

Ultimately, the parties signed a three paragraph contract titled Owner-Broker Agreement (the listing agreement). Newton agreed that it would list the property for sale and bring a buyer to make an offer of at least $100 million. With respect to Nguyen's compensation, the listing agreement stated, as relevant here: "Seller agrees to pay Broker a commission of six percent (6%) of the sale price upon successful close of the transaction." The parties signed this agreement on August 2, 2011.

Newton subsequently entered into a Broker Cooperation Agreement with Marcus & Millichap to assist Newton with the sale of the mall. Marcus & Millichap entered into confidentiality and registration agreements with potential purchasers, including Peter Pau of Sand Hill properties. Pau was an experienced developer who was interested in purchasing the mall as well as adjacent properties owned by several retail companies. He intended to place all of the properties under single ownership.

The parties disagree about what happened next. According to Vallco, its representatives met with Nguyen in September 2011 and informed him they wanted a different form of listing agreement that included a fixed expiration date. Nguyen claims Vallco wanted to "reuse" the listing agreement. The parties agree that Vallco consistently told Nguyen it was interested in a quick sale of the mall. Neither Marcus & Millichap, Nguyen, or Newton ever presented Vallco with an offer or letter of intent to purchase the mall.

On November 16, 2011, Vallco's attorney sent a letter to Nguyen terminating the listing agreement. Nguyen does not dispute the letter was sent, but contends "[t]he attorney did not have the authority to terminate . . . ." On February 29, 2012, Vallco's attorney wrote to Nguyen reconfirming the termination: "'I now consider this matter fully resolved both with respect to the representation by this form of Vallco as well as the termination of the Owner/Broker Agreement dated August 2, 2011 pursuant to my letter of November 16, 2011, which termination is again confirmed.'" Nonetheless, Nguyen asserted that as of March 2012, he "was led to believe that the [l]isting [a]greement was still in full force and effect," although the evidence he cited (his own declaration and an e-mail) does not support this contention.

In early 2012, Pau learned that Richard Stoll, a representative of Kidder Matthews, a real estate brokerage, claimed that he had a listing for the mall. Nguyen alleged that Vallco and Kidder Matthews had entered into a nonexclusive listing agreement in January 2012.

On April 10, 2012, Marcus & Millichap purported to release Pau from the confidentiality and registration agreement, although Nguyen claims they did not have the authority to do so. On that same day, Nguyen and Marcus & Millichap arranged a telephone call between Vallco and Pau. Pau found the call confusing because most of the participants were speaking Vietnamese, which was being translated into English. Exactly what transpired during the call was disputed, but the parties apparently agree that Pau was interested in the property. While Vallco claimed Nguyen did not assist Pau in negotiating to purchase the mall after that call, Nguyen asserts he traveled to Vietnam on April 27 to meet with Vallco "to follow up on Pau's interest and go forward with negotiations." Vallco asserted that Nguyen sent his wife, Teri Ha, to Vietnam to discuss the status with Vallco and ask Vallco to sign an exclusive listing agreement. There is no evidence such an agreement was signed. It is undisputed that after April 27, Nguyen did not assist Vallco in the sale of the mall.

The details of what took place next are disputed, but the parties agree that on October 26, Pau's attorney sent an e-mail to Vallco's attorney explaining why Pau could not commit to a short close purchase of the mall: "'This is a future development project, but without the cooperation of the City [of Cupertino] and of Sears, Macy's and Penny's [the adjacent retailers], such redevelopment cannot occur because all the majors hold discretionary approval rights over most matters relating to the Mall, including the transfer of ownership and redevelopment.'" In July 2013, Pau and Vallco reached another impasse over price. Pau and Vallco reached an agreement in October 2014 and signed an option agreement under which Pau would buy the mall for $116 million under a specified short close period. An entity controlled by Pau closed the purchase of the mall on November 12, 2014.

B. Procedural History

Nguyen initially filed this case against Tang and Pau's entity Sand Hill Property Co., in May 2013, before any sale of the mall had been finalized. This was followed by amended complaints, various demurrers and motions to strike, which we need not summarize. The operative fifth amended complaint (the complaint) was filed on February 10, 2016, after the sale of the mall to Pau had closed. The complaint alleged claims against Vallco for breach of contract, breach of the implied covenant of good faith and fair dealing, intentional interference with contractual relations, intentional interference with prospective economic advantage, fraud/deceit, violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.), misappropriation of trade secrets, and unjust enrichment.

In sum, Nguyen alleged Vallco failed to pay him the six percent commission due under the listing agreement. He claimed he was entitled to it because he brought the parties together. His cause of action for breach of contract, the only one relevant to this appeal, alleged he performed all of the promises and conditions required of him, and as a result of Vallco's breach, he had suffered about $6.9 million in damages and approximately another $3.1 million in lost commissions.

The trial court overruled Vallco's demurrer to the complaint with the exception of the claims for misappropriation of trade secrets and unjust enrichment, which were sustained without leave to amend. Vallco subsequently answered the complaint.

In April 2016, Vallco moved for summary judgment on the entire complaint, or in the alternative, summary adjudication as to each cause of action. With respect to the cause of action for breach of contract, Vallco argued: 1) Nguyen did not fully perform prior to Vallco's valid termination of the contract; Vallco could not have breached a terminated contract, and Vallco could not have breached a contract that did not include the provisions Nguyen claims were briefed; and 2) Nguyen could not recover

on a "procurement" theory because he did not perform under the listing agreement prior to its valid termination; Vallco did not act in bad faith; Nguyen did not present a buyer who was ready and willing to complete the sale during the time the listing agreement was in effect; and there was a break in continuity between Nguyen's efforts to accomplish the sale and the actual sale.

In response, Nguyen argued triable issues of fact existed as to every relevant issue, and that he was the procuring cause for the sale of the mall. In reply, Vallco contended Nguyen had failed to meet his burden to produce admissible evidence to oppose summary judgment in its favor.

In a lengthy order dated July 18, 2016, the trial court granted Vallco's motion for summary adjudication with respect to the causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing, and denied the motion with respect to the remaining claims for fraud and violation of the Unfair Competition Law. We shall discuss the relevant portions of the court's order below.

On December 11, 2017, Nguyen's counsel filed a request for dismissal without prejudice of the remaining causes of action in the operative complaint.

II

DISCUSSION

A. Summary Judgment Standard of Review and Statutory Framework

Summary judgment is appropriate "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) To prevail on the motion, a defendant must demonstrate the plaintiff's cause of action has no merit. This requirement can be satisfied by showing either one or more elements of the cause of action cannot be established or that a complete defense exists. (Code Civ. Proc., § 437c,

subds. (o), (p); *Bardin v. Lockheed Aeronautical Systems Co.* (1999) 70 Cal.App.4th 494, 499-500.)

"[T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Ibid*.) "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." (*Id.* at p. 850, fn. omitted.)

In performing our de novo review, we use the same procedure as the trial court. We first consider the pleadings to determine the elements of each cause of action. Then we review the motion to determine if it establishes facts, supported by admissible evidence, to justify judgment in favor of the moving party. Assuming this burden is met, we then look to the opposition and "decide whether the opposing party has demonstrated the existence of a triable, material fact issue." (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.) We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

B. Each Party's Burden

As noted above, the party moving for summary judgment has the "initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.) In order to make this determination, we review the law and evidence relevant to the

pleaded cause of action. If the moving party carries its burden of production on each element, the burden then shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Id.* at pp. 850-851.)

The only cause of action relevant here is Nguyen's claim for breach of contract. "A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239.)

1. Existence of a Contract

Generally, the statute of frauds expressly bars claims for a real estate broker's commission without a contract or other writing signed by the seller. (Civ. Code, § 1624, subd. (a)(4).)[4] It is undisputed that the only such writing in the record is the listing agreement.[5]

The listing agreement is very brief, including only three paragraphs. The first stated that "Seller agrees for Broker, Newton Law Group, to list/sell the Property, Vallco Shopping Center in Cupertino, CA, and Broker will bring a buyer to make an offer to complete the purchase of the Property." The second paragraph stated the sale price will be at least $100 million, and the first buyer who signs a purchase contract or submits a letter of intent with proof of financial ability and a deposit, would have the right to buy the property. The third paragraph, as relevant here, stated the broker would be paid a commission of six percent "of the sale price upon the successful close of the

[4] Subsequent statutory references are to the Civil Code.

[5] As mentioned above, in the trial court, Nguyen discussed drafts of a more comprehensive listing agreement he proposed, but was never signed. This is of no import. If anything, it demonstrates Vallco's intent *not* to sign such an agreement.

transaction," along with some provisions about splitting the commission with the buyer. There is no dispute that the parties entered into that agreement on August 2, 2011.

2. Nguyen's Performance Between August 2 and November 16, 2011

It is undisputed that Vallco consistently told Nguyen that it was interested in a quick sale of the mall. It is also undisputed that neither Nguyen, Newton, or Marcus & Millichap presented Vallco with an offer or letter of intent between the date the parties signed the listing agreement and the date of Vallco's letter terminating the agreement.

3. Termination or Breach

The only question remaining is whether Vallco lawfully terminated the listing agreement or if it breached it by refusing to pay Nguyen a commission when the mall was ultimately sold to Pau three years later, in November 2014.

Vallco argued below, and argues here, that the listing agreement was lawfully terminated. The listing agreement included no term, no exclusivity provision, and no termination provision. Accordingly, we find that on its face, the defendants have met their burden to demonstrate that in 2014, no valid contract existed that required Vallco to pay the six percent commission. The burden shifts to Nguyen to show the existence of a triable issue of fact on this issue. Nguyen raises two potential reasons – that Vallco terminated the listing agreement in bad faith, or that Vallco was estopped from terminating the listing agreement.

Rather than marshaling the evidence and persuading us that a triable issue of fact exists, Nguyen ignores the standard of review and focuses his attention on why the trial court's reasoning was mistaken. He first contends, in a two-paragraph argument, that because the court found triable issues as to his fraud claim, there were necessarily triable issues as to whether Vallco terminated the listing agreement in bad faith. Instead

of arguing the facts or providing case citations, he simply claims the court "contradicts itself" and that alone is enough for reversal.

The only fact Nguyen even mentions is his assertion "that Vallco 'acted in bad faith by forcing him to provide them with the contact information of prospective buyers in September 2011'" and failed to provide him with the mall's information. He cites only the court's order, without bothering to tell us where in the 3,300-page record, and particularly in his separate statement, we can find the evidence to support this assertion. This does not meet his burden to demonstrate a triable issue of fact as to whether the listing agreement was terminated in bad faith.

Even if Nguyen had evidence to support the assertions about the contacts and the financial information, the bad faith required to avoid paying a commission is specific, not a general type of bad faith where the seller prevents the broker from performing his job. The bad faith must be intended to deprive the broker of a commission. (*Rose v. Hunter* (1957) 155 Cal.App.2d 319, 324-325.) The facts he alleges regarding contact information and records are simply not enough to establish a triable issue on this point. (See *Tetrick* v. *Sloan* (1959) 170 Cal.App.2d 540, 545 [revoking listing agreement was not in bad faith where purchaser was not prepared at the time the broker introduced the seller and buyer, because buyer was not prepared to consummate transaction].) There was no evidence whatsoever that Pau was prepared to complete the sale at the time Vallco terminated the listing agreement, nor does Nguyen explain how the failure to turn over records establishes the termination, two months later, was in bad faith. Therefore, Nguyen has not met his burden to demonstrate a triable issue of fact as to bad faith precluding Vallco's termination of the listing agreement.[6]

[6] In the trial court, although he does not repeat the argument here, Nguyen asserted that as of March 2012, he "was led to believe that the [l]isting [a]greement was still in full force and effect." The evidence he cites on this point, however, are his own declaration and an e-mail he sent. Neither document supports this contention.

Alternatively, Nguyen argues that Vallco should have been equitably estopped from terminating the listing agreement. As the trial court pointed out, however, Nguyen did not allege equitable estoppel in his complaint. He does not deny this, but asks us to essentially ignore it and consider the argument on its merits anyway. We decline the opportunity to do so. As the court pointed out, there is ample authority that papers opposing summary judgment are not a substitute for amending the pleadings. (See, e.g., *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 648.) Here, Nguyen had six chances to plead any theory he wished. He cannot now rely on a new theory to defeat summary judgment. He has failed to meet his burden on this point.

Accordingly, without a triable issue as to whether the contract was breached, Nguyen's breach of contract claim must fail as a matter of law.

4. Procurement

Alternatively, Nguyen argues there is a triable issue of whether he was the "procuring cause" of the sale, and therefore entitled to a commission. "'A broker is the "procuring cause" of a . . . transaction if he finds a purchaser who is ready, willing, and able to buy the property on the terms stated and he obtains a valid contract obligating the purchaser on these terms. If the broker cannot secure a written offer from the purchaser, he is still considered the "procuring cause" if he brings the principal and the purchaser together so that they may enter into such a contract. In other words, if the broker's efforts result in a "meeting of the minds" between the buyer and the seller but the final negotiations and the conclusion of the sale are conducted by them without the aid of the broker, he will still earn his commission.'" (*Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 820-821, fn. 2, disapproved on other grounds in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393, fn. 5.)

While Nguyen asserts "courts typically call this a breach of contract remedy," he does not provide citations to support this assertion. Indeed, in the only case Nguyen cites on this point in his opening brief, *Buckaloo v. Johnson*, *supra*, 14 Cal.3d 815, the second sentence of the opinion states: "Plaintiff's principal allegation is that the acts of defendants constituted the tort of intentional interference with prospective economic advantage." (*Id.* at pp. 819, 822-828.) Nguyen did not plead a cause of action against Vallco for that tort, however.

As a matter of *contract,* rather than tort law, this argument seems largely subsumed by the statute of frauds, which states, as relevant here: "(a) The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent: [¶] . . . [¶] (4) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate . . . or to procure, introduce, or find a purchaser or seller of real estate . . . for compensation or a commission." (§ 1624, subd. (a)(4).)

The statute of frauds specifically includes procurement of a purchaser in its language. Nguyen claims it is "unclear" if the statute of frauds bars his breach of contract claim as a matter of law. He cites only one case, *Coulter v. Howard* (1927) 203 Cal. 17, 25-26, for the proposition that it does not, quoting the following language: "'It is also established law in this state that a written contract between the seller and the purchaser is not essential to the recovery of the broker's commission if he has produced to the seller a purchaser who is ready, willing and able to purchase upon the terms proposed by the seller . . . .'" Further, "[t]he broker has performed his duty and has earned his commission regardless of whether a written contract is actually entered into . . . ." (*Ibid.)* What this ignores, however, is that the trial court was referring to was not whether the statute of frauds had to be satisfied in order for the broker to be entitled to a commission at all, but whether a written contract between the "seller and the purchaser" (*ibid.*) was required. Indeed, *Coulter v. Howard*, expressly found the statute of frauds

had been satisfied by the escrow instructions: "[T]he provision in the escrow offer must be held to be a 'note or memorandum' of the contract which is all the law requires" with a citation to section 1624.

Nguyen has therefore offered no authority for the proposition that the statute of frauds need not be satisfied in a breach of contract claim if a broker claims he or she procured a sale. While such a claim may be possible under tort theories, or when there is evidence the statute of frauds has been satisfied in some other manner, that is not the case here. (See, e.g., *Rose v. Hunter*, *supra*, 155 Cal.App.2d at p. 324 [conspiracy claim; parties stipulated the statute of frauds was satisfied].) As Vallco points out, recognizing procurement as an exception would open an enormous loophole in the statute of frauds. Such a loophole would be supported by neither the language of section 1614 nor case authority, and we reject this argument. As a matter of law, Nguyen cannot proceed on this theory.

Even if he could proceed, we would conclude that Nguyen has not raised a triable issue on this point. For a broker to be deemed the procuring cause of a sale, evidence that the broker called the attention of a prospective purchaser to the property and urged the sale is not sufficient. (See *Hill v. Knight* (1930) 209 Cal. 14, 25; *Fitzpatrick v. Underwood* (1941) 17 Cal.2d 722, 725-726, 729-733.) Moreover, and as is highly relevant here, the broker "must set in motion a chain of events, which, *without break in their continuity*, cause the buyer and seller to come to terms as the proximate result of his peculiar activities." (*Sessions v. Pacific Improvement Co.* (1922) 57 Cal.App. 1, 17, italics added.)

Vallco submitted evidence of a significant break in the continuity of negotiations with Pau. "In July 2013 Pau and Vallco reached another impasse in negotiations, when Pau offered to pay $40 million with Vallco to carry a $75 million, no interest loan for 2 years. Vallco rejected the offer, stating that it would pursue other buyers, and Pau responding 'Ok. You know where we are and you can always find us.'"

Nguyen listed this as "undisputed" in his separate statement of facts. It was also undisputed that Pau and Vallco did not reach agreement on the sale until October 2014, almost three years after Vallco terminated the listing agreement. Nguyen conceded that after April 27, 2012, he did not assist Vallco in the sale of the mall.

In sum, there was undisputed evidence of a significant break in continuity between Nguyen's initial introduction of Pau and Vallco and their ultimate consummation of the sale three years after Vallco terminated the listing agreement. Such a break in continuity would preclude Nguyen from recovering under a procurement theory in his breach of contract claim, even if he were able to proceed on that theory without satisfying the statute of frauds.

5. Alternate Remedies Raised for the First Time on Appeal

Nguyen further contends that he was entitled to the reasonable value of services in reliance on the agreement, and asserts that Vallco had the burden to prove no triable issue of fact existed on this point. He cites the entirety of Vallco's moving papers in support of this argument. This issue was never raised below, however, or if it was, Nguyen does not cite us to the part of his opposition to summary judgment or his separate statement where this was raised, even after Vallco's responding brief pointed out this problem. Accordingly, this argument is deemed waived. (*S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 722.)

Moreover, although he claims otherwise, the complaint did not allege this as an alternate remedy for breach of contract either. Rather, he claimed "the reasonable value of his services in preparation and performance in reliance on the agreement," as part and parcel of his damages for breach of contract, not the quasi-contractual remedy he now asks us to infer. For the same reasons discussed above, his claim to contractual damages is not supported by the existence of a breach of contract.

C. Purported Contradictory Rulings

As a separate ground for reversal, Nguyen contends summary adjudication on the breach of contract claim must be reversed "because the rest of the ruling contradicts it." (Boldfacing omitted.) This is both irrelevant and incorrect. As Nguyen correctly argued and as we stated above, the standard of review here is de novo. "'As a corollary of the de novo review standard, the appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court.'" (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22; see *Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 140.)

Therefore, it simply does not matter if the trial court made inconsistent rulings. In his reply brief, Nguyen seems puzzled by this: "[T]he first task for an appellate court should be to determine whether the trial court made the correct ruling and whether its reasons support the ruling." But as the cases cited above demonstrate, we may affirm the grant of summary adjudication on any correct legal theory that was raised below.

We also disagree with Nguyen, however, that the rulings were inconsistent. He claims "[t]he trial court granted summary adjudication on the breach of contract claim because it believed Nguyen had suffered no damage." He cites two pages of the court's order. Those pages, however, do not stand for the proposition asserted, nor can we find any part of the order discussing the breach of contract claim that states Nguyen had suffered no damages. The court's lengthy discussion of the breach of contract claim discusses substantial performance, equitable estoppel, whether the listing agreement was properly terminated, and whether Nguyen was a "procuring cause of the transaction." There is simply nothing in the trial court's order about granting summary adjudication due to a lack of contractual damages.

Nguyen attempts to twist the court's ruling to mean that "Nguyen suffered no damage because he did not establish a triable issue of fact on whether he was entitled to a commission. [Citation.] He did not show he had procured a buyer for the Mall before Vallco terminated his listing agreement. [Citation.] And, he did not present a triable issue of fact on whether he was the procuring cause for the sale." But this is a misreading of the order, which never addresses the issue of damages on the breach of contract claim. Accordingly, there was no inconsistency; even if there were, as we discussed above, it would not impact our analysis.

III

DISPOSITION

The judgment is affirmed. Vallco is entitled to its costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.