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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of KANG WANG, Deceased. TOM LIANG et al., Petitioners and Appellants, v. JUDY WANG, as Administrator, etc., Objector and Respondent.	B265524 (Los Angeles County Super. Ct. No. BP113089)

APPEAL from an order of the Superior Court of Los Angeles County. Lesley C. Green, Judge. Affirmed.

Kenny Tan and Tiffany Garrick for Petitioners and Appellants.

Lum Law Group and A. Justin Lum for Objector and Respondent.

Songstad Randall Coffee & Humphrey, L. Allan Songstad, Jr. and Chris D. Greinke as Amicus Curiae on behalf of Citimortgage, Inc., upon order of the Court of Appeal.

Tom Liang and Chu-Ching Liang (collectively "appellants") appeal from an order dismissing with prejudice their petition to determine title to real property pursuant to Probate Code section 850. The trial court determined that appellants' claims of interest in the property located at 750, 752, and 754 Main Street in Huntington Beach, CA (the property) were barred as a matter of law under the doctrines of collateral estoppel and res judicata as well as the relevant statutes of limitation. We affirm.

BACKGROUND

The property

In 1985, a quitclaim deed was recorded with the Orange County recorder. The quitclaim deed transferred the property from Chi Tzu-Kuang Wang, a widow, and Judy Sheng-Tzu Wang, a single woman, to appellants and Kang Wang as joint tenants. Judy Sheng-Tzu Wang, Chu-Ching Liang and Kang Wang are siblings.

On August 30, 1988, a quitclaim deed was recorded with the Orange County Recorder. The 1988 quitclaim deed transferred the property from "[appellants], husband and wife . . . to Kang Wang, a single man."

On August 30, 1988, a deed of trust in the amount of $260,000 was recorded with the Orange County Recorder (August 1988 deed of trust). The August 1988 deed of trust encumbered the property. CitiMortgage, Inc. (CitiMortgage) is the present beneficiary under the August 1988 deed of trust. On January 27, 2004, a home equity line of credit deed of trust in an amount not to exceed $35,000 was recorded with the Orange County Recorder. The January 2004 deed of trust encumbered the property, and CitiMortgage is the servicer for the present beneficiary under the January 2004 deed of trust.

The probate court action

Kang Wang died on April 16, 2008. In October 2008, probate was opened, and by order dated December 22, 2008, the decedent's sister, respondent Judy Wang, became the special administrator of the estate with the power of a general administrator. At the time of his death, the decedent held title to the property pursuant to the 1988 quitclaim deed.

On July 6, 2009, Tom Liang filed creditor's claim No. 5 against the estate of Kang Wang in the amount of $2,416.29. The claim states: "In order to keep Kang's estate

property (750&752 Main St.) from default then foreclosure for lack of insurance, we helped pay mortgage and landlord insurance bills even several months after passing."

On July 6, 2009, Tom Liang filed creditor's claim No. 8 against the estate of Kang Wang in the amount of $38,236.43. The claim states that Liang helped pay the bills on the property from 1988 through the date of Kang Wang's death. The claim includes payments for a property appraisal in 1988 and payment of the mortgage in 199l.

The creditors' claims filed by Tom Liang were filed more than 60 days after the date to make such claims. The executor rejected the claims as untimely.

On March 22, 2010, Tom Liang filed a notice of motion to file claims post one-year. In the motion, Tom Liang admitted that claim No. 5 was for fees paid to the bank to keep the decedent's house from going into foreclosure.

On June 9, 2010, appellants filed an objection to the petition to determine title to and transfer of real property filed by the estate. In the objection, appellants admitted that they quitclaimed the property to Kang Wang in 1988. Appellants explained that they quitclaimed the property to Kang Wang so that he could claim it as his primary residence and obtain a cash out loan.

On June 30, 2010, Tom Liang filed a petition to file late claims. Tom Liang admitted that he had paid fees to CitiMortgage in 2008 to keep Kang Wang's house from going into foreclosure. He also attached creditor's claim Nos. 5 and 8.

On November 12, 2010, the estate filed an amended petition to determine title to and transfer of real property to estate (estate's amended petition). The estate filed the petition to resolve the issue of ownership of the property.

On January 5, 2011, appellants filed the petition of Tom Liang and Chu-Ching Liang to determine title to real property pursuant to Probate Code section 850. Appellants claimed that Tom Liang's signature on the 1988 quitclaim deed was forged. They sought to cancel the 1988 quitclaim deed based on the alleged forgery. In addition, they alleged that title was taken by Kang Wang solely for the purposes of obtaining a loan, thus a resulting trust was formed in favor of Tom Liang and Chu-Ching Liang.

Appellants also filed an objection to the estate's amended petition, containing similar claims.

On April 14, 2011, the estate filed an objection to appellants' section 850 petition.

Related civil proceeding

Appellants filed a separate lawsuit in Los Angeles Superior Court alleging that they were the owners of the property because the quitclaim deed was forged. The complaint, captioned "Complaint to Quiet Title and Cancel Deeds," was filed on January 6, 2012. On or about February 6, 2012, the complaint was removed to the United States District Court, Central District of California, *Tom Liang et al. v. Citimortgage, Inc.*, case No. 8:12-cv-00191-AG-MLG. The complaint alleged that Tom Liang's signature was forged on the 1988 quit claim deed. Judy Wang, as executor of the estate, was named as a counterdefendant in a counterclaim brought by CitiMortgage and a cross-defendant in a cross-claim brought by appellants. Appellants sought a judgment canceling the 1988 quitclaim deed, the August 1988 deed of trust, and the January 2004 deed of trust.

On June 24, 2013, the lawsuit against CitiMortgage was dismissed with prejudice.[1]

Continued probate court proceedings

On May 14, 2015, a hearing was conducted in the probate court to determine whether appellants' section 850 petition and objection to the estate's petition were barred due to the federal court proceedings and the statutes of limitation.

On May 18, 2015, the probate court issued an order dismissing with prejudice appellants' section 850 petition and overruling appellants' objection to the estate's amended petition. The court held that appellants' petition and objection were barred by collateral estoppel and res judicata, as well as the statutes of limitation found in Code of Civil Procedure section 338, subdivision (d), Code of Civil Procedure section 343, and Family Code section 1102. In addition, the court found that appellants were equitably

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[1] The parties state, without citation to the record, that on May 10, 2013, Judy Wang as executor of the estate was dismissed from the matter without prejudice.

estopped from pursuing their claims because they led Kang Wang and the lenders to believe for over 20 years that the 1988 quitclaim deed and deeds of trust were valid, only to claim they were invalid after the grantee of the deed and borrower under the deeds passed away.

Notice of appeal

On July 16, 2015, appellants filed their notice of appeal from the May 18, 2015 order.

DISCUSSION

I. Standards of review

The application of law to undisputed facts is subject to an appellate court's independent review. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.) Where the facts determining whether the trial court properly applied res judicata or collateral estoppel are uncontested, the application of the doctrine is a question of law to which we apply an independent standard of review. (*Roos v. Red* (2005) 130 Cal.App.4th 870, 878.) In addition, where the relevant facts are not in dispute, the application of the statute of limitations may be decided as a matter of law. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

II. Res judicata and collateral estoppel

A. Applicable law

"[R]es judicata '"precludes parties or their privies from relitigating a *cause of action* [finally resolved in a prior proceeding.]."' [Citations.] But res judicata also includes a broader principle, commonly termed collateral estoppel, under which an *issue* '"necessarily decided in [prior] litigation [may be] conclusively determined *as* [*against*] *the parties* [*thereto*] *or their privies* . . . in a subsequent lawsuit on a *different* cause of action."' [Citation.]" (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828 [*Vandenberg*].)

"Thus, res judicata does not merely bar relitigation of identical claims or causes of action. Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from redisputing *issues* therein decided against him, even when those

issues bear on different claims raised in a later case. Moreover, because the estoppel need not be mutual, it is not necessary that the earlier and later proceedings involve the identical parties or their privies. Only the party *against whom* the doctrine is invoked must be bound by the prior proceeding. [Citations.]" (*Vandenberg, supra,* 21 Cal.4th at p. 828.)

"Accordingly, the collateral estoppel doctrine may allow one who was not a party to prior litigation to take advantage, in a later unrelated matter, of findings made against his current adversary in the earlier proceeding." (*Vandenberg, supra,* 21 Cal.4th at p. 828.)

"Collateral estoppel (like the narrower 'claim preclusion' aspect of res judicata) is intended to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation. [Citation.]" (*Vandenberg, supra,* 21 Cal.4th at p. 829.) However, even where all the minimal prerequisites of the doctrine are present, collateral estoppel """is not an inflexible, universally applicable principle."""" (*Ibid.*) Courts may still consider whether collateral estoppel is "fair and consistent with public policy" in the case before it. (*Ibid.*)

"A prior judgment is not res judicata on a subsequent action unless three elements are satisfied: '1) the issues decided in the prior adjudication are identical with those presented in the later action; 2) there was a final judgment on the merits in the prior action; and 3) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication.'" (*Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 685.) In addition, the doctrine of res judicata applies """"on matters which were raised or could have been raised, on matters litigated or litigable. . . .""" [Citation.]" (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 576.) """"The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions."""" (*Ibid.*)

"'Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.' [Citation.] The doctrine applies 'only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that

decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.]' [Citation.]" (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943.)

"A dismissal with prejudice following a settlement constitutes a final judgment on the merits." (*Estate of Redfield* (2011) 193 Cal.App.4th 1526, 1533 (*Redfield*).)

B. The trial court properly applied res judicata to bar appellants' claims in the section 850 petition and objection to the estate's amended petition

The three elements of res judicata are met in this case.

First, the issues decided in the prior adjudication are identical to those present in this action. In the federal action, appellants argued that they had an interest in the property because the 1988 quitclaim deed was invalid. This included a claim that Tom Liang's signature on the deed was forged. In addition, although appellants did not expressly raise the resulting trust argument in the civil action, it is still barred under the doctrine of res judicata because it could have been raised. (*Villacres v. ABM Industries Inc., supra,* 189 Cal.App.4th at p. 569 ["Res judicata bars not only issues that were raised in the prior suit but related issues that could have been raised"]; see also *Noble v. Draper* (2008) 160 Cal.App.4th 1, 11 ["res judicata bars claims that *could have been* raised in the first proceeding regardless of whether or not they were raised"].)

Second, there was a final judgment on the merits in the federal civil action. "A dismissal with prejudice following a settlement constitutes a final judgment on the merits." (*Redfield, supra*, 193 Cal.App.4th at p. 1533.)

Finally, the parties against whom the doctrine is raised were parties to the prior litigation. In the federal action, appellants were the plaintiffs. Judy Wang and Citimortgage were defendants. Appellants filed the section 850 petition; thus, the doctrine is properly raised against them. Judy Wang, as administrator of the estate, filed

an objection to appellants' section 850 petition and therefore is a party to the petition.[2] Citimortgage, as an interested party, was also permitted to file briefs in the probate proceedings.

Because each of the threshold requirements of res judicata is satisfied, the trial court did not err in applying it to dispose of appellants' section 850 petition and objection to the estate's petition. In addition, we note that the policy purposes of the doctrine of res judicata are served in this case. "'"'"Res judicata precludes piecemeal litigation by splitting a single case of action or relitigation of the same cause of action on a different legal theory or for different relief.'" [Citation.]' [Citation.]" (*Noble v. Draper, supra,* 160 Cal.App.4th at p. 11.) Application of the doctrine of res judicata in this matter properly prevents appellants from re-litigating the validity of the 1988 quitclaim deed.

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[2] Appellants make much of the fact that Judy Wang was voluntarily dismissed from the federal civil action. They have failed to provide a citation to the record documenting this voluntary dismissal. Further, appellants have provided no law suggesting that their act of dismissing Judy Wang from that case changes the analysis at all. As set forth above, res judicata applies to all claims that could have been raised in the initial proceeding, whether or not they were raised. (*Noble v. Draper, supra,* 160 Cal.App.4th at p. 11.) As the Supreme Court has made clear, "all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.) The purpose of the rule is to "'curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.' [Citation.]" (*Ibid.*) Appellants may not avoid the preclusive effect of res judicata by voluntarily dismissing a party. Because they could have proceeded on their quiet title claims against Judy Wang, those claims are now barred.

C. The trial court properly applied collateral estoppel to bar appellants' forgery claims in the section 850 petition and objection to the estate's amended petition[3]

1. The elements of collateral estoppel are met

The elements of collateral estoppel are met in this case. First, the trial court explained that the issues in the federal action were identical to the issues raised in appellants' section 850 petition and objection to the estate's petition: "In the prior civil action, [appellants] included causes of action for quiet title and cancellation of deeds, seeking to cancel the 1988 Quitclaim Deed and subsequent deeds of trust."[4]

Furthermore, the issues in the federal action were actually litigated and necessarily decided. "'Dismissal with prejudice is determinative of the issues in the action and precludes the dismissing party from litigating those issues again.' [Citations.]" (*Redfield, supra*, 193 Cal.App.4th at p. 1533.) Following the dismissal with prejudice of their claims in federal court, appellants' right of action on those claims was terminated and may not be revived. (*Ibid.*) This principle applies equally under the doctrine of res judicata and the related doctrine of collateral estoppel. Thus, whether appellants' arguments are characterized as claims or issues, "those issues were deemed to have been actually litigated and determined when the identical issues . . . were reduced to a final judgment on the merits." (*Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1333 (*Alpha*).)

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[3] Because the claims set forth in appellants' section 850 petition and objection to the estate's petition are barred under the doctrine of res judicata, we need not discuss applicability of the doctrine of collateral estoppel. However, we include this discussion for the benefit of the parties.

[4] Appellants argue that the resulting trust argument was not set forth in the federal civil action. However, we note that a resulting trust argument was necessarily implied in appellants' general argument that they continued to hold an interest in the property. Even if the resulting trust argument was not raised in the federal civil action, it could have been raised. Thus, as set forth above, it is barred under the doctrine of res judicata.

The decision in the federal action was final and on the merits. "A dismissal with prejudice following a settlement constitutes a final judgment on the merits." (*Redfield, supra,* 193 Cal.App.4th at p. 1533.)

Finally, the party against whom the preclusion is sought was a party to the prior case. Appellants were the plaintiffs in the federal matter and they are the parties against whom collateral estoppel is sought.

Because each of the threshold requirements of collateral estoppel is satisfied, the trial court did not err in applying it to dispose of appellants' section 850 petition and objection to the estate's petition.

2. The cases cited by appellants are inapplicable

Appellants argue that collateral estoppel is not applicable in this case. Appellants point out that Citimortgage was the only party dismissed with prejudice in the federal case. However, appellants argue, collateral estoppel does not apply even as to Citimortgage, because the issues raised in the section 850 petition and objection to the estate's petition were not actually litigated or necessarily decided in the federal action.

Appellants cite *Rice v. Crow* (2000) 81 Cal.App.4th 725, 736-737 (*Rice*) for the proposition that a settlement that avoids trial does not constitute actual litigation of the issues. *Rice* is distinguishable. In *Rice*, the plaintiff was a director of a property development corporation who sued two other directors of the organization. The plaintiff later commenced a legal malpractice action against his former attorneys arising from their representation of him earlier in the proceedings. The malpractice matter was eventually settled with a settlement agreement that required the plaintiff to dismiss the malpractice action with prejudice. (*Id.* at pp. 729-731.)

The defendants in the underlying action filed a summary judgment motion, arguing that the plaintiff was precluded from asserting his claims against them due to the settlement of his malpractice action and dismissal with prejudice. (*Rice*, *supra*, 97 Cal.App.4th at p. 731.) The trial court granted the motion, but the Court of Appeal reversed.

The *Rice* court agreed with the general principle that "'[A] dismissal with prejudice [is] a retraxit constituting a decision on the merits invoking the principles of res judicata.' [Citation.]" (*Rice, supra,* 81 Cal.App.4th at p. 734.) The appellate court's disagreement with the trial court stemmed mainly from the trial court's determination that the lawyers against whom the plaintiff had brought the malpractice action were proxies for the underlying defendants in the original lawsuit. The court reasoned that because the defendants in the underlying action "were neither parties to the malpractice action, nor in privity with them by having acquired an interest in that action by inheritance, succession or purchase, they cannot invoke res judicata on their behalf." (*Id.* at p. 736.) The *Rice* court noted that it had found no case, nor had any been cited, concluding that "a settlement and dismissal with prejudice of a legal malpractice case operates to bar the plaintiff from prosecuting a suit against the original wrongdoers in the underlying action out of which the malpractice arose." (*Id.* at p. 739.) Because there is no malpractice matter involved here, the *Rice* case has no relevance.

Appellants also cite *Third Eye Blind, Inc. v. Near North Entertainment Ins. Services, LLC* (2005) 127 Cal.App.4th 1311 (*Third Eye Blind*). In *Third Eye Blind*, a musical band sued its insurer after the insurer denied coverage. The band also sued its business manager and insurance broker for failing to advise and failing to obtain appropriate coverage. After the band won a summary adjudication against its insurer on the denial of coverage, the insurance broker and business manager moved for judgment on the pleadings on the band's negligence claims against them. The trial court granted the motion, but the appellate court reversed, holding that the conclusion that the insurance company had breached its duty "could not absolve [the manager and broker] of liability for their own alleged negligence in failing to advise [the band]." (*Id.* at p. 1323.) In short, because the prior ruling did not negate causation or any other element of the band's claims against the remaining defendants, the trial court should not have entered judgment on the pleadings for those parties.

The *Third Eye Blind* court provided some dicta regarding the inapplicability of collateral estoppel, but focused on the fact that the summary judgment in the band's favor

was not necessarily final: "'While an insured may obtain an early summary adjudication of a defense obligation, the insurer is entitled to seek a contrary ruling at *any time* it acquires the requisite evidence to conclusively eliminate any potential for coverage.' [Citations.]" (*Third Eye Blind, supra*, 127 Cal.App.4th at p. 1324.)

Finally, we note that the doctrine of collateral estoppel, like the doctrine of res judicata, is """not an inflexible, universally applicable principle."""" (*Vandenberg, supra*, 21 Cal.4th at p. 829.) Courts may still consider whether collateral estoppel is "fair and consistent with public policy" in the case before it. (*Ibid.*) In *Rice* and *Third Eye Blind*, the courts determined that principles of fairness dictated against preclusion of the claims at issue. Here, in contrast, appellants are attempting to litigate identical claims and issues that they dismissed with prejudice in the federal court action. Such tactics are exactly what the doctrine of collateral estoppel is designed to prevent. (See *Alpha, supra*, 133 Cal.App.4th at p. 1333 [public policies underlying doctrine of collateral estoppel are promotion of judicial economy; prevention of inconsistent judgments; and providing repose by preventing a party from suffering harassment from vexatious litigation].)

III. Statutes of limitation

In addition to finding that appellants' claims were barred by the doctrines of res judicata and collateral estoppel, the probate court determined that appellants' claims are barred by various statutes of limitation. Because they were involved in the financing process in 1988, the probate court reasoned, appellants knew or should have known in 1988 if they had a claim regarding the validity of the quitclaim deed.

We have determined that appellants' claims are barred by res judicata. Therefore, we need not address the issues regarding the statutes of limitation. However, we note that under Code of Civil Procedure section 338, subdivision (d), the statute of limitation for fraud is three years after discovery of the facts constituting fraud. Under Code of Civil Procedure section 343, an action for relief not otherwise provided for is four years. Because appellants knew or should have known of their claims in 1988, those claims are also barred by these statutes of limitation.

Family Code section 1102 provides that both spouses must join in executing any instrument by which real property owned by the community is sold, conveyed or encumbered. The statute dictates that no action to avoid any instrument mentioned in the section shall be commenced after the expiration of one year from the filing of that instrument in the recorder's office. (§ 1102, subd. (d).) To the extent that it is applicable, the statute of limitations found in section 1102 also bars appellants' claims.

DISPOSITION

The order is affirmed. Respondent is awarded costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST