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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BROADCAST MUSIC, INC.,

Plaintiff,

v.

STRUCTURED ASSET SALES, INC.,

Defendant and Appellant;

CURRENCY CORPORATION,

Defendant and Respondent.

B248011

(Los Angeles County
Super. Ct. No. BC379432)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Teresa Sanchez-Gordon, Judge. Reversed.

Law Offices of Robert S. Besser, Robert S. Besser; Law Office of Lauren M. Greene, Lauren M. Greene; and Armen Manasserian for Defendant and Appellant.

Smith Law Firm and Craig R. Smith for Defendant and Respondent.

This case involves competing claims to royalties from licenses arranged by Broadcast Music, Inc. (BMI) for the public performance of songs written by Adeniyi Paris (Paris). Naming Currency Corporation (Currency) and Structured Asset Sales, Inc. (Structured) as defendants, BMI interpleaded accrued royalties and requested declaratory relief regarding who was entitled to receive future royalties. The trial court granted summary judgment in favor of Currency. Structured now appeals. We reverse because Currency's motion for summary judgment failed to recognize, address and resolve all the material issues of fact that were framed by BMI's pleading.

FACTS

The Copyrighted Songs

Paris is the author of at least 18 songs. BMI pays out royalties that are earned on those songs to whoever has the right to their proceeds. Three of the songs—"Lulu," "Sooner or Later," and "I've Just Got a Feeling Something" (alternatively titled "Something Good Is Coming My Way") (Named Songs) were written in the early 1970's and continue to generate royalties.

Paris's Line of Credit; the Security Agreement and UCC-1 Financing Statement

In 1992, Paris obtained a commercial line of credit from Currency. In order to secure his repayment of continuing loans, Paris granted Currency a security interest in various collateral, including all his copyrighted songs and the proceeds from those copyrighted songs.

Paris signed a UCC-1 financing statement establishing Currency's security interest in all his present and future rights to the payment of money under contracts Paris had with, inter alia, BMI.

The Revolving Loan Agreement

In 1999, Paris entered into an agreement for Currency to make revolving loans to Paris until all his obligations to Currency were satisfied. The agreement provided that the "aggregate amount of the Loans (including unpaid principal, interest, and other amounts due) shall not at any time exceed \$15,000, unless [Currency] in its sole discretion chooses

to provide more financing.” The terms of each loan were to be set forth in promissory notes prepared by Currency.

The Contemplated Sale of Paris’s Rights to Structured

Structured offered to purchase the rights of Paris to receive the writer’s share of royalty income from BMI and other entities for \$20,000 less potential deductions for amounts necessary to pay off liens. Paris signed the offer.¹ The closing of the sale was conditional on Structured’s receipt of a release of all claims and liens against the rights, and a written acknowledgment from BMI and another entity of their acceptance of the transfer of rights.

In January 2006, for unspecified “good and valuable consideration,” Paris signed an assignment to Structured of his right to receive royalties from BMI arising from the exploitation of his musical compositions. Exhibit A to the assignment contained a list of “18 Work Titles” and the corresponding “BMI Work #” for those 18 songs. The Named Songs were on the list.

The Foreclosure Sale of the Named Songs

On May 15, 2006, Reliable Trust Deed Services, Inc. (Reliable) issued a notice of public sale pursuant to Commercial Code 9504 stating that Currency “will sell at public sale all th[ose] certain rights to receive income from personal property described as follows: [¶] ‘Lulu’ [¶] ‘Sooner Or Later’ [¶] ‘I’ve Just Got A Feeling Something’ [¶] Said property will be sold so as to satisfy [Paris’s] obligation[s], in full or in part, to [Currency] on: [¶] May 31, 2006, at 11:00 a.m.” (Emphasis omitted.)

As noticed, Reliable foreclosed on the Named Songs. The stated basis was the need to cure Paris’s defaults relating to his line of credit with Currency. Music Royalty Consulting, Inc. (Music Royalty) was the successful bidder.

Music Royalty’s Letter to BMI

Music Royalty sent a letter to BMI stating that all royalties for the Named Songs should be paid to Currency, and also that “all of Mr. Paris’s] rights relating to the

¹ The parties dispute whether Structured also signed.

[Named Songs], including without limitation his right to receive any income, have been extinguished. However, Mr. Paris shall retain title to the remainder of his catalog . . . , and all royalties related to [the remainder of his catalog] shall remain assigned, as before, to [Currency].”

The 2006 Action

BMI interpleaded \$889.92 in song royalties owed to Paris for the first quarter of 2006. In its complaint, BMI alleged: Structured, Music Royalty, Currency and Paris had conflicting demands for payment. Structured based its demand on the theory that in 2006, it obtained an assignment from Paris of all his rights to receive songwriter payments from BMI. Currency, Music Royalty and Paris (collectively the Currency Parties), on the other hand, claimed that Paris rescinded the assignment, and that the assignment was otherwise infirm. The Currency Parties asserted that the portion of the funds attributable to the Named Songs should be distributed to Music Royalty, and that the rest of the funds should be distributed to Currency. They based their claims on a series of contentions: The Named Songs were collateral for loans made to Paris in connection with a line of credit extended by Currency, as secured by a 1992 security agreement, and as further secured by a 1992 UCC-1 financing statement. When Paris defaulted, an agent for Currency conducted a public sale of the right to receive income from the Named Songs, and Music Royalty was the successful bidder. Although Paris remained the owner of all his other songs (Remainder Songs), the royalties for the Remainder Songs were assigned to Currency. In contrast, Structured contended that the foreclosure sale was invalid, and that the loans made to Paris were void because they did not comply with the Finance Lenders Law.²

² The complaint referred to the Named Songs as the “named compositions.” The Remainder Songs were not identified or collectively labeled. Rather, one paragraph alleged: “[The Currency Parties contend] that the portion of The Funds not attributable to the named compositions should be disbursed to [Currency]” as set forth in Music Royalty’s letter.

While the case was pending, Music Royalty assigned its interest in the Named Songs to Currency.

Structured failed to appear in the action, and its default was entered. The trial court entered a judgment directing the clerk of the court to disburse \$2,810.21 in interpleaded funds to Currency.³

The Present Action

In late 2007, BMI filed a complaint for interpleader regarding \$771.94 in royalties due to Paris for the first quarter of 2007. Also, it requested a declaration regarding the future rights of the parties. As in the 2006 action, BMI alleged that Currency claimed the right to receive royalties from the Named Songs due to the foreclosure sale, and it claimed the right to receive royalties from the Remainder Songs due to an assignment.

Currency moved for summary judgment on three grounds: Structured obtained no rights from Paris because they did not form a contract and Paris never received any consideration; Structured's claims are barred by collateral estoppel due to the judgment in the first interpleader action; and Currency is the rightful owner of the Named Songs based on the foreclosure sale.

The trial court granted the motion. It found that the first interpleader action triggered collateral estoppel on the issue of whether the foreclosure sale and Currency's title to the Named Songs were valid.

Judgment was entered for Currency. According to the judgment, Currency was the rightful owner of the Named Songs and entitled to all accrued and future royalties to

³ Presumably, royalties accrued during the pendency of the case, and BMI also interpleaded those funds. As a result, the judgment awarded more than the \$889.92 initially interpleaded.

We note that the default judgment improperly stated that Currency was entitled to receive all future royalties generated by the Named Songs, and that it was entitled to recover attorney fees and costs. This improper language was later deleted pursuant to a nunc pro tunc order.

be paid by BMI. The judgment was silent regarding who had the right to receive royalties from the Remainder Songs.

This timely appeal followed.

DISCUSSION⁴

Summary judgment is subject to de novo review. (*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 374.) “[W]e apply the same three-step analysis used by the superior court. We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent’s claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue. [Citation.]” (*Ibid.*; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258 [“It is the allegations in the complaint to which the summary judgment motion must respond”].)

BMI’s complaint presents two independent issues. Who is entitled to the BMI royalties for the Named Songs? Who is entitled to the BMI royalties for the Remainder Songs? Subsisting within these independent issues are various subissues regarding how and whether Currency or Structured acquired the rights to the BMI royalties for the Named Songs and the Remainder Songs.

Red flags immediately wave when the moving papers are consulted.

One basis for Currency’s motion was that it legally acquired Paris’s royalty rights. But this is problematic. The notice of motion and memorandum of points and authorities filed in support of the motion for summary judgment did not delineate between the Named Songs and the Remainder Songs. But with respect to Currency’s acquisition of rights, they focused solely on the foreclosure sale and, thus, only the Named Songs. There was no discussion of how Currency acquired the rights to the Remainder Songs.⁵

⁴ After the parties filed their briefs, we requested and received letter briefs on the issue of whether Currency’s motion for summary judgment disposed of all material issues presented by BMI’s complaint.

⁵ The Music Royalty letter to BMI contains hearsay that the Remainder Songs were disposed of by Paris through an assignment to Currency. We note, however, that

Also, the separate statement specifically referred only to the Named Songs. Thus, at least with respect to the substantive merits of the issues raised by the complaint, Currency's motion for summary judgment was not dispositive.

A second basis for Currency's motion—the one relied upon by the trial court—was collateral estoppel. But that basis suffered from infirmity, too.

The collateral estoppel doctrine is triggered when (1) the issue sought to be precluded from relitigation is identical to one decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and based on the merits; and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

Currency failed to establish that when the default judgment was entered in the first interpleader action, the trial court necessarily decided that Currency obtained, in perpetuity, the right to receive royalty income from the Named Songs and the Remainder Songs. This conclusion is undeniable. The default judgment awarded royalties to Currency but did not establish which songs gave rise to the royalties, i.e., whether they derived from the Named Songs, the Remainder Songs or both. If the royalties were derived from the Named Songs, then the trial court did not necessarily decide who had the right to receive royalties from the Remainder Songs. If the royalties were derived from the Remainder Songs, then the trial court did not necessarily decide who had the right to receive royalties from the Named Songs. If the royalties derived from both the Named Songs and Remainder Songs, there is still a question about future royalties from the Remainder Songs. This is because the nature of Currency's right to future royalties from the Remainder Songs is unclear. In other words, the motion did not establish the

Currency asked the trial court to take judicial notice of a declaration Paris signed on May 21, 2007. Paris stated that on January 30, 2006, he assigned his royalties from the Named Songs to Music Royalty. In his declaration, Paris makes no claim that he assigned away his rights to the Remainder Songs.

terms of the purported assignment of those songs to Currency. Perhaps Currency obtained the royalties to the Remainder Songs in perpetuity, or perhaps it was supposed to assign them back to Paris once his line of credit was paid off and the relationship between the parties terminated. At a minimum, there is a triable issue as to future royalties from the Remainder Songs.⁶

It is ironclad that summary judgment cannot be granted unless all material issues are successfully negated by the moving party. (Code Civ. Proc., § 437c, subd. (c); *Wilson v. Western National Life Ins. Co.* (1991) 235 Cal.App.3d 981, 988 [“If there is any issue of material fact to be tried, summary judgment must be denied”].) Because Currency did not meet its burden of negating all material issues, the motion for summary judgment should have been denied.

All other issues are moot.

DISPOSITION

The judgment is reversed.

Structured is entitled to its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ

⁶ At oral argument, counsel for Currency identified documents submitted by Structured below that set forth BMI’s royalty statements. Except for a \$0.33 royalty on one “unreported work,” a review of those statements indicates that royalties were paid for “Sooner Or Later” and “I’ve Just Got A Feeling Something” We do not know if the trial court in the first action considered this evidence. It suggests, though, that the trial court did not necessarily decide any issues pertaining to the Remainder Songs when it entered default judgment.