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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DANIEL J. McHUGH, as Trustee, etc.,

Plaintiff, Cross-defendant and
Appellant.

v.

GREGORY LEE DOBIN,

Defendant, Cross-complainant and
Appellant.

2d Civil No. B239961
(Super. Ct. No. 56-2010-
00366921-CU-OR-SIM)
(Ventura County)

Gregory Lee Dobin appeals from a judgment that 1) invalidates a 2008 foreclosure sale of real property in which Dobin has an interest; 2) quiets title to the property in Dobin subject to an equitable lien in favor of Daniel McHugh and to the liens created by a First and a Second Deed of Trust in favor of McHugh; 3) declares that McHugh is a mortgagee lawfully in possession of the property; 4) permits McHugh to continue in possession until the loans secured by the first and second deeds of trust are paid in full or foreclosed; and, 5) awards attorney fees and costs to McHugh. Dobin contends substantial evidence does not support the trial court's conclusions and the judgment based upon its findings. McHugh filed a protective cross-appeal. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

In 1993, Hildegard Adam and her son Stefan Adam purchased 23 acres in Moorpark with the intention of developing it into an equestrian center. Although the nominal purchaser was Hildegard, Dobin and his wife Erica Adam later claimed and were determined to have an undisclosed ownership interest in the property.

After Hildegard purchased the property, McHugh and some of his investors made loans to Hildegard and Stefan to facilitate the acquisition of the property and to construct the equestrian center. In April 2003, these loans were consolidated into a single obligation secured by a First Deed of Trust. In July 2003, McHugh and a different set of investors made another loan secured by a Second Deed of Trust to fund further improvements. Payments on the first and second loans were sporadic and the mortgagor was unable to pay property taxes putting the loans in default. Only two years later, in December 2005, the McHugh Family Trust made an emergency loan secured by a Third Deed of Trust that temporarily paid up the missed mortgage payments and provided a mechanism for payment by McHugh's trust of the delinquent property taxes.

Even with this relief, the mortgagor continued to miss payments on the secured obligations. In April 2008, the McHugh Family Trust filed a Notice of Default and Election to Sell pursuant to the terms of its Third Deed of Trust. On November 20, 2008, after attempts to work out refinancing issues failed, Hildegard sent a letter to McHugh announcing that she could no longer make the payments on the notes and would close down all operations on the property. On November 25, 2008, the property was sold to the McHugh Family Trust and shortly thereafter, McHugh's Trust conveyed the property to a joint venture comprised of McHugh and his investors. McHugh peaceably accepted possession of the property from the mortgagor for the benefit of himself and his investors without objection from Hildegard, Erica or Dobin. Thus McHugh has been a creditor in possession since November 2008.

All in all, the money advanced by McHugh, his investors and his family trust exceeds \$3.3 million. With interest, the balance currently due on the notes exceeds \$3.9 million, a sum substantially exceeding the value of the property and its improvements. All three trust deeds give the mortgagee a right to possession, a right to collect the rents and a power of sale. Neither the mortgagor nor Dobin or anyone else has ever tendered the amount of either the unpaid balance of the mortgage-backed loans or the equitable lien arising from the payment of delinquent property taxes.

Meanwhile, in 2003 Erica filed a divorce petition to end her marriage to Dobin. In 2004, Dobin filed a "cross-complaint" against Erica, Hildegard, Stefan and Equestrian Properties, LLC, to confirm the ownership interest of Dobin and Erica in the property that Dobin and Erica kept secret from McHugh, the Internal Revenue Service, the bankruptcy court and other creditors. McHugh, his investors and the McHugh Family Trust were not joined in the divorce proceedings and were never made parties to Dobin's "cross-complaint." Nevertheless, in March 2004, *before* the Third Deed of Trust was recorded, Dobin recorded a lis pendens asserting an interest in the property.

In October 2009, the trial court concluded that Erica and Dobin had an unrecorded ownership interest in the property. In a judgment entered nunc pro tunc on October 29, 2009, the court awarded Hildegard's and Erica's interest in the property to Dobin.

Dobin, citing the priority of his lis pendens over the Third Deed of Trust demanded that McHugh surrender possession of the property to him subject to the terms of the first and second mortgages. McHugh responded to Dobin's demand by filing a complaint for declaratory relief that seeks judicial foreclosure of an equitable lien for property taxes paid by the McHugh Family Trust, to enforce personal guarantees by Hildegard, Erica and Dobin and to establish that McHugh was a mortgagee lawfully in possession of the property pursuant to the terms of the First and Second Deeds of Trust. Dobin cross-complained to set aside the Trustee's

Deed to the McHugh Family Trust, to quiet title to the property in him, to oust McHugh from possession and for damages.

Following a trial in August and September 2011, the trial court concluded the foreclosure by the McHugh Family Trust was invalid because Dobin's lis pendens was recorded before the Third Trust Deed. The judgment quieted title to the property in Dobin, but ruled his title was subject to an equitable lien for payment of the property taxes by the McHugh Family Trust and was also subject to the liens created by the First and Second Deeds of Trust that were in default. The court also found that Dobin's denials that he had any interest in the property were deceitful and were intended to defraud the Internal Revenue Service to escape a \$2 million tax lien, to mislead the Bankruptcy Court, to cheat creditors and swindle lenders. The court concluded that McHugh was lawfully in possession of the property as a mortgagee and was entitled to remain in possession until the first and second mortgages were paid in full or foreclosed.

A judgment was entered on December 15, 2011. Dobin's motion for a new trial was denied.

DISCUSSION

Dobin contends that substantial evidence does not support the trial court's finding that the mortgagor voluntarily surrendered possession of the property to McHugh, and that it erred in ruling McHugh is a mortgagee in possession. Dobin contends that the evidence is insufficient to support the trial court's conclusion that an equitable lien exists in favor of the McHugh Family Trust for paying delinquent property taxes. Dobin disputes the court's finding he suffered no economic loss from anything done by McHugh and argues he should have been awarded about \$44,000 per month in damages. Finally, he contends the evidence does not support the trial court's conclusion that there was not a merger of the interests of the investors in the first and second and third secured loans that extinguishes these liens. We disagree.

Standard of Review

When the basis of an appeal is that substantial evidence does not support the court's findings and conclusions, we give the trial court's findings "the benefit of every reasonable inference and resolv[e] all conflicts in its favor." (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935.) In reviewing a sufficiency of the evidence claim, we must determine "whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the [fact finder]. When two or more inferences can be reasonably deduced from the facts," we cannot substitute our deductions for those of the fact finder. (*Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) "The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record. [Citation.]" (*In re Estate of Young* (2008) 160 Cal.App.4th 62, 76.) Here the evidence amply supports each of the findings, conclusions and orders of the court.

Mortgagee in Possession

The trust deeds executed by the mortgagor permit the beneficiary to take possession of the property and to collect the rents in the event of a default or by agreement even if the loans are not in default. Once peacefully in possession, the beneficiary is entitled to remain in possession until the debt secured by the property is paid or ownership of the property is transferred through a foreclosure sale. (*Cameron v. Ah Quong* (1917) 175 Cal. 377, 384-385.) Dobin does not dispute the validity of the First and the Second Deeds of Trust or the promissory notes they secure.

The loans extended by McHugh were frequently in default. For example, in 2005, McHugh was required to provide Hildegard emergency financial relief to cover delinquent property taxes and missed mortgage payments. In 2008,

McHugh again tried to help the mortgagor survive financially by waiving fees and penalties on unpaid or late-paid installments. He also extended the due date of the Second Deed of Trust from July 2008 to December 2008 while the availability of other financing was explored. None of McHugh's concessions were enough to make the equestrian center a viable enterprise.

After the McHugh Family Trust filed a Notice of Default and Election to Sell in April 2008 and attempts to salvage the business failed, Hildegard decided that it was futile to continue operating the equestrian center. Whether or not the mortgage backed obligations were at that moment in default, it was clear they soon would be. The note secured by the Second Deed of Trust was all due and payable on December 28, 2008. Hildegard had no way to pay all or any portion of the principal and interest then due. In November 2008, Hildegard notified McHugh that she could no longer pay the bills and would abandon the business and close down the business. Her election to do so was not forced by threats from McHugh. It was reasonable for the trial court to infer that Hildegard's choice was sensible, inevitable and entirely voluntary. McHugh ousted no one from the property and met no resistance from anyone who was then entitled to possession or who had been declared by a court to have an interest in the property. This evidence amply supports the court's conclusion McHugh was a mortgagee lawfully in possession and that he is entitled to retain that status until the loans are repaid or foreclosed.

Dobin claims that the evidence does not support the court's finding that he did not object to McHugh's taking possession. Whether he did or not is of no consequence. Dobin was not a record owner of the property or a mortgagor. His claim to a secret ownership interest was the subject of litigation in his divorce proceeding but in 2008, his entitlement, if any, was undetermined. Dobin did nothing to stop McHugh from collecting the rents or from installing Erica and Jeff Wilson to run the business and maintain the property. The trial of the *Dobin v. Dobin* divorce would not result in a judgment establishing the existence of the secret partnership and an award of the property to Dobin until October 29, 2009.

Equitable Lien

Substantial evidence supports the court's conclusion that in 2005 McHugh was asked by Erica and Hildegard to advance the funds to pay, among other things, delinquent property taxes. Their intention to charge the property with this debt is evidenced by the Third Deed of Trust. It is undisputed that this debt was not repaid. As a court of equity, the trial court did not err in finding McHugh and his investors are entitled to an equitable lien against the property even if the foreclosure proceeding based upon the Third Deed of Trust was flawed. (Civ. Code, §§ 2876, 2904; *County of Los Angeles v. Construction Laborers Trust Funds* (2006) 137 Cal.App.4th 410, 414-415.)

Dobin cannot "do equity" to obtain the equitable relief he seeks. He has paid nothing on over \$3 million in loans extended to acquire, improve and operate the property and business that is the subject of Dobin's secret partnership. He has not tendered anything toward the unpaid installments of principal or interest on the notes since his interest in the property and business were confirmed in October 2009. Dobin has no money, no experience in managing a property of this kind, owes millions to the United States Treasury and offered no plan to the court that suggests what he might do if these assets were handed over to him.

Dobin's deceit disqualifies him from the equitable relief he seeks. He lied to McHugh in his 2003 application to be a guarantor of the mortgagor's borrowings by certifying he had no ownership interest in the subject property or any other real estate. The trial court's statement of decision in this case includes the observation that, "Greg Dobin and Erica Adam come to this court with unclean hands and much of their current difficulty derives from [their] deceit." The trial court, noted "Mr. Dobin and now Erica Adam began this enterprise and throughout were defrauding just about everyone that had anything . . . to do with this property. They were defrauding the United States government, the IRS, the bankruptcy court, and any lender wanting anything to do with that property."

Dobin is simply not entitled to equitable relief even if McHugh's attempt to foreclose on the lien created by the Third Deed of Trust and his acquisition of possession was flawed. "The "clean hands" rule is of ancient origin and given broad application. It is the most important rule affecting the administration of justice. "Equity denies affirmative relief for such conduct even though it thereby leaves undisturbed and in ostensible full legal effect acts or proceedings which would affirmatively be set aside but for such consideration." [Citations.]" (*Padgett v. Padgett* (1962) 199 Cal.App.2d 652, 656.)

Merger of the Three Trust Deeds

Dobin contends that McHugh acquired all legal and equitable beneficial interests in the property through the proceedings to foreclose the Third Deed of Trust. He reasons that the Trustee's Deed to the McHugh Family Trust and the conveyance thereafter to McHugh's joint venture merged all legal and beneficial interests and extinguished the first and second mortgage liens. He believes that when McHugh's foreclosure proceedings were invalidated and title was awarded to him, he is entitled to have the property and its improvements free of any liens. We disagree.

A merger will not be found if it is necessary for the protection of the owner's rights that the lien be preserved. (*Ralph C. Sutro Co. v. Paramount Plastering, Inc.* (1963) 216 Cal.App.2d 433, 438.) Dobin's argument is fanciful. "Equity will prevent or permit a merger as will best subserve the purposes of justice, and the actual and just intent of the parties. . . . In the absence of an expression of intention, if the interest of the person in whom the several estates have united, as shown from all the circumstances, would be best subserved by keeping them separate, the intent so to do will ordinarily be implied." (*Ito v. Schiller* (1931) 213 Cal. 632, 635, quoting *Jameson v. Hayward* (1895) 106 Cal.682, 688, 689.) Dobin comes to court with dirty hands and asks the court to grant equitable relief that would produce a gross inequity. The request is folly.

We have considered Dobin's other contentions and find them entirely without merit.

DISPOSITION

The judgment is affirmed. McHugh shall recover his costs on appeal.

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BURKE, J.*

We concur:

GILBERT, P. J.

YEGAN, J.

* (Judge of the Superior Court of San Luis Obispo County, assigned by the Chief Justice pursuant to art. 6, § 6 of the Cal. Const.)

David R. Worley, Judge
Superior Court County of Ventura

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