

Filed 12/23/19 Lin v. Sepulveda CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HSING LIANG SIDNEY LIN et
al.,

Cross-complainants and
Respondents,

v.

CAROLINA SEPULVEDA et al.,

Cross-defendants and
Appellants.

B284179

(Los Angeles County
Super. Ct. No. GC045358)

APPEAL from a judgment of the Superior Court of Los Angeles County, William D. Stewart, Judge. Affirmed.

Chad T-W Pratt, Sr., for Cross-defendants and Appellants.

Dan Hogue for Cross-complainants and Respondents.

Carolina Sepulveda, Ed Evans, and J. Michael McGoldrick (collectively Tenants) were occupants of a house in San Marino (the Property), which was the subject of competing claims of ownership. After this lawsuit was filed to resolve those claims, Tenants filed claims of right to possession (Code Civ. Proc.,¹ § 1174.3) and prejudgment claims of right to possession (§§ 415.46, 1174.25) in the action. Tenants appeal from the judgment entered in favor of Fang Chu and Hsing Liang Sidney Lin on their cross-complaint against Jeff Thompson, Tenants’ landlord. Tenants contend the trial court erred in denying their motion to dismiss Chu and Lin’s cross-complaint under sections 583.210 and 583.250 for failure to serve Tenants. Tenants argue Chu and Lin were required to serve them as the fictitiously named cross-defendants in the cross-complaint. We affirm.²

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Cross-complaint*

On February 2, 2015 Chu and Lin filed a first amended cross-complaint alleging 11 causes of action, including for quiet title and ejectment, against Thompson and others. The cross-complaint alleges as to “FOES 10 to 50”: “Cross-complainants are ignorant of the true names and capacities of Cross-[d]efendants sued herein as FOES 10 to 50, and therefore sue these [c]ross-[d]efendants by such fictitious names. Cross-

¹ Further undesignated statutory references are to the Code of Civil Procedure.

² In a separate opinion we affirm entry of the judgment against Thompson. (*Lin v. Thompson* (Dec. 23, 2019, B283223) [nonpub. opn.])

[c]omplainants will amend this [c]ross-[c]omplaint to allege their names and capacities when ascertained. [¶] Cross-[c]omplainants are informed and believe and thereon allege that each of these fictitiously named [c]ross-[d]efendants claim some right, title, estate, lien, or interest in the Subject Property adverse to [c]ross-[c]omplainants' title and their claims, and each of them, constitute a cloud on Cross-complainants' title to the . . . Property."

Chu and Lin asserted their cause of action for ejectment against Thompson, his brother Christopher Thompson, and FOES 31-50, alleging Thompson took possession of the Property from Chu and Lin and refused their demands to return the Property.

B. *The Trial Court's Grant of Summary Adjudication and Issuance of Writ of Possession*

At a hearing on January 8, 2016 the trial court granted Chu and Lin's motion for summary adjudication of their ejectment cause of action. In its February 22, 2016 order, as amended on March 15, 2016, the court stated judgment in favor of Chu and Lin and against Thompson "shall be entered along with the quiet title judgment previously determined by summary adjudication." The order added, "A [w]rit of [p]ossession may issue forthwith upon signing of this [o]rder"

On April 11, 2016 Chu and Lin filed an application for issuance of writ of possession, and the court clerk issued the writ the same day.

C. *The Tenants' Claims of Right to Possession, Prejudgment Claims of Right to Possession, and Answers*

On July 1, 2016 McGoldrick filed a claim of right to possession based on his rental agreement with Thompson and his residency at the Property. On the same day McGoldrick filed an answer to the cross-complaint. On July 15, 2016 Evans filed a claim of right to possession based on his rental agreement with Thompson and residency at the Property.

On October 21, 2016 the trial court held a hearing on Evans's and McGoldrick's claims of right to possession. Evans testified; McGoldrick did not. The court issued an order denying Evans's and McGoldrick's claims, stating, "[T]he rights of Lin are superior to any rights of all living, dead or to be born in the future parties and therefore subject to the [w]rit of [e]xecution issued April 11, 2016. Therefore it is ordered that the [w]rit of [e]xecution be amended to include [Evans] and [McGoldrick] and all [l]iving, [d]ead, [o]r [t]o [b]e [b]orn [i]n [t]he [f]uture [p]arties as being subject to the [w]rit"

On October 31, 2016 Sepulveda filed a claim of right to possession based on her rental agreement with Thompson and residency at the Property.

On November 10, 2016 Chu and Lin filed an ex parte application for an order directing the Los Angeles County Sheriff to execute the writ of possession and disregard any further claims of right to possession. In its order filed that day, the trial court granted the application, finding "that persons known and unknown are acting to frustrate orders of the [c]ourt," and ordering the sheriff "to refuse any further [c]laim of [r]ight to [p]ossession filed by anyone in this matter and to proceed with the [w]rit and to place [Chu and Lin] in lawful and peaceful

possession of [the Property] notwithstanding any [c]laim of [r]ight to [p]ossession or [n]otice of [b]ankruptcy filing.”

On November 21, 2016 Evans filed an answer to the cross-complaint. On November 28, 2016 McGoldrick, Evans, and Sepulveda filed prejudgment claims of right to possession. Each of them asserted, “I have a rental agreement with the owner, who remains owner due to fraudulent foreclosure. Owner obtained judgment against the [t]rustee (Reliable Trust Deed Services) and [p]laintiff Shantre Inv., and received return of the property in this pending action, due to fraud of the [t]rustee resulting in non-sale to non-bonafide purchasers.”

On December 5, 2016 Sepulveda filed an answer to the cross-complaint. On December 29, 2016 the trial court issued an order denying Sepulveda’s claim of right to possession.³

D. The Tenants’ Motion To Dismiss

On December 20, 2016 Sepulveda filed a motion to dismiss Chu and Lin’s cross-complaint on behalf of herself and the other purported FOE defendants based on lack of service pursuant to sections 583.210 and 583.250.⁴

On February 24, 2017 the trial court denied Sepulveda’s motion to dismiss, finding Tenants “appeared in this action when they filed prejudgment claims of right to possession.” The court

³ Sepulveda fails to include the order in the appellate record, but she does not challenge the trial court’s denial of her claim.

⁴ Evans previously moved to quash service of the summons and cross-complaint based on Chu and Lin’s failure to serve Evans with the cross-complaint. On October 21, 2016 the trial court denied Evans’s motion, explaining Evans “can’t quash something if it wasn’t served.”

rejected Tenants’ contention that Chu and Lin failed to serve the summons and cross-complaint on them within three years of filing the action, as required under section 583.210, and that dismissal was warranted for lack of service under section 583.250, subdivision (a). The court explained, “This statutory scheme does not [apply] to . . . Sepulveda, . . . McGoldrick, and . . . Evans because they did not become parties to this action through any action of [Chu and Lin]. Instead, they each filed a claim to possession under . . . section 1174.3 in order to claim a right to possession of the property [¶] Under . . . section 1174.25(a), when they filed their claims of right to possession, this constituted a general appearance by each in this action. Further, section 1174.25(b) states that when the claim to possession is filed, the occupant is added to the complaint as a named defendant and must answer or otherwise respond to the complaint within five days. . . . In addition, under section 1174.3 the Court sets a hearing on their claims to possession and then makes the necessary orders based on the determination made at the hearing. [¶] . . . Accordingly, there are no grounds to dismiss them under . . . section 583.250 because [Chu and Lin] were not required to serve them with the pleadings; instead, they were required to respond to the [cross-complaint] within five days of filing their claims.”

E. *The Judgment*

On May 25, 2017 the trial court entered a judgment on Chu and Lin’s cross-complaint, Thompson’s cross-complaint against Chu and Lin, and Lin’s unlawful detainer action against Thompson. The judgment granted title to the Property to Chu and Lin “free of any claim of . . . Thompson and persons claiming

right of title or interest by or through . . . Thompson” As to Chu and Lin’s ejectment cause of action, the judgment ordered Thompson to pay \$477,687 in damages to Chu and Lin for wrongfully withholding possession of the Property.

Tenants appealed on July 24, 2017.

DISCUSSION

A. *The Tenants Have Standing To Appeal*

Chu and Lin contend Tenants lack standing to appeal the May 25, 2017 judgment. “Under Code of Civil Procedure section 902, ‘[a]ny party aggrieved’ may appeal a judgment.” (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 263; accord, *Eck v. City of Los Angeles* (2019) 41 Cal.App.5th 141, 145.) “Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision.” (*In re K.C.* (2011) 52 Cal.4th 231, 236; accord, *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.)

The trial court entered judgment on Chu and Lin’s quiet title cause of action, granting them title as of June 16, 2010 “free of any claim of . . . Thompson and persons claiming right title or interest by or through . . . Thompson” to the Property. Tenants are therefore aggrieved parties because they claim an interest in the Property through Thompson. Further, as discussed below, Tenants became parties to Chu and Lin’s cross-complaint after

they filed prejudgment claims of right to possession on November 28, 2016. They also each filed an answer to the cross-complaint. We liberally construe standing to appeal and conclude Tenants may appeal from the May 25, 2017 judgment.

B. *Standard of Review*

“We review questions of statutory construction de novo. Our primary task ‘in interpreting a statute is to determine the Legislature’s intent, giving effect to the law’s purpose. [Citation.] We consider first the words of a statute, as the most reliable indicator of legislative intent. [Citation.]’ [Citation.] We construe the statute’s words in context, harmonizing statutory provisions to avoid absurd results. [Citation.] If the statutory text is susceptible to more than one reasonable construction, we may consider extrinsic aids such as legislative history to facilitate our interpretative analysis.” (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1041; accord, *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.* (2018) 4 Cal.5th 1082, 1089.)

C. *The Trial Court Properly Denied the Tenants’ Motion To Dismiss the Cross-complaint*

Tenants contend the trial court erred in denying their motion to dismiss the cross-complaint for failure to serve them within three years after commencement of the action because they were named fictitious “FOES” in Chu and Lin’s first amended cross-complaint. This contention lacks merit.

“Section 583.210, subdivision (a), provides that a summons and complaint ‘shall’ be served upon a defendant within three years after the action is commenced. Section 583.250, in turn,

provides that the action ‘shall’ be dismissed if service is not made within the statutorily prescribed time and that the foregoing requirements ‘are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.’ (*Id.*, subds. (a)(2), (b).)” (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748.)

These sections would apply if Tenants were named as cross-defendants. But they were not. Although the first amended cross-complaint alleges Chu and Lin were ignorant of the names of other individuals claiming an interest in the property, described as FOES 10 to 50, Chu and Lin did not amend their cross-complaint to substitute Tenants as the fictitiously named FOE cross-defendants. (See § 474 [“When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint . . . , and such defendant may be designated in any pleading . . . by any name, and when his true name is discovered, the pleading . . . must be amended accordingly”]; *Meller & Snyder v. R & T Properties, Inc.* (1998) 62 Cal.App.4th 1303, 1312 [“The court was without power to enter a judgment against [the corporation], sued under a fictitious name, unless it found the complaint was properly amended to substitute the corporation pursuant to section 474.”].)

Instead, Tenants became parties to the cross-complaint when they filed prejudgment claims of right to possession pursuant to sections 415.46 and 1174.25. Section 415.46 provides an owner of property may serve a prejudgment claim of right to possession form on a tenant as part of an unlawful detainer action. Once the tenant is served with the claim form, section 1174.25, subdivision (a)(1), provides the tenant “may file a claim as prescribed in Section 415.46, with the court within 10 days of

the date of service of the prejudgment claim of right to possession [form] as shown on the return of service Filing the prejudgment claim of right to possession shall constitute a general appearance”

Subdivision (b) of section 1174.25 provides further, “At the time of filing, the claimant shall be added as a defendant in the action for unlawful detainer and the clerk shall notify the plaintiff that the claimant has been added as a defendant in the action by mailing a copy of the claim filed with the court to the plaintiff with a notation so indicating. The claimant shall answer or otherwise respond to the summons and complaint within five days . . . after filing the prejudgment claim of possession. Thereafter, the name of the claimant shall be added to any pleading, filing or form filed in the action for unlawful detainer.”

Tenants argue sections 415.46 and 1174.25 only apply to unlawful detainer actions, not to a cause of action for ejectment. But Tenants are judicially estopped from taking this position on appeal because they filed claims of right to possession and prejudgment claims of right to possession in the trial court, seeking adjudication of their interests in the Property. (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986-987 [Judicial estoppel “applies when: ‘(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.’”]; accord, *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422.)

The trial court accepted Tenants' implied position they had a right to be heard on their claims of right to possession, holding a hearing on October 21, 2016 at which the court heard testimony on their claims. Tenants also were allowed to file prejudgment claims of right to possession. Each tenant signed the prejudgment claim of right to possession, attesting under penalty of perjury he or she was not "named in the accompanying Summons and Complaint." Tenants are therefore judicially estopped from asserting the procedures for adjudicating a tenant's claim of right to possession do not apply in an ejectment proceeding.

Moreover, sections 415.46, 1174.25, and 1174.3⁵ codified the procedure the Supreme Court established in *Arrieta v. Mahon* (1982) 31 Cal.3d 381, 389-390 (*Arrieta*), which requires the marshal (or other law enforcement) to post a notice to vacate property when enforcing a writ of execution following entry of a judgment in an unlawful detainer proceeding. The *Arrieta* court held occupants not named in a writ of execution had a constitutional due process right to notice and a pre-eviction

⁵ Section 1174.3 provides a procedure for an occupant to follow after service of the writ of possession where a landlord has not served a prejudgment claim of right to possession form under sections 415.46 and 1174.25. Section 1174.3, subdivision (a)(1), provides, "A claim of right to possession may be filed at any time after service or posting of the writ of possession . . . up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession." The section provides further that "[f]iling the claim of right to possession shall constitute a general appearance." (§ 1174.3, subd. (a)(1).) Here, Tenants filed claims of right to possession and prejudgment claims of right to possession.

hearing in an unlawful detainer action.⁶ (*Id.* at p. 389; see *Cardenas v. Noren* (1991) 235 Cal.App.3d 1344, 1349 [occupant required to comply with statutory procedure for filing claim of right to possession enacted to codify procedures contemplated by *Arrieta*].) Under *Arrieta*, the marshal was required to provide notice to occupants they could contact the marshal's office to assert a claim of right to possession of the property, and once the occupant asserted a claim, the marshal could not evict the occupant until further order of the court. (*Arrieta*, at p. 390.)

Nothing in *Arrieta* suggests a tenant's due process right to a pre-eviction hearing is limited to an unlawful detainer case. Indeed, the *Arrieta* court relied on the due process analysis in its earlier ejectment case, *Wattson v. Dowling* (1864) 26 Cal. 124, to support its holding. (*Arrieta, supra*, 31 Cal.3d at p. 389, fn. 7.) In *Wattson*, the Supreme Court held the occupant of the premises, who claimed an interest in the premises but was not a party to the ejectment action, could not "be deprived of his property or of the enjoyment of it, without due process of law." (*Wattson*, at p. 127; see *Tevis v. Ellis* (1864) 25 Cal. 515, 518-519 [plaintiff and his tenant could not be evicted by execution of writ of restitution where ejectment action did not name plaintiff and his tenant].) The due process analysis in *Wattson* supports the trial court's consideration of Tenants' claims of right to possession.

Because Tenants became parties to the cross-complaint after filing prejudgment claims of right to possession (§ 1174.25, subd. (a)(1)) and answers to the cross-complaint, the trial court

⁶ A writ of possession enforces a judgment for possession or sale of property (§ 712.010); a writ of execution enforces a money judgment (§ 699.510).

properly found there was no basis to dismiss the cross-complaint for failure to serve Tenants as fictitious FOE cross-defendants.

DISPOSITION

The judgment as to Sepulveda, Evans, and McGoldrick is affirmed. Chu and Lin are entitled to recover their costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.