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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RANDY TAYLOR et al.,

Plaintiffs and Respondents,

v.

CAROL UNRUH,

Defendant and Appellant.

B280376

(Los Angeles County
Super. Ct. No. BC597720)

APPEAL from an order of the Superior Court of
Los Angeles County, Stuart M. Rice, Judge. Affirmed.

Shane E. Coons for Defendant and Appellant.

Delman Vukmanovic, John Vukmanovic and Dana Delman
for Plaintiffs and Respondents.

INTRODUCTION

In this action for partition and other remedies relating to several pieces of real property, the trial court appointed a receiver to manage one of the properties and collect rents while the case is pending. Carol Unruh, who purports to hold a junior deed of trust on that property with an assignment of rents, appeals from the trial court's order enjoining her from collecting those rents. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Trial Court Appoints a Receiver*

In October 2015 Randy and Reyna Taylor and Steve Hawrylack filed this action for partition, an accounting, breach of contract, waste, and conversion against Stephen Forde, alleging he committed various acts of misconduct while managing four pieces of real property the parties co-owned. In November 2015 the trial court granted an application by the Taylors and Hawrylack to appoint a receiver for one of the properties, a four-unit residential building the parties refer to as Maple 2.

The order appointing the receiver provided that, “[p]ending the determination of this action, the receiver shall manage, control, care for, preserve, [and] maintain . . . [Maple 2], and, specifically, shall collect the rents, issues, and profits therefrom . . . pending further order of this Court.” The order further provided that all tenants of Maple 2 “are hereby directed, until further order of this Court, to pay over to the receiver all rents . . . now due and unpaid or that may hereafter become due, and all persons and entities liable for such rents are hereby

enjoined and restrained from paying any rents . . . to Defendant Forde, or his agents, servants or attorneys.”

B. *The Trial Court Enjoins Forde and Brazil from Collecting Rents*

In April 2016 the Taylors and Hawrylack amended their complaint to add Thomas Brazil as a defendant, and the receiver applied for a temporary restraining order prohibiting Brazil and Forde from trying to collect rents from tenants of Maple 2. Evidence supporting the application showed that in March 2016 Brazil wrote tenants of Maple 2 claiming he held a junior deed of trust on the property that included an assignment of rents,¹ stating he was enforcing the assignment because the underlying note was in default,² and instructing them not to pay rent to the receiver but to Brazil’s attorney, Unruh. The evidence also showed that Unruh, in a March 2016 email to a tenant, asserted

¹ The deed of trust Brazil purported to hold was recorded in December 2006, secured a note of \$185,000 payable by the Taylors and Hawrylack to Nancy A. Sparks, and named Sparks as beneficiary with a right to collect rents in the event of default. In his correspondence with tenants of Maple 2, Brazil stated that Sparks was his sister and the “original successor trustee of the Brazil [Family] Trust [(the Brazil Trust)],” that it was the Brazil Trust that “provided” the deed of trust, and that upon the death of his sister he (Brazil) became the successor trustee of the Brazil Trust. We note that, even assuming Sparks executed the note and deed of trust on behalf of the Brazil Trust, which neither document reflects, the record on appeal contains no admissible evidence Brazil succeeded Sparks as trustee of the Brazil Trust.

² There is no dispute the underlying note was in default.

Brazil's claim was "superior" to the court's order appointing the receiver, that in March and April 2016 Forde threatened tenants with eviction if they did not pay him rent, and that in April 2016 Brazil sent two tenants a three-day notice to pay rent or quit with instructions to send their rent payments to Unruh.

On April 15, 2016 the trial court granted the application for a temporary restraining order prohibiting Brazil, Forde, "and their agents, attorneys, employees and representatives, and all persons or entities acting under or in concert with them" from (a) demanding, collecting, or receiving rents from Maple 2, (b) communicating with any tenants for that purpose, (c) taking any legal action against the tenants concerning their tenancies or the collection of their rent, (d) "[t]ransferring, conveying, assigning, pledging, deeding, selling, renting, leasing, encumbering, changing ownership of, vesting of title to, or otherwise disposing of" Maple 2, and (e) terminating or otherwise affecting the utilities for Maple 2. The court issued an order to show cause why it should not issue a preliminary injunction restraining Brazil and Forde from engaging in this conduct and set the hearing on the order to show cause for May 5, 2016.

At the May 5, 2016 hearing the trial court found Brazil had not been properly served with the temporary restraining order and order to show cause, and the court continued the hearing to May 26, 2016 to allow the parties to address those defects in service. In the meantime, the court enjoined Forde from engaging in the conduct proscribed by the temporary restraining order and dissolved the temporary restraining order against Brazil.

After the parties stipulated to continue the hearing on the order to show cause to July 14, 2016, the receiver filed a proof of

service showing proper service on Brazil of the temporary restraining order and order to show cause. In response to the order to show cause, Brazil filed a declaration stating he would continue to insist that Maple 2 tenants pay rents to him because “[n]either the court nor the receiver has cited any case law or other authority that would supervene my [assignment of rents clause] vis-à-vis the receiver.” Forde also filed a declaration, stating, “Since the time Tom Brazil exercised his [assignment of rents on March 7, 2016], I have advised tenants, when asked, to pay the rent to Mr. Brazil.” Forde further asserted that “Brazil’s assignment of rents is superior to the court receiver” and that he (Forde) would “continue to contact the tenants on behalf of Brazil.”

On July 14, 2016 the trial court held the hearing on the order to show cause and, under Code of Civil Procedure section 526, subdivision (a)(3), granted the receiver’s motion for a preliminary injunction enjoining Brazil, Forde, “and their agents, attorneys, and all persons acting in concert with them” from the conduct proscribed in the April 15, 2016 temporary restraining order. The court rejected the argument that Brazil’s purported right to collect rents under the junior deed of trust entitled him to interfere with the receiver’s collection of rents, noting Civil Code section 2938, subdivisions (c)(3) and (k), “imply that a written notice from the court may supersede Brazil’s alleged enforcement of the assignment of rent clause.” The trial court entered a preliminary injunction against Forde on July 14, 2016 and against Brazil on July 26, 2016.³

³ The trial court continued “the Order To Show Cause Re Preliminary Injunction as to defendant Brazil” to July 26, 2016 to allow for the filing of a “[p]roof of service on Brazil of moving

C. *The Trial Court Enjoins Unruh from Collecting Rents*

In October 2016, after the Taylors and Hawrylack amended the operative complaint to name Unruh as a defendant, the receiver filed an ex parte application for an order under Code of Civil Procedure section 526, subdivision (a)(3), restraining Unruh from attempting to collect rents from tenants of Maple 2.

Undisputed evidence supporting the application showed that on August 30, 2016 Unruh had written to tenants of Maple 2 to demand they pay rent to her. In that correspondence Unruh stated that the Brazil Family Trust sold her the junior deed of trust it held on Maple 2, that she was “exercising [her] assignment of rents clause,” and that her “assignment of rents is superior to the receiver because it originates in the deed of trust.” She included copies of written assignments to her of the deed of trust and promissory note executed by Brazil (as “Successor Trustee of the Christine A. Brazil Trust”) and dated July 15, 2016, a document reflecting that Unruh recorded the assignment of the deed of trust on July 18, 2016, and a “DEMAND TO PAY RENT TO PARTY OTHER THAN LANDLORD” pursuant to Civil Code section 2938, subdivision (k).

Unruh opposed the receiver’s application, arguing that, as “a secured lender holding an assignment of rents” under the junior deed of trust, she had “priority over a receivership” to collect rents. In a supporting declaration, Unruh stated that on July 2, 2016 she “entered into an agreement to purchase” the deed of trust and that, on an unspecified date, she “purchased the

papers.” The final form of the preliminary injunction entered against Brazil stated it applied also to “his agents, ~~attorneys~~, and all persons acting in concert with him,” that is, with the word “attorneys” crossed out.

note and deed of trust on Maple 2 from the Christine A. Brazil Trust (Brazil Trust).” In another paragraph she stated: “The original promisee of the note was Nancy A. (Brazil) Sparks, as successor trustee of the Brazil Trust, who subsequently passed away. I purchased the note from Thomas V. Brazil, the brother and the successor trustee.”

On November 21, 2016 the trial court heard the receiver’s application, granted it, and issued a preliminary injunction enjoining Unruh from collecting rents from tenants of Maple 2, communicating with tenants or residents of the property, taking any legal action against the tenants, or doing anything to affect the utilities for the property. Unruh timely appealed, contending the trial court erred in enjoining her from collecting rents from tenants of Maple 2.⁴

DISCUSSION

A. *Applicable Law and Standard of Review*

Under Code of Civil Procedure section 526, subdivision (a)(3), a trial court may grant an injunction “[w]hen it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.” (See *ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1023 [“[t]he court may grant a preliminary injunction when there is evidence of the threat of

⁴ She does not contend the trial court erred in issuing its order appointing the receiver.

committing an act in violation of the rights of another party respecting the subject of the action”].)

“[T]he question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief.” (*White v. Davis* (2003) 30 Cal.4th 528, 554; accord, *Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361 (*Jamison*).) ““The trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction.”” (*Jamison*, at pp. 362-363.)

Ordinarily, our review of an order granting a preliminary injunction “is limited to whether the trial court abused its discretion in evaluating the foregoing factors,” but where the issue is purely one of law, our standard of review is de novo. (*Jamison*, *supra*, 4 Cal.App.5th at p. 362; accord, *City and County of San Francisco v. Post* (2018) 22 Cal.App.5th 121, 129.) ““[W]hen reviewing the interpretation and application of a statute where the ultimate facts are undisputed” an appellate court exercises its independent judgment in determining whether issuance or denial of injunctive relief was proper.” (*City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078, 1085; accord, *In re Loveton* (2016) 244 Cal.App.4th 1025, 1043.)

B. *The Trial Court Did Not Err in Enjoining Unruh from Collecting Rents*

Unruh contends “the Trial Court’s order enjoining [her] collection of rents under a valid Deed of Trust assignment of rents interferes with [her] statutory rights as a matter of law, and is not based upon disputed facts.” She refers to her purported rights under Civil Code section 2938, subdivision (c), as one holding an assignment of rents from real property made in connection with an obligation secured by the property: “Upon default of the assignor under the obligation secured by the assignment of . . . rents . . . , the assignee shall be entitled to enforce the assignment in accordance with this section. On and after the date the assignee takes one or more of the enforcement steps described in this subdivision, the assignee shall be entitled to collect and receive all rents . . . that have accrued but remain unpaid and uncollected by the assignor or its agent or for the assignor’s benefit on that date, and all rents . . . that accrue on or after the date. The assignment shall be enforced by one or more of the following: [¶] [¶] (3) Delivery to any one or more of the tenants of a written demand for turnover of rents . . . in the form specified in subdivision (k), a copy of which demand shall also be delivered to the assignor” (Civ. Code, § 2938, subd. (c).)

Unruh argues the trial court committed legal error by enjoining her from exercising her right under Civil Code section 2938, subdivision (c), to collect rents from tenants of Maple 2. But Unruh did not have a right under this provision to collect rent from those tenants because the trial court’s order appointing the receiver had directed the tenants to pay rent to the receiver. As provided in Civil Code section 2938, subdivision (d), a tenant’s obligation to pay rent to an assignee under

subdivision (c) ceases upon “receipt by the tenant of a written notice from a court directing the tenant to pay the rent in a different manner.” (See 4 Witkin, Summary of Cal. Law (11th ed. 2017) Security Transactions in Real Property, § 105, p. 889 [“[t]he obligation to pay the assignee continues until the tenant receives a notice from the court directing otherwise”].) The record shows, and Unruh does not dispute, tenants of Maple 2 received the court’s order directing them to pay rent to the receiver no later than March 2016, when Brazil and Unruh wrote them with instructions to ignore it.⁵ Therefore, there is no merit to Unruh’s argument the trial court violated her rights under section 2938, subdivision (c), and Unruh has not demonstrated the trial court otherwise abused its discretion in enjoining her from collecting rents from the tenants in Maple 2.

DISPOSITION

The November 21, 2016 order granting the receiver’s request for injunction against Unruh is affirmed. The Taylors and Hawrylack are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.

⁵ In its July 14, 2016 ruling, the trial court noted the receiver reported giving “notice to the tenants on May 6, 2016, *reminding* them to make rent payments to a property management company engaged by Receiver.” (Italics added.)