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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SOUTH FORK RANCH, LLC et al., Plaintiffs and Appellants, v. THE NATURE CONSERVANCY, Defendant and Respondent, DAVID BUNN et al., Intervenors, Defendants and Respondents.	2d Civil No. B267157 (Super. Ct. No. 56-2014-00449856-CU-BC-VTA) (Ventura County)

This appeal is governed by res judicata and collateral estoppel. The parties own contiguous parcels of land near the Santa Clara River in Ventura County. In 2013, the trial court adjudicated a declaratory relief action regarding an easement,

brought by appellant South Fork Ranch, LLC (South Fork) against R. Eric King and respondents David Bunn, Ellen Birrell, and the Nature Conservancy (TNC) (*South Fork I*). The trial court declared that South Fork and King "no longer have easement rights which would permit them to substantially alter or remove the revetment wall or groins," referring to a flood protection barrier that impedes appellants' construction of a water well on respondents' property.

In 2014, South Fork and King sued Bunn, Birrell and TNC for interference with an easement (*South Fork II*). The new iteration of South Fork's claim reasserts a right to remove the revetment wall, the same matter litigated in *South Fork I.* Appellants' pleading does not acknowledge the judgment in *South Fork I.* Relying on res judicata, the trial court entered judgment for respondents in *South Fork II.* We affirm because appellants seek to relitigate claims and issues that were decided adversely to them in the prior action.

FACTS AND PROCEDURAL HISTORY

In 1992, the "South Fork Ranch Declaration of Covenants, Conditions and Restrictions" (CC&R's) were adopted, creating water access rights by easement for three contiguous parcels of land. Parcel A abuts the Santa Clara River, but Parcels B and C do not. Water for the three parcels was pumped from a well into tanks and dispersed through pipes. The water facilities were located on Parcel A.

After the CC&R's were adopted, flooding destroyed the well and eroded the river bank along Parcel A. An amendment to the CC&R's, recorded in 1996, moved the well site upstream and established a new easement. At the same time, the then-owner of Parcel A constructed a revetment wall several hundred feet in

length across the original easement, to protect the river bank. Flooding in 1997-1998 destroyed 60 percent of the wall. A new wall, 9 to 14 feet high and fortified by large boulders, was constructed in 1998-1999; "groins" of caged rocks placed on a deep foundation protruded from the base of the wall.

South Fork purchased Parcel B in 1996, after the CC&R's were amended. King purchased Parcel C in 2000. Bunn and Birrell (the Bunns) purchased Parcel A in 2005, while Ventura County was suing the then-owner of Parcel A for building the unauthorized revetment wall. The County settled its lawsuit by stipulation in 2005. The judgment required the Bunns to repair and restore Parcel A and the wall structures on the river; comply with watershed protection standards; and transfer 52 riparian acres of Parcel A to TNC.[1] Part of Parcel A was transferred to TNC in 2009, the same year that the Bunns completed the $421,887 restoration work required by the 2005 judgment.

The 2013 Judgment in *South Fork I*

In 2011, South Fork sued King, the Bunns and TNC for "declaratory relief (easements)."[2] South Fork alleged that the parties disagreed about their rights under the CC&R's. It is undisputed that appellants "requested 'the right to remove part

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[1] The "Restoration Plan" incorporated into the judgment states, "The Property Owners shall permit and construct an approved . . . bank protection structure at the Site which meets Ventura County Watershed Protections standards. The bank protection structure shall be approved by federal, state and local agencies by November 30, 2006. The Property owners shall permit and construct the approved bank protection structure within three years of the . . . Final Judgment."

[2] The trial court aligned King's interests with South Fork, though he was named as a defendant.

of the revetment wall and groins'" and sought a declaration that their easement was not extinguished, plus an order that the Bunns "shall remove from said easements all unreasonable obstructions" that prevent appellants from constructing a well.

The dispute was tried by Judge Mark Borrell in 2013. His statement of decision explains that the object of the CC&R's was to ensure "adequate rights of access . . . to the water facilities" for each of the three parcels. The 1996 amendment moved the well upstream; thereafter, a wall, boulders and groins were placed across the site of the original easement. The trial court found, "These structures were intended to be permanent." The decision notes that the upstream facility is operational: a well in the new easement area "and its associated collection field, pipes, pumps and tanks, presently service all three parcels."

The court wrote that South Fork and King sought "to develop an additional well . . . within the area of the original well easement." To accomplish this development, appellants "request the right to remove part of the revetment wall and groins in order to construct and operate the intended well." Respondents objected that the CC&R's "permit only a single operating well, that the amendment to the CC&Rs extinguished the original well easement," or the easement was abandoned or lost through prescription.

The trial court found that the original easement was preserved, despite the 1996 amendment, because "the amended CC&Rs do not foreclose the possibility of multiple wells in simultaneous operation." The easement was not abandoned when the well was moved upstream.

The court also found that the completion of the revetment wall in 1999 was an open, adverse and hostile use of the original

easement, which has existed, uninterrupted, for over five years. The court determined that the wall and its appurtenances "limit the use of the original easement, and that limitation has now matured to permanency." The court concluded that barriers on Parcel A "at least in the form which . . . existed in 1999, has been fixed by adverse possession." As a result, South Fork and King "no longer have easement rights which would permit them to substantially alter or remove the revetment wall or groins as they existed in 1999."

South Fork I became final when appellants abandoned their appeal from the judgment.

South Fork II

In 2014, appellants filed this action against TNC, asserting a cause of action for "interference with easement." They allege having rights and privileges "over, through and upon" the original easement. Appellants demanded removal of the wall, groins and other obstructions in 2012, but TNC "refuses to remove its unlawful interferences." They seek an order directing TNC "to remove revetments, foundations and groins and remove ajaxes and other obstructions from Plaintiffs' easement" (or authorizing appellants to remove them, at TNC's expense), and a permanent injunction to prevent any further obstruction.

Appellants' pleading relies solely on the CC&R's. The complaint does not mention the 2013 judgment in *South Fork I*, or that appellants' easement rights under the CC&R's were partially extinguished by adverse possession. In its brief on appeal, by contrast, South Fork writes that *South Fork I* "resolved claims by the same parties hereto concerning the *same* easements, the *same* encroachments (a revetment wall and groins) located on the *same* portion of an easement."

TNC moved for summary judgment, based on res judicata. The trial court (Judge Kent M. Kellegrew) granted the motion because appellants "are bound by a prior judgment." They cannot establish (1) the easement on which they base their claim, which was "substantially modified" by *South Fork I*, or (2) interference with their easement, because *South Fork I* (a) gave TNC, by adverse possession, the right to maintain a protective barrier that is the same size as the "enormous" 1999 revetment system, and (b) bars appellants from removing or substantially altering that system. The court emphasized that "*Here, the complaint alleges an unmodified easement, without any reference to the 2013 judgment.*" (Italics in original.) Judgment was entered in favor of TNC.

The Bunns moved for judgment on the pleadings on their complaint in intervention. The court granted the motion, finding that appellants "cannot establish the easement on which they base their claim." Judgment was entered in favor of the Bunns.

DISCUSSION

We review de novo the trial court's rulings. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142 [summary judgment]; *Smiley v. Citibank* (1995) 11 Cal.4th 138, 145-146 [judgment on the pleadings].) Whether res judicata or collateral estoppel applies in a particular case presents a question of law properly resolved by summary judgment. (*Rohrbasser v. Lederer* (1986) 179 Cal.App.3d 290, 296; *Gill v. Hughes* (1991) 227 Cal.App.3d 1299, 1304.)

Res judicata precludes piecemeal litigation, i.e., multiple lawsuits brought to vindicate the same primary right. (*Gillies v. JPMorgan Chase Bank, N.A.* (2017) 7 Cal.App.5th 907, 914.) The doctrine promotes judicial economy and averts vexation and

expense to the parties by preventing relitigation of the same claim in a second suit between the same parties. (*Ibid.*) It does not matter if the plaintiff has a new legal theory in the second suit, so long as plaintiff is asserting the right to be free from a particular injury in both lawsuits. (*Ibid.*; *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 526.)

Res judicata encompasses "'matters which were raised or could have been raised, on matters litigated or litigable'" in the prior action. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 975.) If a plaintiff seeks coercive relief in a declaratory relief action—an order to force the defendant to do something—a subsequent action seeking the same relief is an attempt to relitigate the same claim, for purposes of res judicata. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897-900.)

Appellants sought coercive relief in *South Fork I*. They requested the right to remove the wall or an order that the Bunns "shall remove" the wall. The statement of decision in *South Fork I* acknowledges that appellants seek removal of the revetment wall and groins, and denies that relief. Although *South Fork I* asserts a claim for "declaratory relief (easements)" and *South Fork II* asserts a claim for "interference with easement," this is a distinction without a difference. Both lawsuits seek to vindicate the same primary right arising from the same injury: appellants' right to force removal of the wall and groins that prevent them from constructing a well.

The current wall has been in place since 2009, two years before *South Fork I* was filed. Appellants' claims were raised, or could have been raised, in *South Fork I*. They cannot relitigate their claim that the wall must be removed, under the guise of a different cause of action.

Under the doctrine of collateral estoppel, a plaintiff cannot relitigate "issues argued and decided in a previous case, even if the second suit raises different causes of action." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) Defendants may assert collateral estoppel if (1) there was a final judgment in the prior lawsuit; (2) an identical issue is being raised; (3) the issue was actually litigated and necessarily decided; and (4) the plaintiff brought both lawsuits. (*Id.* at p. 825.) The doctrine applies "even if some factual matters or legal theories that could have been presented with respect to that issue were not presented." (*Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1042; *Kemper v. County of San Diego* (2015) 242 Cal.App.4th 1075, 1089.)

Collateral estoppel applies when the prior action was for declaratory relief. (*Mycogen Corp. v. Monsanto Co., supra*, 28 Cal.4th at p. 898.) "'A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action.'" (*Aerojet-General Corp. v. Am. Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 403.) "Thus, even though it is a declaratory judgment, the [prior] judgment is conclusive as to the matters declared on the face of the judgment." (*Id.* at p. 404.)

Courts examine the judgment to see if the prior action is conclusive. (Code Civ. Proc., § 1908.5; *Tevis v. Beigel* (1957) 156 Cal.App.2d 8, 14.) A statement of decision helps resolve what issues were actually decided in the prior action. (*Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 491-493; *McClain*

v. Rush (1989) 216 Cal.App.3d 18, 28 [a minute order explaining the judgment is "determinative"].)

South Fork I conclusively establishes respondents' right to protect their land with a barrier. The barrier, originally built in 1996, was rebuilt and fortified in 1998-1999. A restoration of the barrier, completed in 2009, was required by a court order arising from a lawsuit brought by the Ventura County district attorney. Appellants let the Bunns spend several years and half a million dollars complying with the court order, never protesting even though the work overtly affected their easement.

Appellants argue that the Bunns' 2009 work on the revetment wall negates the effect of *South Fork I*. The 2009 alterations were in place years before the prior judgment. The court specifically found, in *South Fork I*, that "In 2009, Bunn and Birrell caused additional work to be done [to] the revetment wall and groins. This construction was to repair and fortify the system. Large boulders were used. Rows of A-Jacks were placed at the foot of the structures. *But the general location and features of the wall and groins were not substantially altered*." (Italics added, fn. omitted.)

Appellants cannot have another trial on the issue of whether the 2009 work substantially altered the protective wall system. The issue was resolved against them in *South Fork I*. "[O]nce an issue is litigated and determined, it is binding in a subsequent action notwithstanding that a party may have omitted to raise matters for or against it which if asserted might have produced a different outcome." (*Carroll v. Puritan Leasing Co.*, *supra*, 77 Cal.App.3d at p. 490.)

In *South Fork II*, appellants again seek to force the removal of the wall, groins and appurtenances that prevent them from

building a well. The pleading suggests that the obstruction began in 2009; it ignores that the wall was built in 1996 and that the 2013 judgment guarantees respondents' right to maintain the protective barrier. The new action does not acknowledge that appellants "no longer have easement rights which would permit them to substantially alter or remove the revetment wall or groins," as stated in *South Fork I.*

Judge Borrell observed, in his statement of decision, "The primary difficulty with operating a well at this location now will be getting the water from the river over, through or under the revetment wall." (Fn. omitted.) At trial, there was "no competent evidence on which to assess how these challenges could be mitigated, if at all," adding, "Southfork and King have not presented evidence of the well and related facilities they may wish to construct."

In *South Fork II*, appellants do not allege that they have a solution for getting water "over, through or under the revetment wall" in a way that that will not substantially alter or require the removal of the revetment wall or groins. This is the very same issue they failed to prove in *South Fork I.* Appellants now allege that they demanded the removal of the obstructions in 2012. Yet in 2013, appellants' demands "to remove part of the revetment wall and groins to construct and operate the intended well" did not pass muster at trial. This was due to respondents' adverse possession rights and appellants' failure to prove that they had a viable way to build over, through or under the protective barrier.

Appellants are simply repeating *South Fork I.* They again demand that respondents remove portions of the wall and groins; however, the court in *South Fork I* stated that these are "intended to be permanent" and "were not substantially altered"

by the "additional work" done by the Bunns in 2009, pursuant to the court-ordered "Restoration Plan." (See fn. 1, *ante*.) Appellants' pleading, based solely on their *unmodified* easement rights under the CC&R's, is not tailored to conform to *South Fork I.* (*Bosetti v. United States Life Ins. Co. in City of New York* (2009) 175 Cal.App.4th 1208, 1225 [the complaint limits the issues and plaintiffs cannot defeat summary judgment on a theory not pleaded].)

Appellants argue that *South Fork I* is confusing or legally incorrect. They question the court's application of adverse possession, positing that the court should have found a prescriptive right, not adverse possession, or that the court "balance[d] the equities between the parties" without saying that it was doing so.

If appellants wanted clarification of Judge Borrell's statement of decision, they had to obtain it before judgment in 2013. If appellants thought that *South Fork I* was wrongly decided, and if they were unhappy that the trial court did not order the removal of the wall in 2013, they had to take a timely appeal and seek reversal. Neither path was pursued and *South Fork I* became a final, binding judgment. "An erroneous judgment is as conclusive as a correct one." (*Panos v. Great Western Packing Co.* (1943) 21 Cal.2d 636, 640.)

The current litigation is a collateral attack on the 2013 judgment. The 2013 judgment states, on its face, that appellants have *no right* to remove or substantially alter the barrier across the original easement to build a well. Appellants hope to convince a second court that they have the right, under the CC&R's, to remove the physical obstruction preventing their

construction of a well, regardless of *South Fork I.* Their attempt fails. We affirm the judgments in favor of respondents.

DISPOSITION

The judgment is affirmed. Respondents are entitled to recover their costs on appeal from appellants.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kent M. Kellegrew, Judge
Superior Court County of Ventura

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