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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

HOMAYOUN AGHAEI and MONICA AGHAEI, Plaintiffs and Appellants, v. ATLAS EQUITY GROUP, Defendant and Respondent.	B267389 (Los Angeles County Super. Ct. No. BC554924)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara Marie Scheper. Affirmed.

Law Offices of Barry G. Florence, Barry G. Florence for Plaintiff and Appellant.

Law Offices of Stuart L. Wallach, Stuart Lane Wallach for Defendant and Respondent.

Plaintiffs and appellants Homayoun Aghaei and Monica Aghaei appeal from a judgment entered after the trial court sustained a demurrer, and subsequently granted a motion for judgment on the pleadings. The demurrer and motion were filed by defendant and respondent Atlas Equity Group. Plaintiffs contend the trial court improperly applied the doctrine of res judicata and consequently erred in granting the demurrer.[1] We affirm the judgment.

PROCEDURAL BACKGROUND

In January 2012, plaintiffs filed what was entitled as a complaint for declaratory relief (first lawsuit), alleging the following. Plaintiffs and defendant executed escrow instructions pursuant to which defendant agreed to deposit $685,000 into escrow for an irrevocable option to purchase real property located in Inglewood. The deposit was to be made within 60 days of the opening of escrow. Defendant timely deposited only $200,000 of the $685,000, and refused to cancel the escrow instructions. Plaintiffs executed escrow instructions to cancel escrow, but defendant refused to do the same, and plaintiffs therefore suffered damages in excess of $150,000. Plaintiffs also alleged, "An actual controversy has arisen and now exists between [plaintiffs] and [defendant] concerning their respective rights

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[1] Plaintiffs only challenge the trial court's ruling on the demurrer; they do not challenge the ruling on the motion for the judgment on the pleadings. "[I]t is '"hornbook law that [an] order sustaining a demurrer is interlocutory, is not appealable,"' but . . . is reviewable on appeal from the judgment. [Citation.]" (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20.)

under the [escrow i]nstructions and whether or not [defendant] must execute the cancellation instruction." In addition to praying for "a declaration that [defendant] failed to comply with the [escrow i]nstructions," plaintiffs also prayed "[f]or an order that [defendant] execute cancellation instructions or that this Court declare the escrow terminated for failure of [defendant] to comply with the terms thereof."

Defendant responded to the "declaratory relief" complaint by filing a cross-complaint for specific performance and breach of contract against plaintiffs, and recording a notice of lis pendens on the title to the property. Thereafter, the parties entered into a stipulated judgment, stating, "[Plaintiffs] and [defendant] has [*sic*] agreed to resolve their dispute as follows: [¶] A. Upon this Court executing this Stipulation, Judgment will be entered in favor of [plaintiffs] and against [defendant] on the complaint. Within five (5) days of the signing of this Stipulation by the Court, [defendant and plaintiffs] will sign and deliver to R. Escrow cancellation instructions, cancelling escrow #112651-MC. All monies held by R. Escrow, less any fees of the escrow holder, will be returned to [defendant]. [¶] B. Within five (5) days of the signing of this Stipulation by the Court, [defendant] will file a dismissal, with prejudice, of its cross-complaint. [¶] C. The parties agree that each party shall bear its own costs and attorney's fees arising from the complaint and cross-complaint in this action. [¶] D. The parties will sign any and all documents required by this Court or the escrow holder to facilitate the terms of this Stipulation."

In August 2014, plaintiffs filed a complaint alleging a single cause of action for breach of contract (underlying lawsuit). Plaintiffs alleged "[a]s a result of [defendant] agreeing to the

[stipulated judgment] and the entering of judgment in favor of [plaintiffs] and against [defendant], [defendant] acknowledged that it did not comply with the terms of the escrow instructions and did not fulfill its obligations thereunder. Moreover, by signing the [stipulated judgment], [defendant] acknowledged that the position of [plaintiffs] was correct and that [defendant] breached the [escrow i]nstructions by not signing cancellation instructions when requested by [plaintiffs]." Plaintiffs also alleged, "During the time between signing of the escrow instructions and the [stipulated judgment], [plaintiffs] received numerous proposals to develop the Property all of which had to be declined because of the ongoing litigation and the lis pendens placed on the Property by [defendant]." Plaintiffs prayed for "damages in excess of $1,000,000" for defendant's failure to immediately cancel escrow and by "placing a lis pendens on the [p]roperty."

Defendant demurred to the complaint on the ground it was barred by the doctrine of res judicata, arguing that in the first lawsuit plaintiffs not only sought a declaration of the parties' rights and obligations under the escrow instructions and a declaration of whether defendant must execute the cancellation instruction, they also sought coercive relief—an order compelling defendant to execute cancellation instructions. Defendant further argued the stipulated judgment required judgment to be entered in favor of plaintiffs and against defendant on the complaint, and compelled defendant to execute cancellation escrow instructions thereby cancelling escrow.

The trial court sustained the demurrer, in part, finding that "the request for damages in the instant action arising from defendant's failure to cancel the escrow" is barred by the doctrine

of res judicata. The trial court overruled the demurrer concerning plaintiffs' damages claim based on defendant filing a notice of lis pendens against the title to the property because the demurrer had not addressed that claim.

Thereafter, defendant filed a motion for judgment on the pleadings, arguing the litigation privilege barred plaintiffs' damages claim arising out of the filing of the notice of lis pendens. The trial court granted the motion. Judgment was entered in favor of defendant and against plaintiffs, and plaintiffs filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

We review de novo a judgment based on an order sustaining a demurrer. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 81, overruled on another ground in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal. 4th 919, 939, fn. 13.) "As the Supreme Court has observed, 'In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause

of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]' [Citation.]" (*Los Angeles Memorial Coliseum Com. v. Insomniac, Inc.* (2015) 233 Cal.App.4th 803, 819.)

Res judicata is a defense that may be raised by demurrer. (Code Civ. Proc., § 430.30, subd. (a); *Estate of Dito* (2011) 198 Cal.App.4th 791, 795.) Whether res judicata applies is a question of law, which we review de novo. (*Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1553; *Nicholson v. Fazeli* (2003) 113 Cal.App.4th 1091, 1100.)

B. Analysis

The issue on appeal is whether the first lawsuit precluded a subsequent claim for damages based on defendant's refusal to execute escrow instructions cancelling escrow. "'Res judicata' describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. . . . . Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897, fn. omitted (*Mycogen*); see also *Citizens Planning Assn. v. City of Santa*

Barbara (2011) 191 Cal.App.4th 1541, 1549; Code Civ. Proc., § 1908, subd. (a)(2).)[2]

Res judicata applies if (1) the judgment in the prior proceeding is final and on the merits, (2) the present proceeding is on the same cause of action as the prior proceeding, and (3) the parties in the present proceeding or parties in privity with them were parties in the prior proceeding. (*In re Anthony H.* (2005) 129 Cal.App.4th 495, 503; *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202; see *Busick v. Workmen's Comp. Appeals Bd*. (1972) 7 Cal.3d 967, 972; *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810-811.)

Res judicata applies here. The judgment in the first lawsuit—a stipulated judgment—"is res judicata as to those issues it embraces. [Citations.]" (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 596.) In addition, there is no dispute the parties are the same in both actions. And, as discussed below, both actions are on the same "cause of action."

For purposes of res judicata, the term "cause of action" refers neither to the legal theory asserted by a plaintiff nor to the

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[2] "'The doctrine of collateral estoppel is one aspect of the concept of res judicata. In modern usage, however, the two terms have distinct meanings.' [Citation.]" (*Mycogen supra*, 28 Cal.4th at p. 897, fn. 7.) In contrast to the doctrine of res judicata, the doctrine of "collateral estoppel, or issue preclusion, 'precludes relitigation of issues argued and decided in prior proceedings. [Citation.]" (*Id*. at p. 896.) Under the doctrine of collateral estoppel, "'"The first action is not a complete merger or bar, but operates as an estoppel or conclusive adjudication as to such issues in the second action which were actually litigated and determined in the first action. [Citation.]" [Citation.]' [Citation.]" (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 867.)

remedy the plaintiff seeks. (*Mycogen*, *supra*, 28 Cal.4th at p. 904; *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795-796 (*Slater*).) Instead, "California has consistently applied the 'primary right[]' theory, under which the invasion of one primary right gives rise to a single cause of action." (*Slater*, *supra*, 15 Cal.3d at p. 795.) The primary right theory "provides that a 'cause of action' is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.] . . . [¶] As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. [Citation.]" (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681 (*Crowley*); accord, *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 641.) A particular injury might be compensable under multiple legal theories and might entitle a party to several forms of relief; nevertheless, it will give rise to only one cause of action. (*Crowley*, *supra*, 8 Cal.4th at pp. 681-682.)

In the first lawsuit, plaintiffs alleged they suffered damages in excess of $150,000, because defendant refused to execute escrow instructions to cancel escrow, and they prayed for an order requiring defendant to execute escrow cancellation instructions. In the underlying lawsuit, plaintiffs alleged they suffered damages as a result of defendant's failure to cancel escrow prior to entering into the stipulated judgment. Plaintiffs' request for damages in the underlying lawsuit arises from defendant's failure to cancel escrow—the same primary right as the first lawsuit.

However, the "declaratory judgment act carves out an exception to the bar of res judicata . . . where a plaintiff's initial action seeks *purely* declaratory relief." (*Mycogen*, *supra*, 28 Cal.4th at p. 897.) Nonetheless, "'[t]he great weight of authority holds that where a party seeks declaratory as well as coercive relief, the declaratory judgment exception to res judicata does not apply.'" (*Id*. at p. 900, quoting *Criste v. City of Steamboat Springs* (D.Colo. 2000) 122 F. Supp.2d 1183, 1187.)

"[A] declaratory judgment merely declares the legal relationship between parties." (*Mycogen*, *supra*, 28 Cal.4th at p. 898.) By contrast, coercive relief occurs when the trial court orders a party to do or to refrain from doing something. (*Ibid*.) Coercive relief includes damages, specific performance, and injunction. (*Ibid*.)

There are several policy reasons for not applying the declaratory judgment exception to the principle of res judicata when a party seeks coercive relief in the initial action "'First, to allow the exception to extend beyond purely declaratory relief would run counter to the purpose of declaratory actions, which is "to provide a remedy that is simpler and less harsh than coercive relief." [Citation.] Perhaps more importantly, to permit some but not other coercive actions to accompany a request for declaratory relief would open the door to uncertainty and potential claim splitting. [There is] no justification, for example, for applying ordinary claim preclusion rules to cases where the plaintiff seeks declaratory and damage relief, but a different set of rules to cases where the plaintiff seeks declaratory and injunctive relief. Moreover, if courts were to apply a more lenient set of rules to the latter situation, this would encourage parties to split their causes of action to gain a second bite at the apple if not successful in the

first lawsuit. To avoid uncertainty, application of preclusion rules must be clear. Once a party seeks and obtains coercive relief, the basis for applying the declaratory judgment exception evaporates, and ordinary rules of claim preclusion must apply.' [Citation.]" (*Mycogen*, *supra*, 28 Cal.4th at pp. 900-901.)

In the first lawsuit, plaintiffs did not merely request declaratory relief. They also sought and obtained coercive relief in that defendant was ordered by the trial court to execute cancellation instructions. The trial court properly sustained defendant's demurrer.

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

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KUMAR, J.*

We concur:

TURNER, P. J.

BAKER, J.

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* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.