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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTIANA TRUST, A
DIVISION OF WILMINGTON
SAVINGS FUND SOCIETY, FSB,
AS TRUSTEE OF ARLP TRUST 2,

Plaintiff and Respondent,

v.

GAMAGE HOLDINGS, LLC,
et al.,

Defendants and Appellants.

B277945

(Los Angeles County
Super. Ct. No. BC526959)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Law Office of Oscar Acevedo and Oscar Acevedo for Defendant and Appellant Gamage Holdings, LLC.

P. David Cienfuegos, in pro. per., for Defendant and Appellant.

Garrett & Tully, Tomas A. Ortiz, John C. Tully and Robert Garrett for Plaintiff and Respondent.

Appellants Gamage Holdings, LLC (Gamage) and P. David Cienfuegos (Cienfuegos) appeal from the judgment entered on the trial court's order enforcing a settlement under Code of Civil Procedure section 664.6.¹ The judgment requires appellants to pay respondent Christiana Trust (Christiana)² \$160,000 in settlement of their competing claims to a residential property in Granada Hills (the Property). We affirm.

BACKGROUND

Through a complicated series of transactions, Christiana on the one hand, and Gamage and Cienfuegos on the other, had competing claims to the Property through two competing lines of title.

Deko and NCM Deeds of Trust

Both chains of title begin with Ismael Rosales, who acquired the Property by quitclaim deed in July 2004. At the time the quitclaim was executed, the Property was encumbered by two deeds of trust. In August 2005, a third deed of trust, referred to as the Deko deed of trust,

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

² Christiana's full title is Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity, but as trustee of ARLP Trust 2 (Christiana).

was recorded purportedly encumbering the Property to secure a loan of \$50,000 from Deko. Rosales was listed as trustor.

A week later, in August 2005, Rosales sold the Property to Jaime Shim (not a party to this appeal) for \$525,000. Escrow closed in September 2005. Three documents were recorded: a deed conveying the Property from Rosales to Shim, and first and second purchase money deeds of trust (for \$420,000, and \$105,000, respectively) by Shim in favor of New Century Mortgage (NCM). The loan secured by the Deko deed of trust and other loans on the property loans were paid off.

As will be explained, it is through transactions involving the Deko deed of trust that Gamage and Cienfuegos claim title to the property, and it is through transactions involving the NCM deed of trust that Christiana claims title.

Rosales' Lawsuit and Assignment of the Deko Deed of Trust to Javier Lepe

In January 2006, Rosales filed suit seeking to set aside the sale to Shim and the Deko and NCM deeds of trust, claiming that Shim and others had conspired to steal the Property from him. Appellant Cienfuegos represented Rosales in that action.

In November 2009, Cienfuegos facilitated the recording of two assignments of the Deko deed of trust: one from Deko to Rosales, and the other from Rosales to Javier Lepe.

Transfer of the NCM Loan and Deed of Trust

In September 2010, following a trustee's sale of the Property, for a credit bid of \$320,783, the NCM loan and first deed of trust were transferred to an entity we refer to as USB.³ The first deed of trust was assigned to USB and a trustee's deed in its favor was recorded.

On August 26, 2013, three unrecorded conveyances relevant to Christiana's claim of title occurred: (1) U.S.B. conveyed the Property to an entity we refer to as USB–SerVertis REO;⁴ (2) USB and USB–SerVertis REO conveyed the Property to Altisource Residential, L.P. (Altisource); and (3) Altisource transferred the Property as part of a bundle of properties to its subsidiary, Wilmington Savings Fund Society, FSB, by way of an unrecorded instrument. Christiana, a division of Wilmington Savings Society, traces its interest in the Property through Wilmington and the assignments of the NCM loan and deed of trust.

Foreclosure on the Deko Deed of Trust and Conveyance to Gamage

Meanwhile, on November 16, 2010, although the Deko loan was purportedly paid in full, Lepe caused to be recorded a substitution naming Cienfuegos as trustee under the Deko deed of trust. On

³ The full title is U.S. Bank, N. A., as Trustee in Trust for the Benefit of the Holder of Severtis Fund I Trust 2009-2 Certificates, Series 2009-2.

⁴ The full title is U.S. Bank, N.A. as Trustee, Not in its Individual Capacity but Solely as Trustee of the SerVertis REO Pass through Trust I.

November 16, 2010, Cienfuegos, acting as alleged trustee of the Deko deed of trust, recorded a notice of default and commenced non-judicial foreclosure proceedings under that deed. USB was not notified of foreclosure proceedings commenced in November 2010.

On March 9, 2011, Cienfuegos, as trustee under the Deko deed of trust, sold the Property at a trustee's sale to Lepe for a full credit bid of approximately \$81,417, and subsequently recorded a deed conveying title to Lepe. On March 25, 2011, Lepe quitclaimed his interest in the Property to Gamage. That quitclaim deed was recorded on March 27, 2012.

Christiana's Lawsuit

In November 2013, Christiana sued Gamage, Cienfuegos, and Lepe over title to the Property. In the operative second amended complaint, Christiana alleged claims for cancellation of trustee's deed upon sale (seeking cancellation of all relevant documents in Gamage's and Cienfuegos' chain of title deriving from the foreclosure on the Deko deed of trust), declaratory relief (seeking a declaration that Christiana owned the property through the NCM deed of trust and that Gamage and Cienfuegos had no interest in it), and several claims for damages (wrongful foreclosure, disparagement of title, negligence, and negligent notice of foreclosure). During law and motion proceedings, Gamage and Cienfuegos filed two demurrers and a motion to dismiss asserting primarily that Christiana, which had an unrecorded interest in the

Property, lacked standing to pursue the action. The court consistently rejected this assertion.

The Settlement

On September 18, 2015, the parties participated in a mediation with a retired judge and agreed to settle the matter. The terms of that settlement are contained in a “Term Sheet.” The Term Sheet provides that its terms are binding, but also that the parties would execute an additional long form agreement containing more complete provisions of their settlement agreement. By December 15, 2015, a long form agreement (Settlement Agreement) had been executed by all parties.

The Settlement Agreement reflects the parties’ agreement that Gamage would “own the Property free and clear of all claims by [Christiana] and/or any of its predecessors in interest.” In exchange, Gamage, Cienfuegos and Lepe agreed to pay Christiana \$220,000 as follows:

- (1) Cienfuegos would pay \$170,000 in two payments: \$10,000 within 30 days of execution of the Settlement Agreement, with the remaining \$160,000 due within six months of the September 18, 2015 mediation date, and no later than March 18, 2016;
- (2) Gamage would pay \$25,000 within six months of the mediation date, and no later than March 18, 2016; and
- (3) Lepe would pay \$1,000 per month for 25 months, beginning January 2016.

Under paragraphs 1(d) and (e), within 10 days of execution of the Settlement Agreement, Christiana agreed to withdraw the lis pendens it had filed against the property, and to record conveyances from USB to Christiana and from Christiana back to Gamage.

Motion to Enforce the Settlement

On July 28, 2016, Christiana filed a motion to enforce the Settlement Agreement under section 664.6 against Gamage and Cienfuegos.⁵ According to the motion, Christiana recorded withdrawal of its lis pendens on January 19, 2016. Cienfuegos made an initial \$10,000 payment in January 2016, and Gamage paid Christiana \$25,000 in April 2016. Christiana attempted unsuccessfully to record three quitclaim deeds in order to perfect title to the Property in Gamage. For unspecified reasons the deeds were rejected by the county recorder. To avoid further delay, Christiana caused its predecessor to quitclaim the Property directly to Gamage, which released Christiana's interest in the Property and obviated the need to record additional

⁵ The copy of the section 664.6 motion in the appellate record appears to be a subsequent version of a previous motion filed by Christiana after the hearing on the initial motion (which the court was apparently inclined to grant) was continued at the last minute. Appellants' appendix does not contain the initial moving or opposition papers or exhibits, and appellants did not include in the record some documents to which the parties refer in the re-filed papers (e.g., evidence that Christiana recorded notice of the withdrawal of its Lis Pendens, or the quitclaim deed it claims to have executed in favor of Gamage), and we cannot ascertain if those documents were filed with the court.

deeds or risk further rejection by the recorder.⁶ The USB–SerVertis REO quitclaim deed in favor of Gamage was recorded on February 8, 2016. Christiana argued that, despite the fact that it had complied with the Settlement Agreement and ensured that Gamage held undisputed title to the Property, appellants refused to pay the remaining \$160,000 due under the Settlement Agreement.

Appellants opposed the motion. Echoing an argument the court repeatedly had rejected in overruling their demurrers and denying the motion to dismiss, appellants maintained that their duty to tender final payment was not triggered until Christiana recorded conveyances demonstrating its chain of ownership.

The court granted the motion to enforce the settlement. It disagreed with appellants’ contention that Christiana had to show it had record title, observing that defendants failed to demonstrate “grounds sufficient” to justify setting aside the Settlement Agreement. It concluded that “[defendants] got what [they] bargained for. Essentially, the bottom line, [Gamage is] going to get title but [Gamage, Cienfuegos, and Lepe] have to pay for [*sic*]. Frankly, . . . there’s really no other result.”

⁶ The Property was quitclaimed by USB, NA, as trustee, not in its individual capacity, but solely as trustee of the USB–SerVertis REO Pass Through Trust 1.

The court entered an order compelling Gamage and Cienfuegos to pay \$160,000 to Christiana as required by the Settlement Agreement, and entered judgment on the order.

DISCUSSION

Appellants contend the trial court erred in granting the motion to enforce the Settlement Agreement because Christiana's obligations under specific provisions of that Agreement were conditions precedent to appellants' performance.⁷ Appellants argue that, under the Settlement Agreement, Christiana specifically agreed to record a conveyance from USB and its own quitclaim to Gamage. Unless and until those deeds are recorded, appellants insist they have no obligation to tender the final \$160,000 payment.

Instead of complying with this contractual mandate, USB—SerVertis REO recorded a February 8, 2016 quitclaim deed in favor of Gamage. Appellants insist the trial court erred in finding Christiana satisfied its contractual obligations, because this quitclaim deed does not satisfy the terms of the Settlement Agreement.

⁷ The parties devote significant discussion to the court's orders overruling appellants' demurrers and denying the motion to dismiss. This appeal is solely from the judgment granting the motion to enforce the Settlement Agreement. Except as they relate to enforcement of that Agreement, no prior proceeding is at issue here.

1. *Governing Law and the Standard of Review*

“Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. [Citations.]” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809.) It has long been the rule that the court may proceed under section 664.6 “even when issues relating to the binding nature or terms of the settlement are in dispute, because, in ruling upon the motion, the trial court is empowered to resolve these disputed issues and ultimately determine whether the parties reached a binding mutual accord as to the material terms.” (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905 (*Assemi*)). In making its factual determinations on a section 664.6 motion, the trial court may consider, among other things, declarations of the parties and their counsel. (*Id.* at p. 911; *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182 (*Hines*)). We review the trial court’s factual determinations on a section 664.6 motion for substantial evidence. (*Assemi, supra*, 7 Cal.4th at p. 911; *Hines, supra*, 167 Cal.App.4th at p. 1182.)

2. *The Court Did Not Err in Granting Christiana’s Section 664.6 Motion*

Section 1 of the Settlement Agreement states that:

“(d) Within ten (10) days of full execution of this Agreement, Christiana Trust will cause to be withdrawn the lis pendens recorded in connection with [the instant] Action Within ten (10) days of full execution of this Agreement, Christiana Trust will also cause to be recorded both the conveyances from U.S. Bank to

Christiana Trust and a quitclaim deed from Christiana Trust back to Gamage. Any delay in time beyond ten days shall extend any acts to be completed by the March 18, 2016 deadline by an equal amount of time.

“(e) The parties agree that Gamage will own the Property free and clear of all claims by Christiana Trust and/or any of its predecessors in interest.”

Appellants argue that Christiana’s failure to record a deed reflecting its conveyance from USB, which would confirm Christiana’s standing as a real party in interest here and complete the chain of title, demonstrates that Christiana failed to satisfy its obligations under Section 1(d) of the Settlement Agreement. Appellants contend that the court ignored this obligation, and maintain that their duty to tender the remaining funds is contingent on and extended by an equal amount of time until Christiana has recorded both its conveyance from USB, and Christiana’s quitclaim deed to Gamage. This contention fails.

First, the argument that Christiana lacks standing to sue because its interest in the Property was unrecorded has repeatedly—and properly—been rejected by the trial court. The purpose of recordation is to provide constructive notice to establish priority as against a subsequent purchaser. (Civ. Code, § 1217; *Devereaux v. Frazier Mountain Park etc. Co.* (1967) 248 Cal.App.2d 323, 328; see also, Miller & Starr, Cal. Real Estate (4th ed. 2017) § 10:2.) Public recordation is irrelevant to legal title (see, 12 Witkin, Summary of Cal. Law (10th ed.

2005) Real Property, § 254(3)), and unnecessary either to effect a conveyance or to determine ownership interest.

Second, there is no merit to appellants' contention that Christiana's purported lack of standing justifies appellants' refusal to perform under the Settlement Agreement. The Settlement Agreement is an independent contract. Christiana's capacity to sue is irrelevant to its enforceability. Appellants challenged Christiana's standing by demurrers and a motion to dismiss. (See *V & P Trading Co., Inc. v. United Charter, LLC* (2012) 212 Cal.App.4th 126, 133–134 [defendant wishing to object to plaintiff's capacity to sue must raise objection by demurrer or answer].) Although appellants did raise this issue on demurrer, the motions were unsuccessful. In agreeing to settle this action, appellants did not object to Christiana's capacity to sue. Indeed, appellants explicitly agreed that Christiana had the authority to execute and perform under the Settlement Agreement. Because appellants entered the Settlement Agreement without raising a question of standing, conveniently asserting the issue again only when opposing a motion to enforce that Agreement, we conclude they were not entitled to raise lack of capacity as a basis to oppose the motion.

Third, and most important, substantial evidence supports the trial court's conclusion that Christiana did not commit a material breach of the Settlement Agreement. For reasons not specified in the record, the recorder rejected Christiana's efforts to record several quitclaim deeds in its effort to perfect title in Gamage. Frustrated by that effort, Christiana approached the goal differently, and instead had its

predecessor in interest record a quitclaim deed confirming title in favor of Gamage. On January 19, 2016, Christiana complied with its obligation to record withdrawal of its lis pendens and, on February 8, 2016, the USB–SerVertis REO quitclaim deed to Gamage was recorded. Christiana maintains that the February 2016 quitclaim deed from its predecessor to Gamage fulfilled Christiana’s duty to confirm title in Gamage and ensure that Gamage would “own the Property free and clear of all claims by [Christiana] and/or any of its predecessors in interest.”⁸ The court implicitly concluded that the fact that the February 2016 quitclaim deed did not comport with the precise details of section (1)(d) of the Settlement Agreement was immaterial and did not undermine the goal of the Agreement, i.e., for Gamage to obtain clear title in exchange for the payment of specific funds.

Clearly, Christiana did not perform with precision the actions required by Section 1(d) of the Settlement Agreement. We agree with

⁸ Christiana is only half right. That quitclaim deed released any interest held by Christiana’s predecessor, USB in favor of Gamage. By itself, it did not release any interest held by Christiana, as Christiana’s interest in the Property was acquired via an assignment from USB that predated USB–SerVertis REO’s quitclaim deed to Gamage. Thus, technically, Christiana’s unrecorded interest survived recordation of the February 2016 quitclaim deed.

But this is an academic concern. Other provisions of the Settlement Agreement (specifically, sections 2(a)(1), 3, 4, 5, 11, 12 & 16) are sufficient to establish that Christiana has fully released any interest it had in the Property. In other words, while the recordation of the USB–SerVertis REO quitclaim deed in favor of Gamage by itself was insufficient to effectuate a release of Christiana’s interest in the Property, the integrated Settlement Agreement has, as a whole, accomplished that goal.

the trial court however, that its failure to do so did not constitute a sufficient basis to refuse to enforce the Agreement: Appellants “got what [they] bargained for.” Essentially, the bottom line, under the Term and Settlement Agreements was that, under Section 1(e), Gamage would “own the Property free and clear of all claims by [Christiana] and/or any of its predecessors in interest.”

Substantial evidence supports the trial court’s conclusion that Christiana satisfied its obligations under the Settlement Agreement, and is owed an aggregate sum of \$160,000 from Gamage and Cienfuegos.

DISPOSITION

The judgment is affirmed. Christiana shall recover its costs of appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.