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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

YOUNG SOOK YI,

Plaintiff and Appellant,

v.

SEUNG JIN OH, et al.,

Defendants and Respondents.

B275195

(Los Angeles County
Super. Ct. No.
BC502269)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michelle Rosenblatt, Judge. Reversed.

Mariano Alvarez, for Plaintiff and Appellant.

Law Offices of Dale J. Park and Dale J. Park, for
Defendants and Respondents.

Appellant Young Sook Yi filed a quiet title action alleging her son had forged a power of attorney that he then used to obtain a loan secured by a deed of trust to Yi's home. The complaint further alleged that Yi's son defaulted on the loan, causing her house to be foreclosed upon, and then sold to respondents Soung Jin Oh and Jamie J. Oh. Yi sought an order declaring the power of attorney, the deed of trust and the Oh's' grant deed void.

The Ohs demurred, arguing Yi had failed to allege any facts showing they had actual or constructive knowledge that the power of attorney was forged, or that any of the documents in their chain of title were invalid. Yi, however, argued that it was immaterial whether the Ohs had any such knowledge because a forged instrument is void as a matter of law, and cannot provide foundation for good title.

The trial court sustained the demurrer without leave to amend, concluding that: (1) under Probate Code section 4303, the Ohs were entitled to rely on the power of attorney unless Yi could prove they had reason to know it was a forgery; and (2) Yi had alleged no facts demonstrating the Ohs knew or should have known the document was forged. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of Yi's Complaint

Plaintiff Young Sook Yi (Yi) filed a complaint against her son, Jimi Yi (Jimi), and other individuals who were involved in a series of transactions that resulted in the foreclosure of Yi's home. The operative fifth amended complaint alleged that Jimi's business partner, Son Tae Kim (Kim), wanted to purchase an apartment building, but lacked funds for the down payment. To

finance the purchase, Kim convinced Jimi to forge Yi's signature on a special power of attorney appointing Jimi as her attorney-in-fact for all real estate transactions involving her house. The complaint further alleged that Jimi and Kim then found a notary who was willing to acknowledge the power of attorney without Yi being present. The complaint included a copy of the power of attorney, which contained a notary acknowledgment and the purported signature of Yi.

Jimi used the forged power of attorney to obtain a \$150,000 loan that he and Kim intended to use for the down payment on the apartment building. Jimi and the lender, Seong Sook Lee (Lee), signed two documents related to the loan. The first document was a promissory note requiring Yi to make monthly payments to Lee. The second document was a deed of trust that gave Lee the right to foreclose on Yi's home if the promissory note was not repaid. Jimi signed both documents with the following notation: "Young Sook Yi by Jimi Yi as her attorney-in-fact." Lee then transferred \$150,000 to the escrow company that was administering the sale of the apartment building. The complaint alleges Yi had no knowledge of the promissory note, the deed of trust or Jimi and Kim's purchase of the apartment building.

Jimi and Kim eventually failed to repay the promissory note, causing Lee to foreclose on Yi's house. Lee purchased the house at the foreclosure sale, and then sold the property to Seung Jin Oh and Jamie J. Oh. In September of 2014, Lee recorded a grant deed conveying title to the Ohs.

Yi's complaint alleged two causes of action. The first claim, pleaded against Jimi, Kim, Lee and the Ohs, sought cancellation of the power of attorney and all documents that flowed from the power of attorney, including the promissory note, Lee's deed of

trust, the foreclosure sale documents and the grant deed transferring title to the Ohs. The second claim, alleged against Lee and the Ohs, sought to quiet title to Yi's home.

B. The Ohs' Demurrer to the Complaint

The Ohs filed a demurrer to the complaint arguing they were entitled to judgment on both claims because Yi had alleged no facts showing they had actual or constructive knowledge that the power of attorney was a forgery, or that any of the other documents in their chain of title were invalid. In support, the Ohs cited Probate Code section 4303, which provides immunity to persons who rely in good faith on a power of attorney if three requirements are met: (1) the person designated in the power of attorney presents the document to the person claiming immunity; (2) the power of attorney appears valid on its face; and (3) the power of attorney is notarized. The Ohs contended that because Jimi's power of attorney was notarized and appeared valid on its face, section 4303 immunized them from Yi's claims unless she could prove they had reason to know the document was not valid.

The Ohs also argued the complaint failed to plead any facts "showing that [they] were not bona fide purchasers." The Ohs contended that as "good faith purchasers for value," they had taken title to Yi's property "free of" any "adverse interests . . . or irregularities in the sales proceedings" that were "unknown" to them at the time of purchase. According to the Ohs, because the complaint alleged no facts showing they were aware of the defects in the power of attorney and the other documents in their chain of title, Yi's claims failed as a matter of law.

In her opposition, Yi argued it was immaterial whether the Ohs had notice of the defects in their title because the complaint alleged the power of attorney had been forged, thereby rendering

it void: “[T]he Ohs reliance on Probate code section 4303 is misplaced in that the [power of attorney] was forged. As a forgery, it is void ab initio and all subsequent instruments and conveyances are also void. . . . [¶] . . . [¶] The focal crux in resolving this issue is not the lack of notice by [the Ohs]. Rather, it should be the character of the instruments . . . that are the sources of the[ir] title. . . . If the instruments are void, they don’t transfer title to defendants.” Yi asserted that although section 4303 immunized persons who met the statute’s requirements from “financial” liability arising from their reliance on a power of attorney, the statute did not allow such persons to “deriv[e] title from a void [power of attorney].” Alternatively, Yi argued that section 4303 did not apply to the Ohs because they “were not aware of and never relied on the [power of attorney].”

Yi also argued it was immaterial whether the Ohs were bona fide purchasers, explaining: “Where an interest is wholly void, it cannot provide the foundation for good title even in the hands of an innocent [bona fide purchaser].” Thus, according to Yi, the Ohs’ status as bona fide purchasers “would not help their case [given] the nullity of their source of title. . . .”

The court sustained the demurrer without leave to amend, concluding that Yi’s argument that a forged power of attorney was void, and could not provide the foundation for good title, even to a bona fide purchaser, “fl[ew] in the face of the presumption set forth in Probate Code section 4303.” The court explained that under section 2303, the Ohs were entitled to rely on the power of attorney unless Yi proved they “had actual or constructive notice of Plaintiff’s disputed interest in the property and were not [bona fide purchasers].” The court also concluded that while the complaint contained “conclusory” statements regarding the Ohs’

notice of the defects in their title, the pleading alleged no “facts” that would support such a finding.

DISCUSSION

A. Standard of Review

“A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court’s ruling on a demurrer and determine de novo whether the pleading alleges facts sufficient to state a cause of action or discloses a complete defense. [Citations.] We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. [Citations.] However, we are not required to accept the truth of the legal conclusions pleaded in the complaint. [Citations.] We liberally construe the pleading with a view to substantial justice between the parties.” (*Tepper v. Wilkins* (2017) 10 Cal.App.5th 1198, 1203.)

B. The Trial Court Erred in Sustaining the Demurrer

Yi argues the trial court erred in concluding her claims failed because she had alleged no facts showing the Ohs had actual or constructive knowledge that the power of attorney, or any of the subsequent documents in their chain of title, were invalid. Yi contends that, if proven, her allegation that Jimi forged the power of attorney would render the power of attorney, and any claim of title flowing from that instrument, void as a matter of law irrespective of whether the Ohs had any reason to know of the forgery.

a. A forged power of attorney cannot provide foundation for good title

The Ohs do not dispute that the complaint alleges Jimi forged a power of attorney providing him the authority to engage in real estate transactions involving Yi's home, and that all subsequent documents in their chain of title were predicated on that forged instrument. "It has been uniformly established that a forged document is void ab initio and constitutes a nullity; as such it cannot provide the basis for a superior title as against the original grantor." (*Wutzke v. Bill Reid Painting Service, Inc* (1984) 151 Cal.App.3d 36, 43 (*Wutzke*).) As stated by our Supreme Court: "Numerous authorities have established the rule that an instrument wholly void, such as . . . a forged instrument . . . , cannot be made the foundation of a good title, even under the equitable doctrine of bona fide purchase." (*Trout v. Taylor* (1934) 220 Cal. 652, 656; see also *Firato v. Tuttle* (1957) 48 Cal.2d 136, 139 ["Instruments which are wholly void cannot ordinarily provide the foundation for good title even in the hands of an innocent purchaser, as where a deed has been forged. . . ."]); *Burns v. Ross* (1923) 190 Cal. 269, 275 (*Burns*).)

Our courts have recognized that this rule applies not only to instruments that purport to convey title (such as a grant deed), but also to intermediate instruments from which a claim of title flows. For example, in *Burns, supra*, 190 Cal. 269, our Supreme Court held that a forged assignment of a real estate sales contract was void, thereby invalidating all subsequent documents in the chain of title that were predicated on the forgery. The plaintiff in *Burns* filed a complaint alleging she had entered into a contract to purchase land from a third party, which was payable in installments. The plaintiff further alleged that after

she became sick, she had delivered the contract to John Fitzgerald with directions to continue making the installment payments. Rather than making such payments, Fitzgerald forged a document assigning himself the plaintiff's contract of sale. He then executed a second document that purported to assign his rights under the contract of sale to the defendants. After the defendants had paid the remainder that was due under the contract, the third-party seller recorded a deed conveying title to the land in question. The plaintiff's complaint sought an order compelling the defendants to convey the land to her upon her repayment of the amounts they had paid to the third party. The trial court sustained a demurrer to the complaint without leave to amend.

The Supreme Court reversed, concluding that plaintiff's complaint adequately stated a claim. The Court initially explained that "[w]here an owner has been . . . deprived of his title by a fraudulent conveyance . . . which is void, as where . . . it was a forgery, . . . and the property, by means of such transfer, comes into the hands of a purchaser for value and without notice, the original defrauded owner is not barred of his remedy." (*Burns, supra*, 190 Cal. at p. 275.) The Court further concluded that this rule applied to the facts alleged in plaintiff's complaint: "According to the complaint, appellant intrusted Fitzgerald with the contract of sale and he by a forged assignment of it to himself and another to defendants enabled them apparently to secure the right to purchase the land and later the land itself. It is true [defendants] are assignees of the wrongdoer and it is not alleged they themselves were guilty of any wrongful act or were not bona fide purchasers. But the original assignment having been forged, no title to the contract passed and the rights of appellant under it

cannot be defeated, even, as respondents contend, by a bona fide purchaser.” (*Ibid.* at p. 275.)

In *Wutzke, supra*, 151 Cal.App.3d 36, the court relied on *Ross* in holding that a claim of title flowing from a forged deed of trust was void. The plaintiff in *Wutzke* sold property to Joan and Sterling Miller, who financed their purchase with a promissory note that was payable to the plaintiff, and secured by a deed of trust to the property. The trustee named in the deed of trust, Mid-Cal Escrow, was authorized to convey the property to the Millers when the promissory note had been paid in full. Shortly after entering into the purchase agreement, Sterling Miller caused Mid-Cal (which he owned and operated) to issue a forged deed of reconveyance transferring unencumbered title to himself, and his wife. Miller then obtained a \$47,000 payment from Bill Reid Painting Service, secured by a second deed of trust to the property. The Millers failed to repay the plaintiff and Reid, both of whom then sought to foreclose on the property. At trial, the plaintiff argued his deed of trust had superiority over Reid’s claim to the property because the deed of reconveyance Sterling Miller had caused to be recorded was a forgery, rendering Reid’s deed of trust void. The trial court agreed, finding that although the plaintiff and Reid were both innocent parties, Sterling Miller’s forgery rendered Reid’s interest in the property void.

The appellate court affirmed, explaining that numerous prior decisions had established a forged document cannot provide the foundation for good title against the original grantor. In its analysis, the court explained that it was immaterial Reid’s interest in the property consisted of a trust deed, rather than a grant deed: “The fact that a deed of trust conveys a more limited interest in property than a grant deed [citation] does not mean

that forged documents involving that interest should be treated differently than documents involving other interests. Indeed, decisional authority relative to forged instruments other than grant deeds uniformly hold such instruments to be void. . . . In short, there is no reason in law or policy why the principle that forged documents are void should not apply to any instrument through which an interest in property is passed. [¶] Since a trust deed obtained by means of forgery is void, it follows that any claim of title flowing from such a deed is void. This elementary legal principle makes clear the validity of the title of a subsequent purchaser or encumbrancer depends upon the validity of his grantor's title. In this case, Reid's claim to free and unencumbered title to the property depended upon the forged reconveyance, which was void. Consequently, the purported first deed of trust given to Reid must be subordinate to [plaintiff's] prior and valid deed of trust." (*Wutzke, supra*, 151 Cal.App.3d at pp. 43-44.)

The Ohs have cited no authority demonstrating that the principle that a forged instrument is void, and cannot provide foundation for good title, does not apply where the forged document is a power of attorney. The allegations in the complaint make clear that the Ohs's claim of title flows directly from the forged power of attorney. According to the complaint, Jimi used the forged document to obtain a loan from Lee, which was secured by a deed of trust to Yi's property. The deed of trust, itself a product of the forged power of attorney, then enabled Lee to foreclose on the property, and then to resell it to the Ohs. We see no meaningful difference between this case, and the facts at issue in *Burns* or *Wultzke*, where the defendants were innocent

purchasers whose claims of title were deemed void because they flowed from a forged document.

b. The trial court erred in concluding the Ohs are entitled to the protections set forth in Probate Code section 4303

The trial court, however, reached a different conclusion. In the court's view, Yi's "theory that the [forged] power of attorney and all subsequent recorded documents based on the power of attorney [we]re void" conflicted with "the presumption set forth in Probate Code section 4303." That statute states, in relevant part:

- (a) A third person who acts in good faith reliance on a power of attorney is not liable to the principal or to any other person for so acting if all of the following requirements are satisfied:
 - (1) The power of attorney is presented to the third person by the attorney-in-fact designated in the power of attorney.
 - (2) The power of attorney appears on its face to be valid.
 - (3) The power of attorney includes a notary public's certificate of acknowledgment or is signed by two witnesses.

The trial court appears to have concluded that when a purchaser of real estate relies in good faith on a forged power of attorney, and satisfies the additional conditions set forth in subdivision (a)(1)-(3), he cannot be divested of his interest in the property merely because the power of attorney was a forgery. Implicit in the court's reasoning is a finding that the Ohs qualified for the protections set forth in section 4303, thus requiring Yi to plead and prove they "had . . . notice of the invalidity of the document."

For the purposes of this appeal, we need not determine whether section 4303 exempts persons who rely in good faith on a forged power of attorney from the general rule that a forged instrument cannot provide foundation for good title. Even if we assume section 4303 operates in such a manner, the complaint alleges no facts supporting the court's finding that the Ohs qualify for the statute's protections. The language of section 4303 makes clear that the statute "only applies when [three conditions are met:] the power of attorney is presented to the third person who is acting in good faith by the attorney in fact listed in the power of attorney; on its face, the power of attorney appears to be valid; and the document includes either a notary public's certificate of acknowledgment or the signatures of two witnesses." (*Kaneko v. Yager* (2004) 120 Cal.App.4th 970, 980.) Thus, to be eligible for the protections set forth in section 4303, the Ohs must establish (among other things) that the power of attorney was presented to them by Jimi, the purported attorney-in-fact.

The Ohs have cited no portion of the complaint that includes such an allegation. The complaint indicates that Jimi presented the forged power of attorney to Lee, who then provided a \$150,000 loan secured by the deed of trust to Yi's home. In regards to the Ohs, however, the complaint alleges only that Lee transferred his interest in Yi's home to them, and then recorded a grant deed conveying title to them. There is no allegation that the Ohs were ever provided a copy of the power of attorney, or that Jimi was the party who presented the document to them. For the purposes of demurrer, we "cannot presume any facts outside of those alleged in the complaint." (*Wills v. Porter* (1900) 132 Cal. 516, 522.) Because there are no facts in the complaint

establishing the Ohs qualified for the protections set forth in section 4303, the trial court erred in concluding that the statute required Yi to plead and prove the Ohs were on notice that the power of attorney was forged.

DISPOSITION

The trial court's judgment in favor of the Ohs is reversed. The case is remanded to the trial court for further proceedings. Appellant is to recover her costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

MENETREZ, J.*

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