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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

MELODY L. COCHRAN, Plaintiff and Appellant, v. BANK OF NEW YORK MELLON, as Trustee, etc., Defendants and Respondents.	B278268 (Los Angeles County Super. Ct. No. BC565336)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marc Marmaro, Michaelle R. Rosenblatt & David Sotelo, Judges. Affirmed in part; reversed in part.

Law Office of Louis P. Dell, Louis P. Dell; Miller & Miller and Robert Miller for Plaintiff and Appellant.

Levinson Arshonsky & Kurtz, Richard I. Arshonsky and Helen Kim Colindres for Defendant and Respondent Bank of New York Mellon, as Trustee, etc.

Houser & Allison, Emilie K. Edling and Robert W. Norman, Jr., for Defendant and Respondent Ocwen Loan Servicing.

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This case involves loans secured by two liens on a property allegedly owned by appellant Melody L. Cochran. In a prior quiet title lawsuit, Cochran alleged an individual named Anthony Delonay fraudulently obtained title to the property, and using his void title, obtained the loans at issue from Greenpoint Mortgage Funding, Inc. (Greenpoint), in exchange for two deeds of trust. Cochran sought to cancel Delonay's title and Greenpoint's deeds of trust as void. The court entered judgment in that case finding Cochran's quiet title claims were barred by the statute of limitations, but Delonay's title in the property was void. The court expressly refused to find Greenpoint's deeds of trust were void. Cochran did not appeal.

Three years later, Cochran filed this lawsuit against Greenpoint's successors-in-interest respondents Bank of New York Mellon (hereafter Bank of New York)[1] and Ocwen Loan Servicing, LLC (Ocwen), after they initiated foreclosure proceedings on the property. She again asserted quiet title-related claims for the same deeds of trust for the same property

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[1] Bank of New York's full party designation is Bank of New York Mellon, as Successor to JPMorgan Chase Bank, as Trustee for MASTR Adjustable Rate Mortgages Trust 2003-6 Mortgage Pass-Through Certificates, Series 2003-6. Another defendant, Western Progressive, LLC, filed a declaration of nonmonetary Interest pursuant to Civil Code section 2924*l* and agreed to be bound by the judgment, so it did not participate in the trial court proceedings and is not a party to this appeal.

based on the same facts she alleged in the prior case. She added a new claim for possession. The trial court sustained demurrers to her complaint, finding her quiet title claims were barred by res judicata and she failed to state a claim for possession.

We agree res judicata barred her quiet title-related claims but conclude a factual dispute precluded dismissal of her possession claim. Thus, we affirm in part and reverse in part.

BACKGROUND

1. Prior Lawsuit

In 2006, Cochran filed a lawsuit against Greenpoint, Delonay, and others alleging a series of forged grant deeds fraudulently transferred her title to the property to Delonay. She alleged Delonay used his void title to obtain loans from Greenpoint secured by the property and as a result Greenpoint obtained two void deeds of trust for the property. She asserted claims against Greenpoint and Delonay for quiet title, cancellation of deeds, a declaration the deeds were void, constructive trust, and money had and received. Delonay filed a cross-complaint against Cochran, her mother, and her then-boyfriend for quiet title, equitable subrogation, trespass, and ejectment. Delonay did not name Greenpoint as a party. Greenpoint filed a separate cross-complaint against Cochran and Delonay for an equitable lien.

The court held a bifurcated trial. In the first phase, the court found Cochran's quiet title-related claims were barred by the statute of limitations. Based on this ruling, the court dismissed Greenpoint's cross-complaint as moot and excused Greenpoint from the remainder of the case. In the second phase on Delonay's cross-complaint, the court found Delonay's grant

deed was void so he had no valid claim against Cochran or anyone else at the property.

Cochran proposed a judgment to memorialize the court's rulings. The court struck out all of Cochran's proposed findings of fact and conclusions of law and a portion of the judgment that read, "Inasmuch as Defendant and Cross-complainant Anthony Delonay's title is void, no defendant claiming any title or interest through Anthony Delonay now has any mortgage or other lien of any description on the real property or any part of the real property, either legal or equitable, present or future, vested or contingent."

The court adopted the following two paragraphs that comprised the judgment:

"1. Plaintiff's action on her complaint is barred by the statute of limitations and judgment thereon is against the plaintiff and in favor of the defendants;

"2. Defendant and Cross-complainant Anthony Delonay's title is void and he has no past, present or future estate, right, title, interest, or claim in or to the real property, or any part of the real property, either legal or equitable, vested or contingent, and judgment on the cross-complaint is against Anthony Delonay in favor of Melody Cochran, and all cross-defendants."

The court entered judgment in December 2011, and Cochran did not appeal.

2. Current Lawsuit

Nearly three years later in September 2014, a notice of default and election to sell was recorded against the property for one of the Greenpoint deeds of trust now held by Bank of New York and serviced by Ocwen. In response, Cochran filed the present lawsuit, alleging claims for quiet title, cancellation of

instruments, and declaratory relief against Bank of New York and Ocwen. The claims were all directed at the same property and alleged the same fraudulent transfers that led to Delonay holding void title and Greenpoint holding two void deeds of trust. The complaint acknowledge the prior judgment against her based on the expiration of the statute of limitations.

The trial court sustained demurrers to the original complaint on the ground Cochran's claims were barred by res judicata and collateral estoppel. Cochran was given leave to amend.

Cochran filed her first amended complaint (FAC), repeating the same causes of action against the same parties and adding a claim for possession. She again acknowledged the prior judgment, but alleged several ways in which it did not bar her current claims. In the possession claim, she alleged before and after the 2011 judgment she "possessed and exercised acts of ownership over the property."

The court sustained a demurrer to the FAC, finding res judicata barred Cochran's claims other than possession and no exceptions applied. It denied leave to amend.

Cochran filed a second amended complaint (SAC), which included the same set of facts as the prior complaints. However, she alleged only a claim for possession and a claim entitled "declaration of ownership," which sought a declaration she owned the property in fee simple. For her possession claim, she again alleged before and after the 2011 judgment she "possessed and exercised acts of ownership over the property."

Bank of New York and Ocwen filed demurrers to the possession cause of action and motions to strike the "declaration of ownership" cause of action. The trial court granted the

motions to strike because the "declaration of ownership" cause of action was duplicative of the possession claim. The court sustained the demurrers to the possession claim by taking judicial notice of Cochran's deposition testimony taken before she filed the SAC that her "home" address was elsewhere and her mother had lived at the property at issue since 2006. The court denied leave to amend and entered judgment for Bank of New York and Ocwen. Cochran timely appealed.

DISCUSSION

Cochran challenges the trial court's rulings sustaining the demurrers to the original complaint, the FAC, and the SAC. Because the trial court sustained the demurrers to the original complaint with leave to amend and Cochran amended those claims in response, she waived any challenge to that ruling. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 312.) Following final judgment, she may challenge the court's rulings sustaining the demurrers to her claims in the FAC and SAC without leave to amend. (Code Civ. Proc., § 906.)[2]

1. Standard of Review

We review the sustaining of a demurrer de novo. Assuming all facts properly pleaded or reasonably inferred from the pleaded facts are true, we must determine whether those facts state a claim under any legal theory. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) We do not assume the truth of "mere contentions, deductions, or conclusions of law." (*Ibid.*) We may consider facts the trial court judicially noticed.

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[2] Cochran does not challenge the court's decision to grant the motions to strike the "declaration of ownership" claim in the SAC, so we do not address it.

(*Ibid.*) "Indeed, a demurrer may be sustained where judicially noticeable facts render the pleading defective [citation], and allegations in the pleading may be disregarded if they are contrary to facts judicially noticed." (*Ibid.*)

2. Res Judicata Bars Cochran's Quiet Title Claims.[3]

"Generally, ' "[r]es 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.' " (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 226 (*Castaic Lake*).) Res judicata bars a subsequent claim when " '(1) the decision 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 to the prior proceeding.' [Citation.] Upon satisfaction of these conditions, claim preclusion bars 'not only . . . issues that were actually litigated but also issues that could have been litigated.' " (*Ibid.*)

At the demurrer stage, " '[i]f all of the facts necessary to show that an action is barred by res judicata are within the complaint or subject to judicial notice, a trial court may properly sustain a general demurrer. [Citation.] In ruling on a demurrer based on res judicata, a court may take judicial notice of the

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[3] The parties discuss the application of collateral estoppel to bar Cochran's quiet title claims, but we need not address it because res judicata is dispositive.

official acts or records of any court in this state.' " (*Castaic Lake, supra*, 180 Cal.App.4th at p. 225.)[4]

Cochran does not contend the requirements for res judicata were lacking in this case. Nor could she: the prior case was decided on the merits, resulting in a final judgment; she again alleged the same basic quiet title claims involving the same property and same deeds of trust; and she named Greenpoint's successors to its interests in the property, who were in privity with Greenpoint (see *Castaic Lake, supra*, 180 Cal.App.4th at pp. 229-230).

Instead, she argues the judgment was not preclusive because it was ambiguous and several alleged exceptions to res judicata apply. She also contends the judgment must be interpreted to avoid the effect of res judicata. All of these contentions rest on the same basic premise—the two findings in the prior judgment were incompatible. In her view, if Delonay's title was void, then his transfer of interests to Greenpoint was void, which left the property with two liens based on invalid deeds of trust. Even though the prior court found she sat on her rights instead of timely challenging the validity Greenpoint's

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[4] In ruling on the demurrers to the original complaint, the trial court granted Bank of New York's and Ocwen's requests for judicial notice of the judgment and other filed documents in the prior case, as well as recorded documents related to Bank of New York's and Ocwen's interests in the property. In demurring to the SAC, Ocwen again requested judicial notice of the recorded documents, which the court again granted. With one exception for Cochran's deposition testimony we discuss below, Cochran does not challenge the court's judicial notice rulings, so we will consider these documents in evaluating Cochran's quiet title claims.

interest and Delonay's title, she believes she must be allowed to challenge them now to clear her title to the property. For the reasons we will explain, her contentions fail.

a. The Judgment Was Not Ambiguous, and Resorting to Extrinsic Evidence Was Unnecessary.

Claiming the prior judgment left open the question of Cochran's "*future* right to litigate her title of the property once Delonay's title was found to be void," Cochran argues res judicata does not bar her current claims because the prior judgment was ambiguous. Relatedly, she argues because the judgment was ambiguous, the trial court was required to consider extrinsic evidence, which prevented it from sustaining the demurrers.

She is generally correct a court may resort to extrinsic evidence to clarify an ambiguous judgment in determining whether res judicata applies. (See *Ellena v. State of California* (1977) 69 Cal.App.3d 245, 259.) Yet, the prior judgment here contains no ambiguity, so resorting to extrinsic evidence was unnecessary. (*Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 399 (*Aerojet-General*).) The judgment clearly expressed the court's intended rulings: (1) Cochran's quiet title claims against Greenpoint and Delonay were barred by the statute of limitations; and (2) Delonay's cross-claim against Cochran failed because Delonay's title to the property was void. The effect of the judgment was also unambiguous—Cochran sat on her rights; so while Delonay's title is void and she might still hold some title to the property, her title remains subject to Greenpoint's liens. Because there was no ambiguity in the judgment, the court could properly sustain the demurrers without resorting to extrinsic evidence.

b. There Are No Changed Facts.

Cochran also invokes the principle that res judicata does not "prevent a re-examination of the same question between the same parties where, in the interval between the first and second actions, the facts have materially changed or new facts have occurred which may have altered the legal rights or relations of the litigants." (*Hurd v. Albert* (1931) 214 Cal. 15, 26.) She points to the sequence of the court's two findings in the prior case. The court first found her claims barred by the statute of limitations, and then decided in the second phase of trial that Delonay's title was void. She contends that second finding undermined the first finding and constituted a changed circumstance that bars res judicata.

While res judicata does not bar claims based on new facts arising after the filing of the first complaint (see *Castaic Lake, supra,* 180 Cal.App.4th at p. 227), the court's finding was not a new fact; it was the court's resolution of conflicts in the *existing* facts. That finding merged into the final judgment, and if Cochran believed it was erroneous, she should have pursued a direct appeal. But she cannot now avoid res judicata of the final judgment by attacking the sequence in which the prior court resolved contested factual issues in rendering a final judgment.

c. Assignment of the Deeds of Trust Did Not Start a New Limitations Period.

Cochran next contends res judicata does not apply because the transfer of the void deeds of trust from Greenpoint to Bank of New York and Ocwen amounted to "conversion," triggering a new limitations period. She cites *Culp v. Signal Van & Storage* (1956) 142 Cal.App.2d Supp. 859, but the rule from that case applied to *personal* property, not real property. (*Id.* at p. 861 ["One who,

though honestly and in good faith, purchases *personal* property from one having no title thereto or right to sell the same is guilty of conversion." (Italics added.)].) In any case, Cochran did not allege a claim for conversion, so we fail to see how the statute of limitations for a conversion claim has any impact on her case.

Further, res judicata bars claims based on the same " 'primary right . . . to be free from a particular injury, regardless of the legal theory on which liability for the injury is based.' " (*Castaic Lake, supra*, 180 Cal.App.4th at p. 227.) Even if labeled "conversion," this claim involves the same primary right to clear title to the property and Greenpoint's alleged invasion of that right with invalid liens. Thus, the claim would be barred by res judicata in any event.

d. Res Judicata Policies Are Served by Barring Cochran's Claims.

Cochran argues applying res judicata here would not serve the doctrine's underlying policies of preserving the judicial system, promoting judicial economy, and protecting parties from vexation litigation. (Cf. *Gikas v. Zolin* (1993) 6 Cal.4th 841, 850 [identifying similar policies underlying collateral estoppel].) To the contrary, we think these policies are well served by barring Cochran's claims. She has all but conceded she is seeking to relitigate her title claims. Yet, she waited three years to bring this suit and only after Bank of New York and Ocwen initiated foreclosure proceedings. In the prior case she had a full opportunity to litigate Greenpoint's interest in the property, so allowing her duplicative claims here would waste judicial resources and continue to harass Greenpoint's successors.

e. Neither Unfairness Nor the Public Interest Precludes Res Judicata.

Cochran contends both fairness and the public interest require us to permit her to relitigate her title claims. It is true that "when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed." (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 902.) But this exception is "an extremely narrow one" that only applies when there is a "clear and convincing need" to relitigate an issue with a potential adverse impact on the public or parties not part of the prior judgment. (*Acuña v. Regents of University of California* (1997) 56 Cal.App.4th 639, 652.)

The title issues here are factual, not legal, and we can see no public interest served by declining to apply res judicata to this purely private real property dispute. Cochran claims the property at issue has no owner as a result of the prior judgment, and there is a risk it will fall into disrepair, impacting the surrounding area. Her concerns are overblown—as we have said, Cochran may have some good title, but her title remains subject to Bank of New York's and Ocwen's interests.

Nor do we see any unfairness in barring Cochran's duplicative claims. Frankly, Cochran placed herself in this position when she failed to timely challenge Greenpoint's liens in the prior lawsuit or appeal the prior judgment if she was unhappy with it. We can identify no reason why she should be permitted to argue those issues anew.

f. The Judgment Cannot Be Interpreted to Avoid Res Judicata.

Finally, Cochran argues that, res judicata notwithstanding, we must "harmonize" the judgment in a way that would not preclude her claims. Without saying so expressly, she essentially repeats her contention that we should interpret the court's finding that Delonay's title was void as nullifying the finding that her quiet title claims were barred by the statute of limitations. We interpret judgments as we interpret writings generally, with the primary goal of enforcing the intention of the drafter. (*Rancho Pauma Mutual Water Co. v. Yuima Municipal Water Dist.* (2015) 239 Cal.App.4th 109, 115.) The clear and explicit language governs, and we may not interpret a writing to render any part of it surplusage. (*Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.)

Cochran's proposed interpretation would read out of the judgment the court's express finding that her title claims against Greenpoint were barred by the statute of limitations. Instead, the way to "harmonize" the two findings in the prior judgment is to conclude that Delonay's title is void, *but* Cochran cannot challenge the validity of Greenpoint's and its successors' liens on the property. Indeed, the court expressed this very intention when it struck out the section in Cochran's proposed judgment that would have voided Greenpoint's interest in the property. Thus, Cochran's title remains subject to Bank of New York's and Ocwen's interests.

g. Leave to Amend Was Properly Denied.

Cochran bore the burden to show a reasonable possibility to amend her complaint to cure the defects we have discussed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We review the

denial of leave to amend for abuse of discretion. (*Ibid.*) In her briefs on appeal, she has not addressed whether the trial court abused its discretion in denying leave to amend, so she has forfeited that argument. (*Brown v. Deutsche Bank National Trust Co.* (2016) 247 Cal.App.4th 275, 282.)

3. Cochran's Possession Claim Was Improperly Dismissed.

In the FAC and SAC, Cochran alleged a claim for possession pursuant to Civil Code section 1006, which provides, "Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a sufficient interest in real property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription." The parties do not dispute the term "occupancy" under this provision requires *actual* occupancy of a property. (See *Hart v. All Persons, etc.* (1915) 26 Cal.App. 664, 670-671; see also *Redevelopment Agency v. Superior Court* (1970) 13 Cal.App.3d 561, 568-569 ["Occupancy is synonymous with actual possession. [Citations.] Occupancy signifies actual possession and use of property."].)

In the FAC and SAC, Cochran alleged she obtained title to the property in 1989 by way of grant deed from her mother, who has "remained in possession of the property." She further alleged before and after the prior judgment she also "possessed and exercised acts of ownership over the property." In apparent conflict with these allegations, however, she testified at her deposition taken between the filing of the FAC and SAC that her "home address" was somewhere other than the property, where she had moved in 2006. She further testified her mother had

been living at the property at issue since 2006, along with another man.

Bank of New York and Ocwen challenged this claim for the first time in their demurrers to the SAC, arguing Cochran's possession could not ripen into title superior to their interests and her deposition testimony contradicted her allegations she possessed the property. In sustaining the demurrers, the court rejected the first contention because Bank of New York and Ocwen could have but did not assert it when Cochran first added her possession claim to the FAC. However, the court agreed Civil Code section 1006 required actual occupancy and it took judicial notice of Cochran's deposition testimony, which in its view contradicted the allegations in the SAC that she possessed the property.

In ruling on a demurrer, a court may take judicial notice of discovery responses that contradict a party's pleading. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 477.) But this rule is narrow because " '[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff.' " (*Ibid.*)

The parties have not briefed what evidence might show actual "occupancy" under Civil Code section 1006. Whatever evidence might suffice, we do not think Cochran's testimony is dispositive. She simply gave a different "home" address and testified her mother lived at the property. She was not asked and did not testify whether she lived at the property at any point or even spent any time there temporarily or sporadically, which

could potentially show she occupied the property "for any period" as required under Civil Code section 1006. Nor is there any indication Bank of New York and Ocwen even pursued this line of questioning during her deposition. Thus, Cochran's deposition testimony did not so conclusively contradict her allegations that the occupancy issue was beyond dispute. At best, it created a factual conflict that cannot be resolved at the demurrer stage.

In the alternative, Bank of New York and Ocwen argue as they did in the trial court that Cochran could not obtain superior title based on possession because Bank of New York and Ocwen held only nonpossessory liens on the property. They have not addressed the court's ruling that they should have raised this argument when demurring to the FAC. (See Code Civ. Proc., § 430.41, subd. (b) ["A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer."].) We therefore decline to consider it for the first time on appeal.

DISPOSITION

The judgment is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.