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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

VALENTINE RUTHERFORD
et al.,

Plaintiffs and Appellants,

v.

GARY HOLT et al.,

Defendants and
Respondents.

2d Civil No. B281087
(Super. Ct. No. 56-2015-
00468426-CU-PO-VTA)
(Ventura County)

Valentine Rutherford and Christine Rutherford appeal from judgment for US Lease Financing, Inc., and its sole shareholder Gary Holt (collectively Holt), after a court trial (1) on the Rutherfords' complaint for slander of title and malicious prosecution and (2) on Holt's cross-complaint against Valentine for breach of a promissory note.

The parties have a long history of litigation arising from hard money loans secured by deeds of trust. The Rutherfords contend they should have prevailed as a matter of

law because (1) Holt acted with malice when he brought an action to quiet title to a lot when earlier litigation had established that he had no ownership interest in it; (2) Holt is barred from asserting any claim on the promissory note by the doctrine of res judicata because he could have litigated it in the quiet title action; and (3) the note was not supported by consideration. We conclude substantial evidence supports the trial court's finding that Holt reasonably believed he had an interest in the property when he brought the quiet title action, he could not have enforced the note in the quiet title action, and the note was supported by consideration. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Valentine¹ borrowed \$169,000 from Sofen Enterprises (Sofen). The loan was secured by a deed of trust on Valentine's house and an adjacent corral. Valentine later borrowed \$29,014.50 from Holt, secured by a promissory note and a deed of trust on the corral. Valentine agreed to repay Holt in six months with 35 percent interest.

Valentine did not repay Holt and Holt initiated foreclosure proceedings. Holt paid-off Valentine's Sofen loan with \$181,000. No existing contract required Holt to pay Sofen. Just after Holt made the payment, he attempted to rescind it because his attorney realized it "could very likely result in a \$181,000 gift to Valentine." But Sofen refused to return Holt's payment.

Valentine's Usury Action

Three days after Holt paid-off Sofen, Valentine sued Holt to enjoin the scheduled trustee's sale of the corral and for other relief. Valentine alleged Holt's \$29,014.50 loan was

¹ We refer to the Rutherfords by their first names for ease of identification.

usurious (the usury action). Two days after he filed the action, Valentine transferred the house and corral to himself and Christine, as husband and wife, and then to himself and Christine as trustees of a new trust: the Rutherford Family Trust. We refer to these transfers collectively as the interspousal transfers.

The interspousal transfers were recorded, but Holt was not aware of them. The deeds to the corral were defective: they contained the legal description for the house and the assessor's parcel number for the corral.

Valentine and Holt settled the usury action. Holt agreed to cancel the \$29,014.50 promissory note, to reconvey the deed of trust that secured it, and to rescind the notices of default and trustee's sale. In exchange, Valentine agreed to execute two new promissory notes in favor of Holt in the amounts of \$23,200 and \$181,236.78 secured by deeds of trust on the corral. Both new notes were at 10 percent interest and due within two months. Christine did not sign the settlement agreement, the notes, or the deeds of trust. Valentine's counsel represented that the corral was not held in trust and that Christine's signature was not needed.

Valentine did not repay the new notes. Holt nonjudicially foreclosed on the \$23,200 note, still unaware that Valentine did not own that property. Valentine had declared under oath, after the interspousal transfers, that he was "the owner" of both properties. Chicago Title Insurance Company issued to Holt a trustee sale guarantee which guaranteed that Valentine was the sole owner of the corral.

Holt's Unlawful Detainer Action

Holt initiated unlawful detainer proceedings for the corral against Valentine and Christine (the unlawful detainer action). In defense, Valentine offered evidence of the interspousal transfers.

Holt prevailed only against Valentine, and not Christine. The trial court found that Christine was an “owner” and she “never signed the deed of trust.” But Valentine was “guilty of an unlawful detainer” and was “estopped from asserting as a defense that the property was in the name of the Rutherford Family Trust at the time he executed the deed of trust.” The court acknowledged its decision left Holt and Christine in a “difficult position” but wrote, “those [ownership] issues will have to be addressed in a separate civil suit, and not as part of an unlawful detainer action which deals only with the issue of possession.”

After learning of the interspousal transfers, Holt brought a “post-settlement” motion in the usury action to set that settlement agreement aside. But the trial court stated “that further litigation would be necessary between the parties” and it denied relief.

Holt's Quiet Title Action

Holt filed an action against Valentine and Christine for fraudulently inducing the settlement agreement and to quiet title to the corral. (This is the prosecution that the Rutherfords contend was malicious.)

Holt asked the trial court to set aside the interspousal transfer deeds, to declare Holt to be the “100%” owner of the corral, to set aside the unlawful detainer judgment, and to award damages.

The trial court sustained Valentine's demurrer to some of Holt's causes of action without leave to amend: (1) the causes of action for fraud and negligence because Holt alleged that he undertook his own title search so he could not have reasonably relied on Valentine's representation that he held title; (2) the cause of action for quiet title because the trustor (Valentine) did not hold title, and therefore the 2009 deeds "were not valid," and the "trustee's deed upon sale did not convey title"; and (3) a cause of action to set aside the unlawful detainer judgment because a judgment should be "challenged directly . . . by motion to vacate the judgment, or on appeal." The court wrote in a later ruling that Holt has "half ownership of the property."

Holt appealed the order sustaining Valentine's demurrer. While Holt's appeal was pending, he executed a grant deed which purported to transfer the corral to a third party, the Starr Family Trust. (It is this deed that the Rutherfords contend slandered their title.) Holt then filed a voluntary dismissal of his entire quiet title action "without prejudice." Valentine moved to set aside Holt's voluntary dismissal, because the trial court had already sustained his demurrer to many causes of action without leave to amend.

The trial court set aside Holt's voluntary dismissal in part, and entered judgment against him on his complaint as to fraud, negligence, interference with prospective economic advantage, quiet title, and his request to set aside the unlawful detainer action. The court wrote that the "undisputed facts" establish that the deed of trust was "not valid" because Valentine did not own the property when he signed it and the "trustee's deed . . . did not convey title" of the corral to Holt.

Holt's other causes of action remained voluntarily dismissed, including a cause of action for breach of contract in which he alleged Valentine "breached the [s]ettlement [a]greement . . . because he did not hold 100% title to the subject property" when he entered into it.

We affirmed the order sustaining the demurrer. (*Holt v. Rutherford* (July 3, 2013, B241921) [nonpub. opn.].) We reasoned that Holt's quiet title and unlawful detainer causes of action became moot when he conveyed his interest in the property to a third party and that he raised no substantive challenge to the ruling on the other causes of action.

Christine and Valentine's Action for Malicious Prosecution

Christine and Valentine filed this action against Holt for malicious prosecution and slander of title in their capacities as individuals and as trustees. They alleged Holt brought the quiet title action without probable cause because he "knew from the prior unlawful detainer that [the Rutherfords] had good title." They alleged Holt slandered their title when he transferred his interest in the corral to the Starr Family Trust "knowing [he] had no interest in the property." They alleged they incurred damages defending against Holt's quiet title action and against an unlawful detainer action the Starr Family Trust brought against them.

Holt cross-complained against Valentine for breach of contract based on his failure to make any payments on the \$181,236.78 note, among other things. Valentine demurred based on anti-deficiency laws. The trial court overruled the demurrer because "the trustee's deed upon sale and the deed of trust upon which it was based have been deemed invalid. If the

note was not secured by a valid deed of trust then the anti-deficiency laws do not apply.”

Valentine moved for judgment on the pleadings on Holt’s cross-complaint for breach of the note. He argued that Holt’s claim was barred by the doctrines of res judicata and election of remedies, and the rule against splitting causes of action because Holt could have tried to collect on the note in his quiet title action. The trial court denied the motion because, “[t]he breach of promissory note cause of action could not have been raised in any cause of action upon which judgment was entered in the prior case (anti-deficiency rules precluded such a claim until such time as it was determined the note was not secured by a valid deed of trust) and the voluntary dismissal of the remaining actions is not a bar to their re-litigation.”

The trial court conducted a bench trial after the parties waived jury. It granted judgment for Holt on both the complaint and the cross-complaint.

Regarding malicious prosecution, the trial court found “it was understandable that Holt filed the 2011 [quiet title] lawsuit to resolve [ownership] issues,” because the “end result of the first unlawful detainer case and the usury case was ambiguity as to the rights of the parties to the [corral]”; “[t]he unlawful detainer case only addressed the issue of possession, not ownership”; and “the court in the usury case suggested that a new lawsuit would have to be filed to address the rights of the parties.”

Regarding slander of title, the trial court found that Holt “could have reasonably thought he had an interest in the property” when he transferred title to the Starr Family Trust because the demurrer ruling was not final, he was receiving tax

bills for the property, and he was able to obtain title insurance for the property.

Regarding the promissory note, the trial court found that Valentine was obligated to repay it with interest. It rejected Valentine's argument that the note was not supported by consideration, because it was "part of the global settlement" in which Holt agreed to cancel the pending foreclosure sale and to modify the interest rate and extend the due date. The court rejected Valentine's equitable defenses and found that he was "competent and not subject to undue influence or mental weakness" when he signed the note.

DISCUSSION

Malicious Prosecution and Slander of Title

Valentine and Christine contend the trial court erred when it found no malice to support their causes of action for malicious prosecution and slander of title. They contend Holt knew from prior adjudications as a matter of law that he did not have good title to the corral. We are not persuaded.

The Rutherfords' claim for malicious prosecution required proof that Holt initiated the quiet title action without probable cause and with malice. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50.) Their claim for slander of title required proof that Holt knew he did not own the corral when he executed the deed to the Starr Family Trust, or that he acted with reckless disregard for the truth regarding ownership. (*Appel v. Burman* (1984) 159 Cal.App.3d 1209, 1214.)

There is substantial evidence that Holt did not know he lacked an ownership interest in the corral when he executed the deed to the Starr Family Trust and when he brought the quiet title action against the Rutherfords. The unlawful detainer

action resolved only possession, not ownership. Nor did the usury action resolve ownership. Holt was a record owner receiving tax bills and notices of violation for the property and he obtained title insurance. The trial court credited his testimony that he believed he had an ownership interest. We do not reweigh the evidence on appeal.

Breach of the Promissory Note

Valentine contends the trial court erred when it denied his motion for judgment on the pleadings on Holt's cross-complaint for breach of the new \$181,236.78 promissory note and when it granted judgment for Holt on the cross-complaint after trial. He contends Holt's claims are barred by the doctrines of res judicata and election of remedies, and the rule against splitting cause of action. He also contends that the note was not supported by consideration. We disagree.

In reviewing the order denying judgment on the pleadings, we determine de novo whether, as a matter of law, the cross-complaint states facts sufficient to constitute a cause of action. (Code Civ. Proc., § 438; *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) In reviewing the judgment after trial, we determine whether there is any substantial evidence to support the findings below. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

Holt's cross-complaint for nonpayment of the note is not barred by res judicata, an election of remedies, or the rule against splitting causes of action. Nonpayment of the note was not an issue that was, or could have been, litigated in the quiet title action. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.) Holt did not assert a cause of action for breach of the promissory note in his quiet title action, nor did he allege failure

to repay the note. He could not pursue that claim while attempting to quiet title after foreclosing on the deed of trust that (he believed) secured the note. (Code Civ. Proc., § 580d.) No deficiency may be collected on a note secured by a deed of trust on real property where the property has been sold under the trustee's deed of trust. (*Ibid.*)

But when the trial court entered judgment against Holt on his quiet title claim, and found that the deed of trust was invalid, Holt was free to collect on the unsecured note. He did so for the first time by cross-complaint in this action. Valentine cites no authority for his contention that Holt was required to do so by amendment in the prior lawsuit as soon as the court ruled on the demurrer.

Holt did not split a cause of action. If the same primary right is involved in two actions, judgment in the first action bars consideration of all matters actually raised in that suit and those which could have been raised, “even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery. [Citation.]” (*Eichman v. Fotomat Corp.* (1983) 147 Cal.App.3d 1170, 1174-1175; *Lincoln Property Co., N.C., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 912 [“[T]he primary right is simply the plaintiff's right to be free from the particular injury suffered”]; *Evans v. Horton* (1953) 115 Cal.App.2d 281, 284 [“A party claiming to have been defrauded must seek all the relief to which he may be entitled in one action . . .”].) Holt sought to recover \$181,236.78 in both actions, but his claims did not involve the same primary right. The first was based on Valentine's deception in the settlement agreement, the

second was based on his nonpayment of the resulting unsecured note.

The actions did not arise from the same transactional nucleus of facts. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1157.) In the quiet title action, Holt alleged Valentine fraudulently induced him to cancel the secured \$29,014.50 debt in exchange for a new note that was secured by a deed of trust on property Valentine did not own, and that Valentine breached the settlement agreement when he provided a deed of trust that he had no authority to execute. In this action, by contrast, Holt alleges that Valentine failed to repay the new note. “[T]he right to have contractual obligations performed is distinct from the right to be free from tortious behavior preventing collection of a judgment.” (*Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.* (1994) 29 Cal.App.4th 1828, 1837-1838 [in which a prior action for breach of a purchase contract did not bar a subsequent action for tortious conduct interfering with collection of the judgment].)

Holt’s claim is not barred by election of remedies. Generally, “one who has been induced into an agreement, through fraudulent misrepresentations, may stand upon the contract and receive damages or he may rescind it and likewise he can ignore the fraud and stand solely upon the contract.” (*Burns v. Grosvenor Inglis Corp.* (1932) 120 Cal.App. 688, 692.) But the anti-deficiency rule did not allow Holt to collect on the note until the foreclosure sale and deed of trust were determined to be invalid. (Code Civ. Proc., § 580d, subd. (a).)

Substantial evidence supports the trial court’s determination that the \$181,236.78 note was supported by consideration. Valentine signed that note in exchange for Holt’s release of all claims, including those arising from his Sofen

payment and his original \$29,014.50 loan to Valentine. Under the terms of the global settlement, the foreclosure was cancelled, Valentine's repayment dates were extended, the interest on both obligations was reduced, and the \$29,014.50 obligation was reduced to \$23,200. Valentine was represented by counsel and released all "claims," both known and "unknown," including any claims that the original note was void because it was usurious or that Holt's payment to Sofen was a gift.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Rocky J. Baio, Judge
Superior Court County of Ventura

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