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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

LUIS ESQUIBEL, Plaintiff and Respondent, v. MONICA RANDAZZO, Defendant and Appellant.	B267980 (Los Angeles County Super. Ct. No. BC563859)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Stern, Judge. Reversed.

Law Offices of Lilli B. Musil and Lilli B. Musil, for Defendant and Appellant.

Luis Esquibel, in pro. per., for Plaintiff and Respondent.

Monica Randazzo entered into a marital settlement agreement that required her to convey her interest in a commercial property to her former husband, Luis Esquibel. Randazzo delivered a grant deed to Esquibel, which he failed to record. Fifteen months later, the property was sold at a sheriff's sale to satisfy a prior court order directing Esquibel to pay Randazzo over $52,000 in child support arrearages. Following the sale, Randazzo quitclaimed any remaining interest she may have had in the property to the purchaser.

Esquibel filed a breach of contract claim alleging Randazzo's execution of the quitclaim deed constituted a breach of their marital settlement agreement. Randazzo moved for summary judgment, arguing that she had conveyed her entire interest in the property to Esquibel, and that the quitclaim deed was only intended to remove her name from the recorded title. The court denied the motion. At a subsequent bench trial, the court found Randazzo had breached the parties' agreement, and ordered her to return the proceeds she had received from the sheriff's sale. We reverse, and direct that the court enter a new judgment in favor of Randazzo.

FACTUAL BACKGROUND

A. Events Preceding the Filing of Esquibel's Complaint

1. The parties' property division agreement

Luis Esquibel and Monica Randazzo acquired four pieces of property during their marriage, which included a commercial property located on Valley Boulevard in El Monte, California (the Valley property), and a residence on North Hartley Avenue in West Covina, California (the North Hartley property). Esquibel

and Randazzo later separated, and initiated marital dissolution proceedings. In 2012, the family court found all of the properties to be community property, and ordered them sold.

To avoid the court-ordered sale, the parties entered into an agreement assigning Randazzo ownership of the North Hartley property, and Esquibel ownership of the other three properties. Under the terms of the agreement, Esquibel was required to execute a grant deed conveying his 50 percent interest in the North Hartley property to Randazzo, and Randazzo was required to execute deeds conveying her 50 percent interest in each of the other three properties to Esquibel.

On February 6, 2013, Randazzo delivered to Esquibel interspousal grant deeds to her interests in the Valley property and the other two properties. Esquibel received the deeds, but did not record them.

2. Sheriff's sale of the Valley property

In November of 2013, the family court ordered Esquibel to pay Randazzo $52,332 in child support arrearages. After Esquibel failed to comply with the order, Randazzo filed an application for a writ of execution on the Valley property. The court executed the writ on December 13, 2013, and the Los Angeles County Sheriff's Department filed a notice of levy on February 6, 2014. In July of 2014, the sheriff's department issued notice that the Valley property was scheduled to be sold on August 6, 2014.

Two days before the sheriff's sale was scheduled to occur, Esquibel sent Randazzo's attorney an email requesting that the parties delay the sale to allow him more time to comply with the child support order. Randazzo agreed to the request, and the

parties entered into a stipulation delaying the sale until September 17, 2014.

Esquibel did not pay the child support, and the sheriff's department proceeded with the sale of the Valley property. BME Real Estate, William Little and Michael Hertz (collectively BME) submitted a winning bid of $56,235.57. The day after the sale, Randazzo filed a quitclaim deed conveying any remaining interest she had in the Valley property to BME. On September 29, 2014, the sheriff's department executed a deed of sale confirming it had sold the Valley property pursuant to the writ of execution.

B. Esquibel's Breach of Contract Action

1. Summary of the complaint

On March 16, 2015, Esquibel filed a complaint alleging Randazzo had breached the terms of their property division agreement by executing a quitclaim deed to the Valley property in favor of BME. The complaint also alleged claims against BME seeking to quiet title to the property and to set aside the sheriff's sale.

The complaint described the parties' property division agreement, and acknowledged that Randazzo had delivered Esquibel a grant deed conveying her interest in the Valley property. The complaint also acknowledged BME had obtained the property at a sheriff's sale, but failed to explain the basis for the sale. Esquibel alleged, on information and belief, that BME had "colluded with [Randazzo] to execute a [q]uitclaim [d]eed conveying [to BME] her interest in the [Valley] property."

The facts pleaded in support of Esquibel's breach of contract alleged Randazzo had violated the terms of the property

division agreement by "executing a quitclaim deed . . . allegedly conveying her interest in the [Valley] Property to [BME]. At the time the conveyance was made [Randazzo] had no interest in the . . . property pursuant to the agreement. As the proximate result of [Randazzo's] breach, [Esquibel] did not receive the benefit of the bargain and was damaged as the breach was a contributing factor in the loss of the [Valley] Property. . . ." Esquibel alleged additional claims against Randazzo based on her execution of the quitclaim deed, including breach of the implied covenant of good faith and fair dealing and fraud.

Esquibel's quiet title claim against BME alleged that he had not received notice of the sale because Randazzo had provided the sheriff's department with his incorrect home address. Esquibel further alleged that this lack of notice had denied him the "opportunity to save the [Valley] [p]roperty by, among other things, placing a bid on the . . . [p]roperty and/or satisfying the [child support] [j]udgment." Esquibel also claimed the sheriff's sale was "improperly held" because "the recorded title documents [showed Randazzo] had a 50% interest in the . . . property," but the sale purported to convey "a 100% interest in the . . . [p]roperty . . . to [BME]."

2. Randazzo's motion for summary judgment

Randazzo filed a motion for summary judgment arguing that the undisputed evidence established she had complied with the terms of the property division agreement by delivering a grant deed that conveyed her 50 percent interest in the Valley property to Esquibel, thus vesting him with full ownership of the property. She further asserted that the evidence showed Esquibel had failed to record the deed, which caused her name to remain on the recorded title. Randazzo contended the sheriff's

sale to BME had terminated Esquibel's rights to the property, and that the only effect of the quitclaim deed was to remove her name from the recorded title. Finally, Randazzo asserted that, contrary to the allegations in the complaint, Esquibel knew the Valley property had been executed on, and was scheduled to be sold at a sheriff's sale on September 17, 2014. Despite that knowledge, Esquibel failed to comply with the child support order, resulting in his loss of the property.

In support of the motion, Randazzo provided declarations from herself and her attorney summarizing the prior family court proceedings and the sheriff's sale. The declarations included exhibits confirming that the family court had ordered Esquibel to pay approximately $52,000 in child support arrearages, and that the sheriff's department had sold the Valley property to satisfy that order. Randazzo's counsel also provided copies of emails showing that Esquibel knew the property had been executed on for nonpayment of the child support order, and had signed a stipulation delaying the date of the sale from August 6, 2014 to September 17, 2014.

In his opposition, Esquibel admitted Randazzo had delivered to him a grant deed conveying her interest in the Valley property, and that he did not record the deed. He also admitted the Valley property was sold at a sheriff's sale to satisfy the family court's child support order. Esquibel argued, however, that Randazzo had breached their agreement after the sale by executing a quitclaim deed "convey[ing] her interest in the [Valley] property to . . . BME." Esquibel contended that "[a]t the time of [this] conveyance, [Randazzo] had no interest in the [Valley] property pursuant to the [a]greement and should not have conveyed any interest to [BME] as per the

[a]greement . . . . [Randazzo's] actions were an attempt to defraud [Esquibel] of his other 50% interest in the property that was not up for sale." Esquibel further asserted that because he had never recorded Randazzo's grant deed transferring her interest to the Valley property, she "attempted to convey that [unrecorded] interest to . . . [BME] in breach of her [a]greement . . . to convey her 50% interest to [Esquibel]. Based on the foregoing, [Esquibel] has valid claims for breach of contract . . ."

In an accompanying declaration, Esquibel stated that at the time of the sheriff's sale, "the publicly recorded chain of title [showed he] owned 50% of the property while [Randazzo] . . . owned 50%. Therefore the sale of [his] interest could not have been for 100% of the property at the time of the [s]heriff's [s]ale because the chain of title did not reflect that." Esquibel also stated that he "believe[d] Randazzo . . . may have received financial incentive in exchange for executing" the quitclaim deed to BME.

The court granted Randazzo summary adjudication of Esquibel's fraud claim, but denied her motion with respect to his claims for breach of contract and breach of the implied covenant of good faith and fair dealing.[1] The parties then tried the case.

3. Bench trial

a. Randazzo's trial brief

In a pre-trial brief, Randazzo argued that Esquibel had chosen not to record the grant deed conveying her interest in the Valley property so that her name would remain on the title, thus

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[1] The record does not contain any information regarding the basis for the court's ruling.

"deterr[ing] his creditors from executing on [the] propert[y]." Randazzo further argued that she had executed the quitclaim deed to remove any possible cloud on BME's title: "Once [BME] bid at the auction and purchased the property, [Randazzo] had an obligation to execute a grant deed and get off the title as she would have been if Luis Esquibel had recorded the [g]rant [d]eed back in February 2013. She had no interest in the property."

b. Opening arguments

During opening arguments, Esquibel's counsel argued the evidence would show that although Randazzo had conveyed her interest in the Valley property to Esquibel, she then "decided to go ahead and sign a quitclaim deed in favor of [BME]. There was no reason to do so. There was no basis. In fact, at that point, per the agreement, [Randazzo] had no rights to the property. Therefore, [Esquibel] lost any kind of opportunity regarding equity in the property, regarding dealing with [BME]. He reached out and contacted [BME] to try to negotiate a buyback or a settlement agreement. . . . But to his surprise, [BME] responded that [Randazzo] had already signed a quitclaim deed in their favor."

Randazzo's counsel, however, argued the evidence would show Randazzo had executed the quitclaim deed because she knew she had no interest in the property, and wanted her name removed from the recorded title. Counsel further argued that the evidence showed the Valley property had been sold at a sheriff's sale to satisfy the family court's prior child support order. According to counsel, the quitclaim deed had no effect on the outcome of the sheriff's sale or on Esquibel's property rights.

c. Witness testimony

Esquibel and Randazzo were the only witnesses at trial. Esquibel admitted Randazzo had delivered a grant deed conveying her interest to the Valley property, and that he never recorded the deed. Esquibel further acknowledged that the Valley property had been sold at a sheriff's sale, but did not explain why the property had been sold.

When asked to clarify the nature of the injury he had suffered as a result of the quitclaim deed, Esquibel explained that the deed had operated to "transfer[] [Randazzo's] 50 percent ownership of . . . the Valley [property] to BME," causing him to "los[e that] 50 percent [interest]." Esquibel also stated that if Randazzo had not executed the quitclaim deed, he would "have still owned 50% of the property," and could have "negotiate[d]" to sell that remaining interest to BME. Esquibel testified that he believed the market value of the property was "about [$400,000]." On cross-examination, Esquibel admitted that once Randazzo had delivered the grant deed to her interest in the Valley property, he "had [a] 100 percent interest [in the property] from that point on."

Randazzo testified that she had received approximately $52,000 from the sheriff's sale, which reflected the amount the family court had ordered Esquibel to pay in child support. Randazzo further testified that she had not received any other money from the sale, and had no knowledge of BME before the sale had occurred. When asked why she had executed the quitclaim deed to BME, Randazzo explained that Esquibel had "failed to file the grant deed," and she was concerned she would remain liable "on paper for anything that [might] happen[]" at the property. Randazzo further explained that she believed the

quitclaim deed was only "procedural" in nature, and had no effect on her or Esquibel's "rights to the property."

C. The Trial Court's Ruling

The court issued a five-page written judgment in favor of Esquibel. In its factual findings, the court explained that the evidence showed Randazzo had delivered to Esquibel a grant deed conveying her interest in the Valley property, but "for some unexplained reason[, he did] not record[] it." The court further found that the property was later sold at a sheriff's sale, and that Randazzo then "executed a quitclaim deed in favor of [BME]. . . . Since the recorded title at the time of the sheriff's sale still showed Randazzo as a 50 percent owner of the Valley property, she received proceeds from the sheriff's sale in the amount of $52,000 after she executed the quitclaim deed." The court's factual findings did not address why the Valley property had been executed on and sold, nor did they reference the family court order requiring Esquibel to pay Randazzo $52,000 in child support.

In its legal analysis, the court concluded Esquibel had established Randazzo breached the property division agreement: "[H]aving signed the [a]greement, [and] execute[d] the interspousal grant deed . . ., it is inconceivable that [Randazzo] still believed that she had an ownership interest in the [Valley property]. She already had relinquished ownership interest in the [Valley property] in exchange for other rights. She nonetheless intentionally executed a quitclaim deed on the Valley property in which she fully knew that she had no property interest. She then pocketed the significant proceeds from the sheriff's sale. Her actions violated that Agreement and were in

bad faith. [Citation.] Thus, Randazzo's conduct constitutes both a breach of contract and a breach of the covenant of good faith and fair dealing." The Court also noted that Randazzo had provided "no evidence at trial . . . why she [had] righteously retained the sale proceeds even though she had no legal right to keep those funds."

On the issue of damages, the court explained: "[Esquibel] claims damages based on what he claims that he should have received in a competitive, open-market sale of the property at 'full value' if it had not been sold at a sheriff's sale. Such damages are speculative and . . . . have not been substantiated through admissible evidence. [¶] Plaintiff has proven no damages [on his claims] other than the amount of the sheriff's sale proceeds received by the defendant, which amounts to $52,000. Plaintiff is entitled to a judgment in that amount."

D. Randazzo's Motion to Set Aside and Vacate the Judgment

After entry of the judgment, Randazzo filed a motion to set aside and vacate the judgment (see Code Civ. Proc., § 663) arguing that Esquibel had provided no evidence supporting the court's findings that she received the proceeds of the sheriff's sale because she had agreed to execute a quitclaim deed removing her name from the recorded title. According to Randazzo, the undisputed evidence established that she received the proceeds of the sale to satisfy the family court's child support order: "[T]he evidence is uncontroverted that [Randazzo] had a legal right to the money collected by the Sheriff's Sale through a writ of execution obtained by [Randazzo] for child support arrearages.

[Esquibel] never alleged or presented evidence that she was not entitled to that money."

Randazzo further asserted that the evidence established she had not "execute[d] the quitclaim deed . . . because she believed she had an interest [in the property]," but rather because she knew she had no such interest, and wanted to be removed from the recorded title. The court denied the motion.

DISCUSSION

On appeal, Randazzo argues the trial court erred in denying her motion for summary judgment. She further contends that the trial court's verdict is not supported by substantial evidence, and requests we reverse the judgment, and direct the court to enter judgment in her favor.

A. The Court Erred in Denying the Motion for Summary Judgment

We begin our analysis with the court's summary judgment ruling, which we review de novo. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535.)[2] "A motion for summary judgment is

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[2] Generally, the denial of a motion for summary judgment is deemed to be "harmless error after a full trial covering the same issues." (*Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407, 1411.) Such a denial may constitute prejudicial error, however, if the issues raised in the motion for summary judgment are not addressed at the subsequent trial. (*Ibid.*; see also *F.D.I.C. v. Dintino* (2008) 167 Cal.App.4th 333, 343 ["In general, an order denying a motion for summary judgment or summary adjudication does not constitute prejudicial error if the *same question* was subsequently decided . . . after a trial on the merits. [Citations.] However, if the same

properly granted . . . when 'all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' [Citation.] [Citation.]" (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1301 (*Chavez*) [footnote omitted]; see also Code Civ. Proc., § 437c, subd. (c); *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348].) In making this assessment, "[w]e view the evidence in the light most favorable to the opposing party, liberally construing the opposing party's evidence and strictly scrutinizing the moving party's. [Citation.]" (*Chavez, supra,* 207 Cal.App.4th at p. 1302.)

As summarized above, the parties' property division agreement required Randazzo to convey her 50 percent interest in the Valley property to Esquibel. Randazzo produced evidence in support of her motion for summary judgment showing that she complied with that requirement by delivering a grant deed to Esquibel, thus vesting him with full ownership of the property. (See *Perry v. Wallner* (1962) 206 Cal.App.2d 218, 221 (*Perry*) [transfer of property is affected by "delivery of the conveyance with intent to transfer the title. . . ."].) She also produced evidence showing that several months after her conveyance, the Valley property was executed on and sold at sheriff's sale to

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question is *not* decided after trial, an appellant potentially may successfully assert on appeal that the trial court prejudicially erred in denying his or her motion for summary judgment or summary adjudication"].) As discussed in more detail below, the court's ruling after trial did not directly address the issues and theories that Randazzo raised in her motion for summary judgment. We will therefore review the court's order denying the motion for summary judgment as well as its judgment after the bench trial.

satisfy the family court's child support order. Randazzo argued that her post-sale execution of a quitclaim deed in favor of the purchaser (BME) did not constitute a breach of the parties' agreement because the deed had no effect on Esquibel's property rights, which had been terminated at the sheriff's sale. Instead, the deed had merely served to remove her name from the recorded title.

In his opposition, Esquibel did not dispute any of the evidence Randazzo had provided in support of her motion. He argued, however, that Randazzo's decision to execute the quitclaim deed had denied him the benefit of their agreement because the deed purported to "convey [to BME] [the 50 percent] interest in the [Valley] property" that she had previously conveyed to him.

Esquibel mischaracterizes the nature of a quitclaim deed: "'A quitclaim deed purports to convey only the grantor's present interest in the land, if any, rather than the land itself. Since such a deed purports to convey whatever interest the grantor has at the time, its use excludes any implication that he has good title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed." (Black's Law Dic. (9th ed. 2009) at p. 477 [defining quitclaim deed]; see also *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239 ["'A quitclaim deed transfers whatever present right or interest the grantor has in the property"]; *Winchell v. Lambert* (1956) 146 Cal.App.2d 575, 579 ["A quitclaim is not necessarily or even usually a 'grant of real property'"]; *Hagan v. Gardner* (9th Cir. 1960) 283 F.2d 643, 647 ["Under California law a quitclaim deed is recognized as a distinct form of conveyance, but operates

to transfer only what right, title and interest the grantor may have"].)

Randazzo's quitclaim deed did not, as Esquibel argued, purport to re-convey to BME the 50 percent interest she had previously transferred to him. Instead, the deed merely served to convey whatever interest she had in the property, if any, to BME. Randazzo also provided evidence demonstrating why she had executed the quitclaim deed: to remove her name from the recorded title of the Valley property, a property in which she no longer had any legal interest.

Given that Randazzo timely conveyed to Esquibel her interest in the Valley property, and that his property rights were subsequently terminated at the sheriff's sale, we fail to see how Randazzo's post-sale execution of a quitclaim could be legally deemed a violation of the parties' agreement.

Esquibel also argued that Randazzo's execution of the quitclaim deed "defraud[ed] him of his other 50% interest in the property that was not up for sale." In a supporting declaration, Esquibel clarified his position, explaining that because the recorded title listed Randazzo as a 50 percent owner of the property, BME should have only received a 50 percent interest in the property at the sheriff's sale, leaving Esquibel with a 50 percent interest. According to Esquibel, Randazzo's subsequent act of executing the quitclaim deed effectively transferred that remaining 50 percent interest to BME.

Esquibel's argument appears to be predicated on the assumption that the grant deed Randazzo delivered to him had no effect on the parties' legal ownership of the property until the deed was recorded. Esquibel has provided no authority in support of this argument; the argument is contrary to the law.

"A grant takes effect, so as to vest the interest intended to be transferred, . . . upon its delivery by the grantor." (Civ. Code, § 1054; see also *Perry, supra,* 206 Cal.App.2d at p. 221; *Hinshaw v. Hopkins* (1940) 37 Cal.App.2d 230, 237 ["[i]t is essential to the validity of a transfer of real property that there be a delivery of the conveyance with intent to transfer the title"].) "'[T]o constitute a valid delivery there must exist a mutual intention on the part of the parties, and particularly on the part of the grantor, to pass title to the property immediately.'" (*Estate of Pieper* (1964) 224 Cal.App.2d 670, 684.) The recordation of the deed is not necessary to transfer title. (See *Chaffee v. Sorensen* (1951) 107 Cal.App.2d 284, 289 ["The recording of an instrument gives notice to the world of the transfer but does not add to its efficacy as a complete conveyance of title"]; *RNT Holdings, LLC v. United General Title Ins. Co.* (2014) 230 Cal.App.4th 1289, 1296 [recording of trust deeds not required for them to be valid].)

In this case, Esquibel has identified no disputed issues of material fact concerning the delivery of the grant deed. Randazzo's conveyance of her 50 percent interest in the Valley property was complete at the moment of delivery, vesting Esquibel with full ownership of the property. Esquibel's failure to record the deed did not change his ownership status. We find no support in the record for Esquibel's argument that BME only acquired a 50 percent interest in the Valley property at the sheriff's sale because the recorded title still listed Randazzo as a 50 percent owner, or that he retained, or could have retained, any interest in the property following the sale.[3]

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[3] To the contrary, the sheriff's deed of sale, on its face, conveyed 100 percent of the interest in the property to the buyer.

B. The Trial Court's Verdict Was Not Supported by Substantial Evidence

1. Esquibel presented no new arguments or evidence at trial

At the bench trial, Esquibel did not offer any additional theory as to how Randazzo had breached the property division agreement, nor did he present any new evidence in support of his claims. Instead, as in the summary judgment proceedings, he admitted Randazzo had delivered a grant deed conveying her interest in the Valley property, but argued that BME only acquired a 50 percent interest in the property at the sheriff's sale because the title records still listed Randazzo as a 50 percent owner. He further asserted that Randazzo's quitclaim deed had effectively transferred that remaining 50 percent interest to BME, and denied him the ability to negotiate with BME regarding that interest. For the reasons explained above, we reject Esquibel's contention that although he owned title to 100 percent of the property at the time of the sheriff's sale (a fact no party challenges), and the sheriff's deed transferred 100 percent of the interest in the property to the buyer, the sale nonetheless resulted in a transfer of only a 50 percent interest in the property due to the information in the recorded title.

2. There is insufficient evidence to support the trial court's finding that Randazzo breached the agreement by retaining the proceeds of the sale

The trial court's finding that Randazzo breached the property division agreement appears to have been based on a different legal theory. In its judgment, the court explained that because "the recorded title at the time of the sheriff's sale still

showed [Randazzo] as a 50% owner of the Valley property, she received proceeds from the sheriff's sale in the amount of $52,000 after she executed the quitclaim deed." The court further found that because Randazzo had previously transferred her interest in the Valley property to Esquibel, she had no right to execute the quitclaim deed in exchange for $52,000, and "had no legal right to [retain the sale proceeds.]" The court's analysis makes clear that it believed Randazzo received $52,000 in exchange for executing the quitclaim deed.

There is, however, no evidence in the record that supports such a finding.[4] The parties' trial briefs and evidence establish that Randazzo received the proceeds from the sheriff's sale not because she executed the quitclaim deed, but rather in satisfaction of the family court order requiring Esquibel to pay child support arrearages. Indeed, the record shows that the entire reason the property was executed upon and sold at the sheriff's sale was to satisfy that order. Moreover, Randazzo specifically testified that she did not receive any money related to the sale apart from the amount she was due under the child support order. Esquibel provided no evidence contradicting this testimony.[5]

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[4] We review the trial court's factual findings under the substantial evidence standard. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 500-501.)

[5] In opposition to the motion for summary judgment, Esquibel did provide a declaration asserting that he "believed" Randazzo may have been paid by BME. He failed, however, to provide any evidence in support of this belief in his opposition to the motion for summary judgment or at trial. (See generally *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th

The trial court's judgment does not mention the family court order, nor does it acknowledge the reasons for the sheriff's sale. The judgment also does not address Randazzo's assertion that she executed the quitclaim deed to remove her name from the recorded title of the Valley property. The court's conclusion that Randazzo wrongfully obtained $52,000 because her name remained on the recorded title, and because she executed the quitclaim deed, is contrary to the evidence.

In sum, Esquibel's opposition to the motion for summary judgment failed to identify any triable issue of fact regarding his breach of contract claim or his duplicative claim for breach of the implied covenant.[6] At the ensuing trial, he presented no

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204, 212 ["declarations may not be based upon 'information and belief' and documents submitted without the proper foundation are not to be considered"].)

[6] Esquibel's pleadings make clear that his claim for breach of the implied covenant of good faith and fair dealing is predicated on the same conduct as the breach of contract claim (the execution of the quitclaim deed), and seeks the same damages. We therefore disregard the claim as duplicative of his breach of contract claim. (See generally *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 ["If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated"]; see also *Bionghi v. Metropolitan Water Dist.* (1999) 70 Cal.App.4th 1358, 1370 [where "claim of breach of the implied covenant relies on the same acts, and seeks the same damages, as its claim for breach of contract," summary adjudication affirmed on the ground "the cause of action for breach of the implied covenant is duplicative of

additional evidence in support of these claims, nor did he present sufficient evidence to support a verdict in his favor. We therefore reverse the trial court's judgment, and direct the court to enter a new judgment in favor of Randazzo.

DISPOSITION

The judgment is reversed and the trial court is directed to prepare a new judgment in favor of Randazzo. Randazzo shall recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

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the cause of action for breach of contract, and may be disregarded"].)

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