

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MICHELE L. JOHNSON-BURNETT,

Plaintiff and Appellant,

v.

CITIMORTGAGE INC. et al.,

Defendants and Respondents.

B256564

(Los Angeles County
Super. Ct. No. VC063650)

APPEAL from judgment of the Superior Court of Los Angeles County,
Roger Ito, Judge. Affirmed.

Michele L. Johnson-Burnett, in pro. per., for Plaintiff and Appellant.

Pite Duncan, LLP, Peter J. Salmon, Christopher L. Peterson, and Danielle M.
Graham for Defendant and Respondent CitiMortgage, Inc.

Buckley Madole, P.C., Stephen Hicklin, Michael R. Gonzales, and Michael Le for
Defendant and Respondent NBS Default Services, LLC.

INTRODUCTION

Plaintiff Michele Johnson-Burnett appeals from a judgment of dismissal following an order sustaining demurrers by Defendants CitiMortgage Inc. (Citi) and NBS Default Services, LLC (NBS, and together with Citi, Defendants). Plaintiff's action sought to quiet title to real property she formerly held in joint tenancy with her grandmother, Carrie Jolly, on the theory that Citi's mortgage lien was extinguished when Plaintiff obtained fee ownership of the property by right of survivorship upon Jolly's death. The trial court ruled that Plaintiff could not obtain relief on her claim because Jolly mortgaged the property before creating the joint tenancy and, therefore, Plaintiff obtained her interest in the property subject to the lien. We affirm.

FACTS¹ AND PROCEDURAL BACKGROUND

Carrie Jolly, Plaintiff's grandmother, purchased the subject property on June 19, 2009. On that date, California Financial Group, Inc., doing business as CFG Bancorp (CFG) recorded a deed of trust on the property securing a promissory note signed by Jolly in the principal amount of \$290,000. The deed of trust names Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary, acting as nominee for the lender, CFG.

¹ Because this matter comes to us on demurrer, our statement of facts is based upon the allegations of the operative first amended complaint and facts properly subject to judicial notice. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-266.) “[W]e treat as true all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 178, fn. 3; *Fontenot* at pp. 264-266.)

Jolly transferred the subject property to herself and Plaintiff as joint tenants via a quitclaim deed recorded on June 30, 2009. Jolly died two years later, on October 10, 2011.²

On July 25, 2012, MERS, as nominee for CFG, assigned its interest under the deed of trust to Citi. On August 30, 2013, Citi substituted NBS as trustee under the deed of trust.

On October 9, 2013, NBS caused a notice of default to be recorded on the subject property.

On November 22, 2013, Plaintiff filed a complaint to quiet title, naming Citi and NBS as defendants. In her operative first amended complaint, Plaintiff asserted that the deed of trust attached to only Jolly's interest in the subject property, which was extinguished upon Jolly's death. On this basis, Plaintiff maintained that she acquired fee ownership of the property by right of survivorship " 'free and clear' " of all encumbrances placed on it by Jolly.

Defendants filed separate demurrers to the complaint. Among other things, Defendants argued that Plaintiff acquired her interest in the property subject to the deed of trust because the mortgage lien attached to the property before Jolly transferred it to herself and Plaintiff as joint tenants.

² Plaintiff's request for judicial notice filed on February 6, 2015 is granted with respect to the facts contained in the certificate of death of Carrie O. Jolly. To the extent the other matters contained in the request for judicial notice are already part of the record or are not pertinent to the issues raised in this appeal, the request is otherwise denied as moot. We also deny Defendants' motion to strike portions of Plaintiff's opening brief as moot because the matters challenged by Defendants' motion have not impacted our resolution of this appeal.

The trial court sustained Defendants' demurrers without leave to amend. The court rejected Plaintiff's theory that, as a joint tenant, she acquired the property free and clear of the lien placed on it by Jolly, reasoning that "[w]hile plaintiff is the owner of the entire property [by right of survivorship], she takes the property along with the encumbrance."

DISCUSSION

On review of a judgment of dismissal after an order sustaining a demurrer, "we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose." (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; fn. 1, *ante.*)

Plaintiff contends the following facts are sufficient to establish her quiet title claim: (1) Jolly placed the subject mortgage lien on the property in Jolly's name alone; (2) Plaintiff held the property with Jolly as a joint tenant until Jolly's death; and (3) with Jolly's death, Plaintiff succeeded to full ownership of the property by right of survivorship. Based on these facts, Plaintiff contends the mortgage lien was extinguished upon Jolly's death, and she obtained full ownership by right of survivorship free and clear of the lien. Plaintiff's theory discounts a critical fact that manifestly defeats her claim.

Though it is the law that a lien secured by only the separate interest of one joint tenant expires upon that joint tenant's death (see, e.g., *People v. Nogarr* (1958) 164 Cal.App.2d 591, 593-595, 598),³ this is not the rule when the lien attaches to the

³ As the court explained in *Zeigler v. Bonnell* (1942) 52 Cal.App.2d 217, this rule stems from the unique qualities of the right of survivorship, which each joint tenant separately holds as an incident of the joint tenancy: "The right of survivorship is the chief characteristic that distinguishes a joint tenancy from other interests in property. The surviving joint tenant does not secure that right from the deceased joint tenant, but from the devise or conveyance by which the joint tenancy was first created. [Citation.] While both joint tenants are alive each has a specialized form of a life estate, with what amounts to a contingent remainder in the fee, the contingency being dependent upon which joint tenant survives." (*Id.* at pp. 219-220.) Because each joint tenant separately holds the right of survivorship while both are alive, a lien to secure the debt of one joint tenant

property *before* the creation of a right of survivorship, as Plaintiff admits is the case here. Because the mortgage lien in this case attached to the subject property before Jolly conveyed it to herself and Plaintiff as joint tenants, Plaintiff acquired her right of survivorship subject to the lien. In view of this admitted fact, Plaintiff cannot quiet title as to Defendants' interest in the property.

Dieden v. Schmidt (2002) 104 Cal.App.4th 645 (*Dieden*) is instructive. In *Dieden*, a judgment creditor recorded an abstract of judgment and obtained a judgment lien against his judgment debtor's interest in certain real property. (*Id.* at p. 649.) At the time when the creditor recorded the abstract of judgment, the debtor and his wife owned the property as tenants in common. The debtor and his wife subsequently conveyed their interests in the property to themselves as joint tenants. Before the creditor forced a sale of the property, the debtor died, leaving his wife as the surviving joint tenant. (*Ibid.*)

The *Dieden* court framed the issue raised by the appeal in the ensuing quiet title action as "whether a judgment lien on a real property interest held by a tenant in common survives both a change in title to joint tenancy and the death of the debtor joint tenant." (*Dieden, supra*, 104 Cal.App.4th at p. 648.) The court concluded the lien survived because it "attached to [the debtor's] interest as a tenant in common, before the creation of any right of survivorship." (*Id.* at p. 651.) Citing Code of Civil Procedure sections 697.390 and 695.070, each of which governs judgment liens on interests in real property, the *Dieden* court observed, "a subsequent conveyance or encumbrance of an interest in real property subject to a judgment lien does not affect the lien" and "the judgment lien may be enforced against the property in the same manner and to the same extent as if there had been no transfer, even after the death of the judgment debtor." (*Dieden*, at

attaches to only her interest in the property. (*Id.* at p. 220.) Thus, when the debtor joint tenant dies, her separately held right of survivorship is extinguished, and the debtor no longer has an interest in the property for her creditor to levy upon. (*Ibid.*) However, as we explain above, because the right of survivorship is secured "from the devise or conveyance by which the joint tenancy was first created" (*ibid.*), if a lien attaches to the property *before* the conveyance is made, then the right of survivorship is secured subject to the lien on the property.

p. 651.) Based on these statutes, the court reasoned that when the debtor and his wife “transferred their tenant in common interests to one another . . . and created a joint tenancy, [the wife] took her interest in the property subject to the judgment lien.” (*Id.* at pp. 651-652.) Accordingly, the court held, “[u]nder the Enforcement of Judgments Law, the right of survivorship, an interest created after the judgment lien, had no effect with respect to the judgment lien.” (*Dieden*, at p. 652.)

Plaintiff contends *Dieden* is inapposite because *Dieden* concerned a judgment lien and the *Dieden* court expressly based its holding on the Enforcement of Judgment Law. Contrary to Plaintiff’s premise, this distinction makes no difference. The principle codified in the Enforcement of Judgment Law upon which the *Dieden* court relied also applies to mortgage liens.

As our Supreme Court explained in *Cornelison v. Kornbluth* (1975) 15 Cal.3d 590 (*Cornelison*), “[u]pon the transfer of real property covered by a mortgage or deed of trust as security for an indebtedness, the property remains subject to the secured indebtedness.” (*Id.* at p. 596.) Thus, “[a]lthough a nonassuming grantee of mortgaged property is not personally liable on the debt, *his interest in the property is subject to the lien.*”⁴ (*Id.* at p. 599, italics added.)

Plaintiff’s complaint admits that Jolly placed the subject mortgage lien on the property *before* she conveyed the property to herself and Plaintiff as joint tenants. Accordingly, Plaintiff acquired her right of survivorship subject to the lien. The trial court properly ruled that Plaintiff could not, as a matter of law, state a claim to quiet title with respect to Defendants’ interest in the property.

⁴ Under the statute of frauds, a grantee that acquires real property subject to a pre-existing lien becomes personally liable for the debt and subject to the terms of the security instrument only if she executes a written assumption or the conveyance specifically provides for her assumption of the indebtedness. (Civ. Code, § 1624, subd. (a)(6); *Cornelison*, *supra*, 15 Cal.3d at p. 596.) For our purposes, whether Plaintiff assumed the debt is irrelevant to whether Defendants maintain an interest in the subject property under the deed of trust.

DISPOSITION

The judgment is affirmed. Defendants CitiMortgage Inc. and NBS Default Services, LLC are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

EDMON, P. J.

ALDRICH, J.