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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FIVE POINTS TEMESCAL, LLC, et
al.,

Plaintiffs and Respondents,

v.

MERRIE HATHAWAY,

Defendant and Appellant;

WILLIAM RATTAZZI,

Respondent.

B275665

(Los Angeles County
Super. Ct. No. BC492965)

APPEAL from an order of the Superior Court of Los
Angeles County, Elizabeth A. White, Judge. Affirmed.

Donna M. Standard for Defendant and Appellant.

Dinsmore & Sandelmann, Frank Sandelmann and Brett A. Stroud, for Plaintiffs and Respondents Five Points Temescal, LLC and Temescal Ranch Limited Partnership.

Michael S. Pecherer for Respondent William Rattazzi.

In 2013, defendant and appellant Merrie Hathaway (defendant) stipulated to an interlocutory judgment that partitioned real property she jointly owned with plaintiffs and respondents Five Points Temescal, LLC and Temescal Ranch Limited Partnership (plaintiffs), and with third party Hathaway Temescal, LLC (Hathaway). In 2016, the trial court confirmed the sale of the property, and defendant noticed this appeal from the order confirming the sale. Defendant's contentions on appeal, however, primarily concern the earlier judgment of partition (or the complaint leading to that judgment)—which defendant did not timely appeal. We therefore conclude defendant presents no meritorious challenge to the order under review.

I. BACKGROUND

Defendant held a five percent ownership interest in two parcels of real property that were concurrently deeded to her. Each parcel was separately described in the deed, but together the parcels were referred to in various ownership and conveyance documents as “Temescal Ranch” or the “Temescal Ranch Property.” “Parcel 1” is 6,006.02 acres. “Parcel 2” is 189.17 acres.

In 2012, plaintiffs filed a complaint against defendant and Hathaway seeking to partition Parcel 1 by sale of the property.¹

¹ ““The primary purpose of a partition suit is . . . to partition the property, that is, to sever the unity of possession. [Citations.]” [Citation.]’ (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493[]; see also *14859 Moorpark Homeowner’s Ass’n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1404-1405[] [“partition” is “the procedure for segregating and terminating common interests in the same parcel of property”].) “Partition is a remedy much favored by the law. The original purpose of

Defendant did not demur to the complaint. In 2013, pursuant to a stipulation signed by all the owners, the trial court entered a judgment of partition by sale for Parcel 1. In 2014, the trial court appointed respondent William Rattazzi (the referee) as partition referee to prepare and market Parcel 1 for sale.

Later that year, the referee became aware of Parcel 2 and believed it was inadvertently excluded from the property plaintiffs sought to partition due to a clerical or administrative error. The referee therefore filed a motion asking the trial court to modify the partition judgment to include Parcel 2. Defendant opposed the motion to modify the judgment because she “refuse[d] to be bullied into correcting errors created by [p]laintiffs, while they completely ignore[d] [her] desires, concerns and requests” In particular, defendant wanted to receive a specific portion of Parcel 1 partitioned to her in kind, instead of receiving a share of the sale proceeds.

partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property.” [Citation].’ (*LEG Investments, supra*, at p. 493 [].) [¶] . . . [¶] The manner of partition may be ‘in kind’—i.e., physical division of the property (see, e.g., *Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365[])—according to the parties’ interests as determined in the interlocutory judgment. [Citations.] Alternatively, if the parties agree or the court concludes it ‘would be more equitable,’ the court may order the property sold and the proceeds divided among the parties. [Citations.]” (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596-597.)

The trial court denied the motion to modify the judgment, concluding that in order for Parcel 2 to be partitioned with Parcel 1, both needed to be described in the complaint for partition—which meant plaintiffs would need to seek leave to amend. The court noted, however, that defendant would “have an opportunity to test the propriety of [an amendment] at this stage of the litigation.”

Plaintiffs did not seek to amend the partition complaint. Instead, plaintiffs filed a new partition action with respect to Parcel 2. Defendant then filed, in May 2015, a motion in the proceedings involving Parcel 1 that asked the trial court to (1) consolidate the two actions and (2) vacate the judgment of partition as to Parcel 1. Defendant explained she wanted to receive her share of the partitioned property in kind. Plaintiffs opposed defendant’s motion. They contended consolidation was inappropriate because judgment had already been entered in the Parcel 1 action, no issues remained to be litigated, and there was no ground to vacate the judgment.

The trial court ordered the two partition actions related but denied defendant’s motion to consolidate the actions and vacate the prior judgment. The court exercised its discretion not to order consolidation because there was no possibility of a joint trial, judgment already having been entered in the Parcel 1 action. The trial court also denied defendant’s request to vacate the partition judgment concerning Parcel 1. The court noted defendant’s motion was filed more than six months after entry of the judgment, which meant the judgment could not be vacated

unless it were void, and defendant advanced no valid theory for why the judgment was void.²

In the spring of 2016, the referee filed a motion to confirm the sale of Parcel 1 to the Trust for Public Lands (TPL), a nonprofit public benefit corporation, for the purchase price of \$9,120,000 (the property's appraised value).³ The referee also sought an order authorizing him to execute the sale of the property and to distribute the proceeds. Under the terms of the sale, TPL would purchase the property in two or three installments.

Defendant opposed the sale to TPL, contending the installment agreement was not a sale of the property as a single parcel, the property had not been adequately marketed, and the property could command a higher price. Defendant again asked that a particular portion of Parcel 1 be partitioned to her in kind.

In reply to defendant's opposition, the referee averred defendant could not receive the property she desired through a

² The trial court later granted a judgment of partition for Parcel 2, and defendant appealed that judgment. We affirmed the judgment in an unpublished opinion, which we judicially notice. (*Five Points Temescal, LLC v. Hathaway* (Sept. 19, 2017, B275664) [nonpub. opn.]; see also Evid. Code, §§ 452, subd. (d), 459, subd. (a); *In re Bush* (2008) 161 Cal.App.4th 133, 146, fn. 5; *Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1363, fn. 3.)

³ The companies that brokered the sale were unable to obtain a commercial buyer for the property because of numerous issues with the site, including the expectation of a long entitlement period, the lack of adequate access, the costs required to add infrastructure and make improvements, insufficient water, and an anticipated six-to-eight year development period.

partition in kind because it was not in compliance with the Subdivision Map Act and, in any event, defendant had already stipulated to partition by sale. The referee also noted defendant offered no evidence, apart from her bare assertion, that the sales price of Parcel 1 was below market value.

In May 2016, the trial court held a hearing on the motion to confirm the sale pursuant to published notice. At the hearing, defendant reiterated her objection to the installment agreement with TPL and argued it was unclear what real property was being partitioned. A third party present at the hearing stated it was “prepared to meet the bid, but there’s an issue as to which issue is being sold, so we don’t.” No overbids were offered. The referee took the position that the property to be partitioned was as described in the complaint and the title insurance company had expressed its satisfaction with the description of the property to be conveyed. The trial court agreed defendant made no valid argument to challenge the conveyance of Parcel 1 and recognized defendant was instead “objecting because [she] is not prepared to give up her interest” in the parcel. The court entered orders confirming the sale to TPL and authorizing the referee to execute all sale documents and to distribute the proceeds.

II. DISCUSSION

Defendant’s June 2016 notice of appeal states she is appealing from the trial court’s May 2016 order confirming the sale of Parcel 1. The arguments in her opening brief are not clearly presented, but it appears she contends the trial court erred by (1) allowing plaintiffs’ complaint “to go forward” without including Parcel 2 in the description of the property to be partitioned, (2) allowing plaintiffs “to file this partition action to

proceed separate and apart from [the] second partition action” regarding Parcel 2, and (3) not permitting defendant to receive her portion of the partitioned property in kind. We reject the challenges because they amount to challenges to the interlocutory judgment of partition, or to the order denying defendant’s motion to vacate that judgment or consolidate the two actions, and the time to appeal either of these rulings has long since passed.

Code of Civil Procedure section 904.1 permits a party to take an appeal “[f]rom an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.” (Code Civ. Proc., § 904.1, subd. (a)(9).) Code of Civil Procedure section 904.1 also allows for appeal of an order made after an appealable judgment. (Code of Civ. Proc., § 904.1, subd. (a)(2); *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 748 “[A]n appeal may be taken from an order made after an appealable judgment” if the order satisfies “two requirements: (1) the issues raised by the appeal from the order must be different from those arising out of the appeal from the judgment and (2) the order must affect, enforce, or stay execution of the judgment”].)

Defendant stipulated to the interlocutory judgment ordering partition of Parcel 1 by sale. She was served notice of entry of that judgment on September 27, 2013. Because her claims of error regarding the adequacy of plaintiffs’ complaint for partition and her receipt of a share of the partitioned property in kind were both “finally adjudicated by the interlocutory decree,” it is far too late for her to challenge those issues. (*Oliver v. Sperry* (1934) 220 Cal. 327, 330; see also *Barry v. Barry* (1880) 56 Cal. 10, 11 [issues determined in interlocutory decree of partition not reviewable on appeal from final judgment]; Code Civ. Proc.,

§ 906 [reviewing court may not “review any decision or order from which an appeal might have been [earlier] taken”; Cal. Rules of Court, rule 8.104(a)(1)(B) [notice of appeal must be filed within 60 days after party is served with notice of entry of judgment].)

Defendant’s argument that the trial court erred “by allowing [plaintiffs] to file this partition action to proceed separate and apart from [the] second partition action” also appears to challenge the manner in which plaintiffs described the property in the partition complaint, which, according to defendant, caused an overbidder at the sale of Parcel 1 to decline to make an offer. The argument, so understood, necessarily attacks the underlying complaint, or the judgment entered by stipulation based on that complaint, and it likewise fails because the time to raise these arguments in a proper appeal has long ago elapsed under the authority we have just cited.⁴

To the extent defendant’s brief on appeal can be understood to seek review of the trial court’s denial of her motion to consolidate the two partition actions or vacate the judgment of partition for Parcel 1, such review also is not cognizable in this appeal from the order confirming the sale of the property. The trial court denied defendant’s motion to consolidate or vacate the judgment in July 2015, i.e., after entering the stipulated judgment of partition and ten months before the order confirming

⁴ The argument also fails on the merits because defendant mischaracterizes the “overbid” situation at the hearing confirming the sale of Parcel 1. The potential bidder did not relay any intention to submit an overbid, as the trial court expressly found, and any confusion over the “issue . . . being sold” was created by defendant’s meritless arguments.

the sale of Parcel 1. The trial court's ruling was an appealable post-judgment order, but defendant took no timely appeal from the ruling. (Code Civ. Proc., § 904.1, subd. (a)(2).)

In any event, the argument would fail on the merits. In our prior decision resolving defendant's appeal from the judgment of partition for Parcel 2, we rejected defendant's argument that the trial court erred in declining to consolidate the two partition actions. Defendant's present appeal relies on precisely the same points, and those points fail for the reasons set forth in our prior opinion.⁵ Defendant also continues to be unable to articulate any valid theory for why the judgment of partition is void.

⁵ The appellate record in defendant's prior appeal did not contain her motion to consolidate or any opposition papers, or a copy of the trial court's ruling. These documents are part of the record in the present appeal, but our review of them only confirms our view that the result we reached in our prior decision is correct.

DISPOSITION

The order is affirmed. Five Points Temescal, LLC, Temescal Ranch Limited Partnership, and Referee in Partition William Rattazzi are to recover their costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

RAPHAEL, J.^{*}

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