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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CLUB BAHIA, INC. et al.,

Plaintiffs and Appellants,

v.

ARTHUR C. HIGGINS et al.,

Defendants and Respondents.

B289152

(Los Angeles County
Super. Ct. No.
BC582112)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Howard L. Halm, Judge. Reversed and
remanded with directions.

Kasai Law Group, Wayne T. Kasai and Kristin E. Reynolds
for Plaintiffs and Appellants.

Robert E. Knudsen for Defendant and Respondent
Arthur C. Higgins.

Palmieri, Tyler, Wiener, Wilhelm & Waldron, Erica M. Sorosky and Erin K. Oyama for Defendants and Respondents Bahia Nightclub, Inc., Mark Higgins and Michael Higgins.

Plaintiffs and appellants Club Bahia, Inc., and Lupe Higgins (Lupe),¹ individually and as administrator of the estate of William Clive Higgins (Clive), appeal from a judgment following the trial court's orders granting summary judgment in favor of defendants and respondents Bahia Nightclub, Inc., Mark Higgins (Mark), Michael Higgins (Michael), and Arthur C. Higgins (Arthur), individually and as trustee of the Higgins Family Trust dated March 11, 1994 (the Higgins Family Trust). We reverse.

BACKGROUND²

I. Formation and Ownership of Club Bahia, Inc.

Bartlett James Higgins (Bart) and his wife started Club Bahia, a nightclub, in 1974 on property they had purchased on Sunset Boulevard in Los Angeles (the Sunset Boulevard property). In 1980, Club Bahia was incorporated as Club Bahia, Inc., with 100 percent of the shares belonging to Bart. Club Bahia, Inc., obtained a liquor license from the Department of Alcoholic Beverage Control (the ABC) in 1982. By 2000, Bart had

¹ For clarity, we refer to various members of the Higgins family by either their first names or nicknames used by the parties. No disrespect is intended.

² Unless otherwise indicated, the facts summarized in this section are undisputed.

died and his son, Clive, owned and operated Club Bahia, Inc. Clive was married to Lupe.

Clive died in 2012. Clive's son, Mark, met with Arthur after the funeral. Arthur was Clive's brother and is also the current trustee of the Higgins Family Trust, which owns the Sunset Boulevard property. Mark informed Arthur that Mark would run the nightclub along with Clive's other son, Michael, and Clive's widow, Lupe.³ Arthur asked Mark about the status of the nightclub's liquor license. Arthur had been one of the officers of Club Bahia, Inc., at the time the license was obtained, and Mark told him that his "name was still on it[.]" Because Arthur was no longer a shareholder of the corporation and was not involved in running the nightclub, he wanted his name to be removed from the license.

Updated information about the corporate structure of Club Bahia, Inc.—the licensee—had not been provided to the ABC for many years. Thus, ABC records still indicated that Arthur and three deceased individuals were officers of the corporation, even though a statement of information filed with the Secretary of State in 2012 indicated that Mark and Michael were its officers and directors. Michael consulted with an attorney, who advised him that "Clive's probate should be done to establish officers and shareholders" of Club Bahia, Inc., and that the license could then be updated with the new officers' information.

After meeting with a probate attorney, Lupe, Mark, and Michael agreed to a plan whereby Lupe would receive 100 percent of Clive's assets, including Club Bahia, Inc., through a spousal petition. Lupe would then give Mark and Michael each a 33 percent ownership interest in Club Bahia, Inc. Efforts to

³ Lupe is Mark and Michael's stepmother.

effectuate this plan were disrupted as disagreement regarding the division of ownership emerged. “[O]pen lines of communication stagnated” once Lupe would no longer “engage in any amicable discussion” and told “Mark to ‘call her lawyer[.]’”

II. Surrender of Club Bahia, Inc.’s Liquor License and Formation of Bahia Nightclub, Inc.

Club Bahia, Inc.’s liquor license was surrendered in May 2013. The circumstances surrounding the surrender are disputed. According to Mark and Michael, Arthur surrendered the license, as he was still listed on it as a corporate officer. At one point, however, Arthur denied knowing who surrendered the license; at another time, Arthur claimed that Michael had surrendered it.

Mark and Michael formed a new corporation, Bahia Nightclub, Inc., in late December 2012. They purchased a liquor license for Bahia Nightclub, Inc., to use doing business as “Club Bahia” at the Sunset Boulevard property around the same time that Club Bahia, Inc.’s license was surrendered in May 2013.

III. Unlawful Detainer Action

The surrender of its liquor license had significant repercussions for Club Bahia, Inc.

Club Bahia, Inc., had entered into a 25-year commercial lease of the Sunset Boulevard property in 2007 for \$5,000 per month. The lease required the corporation to “obtain all required licenses or permits for the conduct of its business[.]” But, after the surrender of the liquor license in May 2013, Club Bahia, Inc., started operating without a valid license at the property. Therefore, in his capacity as the successor trustee of the Higgins Family trust, which owned the Sunset Boulevard property, Arthur brought an unlawful detainer action in October 2013

against Club Bahia, Inc., and Lupe based on the failure to maintain a valid liquor license.

The unlawful detainer court made numerous findings following a two-day trial, including that (1) Lupe “refused to take steps to update the corporate documents to the current corporate officers and to take Arthur[’s] . . . name off the corporate documents on file with the ABC”; (2) the ability to reactivate the surrendered liquor license was thwarted by Lupe’s refusal to “agree and . . . participate”; and (3) “[t]o protect [the nightclub] and maintain a liquor license, Mark and Michael . . . , the only ones acting responsibly for [the nightclub], formed a new corporation to maintain a liquor license for the premises.” The court concluded that “Club Bahia, Inc.[.] did not maintain a liquor license due to [Lupe’s] refusal to act [and] participate in making the necessary changes with the ABC[.]” which constituted “a violation of the lease[.]” Accordingly, Arthur—as trustee of the Higgins Family Trust—was granted possession of the Sunset Boulevard property and termination of the commercial lease.

The unlawful detainer judgment was not appealed.

IV. The Current Litigation

Club Bahia, Inc., and Lupe, in her individual capacity and as the administrator of Clive’s estate (collectively plaintiffs), subsequently filed the instant action in May 2015 against Mark, Michael, Bahia Nightclub, Inc., and Arthur, in his individual capacity and as trustee of the Higgins Family Trust (collectively defendants).

A. The complaint

Plaintiffs’ complaint alleged that defendants caused Club Bahia, Inc., to lose its very favorable long-term lease of the

Sunset Boulevard property. Mark and Michael conspired with Arthur to surrender Club Bahia, Inc.'s liquor license in order for Mark and Michael's new corporation, Bahia Nightclub, Inc., to obtain a liquor license for the same location. The loss of the liquor license allowed Arthur, as trustee of the Higgins Family Trust, to evict Club Bahia, Inc. Additionally, Mark and Michael took Club Bahia, Inc.'s property without compensation to benefit Bahia Nightclub, Inc.

Based on these allegations, the complaint asserted causes of action for breach of fiduciary duty, conversion, negligent and intentional interference with contractual relations, and negligent and intentional interference with prospective economic advantage.

B. Defendants' motions for summary judgment and, in the alternative, summary adjudication

Arthur, in his individual capacity and as trustee of the Higgins Family Trust, moved for summary judgment and, in the alternative, summary adjudication of the causes of action asserted against him in the complaint: negligent and intentional interference with contractual relations (third and fourth causes of action), and negligent and intentional interference with prospective economic advantage (fifth and sixth causes of action). Arthur asserted that he was entitled to judgment as a matter of law because "no triable issue of material fact exists and/or there are complete defenses to the causes of action" Specifically, Arthur argued that no cause of action for negligent interference with contractual relations exists, "representatives of a contracting party may not be held liable for the tort of interfering with the principal's contract[.]" and that it had "already been adjudicated in the unlawful detainer action that . . . Lupe . . . was

the cause of the lease's termination, and [that] this finding ha[d] preclusive effect.”

In a separate motion, Mark, Michael, and Bahia Nightclub, Inc., also moved for summary judgment and, in the alternative, summary adjudication of the causes of action asserted against them in the complaint: breach of fiduciary duty (first cause of action), conversion (second cause of action), negligent and intentional interference with contractual relations (third and fourth causes of action), and negligent and intentional interference with prospective economic advantage (fifth and sixth causes of action).

Like Arthur's motion, Mark, Michael, and Bahia Nightclub, Inc., asserted that they were entitled to judgment as a matter of law because “no triable issue of material fact exists and/or there are complete defenses to the causes of action” They argued that it had “already been adjudicated that [Mark and Michael] did not engage in any wrongdoing in connection with the creation of Bahia Nightclub,” as well as that Lupe had caused the loss of Club Bahia, Inc.'s liquor license and lease. According to Mark, Michael, and Bahia Nightclub, Inc., these determinations “ha[d] preclusive effect.” They also argued that there was no evidence that they converted any property; that they did not surrender the liquor license; that no cause of action for negligent interference with contractual relations exists; and that “representatives of a contracting party may not be held liable for the tort of interfering with its principal's contract” and Michael and Mark were “owners, corporate officers and agents for Club Bahia, Inc.”

C. Plaintiffs' oppositions

Plaintiffs separately opposed each of defendants' motions.

In both oppositions, plaintiffs argued that the burden of proving the requirements for the application of res judicata had not been met. Specifically, plaintiffs had not shown that, in the unlawful detainer action, there was a “full and fair litigation” of the issues alleged in the current civil action. They also pointed to various evidence that demonstrated “collusion and deception about the Club Bahia, Inc. liquor license” by defendants. (Bolding omitted.) Plaintiffs argued that the motions were largely based on declarations of fact by Mark and Michael for which they were the sole witnesses and that this was a ground for denying the motions under Code of Civil Procedure section 437c, subdivision (e).⁴

As to Arthur’s motion, plaintiffs argued that the interference with prospective economic advantage causes of action involved relationships other than the contractual relationship between the Higgins Family Trust and Club Bahia, Inc. They also argued that Arthur had failed to recognize the distinction between acts alleged in his individual capacity and acts alleged in his capacity as trustee of the Higgins Family Trust.

As to Mark, Michael, and Bahia Nightclub, Inc.’s motion, plaintiffs asserted that Mark and Michael had a significant financial motive to cause Club Bahia, Inc., to lose its lease, and that Mark and Michael “violated their fiduciary duty to the corporation by causing it to lose it[s] most valuable asset critical to its continuing in business.”

⁴ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

D. Orders granting summary judgment

In two separate orders, the trial court granted the motions for summary judgment exclusively on the ground that plaintiffs' causes of action were barred by "res judicata" arising from the earlier unlawful detainer action. It expressly did not reach any other ground raised in the motions. The court subsequently entered judgment.

E. Appeal

Plaintiffs filed this timely appeal.

DISCUSSION

I. Standard of Review

Summary judgment is properly granted where "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." (§ 437c, subd. (c).) A defendant moving for summary judgment bears the burden of showing that at least one element of a cause of action "cannot be established, or that there is a complete defense to the cause of action." (§ 437c, subd. (p)(2).) Only if the defendant meets this initial burden does the burden shift to the plaintiff opposing summary judgment "to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*)

We review the trial court's order granting summary judgment de novo. (*Samara v. Matar* (2018) 5 Cal.5th 322, 338 (*Samara*).) We resolve "any doubts as to the propriety of granting [defendants'] summary judgment motion" in plaintiffs' favor. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535.)

II. Neither Claim Nor Issue Preclusion Bars Plaintiffs' Causes of Action.

The trial court granted both motions for summary judgment on the sole ground that plaintiffs' causes of action were barred by "res judicata." Courts "have frequently used 'res judicata' as an umbrella term encompassing both claim preclusion and issue preclusion, which [have been] described as two separate 'aspects' of an overarching doctrine. [Citations.] Claim preclusion . . . acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. [Citation.] Issue preclusion, . . . historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit. [Citation.]" (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823–824 (*DKN Holdings*)). To avoid confusion, we follow our Supreme Court in referring "to 'claim preclusion' rather than 'res judicata' [citation], and use 'issue preclusion' in place of 'direct or collateral estoppel' [citations]." (*Samara, supra*, 5 Cal.5th at p. 326; see also *DKN Holdings*, at p. 824.)

We conclude that neither claim nor issue preclusion bars plaintiffs' causes of action and, therefore, the trial court erred by granting summary judgment to defendants.⁵

⁵ Based on its recitation of the requirements of res judicata and its effects, it is clear that the trial court used the term res judicata to mean claim preclusion, as opposed to issue preclusion. Specifically, the court cited and applied the test for res judicata found in *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202, a case that involved the claim preclusion aspect of res judicata. And, in one instance in each order granting summary judgment, the court used the term "claim preclusion" interchangeably with

A. Claim preclusion

Claim preclusion does not bar Club Bahia, Inc., and Lupe's causes of action because (1) the compulsory cross-complaint statute does not apply to unlawful detainer actions, and (2) under common law principles, the causes of action were not and could not have been brought in the unlawful detainer action.

1. Compulsory cross-complaint statute

The compulsory cross-complaint statute (§ 426.30, subd. (a))—which “prohibits a party from asserting a claim if, at the time the party answered a complaint in prior litigation, it failed to allege in a cross-complaint any then existing, related cause of action against the plaintiff” (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 952)—“does not apply to special proceedings” like unlawful detainer actions. (§ 426.60, subd. (a); see also *Tide Water Associated Oil Co. v. Superior Court of Los Angeles County* (1955) 43 Cal.2d 815, 824 [“The Legislature has specifically designated unlawful detainer as a special proceeding”].) Accordingly, Club Bahia, Inc., and Lupe, the plaintiffs in the present civil action, were not required by statute to bring a cross-complaint in the prior unlawful detainer action in which they were defendants.

2. Common law claim preclusion

Under the common law, “[c]laim preclusion prevents relitigation of entire causes of action . . . when ‘a second suit involves (1) the same cause of action (2) between the same parties [or their privies] (3) after a final judgment on the merits in the first suit.’ [Citation.]” (*Samara, supra*, 5 Cal.5th at pp. 326–327.) A “cause of action is the right to obtain redress for a harm

“res judicata.” We address both claim and issue preclusion and find that neither supports summary judgment for defendants.

suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citations.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798 (*Boeken*).) Causes of action that *could have been* brought in the earlier action may also be subject to claim preclusion, but “a prior judgment generally does not bar a subsequent claim if the matter could *not* have been raised or litigated in the earlier action.” (*Hong Sang Market, Inc. v. Peng* (2018) 20 Cal.App.5th 474, 491 (*Hong Sang*).)

Thus, claim preclusion could only bar Club Bahia, Inc., and Lupe’s causes of action if those causes of action were or could have been brought in the prior unlawful detainer action. But they were not and could not have been.

First, Club Bahia, Inc., and Lupe *did not* assert any cause of action in the unlawful detainer proceeding. Finding that they involved “the same primary right[,]” the trial court conflated the defenses raised by Club Bahia, Inc., and Lupe as defendants in the unlawful detainer action with their causes of action as plaintiffs in the current litigation. “Under the ‘primary rights’ theory, a cause of action arises from the invasion of a primary right. Although different grounds for legal relief may be asserted under different theories, conduct that violates a single primary right gives rise to only one cause of action. [Citation.]” (*DKN Holdings, supra*, 61 Cal.4th at p. 818, fn. 1; see also *Boeken, supra*, 48 Cal.4th at pp. 797–798.) An affirmative defense, however, is not a cause of action, because it does not constitute a “right to obtain redress for a harm suffered[.]” (*Boeken, supra*, at p. 798; see also *Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co.* (7th Cir. 2014) 771 F.3d 391, 401 & fn. 7.) Because Club Bahia, Inc., and Lupe did not assert a cause of action in the

unlawful detainer, it cannot be said that they attempted to split a single claim for relief between the two cases. Therefore, the primary rights theory is inapplicable.

Second, Club Bahia, Inc., and Lupe *could not* have raised their current causes of action through a cross-complaint in the unlawful detainer action. Because an unlawful detainer “proceeding is summary in character[,] . . . ordinarily, only claims bearing directly upon the right of immediate possession are cognizable [citations]; and . . . cross-complaints . . . are permissible only insofar as they would, if successful, ‘preclude removal of the tenant from the premises.’ [Citations.]” (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255.) As a result, “a judgment in unlawful detainer usually has very limited res judicata effect and will not prevent one who is dispossessed from bringing a subsequent action to resolve questions of title [citations], or to adjudicate other legal and equitable claims between the parties [citations].” (*Ibid.*) Thus, Club Bahia, Inc., and Lupe could not have brought a valid cross-complaint in the unlawful detainer action asserting breach of fiduciary duty and conversion, interference with contractual relations, and interference with prospective economic advantage because those claims would not have “preclude[d] removal of the tenant from the [Sunset Boulevard property].” (*Ibid.*)

Accordingly, because Club Bahia, Inc., and Lupe did not and could not litigate their instant causes of action in the prior unlawful detainer action, claim preclusion is inapplicable and the trial court erred by granting summary judgment on that basis.

B. Issue preclusion

In contrast to claim preclusion, issue preclusion “prevents ‘relitigation of previously decided issues,’ rather than causes of

action as a whole. [Citation.] It applies only ‘(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.’ [Citation.]” (*Samara, supra*, 5 Cal.5th at p. 327.) The party asserting issue preclusion bears the burden of proving that these requirements are satisfied. (*Hong Sang, supra*, 20 Cal.App.5th at p. 489.) For this appeal, however, we need not determine which, if any, of the issues litigated in the unlawful detainer action have an issue preclusive effect because, regardless, a fundamental problem remains.

To establish as a matter of law their entitlement to summary judgment based on the doctrine of issue preclusion, defendants bore the additional burden of showing how an issue purportedly barred from relitigation would be fatal to at least one element of a cause of action or would provide a complete defense to the cause of action. (§ 437c, subd. (p)(2).) Defendants failed to satisfy this burden. Rather, they merely identified broad issues previously litigated without persuasively showing how these issues compelled summary judgment in their favor in light of the specific elements of Club Bahia, Inc., and Lupe’s causes of action.

Given that the papers of the party moving for summary judgment “are strictly construed whereas those of the opposing party are liberally construed, with all doubts about the granting of the motion resolved in favor of the opposing party” (*Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 352), we conclude that defendants did not establish as a matter of law that they were entitled to summary judgment based on the doctrine of issue preclusion.

III. We Remand for the Trial Court to Address Defendants' Other Grounds for Summary Judgment or, in the Alternative, Summary Adjudication.

In their motions below and on appeal, defendants argue that they are entitled to summary judgment on grounds other than res judicata. We decline to address these alternative arguments in the first instance and, instead, remand for the trial court to reach the issues previously raised by defendants in their motions but not decided. (See *State Farm General Ins. Co. v. Wells Fargo Bank, N.A.* (2006) 143 Cal.App.4th 1098, 1119–1120; *Adams v. Pacific Bell Directory* (2003) 111 Cal.App.4th 93, 100–101.)

DISPOSITION

The judgment is reversed. The matter is remanded for the trial court to consider the additional grounds urged for the grant of summary judgment or, in the alternative, summary adjudication in defendants' moving papers. Plaintiffs are entitled to their costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT