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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Conservatorship of the Person and Estate
of GAMIEL A. WASSIELY.

B269402

(Los Angeles County
Super. Ct. No. BP165615)

LOS ANGELES COUNTY OFFICE
OF THE PUBLIC GUARDIAN,
as Conservator, etc.,

Petitioner and Respondent,

v.

SC, as Nominee, etc.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Lesley C. Green, Judge. Affirmed.

P. David Cienfuegos for Objector and Appellant.

Mary C. Wickham, County Counsel, Leah D. Davis, Assistant County Counsel,
and Deborah P. Mogil, Senior Deputy County Counsel, for Petitioner and Respondent.

This is an appeal from a preliminary injunction issued by the superior court in a conservatorship proceeding. The Los Angeles County Office of the Public Guardian (the County) is the conservator for Gamiel Wassiely, a 75-year-old man who suffers from dementia. Appellant SC, as nominee for CYD Real Estate Asset Holdings II (CYD), is the beneficiary on a trust deed secured by real property that Mr. Wassiely owns. The County was intending to sell the property on Mr. Wassiely's behalf when it learned that a trustee's sale had been set because Mr. Wassiely's mortgage was in default. Concerned that the trustee's sale would result in a lower sale price than the sale that it planned, and unable to secure CYD's cooperation in delaying the trustee's sale, the County sought an order temporarily halting the trustee's sale so that the County's planned sale could be arranged. The County wanted to obtain as much money as possible from the sale of the property so that the proceeds could be used for Mr. Wassiely's benefit.

The County presented evidence to the trial court that the market value of Mr. Wassiely's property far exceeded his obligation to CYD, and that CYD would receive the full value of its loan from the planned sale plus interest. The trial court granted a temporary restraining order and then a preliminary injunction enjoining the trustee's sale.

CYD raises various procedural and substantive objections to the preliminary injunction, which we reject. We conclude that the trial court's preliminary injunction order was a proper exercise of its authority to supervise the conservatorship proceedings and a permissible application of the court's equitable powers.

BACKGROUND

On October 2, 2015, the County filed a petition to be appointed conservator over the person and estate of Mr. Wassiely. Mr. Wassiely was 75 years old at the time. The County acts as conservator when there is no one else who is qualified and willing to act

as conservator and the court finds that it would be in the best interest of the person. (Prob. Code, § 2920.)¹

Mr. Wassiely was referred to the County by a social worker who noted that Mr. Wassiely was confused, lacked understanding of his medical conditions, was unable to manage his property, and had an extreme hoarding problem. The County's petition was supported by the declaration of a doctor who had examined Mr. Wassiely in March 2015. The doctor concluded that Mr. Wassiely was suffering from dementia and lacked capacity to give informed consent to medical decisions or to his placement in a living facility.

Mr. Wassiely is the sole owner of a property located on Sepulveda Boulevard in Los Angeles (the Property). The Property is a six-unit apartment complex. Mr. Wassiely lived in two units and rented out the others. At the time the County sought the conservatorship, Mr. Wassiely was not able to manage his own units or care for his tenants. The water had been turned off, and Mr. Wassiely had been cited for numerous health code violations.

The court appointed the County as conservator on November 9, 2015. The court issued letters of conservatorship finalizing the appointment on November 19, 2015. Five days later, on November 24, 2015, Assured Lender Services, Inc. (Assured) recorded a notice of trustee's sale for the Property. The trustee's sale was scheduled to take place on December 16, 2015, at the post office in the city of Avalon on Catalina Island.

The notice of trustee's sale followed the recording of a notice of default on August 21, 2015. According to the notice of default, the principal amount owed on the mortgage that the Property secured was \$124,772.02 and the mortgage had been in default since March 2015.

The County learned of the trustee's sale on December 1, 2015, when one of Mr. Wassiely's tenants provided a copy of the notice. Two days later, on December 3, 2015, the County filed a petition for instruction and authority to sell conservatee's former

¹ Subsequent undesignated statutory references are to the Probate Code.

residence (Petition for Sale). The County's verified Petition for Sale attached a broker's opinion "supported by current market sales," concluding that the Property was worth between \$1.05 million and \$1.2 million. The hearing on the Petition for Sale was noticed for January 22, 2016.

The County made various attempts with Assured to postpone the trustee's sale, but as of December 10, 2015, Assured was not able to say whether the lender would agree to postpone the sale. The County therefore filed an ex parte application for an order halting the trustee's sale, which the trial court granted on December 15, 2015. The court set a hearing on a preliminary injunction for January 6, 2016.

In support of its request for a preliminary injunction, the County submitted a declaration describing its plans for the sale of the Property. The County intended to engage a real estate firm that would advertise the property, conduct open houses, and publicize the court's confirmation hearing to attract buyers. CYD opposed the motion, arguing among other things that the County had not filed any claim against it and objecting to the County's proffered evidence.

The hearing on the preliminary injunction took place on January 6, 2016. The trial court granted the injunction. The court concluded that it was "reasonably possible" that the County would prevail on its pending Petition for Sale. The court also found that the balance of harms favored issuing the preliminary injunction. The court concluded that the value of the Property would be sufficient to pay Mr. Wassiely's debt to CYD with interest. The County's Petition for Sale was set for January 22, so the Court concluded that the delay would likely not be long. The court noted that, in the interim, CYD would receive 11 percent interest on Mr. Wassiely's debt, which is a "very good interest rate." The court set an expiration date on the preliminary injunction of April 15, 2016.²

² In light of that expiration date, this court issued a letter to the parties pursuant to Government Code section 68081, asking them to address whether this appeal is moot. In response, the parties identified proceedings in the trial court following the preliminary injunction hearing in which the trial court extended the injunction and stayed the County's sale pending this appeal. The County provided this court with copies of various pleadings and trial court orders reflecting these subsequent events in the trial court.

DISCUSSION

In deciding whether to issue a preliminary injunction a trial court typically considers two related factors: “(1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction.” (*14859 Moorpark Homeowner’s Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402 (*Moorpark*).)

While CYD presents various wide-ranging complaints about the process in the trial court, its argument can be distilled to three major contentions. First, it argues that the trial court erred in concluding that the County had demonstrated a likelihood that it would prevail on the merits, as it had asserted no claim against CYD. Second, it argues that the County did not provide a sufficient evidentiary basis on which the trial court could base its decision to issue the injunction. Third, it claims that the trial court was without authority to delay the trustee’s sale because the County had not tendered the amount of the debt that Mr. Wassiely owed. We consider each of these arguments below.

1. The Trial Court Properly Issued an Injunction in the Conservatorship Proceedings to Preserve the Value of Mr. Wassiely’s Real Property Even Though the County Had Not Filed a Claim Against CYD

CYD argues that it was “impossible to determine” whether the County was likely to prevail on the merits because it had not filed a complaint against CYD seeking any relief. When CYD made this argument below, the trial court concluded that “there is actually a probate petition, which is the equivalent of a complaint.” The court said that it had “looked at it, and it appeared to me reasonable to assume that it may prevail.”

As mentioned above, the County’s Petition for Sale was pending at the time of the preliminary injunction hearing. The Petition for Sale did not assert any claim against CYD, but rather sought court approval to sell the Property for Mr. Wassiely’s benefit.

Having received no objection, we take judicial notice of these trial court records pursuant to Evidence Code sections 452, subdivision (d) and 459, subdivision (a).

The County argues that its likelihood of success on the Petition for Sale was sufficient to satisfy the first requirement for the preliminary injunction. Because CYD raises an issue of law concerning the trial court’s authority to base its finding of a likelihood of success on the probate petition, we review the issue de novo. (*Moorpark*, *supra*, 63 Cal.App.4th at p. 1403 [“to the extent that the determination on the likelihood of a party’s success rests on an issue of pure law not presenting factual issues to be resolved at trial, we review the determination de novo”].)

a. Powers of a court supervising conservatorship proceedings

Conservatorships are governed by the Probate Code. Section 1800 describes the “intent of the Legislature” in establishing a conservatorship. The purposes include to “[p]rotect the rights of persons who are placed under conservatorship” and to “[p]rovide for the proper management and protection of the conservatee’s real and personal property.” Section 2541, subdivision (c) gives a conservator the authority to sell real property if it is for the “advantage, benefit, and best interest” of the conservatee.

The legislative scheme also contemplates active court involvement to accomplish these purposes. The terms for sale of a conservatee’s real property are “subject to the approval of the court.” (§ 2542, subd. (a).) Section 2403, subdivision (a) provides more generally that “[u]pon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate.”

A probate court is also authorized to adjudicate claims against a conservatee’s property in the course of supervising the disposition of the conservatee’s estate.³ As

³ A conservatorship may be established over a conservatee’s “person” and/or his or her “estate.” Chapter 5 of the Probate Code (beginning with section 2350) governs the powers and duties of a “conservator of the person,” and chapter 6 (beginning with section 2400) governs the powers and duties of the “conservator of the estate.” The County’s conservatorship of Mr. Wassiely is of both his person and his estate.

mentioned, section 2403, subdivision (a) provides that a “creditor or other interested person” may petition the court concerning a conservator’s actions. Section 2430, subdivision (c) also provides that a “conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.” And section 850 establishes a procedure for a “guardian, conservator, or any claimant” to “file a petition requesting that the court make an order under this part” under certain circumstances; one of those circumstances is when “the guardian or conservator or the minor or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.” (§ 850, subd. (a)(1)(C).)

Section 855 explains that an “action brought under this part may include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of a petition filed under this part.” More generally, section 800 states that “[t]he court in proceedings under this code is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court.”

In considering claims concerning a decedent’s estate under section 850, the court in *Estate of Kraus* (2010) 184 Cal.App.4th 103 (*Kraus*) noted that section 850 and its related provisions provide “ ‘a mechanism for court determination of rights in property claimed to belong to a decedent or another person.’ ” (*Id.* at p. 111, quoting *Estate of Young* (2008) 160 Cal.App.4th 62, 75.)⁴ Moreover, “ ‘[t]he probate court has general subject matter jurisdiction over the decedent’s property and as such, it is empowered to

⁴ In addition to petitions concerning conservatees and minors, section 850 provides for petitions by a personal representative or “any interested person” concerning a decedent’s estate. (§ 850, subd. (a)(2).) Cases interpreting the scope of that section with respect to decedents’ estates are therefore instructive here. In addition, section 2100 provides that “[i]f no specific provision of this division [concerning guardianships and conservatorships] is applicable, the provisions applicable to administration of estates of decedents govern so far as they are applicable to like situations.”

resolve competing claims over the title to and distribution of the decedent's property.' ” (*Kraus*, at p. 114.) The probate court “may apply general equitable principles in fashioning remedies and granting relief.” (*Ibid.*)

b. *The trial court properly exercised its authority to issue an injunction to preserve conservatorship property*

The legislative provisions and principles discussed above give a probate court broad powers to adjudicate claims against, and determine the proper disposition of, a conservatee's property. In light of these provisions, the trial court here could properly issue an order preventing the imminent trustee's sale of Mr. Wassiely's property to preserve it for later court consideration and approval of a sale that would likely obtain a better price.

In *Kraus*, the court affirmed a trial court order pursuant to section 850 requiring the return of money to a decedent's estate by a relative who had wrongfully appropriated the money for himself just before the decedent's death. (*Kraus, supra*, 184 Cal.App.4th at pp. 113–114.) The trial court ordered return of the funds “for a future determination of their proper disposition.” (*Id.* at p. 113.) The court concluded that the order requiring the funds to be given to the estate pending a determination of the claims against the funds was a proper exercise of the trial court's “statutory and equitable powers.” (*Id.* at p. 115.)

Unlike here, the trial court's order in *Kraus* involved property that had been misappropriated.⁵ Nevertheless, it illustrates the broad authority the Legislature has given courts sitting in probate to preserve a decedent's or conservatee's property to permit later determination of its appropriate distribution.

In addition to the powers directly provided to courts sitting in probate, appellate courts have also approved the broad use of injunctive powers to preserve community property for appropriate disposition in the analogous area of marital dissolutions. For

⁵ In the trial court, the County made suggestions of some wrongful conduct by CYD. In particular, the County claimed that CYD's trustee sale might have violated protections given to homeowners (Civ. Code, §§ 2920–2956). The County does not make that argument on appeal, and we therefore do not consider it.

example, in *In re Marriage of Van Hook* (1983) 147 Cal.App.3d 970 (*Van Hook*), the trial court issued preliminary injunctions prohibiting a creditor who had obtained a judgment against the wife from executing against community property of the wife and her husband. The appellate court affirmed, finding sufficient basis for the injunction in the statutes governing marital dissolutions. Of particular significance here, the court rejected the creditor's argument that injunctive relief could not be granted in the absence of a cause of action against him. The court observed that marital dissolution proceedings "are not, strictly speaking, 'actions' by which one party seeks redress for a wrong committed by another." (*Id.* at p. 986.) The court concluded that requiring a cause of action as a predicate for issuing an injunction to protect community property in a marital dissolution would be inconsistent with the authority provided by the Legislature. (*Ibid.*)

Here, as in *Van Hook*, the absence of a specific cause of action against CYD did not preclude the trial court from issuing a preliminary injunction under the authority that the statutory scheme gives probate courts to preserve a conservatee's property and determine claims against it. A conservatorship, like a marital dissolution, is not fundamentally an action "by which one party seeks redress for a wrong committed by another." (*Van Hook, supra*, 147 Cal.App.3d at p. 986.) The trial court in this case acted within its authority to preserve conservatorship property pending further proceedings even though the County had not asserted a cause of action against CYD.

Despite the absence of a specific cause of action against CYD, the relief that the County sought was clear. Although the County had not filed a petition against CYD under section 850, the pending Petition for Sale and the preliminary injunction petition itself provided adequate notice of the ultimate relief that the County was seeking. At the time the court issued the preliminary injunction, the hearing on the County's Petition for Sale was set to be heard just a few weeks later.⁶ The County sought authorization for a

⁶ CYD does not claim that it was denied an opportunity to be heard with respect to future proceedings concerning the sale of the Property, if it chose to participate. (See § 2403, subd. (a) [providing a "creditor, or other interested person" the right to petition the court concerning instructions to a conservator].)

sale that would provide CYD with the full amount of money that it was owed plus interest in the amount of 11 percent on Mr. Wassiely's debt, while maximizing the sale price on the property for Mr. Wassiely's benefit. The trial court could reasonably conclude that the County would succeed on the merits in showing that this relief was appropriate.

In essence, the trial court decided that satisfaction of CYD's claim as a creditor would occur in the probate court rather than in proceedings relating to a trustee's sale. There were some unique aspects of the conservatorship proceeding that supported the logic of considering CYD's claims in that forum. The County's conservatorship petition included a declaration from a doctor who examined Mr. Wassiely in March 2015—the same month in which Mr. Wassiely's mortgage became delinquent—and reported that Mr. Wassiely suffered from dementia. Moreover, the County argued at the preliminary injunction hearing that Mr. Wassiely might have lacked capacity even before he executed the 2010 note on which CYD sought to foreclose. The County pointed out that “the conservatee has been having issues with the housing authority and his ability to properly maintain his home, his apartment complex, since 2006, at least. So there is even further evidence that he did lack capacity even back then.”

The decision to consider CYD's claim in the context of the conservatorship proceedings was within the court's authority to determine “all aspects of the claim” concerning Mr. Wassiely's property. (*Kraus, supra*, 184 Cal.App.4th at p. 114.) It was also consistent with Code of Civil Procedure section 526, subdivision (a)(6), which provides that an injunction may issue “[w]here the restraint is necessary to prevent a multiplicity of judicial proceedings.” (See *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1455–1456 [trial court had authority under the family law statutes and Code Civ. Proc., § 526 to stay prosecution of a foreclosure action to facilitate the family court's duty to characterize and distribute community property].)

2. The Trial Court Acted Within Its Discretion In Issuing the Preliminary Injunction

a. *There was a sufficient evidentiary basis for the trial court's decision to issue the injunction*

CYD claims that the trial court's injunction was not based on "competent evidence." CYD refers to the evidentiary objections that it made below, but, other than asserting that certain statements in the County's declaration were speculative, it does not make any specific arguments in support of its objections to particular items of evidence.

An appellate brief must include argument to support each of the points that it asserts. (Cal. Rules of Court, rule 8.204(a)(1)(B).) An appellant may not simply incorporate by reference documents filed in the trial court. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656.) The failure to support a claim of error with argument in an appellant's opening brief results in a forfeiture of the argument. (*Ibid.*) Thus, CYD cannot challenge the admissibility of the evidence submitted to the trial court simply by referring to the evidentiary objections it made below.

A trial court's decision to admit or exclude evidence is reviewed for abuse of discretion. (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.) The trial court here did not expressly rule on any of CYD's objections. However, even assuming that the court considered the specific statements in the County's declaration that CYD argues were speculative, we conclude that the court acted within its discretion in doing so.

CYD claims that the statement in the County's declaration that Mr. Wassiely "lacked capacity at the time that notice [of default] was given" was speculative. Even if correct, the argument would not support reversal, as there is no indication in the record that Mr. Wassiely's lack of capacity at the time of the notice of default was material to the trial court's decision to issue the injunction. (See *Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1480 [trial court's error on an evidentiary ruling is grounds for reversal only if the appellant demonstrates that a different result would have been probable if the error had not occurred].) In any event, there was sufficient evidentiary

support for the statement. The notice of default was recorded on August 21, 2015, 10 days after the County had filed its petition to appoint a conservator for Mr. Wassiely. The petition attached a declaration from an examining doctor dated March 10, 2015, concluding that Mr. Wassiely had dementia.

CYD also claims that the County's declaration was speculative in concluding that the price that the County was likely to obtain for Mr. Wassiely's property was more than the price that would likely be paid at the trustee's sale. The County's assertion was adequately supported with facts. The County pointed out that the trustee's sale had been noticed to take place "on the northwest corner of the Avalon Post Office" on Catalina Island. On the other hand, the County "will be able to sell the property through alternate means to the foreclosure sale by utilizing the real estate services of the firm of Kennedy and Winchell. The realtor will thereafter list the property on the MLS, place a sign on the property and have brochures made and distributed to potential customers, as well as perform open houses, and then advertise the court confirmation hearing to other potential buyers/overbidders."

The County reasonably claimed that this procedure would be more likely to result in a higher sale price than "a simple auction on the post office steps on Catalina Island, without the marketing and advertising Petitioner would utilize through a well-known and established realty firm."

b. *The trial court acted within its discretion in balancing the harms.*

We review for abuse of discretion the trial court's weighing of the harm to CYD from issuing the preliminary injunction against the harm to Mr. Wassiely from a denial of the injunction. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678.) The trial court acted well within its discretion in concluding that the balance of harms favored issuing the injunction.

There was no reason from the evidence to conclude that CYD would be harmed by the injunction at all. The trial court observed that the County was likely to obtain proceeds from the sale that would be more than sufficient to cover the \$124,772.02 that Mr. Wassiely owed to CYD at the time the notice of default was recorded, even with

accumulated interest.⁷ CYD also would obtain interest at the rate of 11 percent, which the trial court noted was a “hefty interest rate in today’s market.”

The only harm that CYD identifies on appeal is the nebulous injury “to commercial lenders who are denied their contractual rights to foreclose until the probate case is slowly processed.” But the trial court did not purport to recognize a general rule that trustee’s sales may not proceed when a conservatorship proceeding is pending. Nor do we. On the facts present here, CYD does not identify any harm from delay, where the value of the property at issue is more than adequate to satisfy the debt and CYD is receiving a generous rate of interest.⁸

In contrast, the County identified reasonable grounds to conclude that Mr. Wassiely would receive less from the trustee sale than he would receive from the sale the County planned. As the trial court noted, that is money that Mr. Wassiely will need “for his care in the future.”

CYD therefore misses the mark in arguing that foreclosure always results in personal hardship to the borrower and therefore cannot provide the basis for an

⁷ The broker’s opinion that the County submitted in support of its Petition for Sale concluded that the value of Mr. Wassiely’s property was between \$1.05 million and \$1.2 million. At the injunction hearing, the County represented that it had received a cash offer of \$900,000.

⁸ The trial court proceedings that occurred after the trial court’s decision on the preliminary injunction include a successful application by CYD to stay approval of a sale of the Property that the County had apparently arranged. Although we take judicial notice of the trial court records, we do not rely upon the proceedings that occurred after the trial court’s preliminary injunction ruling in reviewing that ruling. However, we do note the apparent incongruity of CYD’s complaint about the harm of delay in this appeal and its conduct in seeking to stay the consummation of a sale of the Property that apparently would have satisfied Mr. Wassiely’s debt. According to a petition for order confirming sale of real property that the County filed on February 25, 2016, the County received a bid for the Property in the amount of \$1.12 million. That amount seems to justify the County’s prediction that it could obtain a sale price for the Property within the range of the broker’s opinion that it submitted to the trial court, which was likely more than CYD could receive from a trustee’s sale noticed to take place at the post office in Avalon.

injunction. The harm to Mr. Wassiely was not the loss of his property, which he (through the County) intends to sell anyway. Rather, the harm was the loss of the additional money that he could receive if the County conducts the sale.

The trial court's decision to consider the unique harm to Mr. Wassiely was within its equitable powers. As the court noted in *Kraus*, the superior court sitting in probate has "broad jurisdiction to fashion an equitable remedy." (*Kraus, supra*, 184 Cal.App.4th at p. 115.) In other contexts, courts have held that trustee's sales should not proceed where the lenders' security interests were not impaired and the sales would cause a hardship to the borrower that was disproportionate to the lender's legitimate security interest. As the court noted in *Baypoint Mortgage Corp. v. Crest Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 825 (*Baypoint*), "Given the drastic implications of a foreclosure, it is not surprising to find courts quite frequently granting preliminary injunctions to forestall this remedy while the court considers a case testing whether it is justified under the facts and law."

In *Baypoint*, the court affirmed a preliminary injunction prohibiting trustee's sales while the trial court considered the plaintiff's claim that defaults consisting of repeated short delays in mortgage payments did not justify foreclosure. The court concluded that "it is reasonably probable under the circumstances of this case that equity will not allow foreclosure to be used as a means of enforcing such precise compliance with this term of the loan." (*Baypoint, supra*, 168 Cal.App.3d at p. 827; see also *Bisno v. Sax* (1959) 175 Cal.App.2d 714, 730 (*Bisno*) ["basic equitable principles" demanded that the appellants be relieved of the effect of an acceleration of a loan and a trustee sale based upon a one-day delay in payment to cure a default].)

CYD cites *Jesson v. Keystone Savings & Loan Assn.* (1983) 142 Cal.App.3d 454 for the proposition that a preliminary injunction stopping a trustee's sale should not issue when the foreclosure is against investment property that is for sale because damages will be adequate. However, unlike here, that case involved various claims by the borrower against the lender concerning the terms of a construction loan, which the trial court had concluded could be adequately compensated through damages. (*Id.* at pp. 457, 460.) The

trial court also concluded that the plaintiff was not likely to succeed on those claims. (*Id.* at p. 460.) Here, in contrast, the County has not asserted (and, so far as the record reflects, does not intend to assert) claims for damages for wrongful conduct against CYD. As discussed above, the basis for the preliminary injunction here was the pending court-supervised sale along with the County's substantiated claim that it was likely to receive more money for its conservatee from that sale than from the trustee's sale.

We do not quarrel with CYD's argument that lenders must ordinarily be able to rely upon their right of sale when a borrower defaults. We do not hold that a borrower may enjoin a trustee's sale anytime the borrower claims that it could receive more money from selling the property in another forum. Rather, we hold that, under the unique circumstances present here, the trial court was justified in preliminarily enjoining the trustee's sale to allow the County to arrange a court-approved sale that would obtain the best possible price for its conservatee.⁹

In *Bisno*, the court quoted with approval Justice Cardozo's dissent in *Graf v. Hope Bldg. Corporation* (1930) 254 N.Y. 1, which explained that acceleration clauses in mortgages " 'are not a class by themselves, removed from interference by force of something peculiar in their internal constitution. In general, it is true, they will be enforced as they are written. . . . However fixed the general rule and the policy of preserving it, there may be extraordinary conditions in which the enforcement of such a clause according to the letter of the covenant will be disloyalty to the basic principles for which equity exists.' " (*Bisno, supra*, 175 Cal.App.2d at p. 728.) The same may be said for the right of sale in CYD's trust deed. The trial court below acted reasonably under its equitable powers in halting the sale under that trust deed to protect Mr. Wassiely's interests while preserving CYD's ability to obtain payment of the amounts that it is owed.

⁹ Thus, we conclude that the preliminary injunction was properly issued in the unique circumstances of this case in the context of a conservatorship proceeding. We do not hold or suggest that an injunction precluding a trustee's sale is an appropriate remedy in ordinary circumstances.

3. The Equitable Tender Requirement Did Not Preclude an Injunction Stopping the Trustee's Sale

CYD argues that the trial court could not properly delay the trustee's sale because Mr. Wassiely (or the County on his behalf) had not tendered the amount due on his debt. However, the cases that CYD cites do not apply to the situation here. The parties in those cases sought to maintain or establish title to property or obtain compensation for a wrongful foreclosure. (See *Sipe v. McKenna* (1948) 88 Cal.App.2d 1001 [quiet title action]; *Penzner v. Foster* (1959) 170 Cal.App.2d 106 [same]; *Karlsen v. American Sav. & Loan Assn.* (1971) 15 Cal.App.3d 112 (*Karlsen*) [action to set aside trustee's sale]; *FPCI RE-HAB 01 v. E & G Investments, Ltd.* (1989) 207 Cal.App.3d 1018 [action for alleged wrongful conduct in conducting a foreclosure sale]; *Gavina v. Smith* (1944) 25 Cal.2d 501 [quiet title]; *McElroy v. Chase Manhattan Mortgage Corp.* (2005) 134 Cal.App.4th 388 [quiet title and fraudulent foreclosure action].) The courts concluded that equity required the parties to meet their own obligations to their creditors before they could seek the court's assistance in asserting their claimed property rights. They did not involve an order that simply permitted a borrower to meet its loan obligations by selling its property through other means.

Moreover, as CYD's cited authority explains, the reason for the tender requirement is that equity will not intervene to relieve a debtor from default where there is no demonstration that the debtor is willing and able to meet its obligations. " " " 'Equity will not interpose its remedial power in the accomplishment of what seemingly would be nothing but an idly and expensively futile act.' " " " (*Karlsen, supra*, 15 Cal.App.3d at p. 118, italics omitted.) For example, in *Karlsen*, the borrower sought to set aside a trustee's sale. The borrower argued that he had appropriately tendered the amount of his indebtedness by requesting that the lender reconvey a portion of the property so that the borrower could sell it to a third party and, together with money from a refinancing that he hoped to arrange, could use the proceeds of the sale to pay off the debt. The court concluded that these speculative contingencies did not amount to a

tender under the principle that “an offer of performance is of no effect if the person making it is not able to perform.” (*Ibid.*, citing Civ. Code, § 1495.)

Here, in contrast, there was ample evidence that the County would be able to satisfy Mr. Wassiely’s debt by selling his property. That prospect was sufficient to meet the equitable requirement of showing that Mr. Wassiely was willing and able to meet his obligations before invoking the assistance of the court.

DISPOSITION

The trial court’s order issuing the preliminary injunction is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P.J.

JOHNSON, J.