Filed 10/30/12 Gnanadev v. Kagel CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROSARIA A. GNANADEV, Plaintiff and Respondent, v. VALERIE KAGEL, Defendant and Appellant.	B234672 (Los Angeles County Super. Ct. No. BC423562)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

Valerie Kagel, in pro. per., for Defendant and Appellant.

Rosen & Associates, Robert C. Rosen, John B. Wallace, David Paul Bleistein and Jordan L. Rock for Plaintiff and Respondent.

This appeal arises from an action concerning the sale of real property by appellant Valerie Kagel to respondent Rosaria Gnanadev. Because appellant designated an incomplete record on appeal and provides no pertinent facts in her opening brief, we glean the facts as best we can from the trial court's docket and appellant's answer to the complaint below.[1]

In 2009, appellant agreed to sell a parcel of real property to respondent for $300,000. Because appellant owed $778,000 on the property, the agreement contained a "short sale addendum" providing that the sale was contingent on approval by the lenders and stating there was no assurance such approval would be obtained. Appellant refused to complete the sale.

On October 9, 2009, respondent sued for breach of the purchase agreement. In her answer, appellant alleged she had been unable to complete the transaction because she could not obtain the lender's permission for the sale.

After several discovery disputes, respondent moved separately for summary judgment and terminating sanctions. Appellant opposed neither motion. The record does not indicate which motion was granted, but on August 31, 2010 the trial court entered judgment in favor of respondent. On October 15, 2010, the trial court ordered the clerk of the superior court to execute a quitclaim deed conveying appellant's interest in the property to respondent. On July 14, 2011, the court ordered that any persons on the property who refused to leave could be forcibly removed by police. On July 15, 2011, the court entered an order approving a negotiated settlement with the lenders.

On August 8, 2011, appellant filed a notice of appeal from the "Order to Execution, Execution by Court of Quitclaim Deed." Appellant designated the following record on appeal: (1) her answer to the complaint; (2) the purchase agreement; (3) the July 14, 2011 order that persons on the property could be forcibly removed; and (4) the July 15, 2011 order approving a negotiated settlement with the lenders. Appellant did not

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[1] James Kagel, appellant's husband, was also party to the litigation below and this appeal. However, on August 12, 2011, he filed an abandonment of appeal.

designate the complaint, the order granting either summary judgment or terminating sanctions, or the order directing the court clerk to execute a quitclaim deed on her behalf.

DISCUSSION

In her brief, appellant identifies the following as the issue on appeal: "Whether the Court Erred in Ordering the Clerk to Execute a Quitclaim Deed summarily in lieu [sic] adjudicating triable issues." Giving appellant's brief an extremely liberal reading, it appears she argues the trial court erred in granting summary judgment because triable issues existed as to the validity of the purchase agreement. Specifically, she argues that because the agreement was contingent upon the approval of a lender for a short sale, which approval could not be obtained, the agreement was "voidable and invalid." Appellant cites no apposite authority supporting the argument.

It is a fundamental principle of appellate practice that an appellant "must affirmatively show error by an adequate record. . . . Error is never presumed. It is incumbent on the plaintiff to make it affirmatively appear that error was committed by the trial court." *(Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712, citations omitted.)

It is unclear whether appellant challenges the order granting summary judgment or the order directing the court clerk to execute a quitclaim deed, or both. At any rate, we cannot review her challenge because neither order is in the record on appeal. Inasmuch as appellant has failed to meet her burden of affirmatively showing error, we must presume the trial court's rulings and orders were correct.

Moreover, because appellant failed to include argument and citation to authority in her brief, we may treat her contentions as waived. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.)

DISPOSITION

The judgment is affirmed. Respondent to recover her costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting, P. J.

JOHNSON, J.