Filed 1/28/16 Han Realty Corp. v. City Investment Capital, Trustee CA2/2



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| HAN REALTY CORP. et al.,<br><br>Plaintiffs and Appellants,<br><br>v.<br><br>CITY INVESTMENT CAPITAL, as Trustee, etc.,<br><br>Defendant and Respondent. | B259762<br><br>(Los Angeles County Super. Ct. Nos. LC096820 & LC098101) |

APPEAL from an order of the Superior Court of Los Angeles County. Josh M. Fredricks, Judge Pro Tem. Affirmed with directions.

Nick A. Alden, for Plaintiffs and Appellants.

Martin & McCormick, John D. Martin and Kathy J. McCormick, for Defendant and Respondent.

* * *

A judge issues a preliminary injunction based on the plaintiff's likelihood of prevailing on certain legal claims; a second judge sustains a demurrer without leave to amend on those same claims contained in the plaintiff's (modified) third amended complaint; a third judge vacates the injunction due to the changed circumstance of the dismissal of the claims that supported the injunction. Did the third judge err in dissolving the injunction? No, although that judge erred in making its dissolution order nunc pro tunc. We accordingly affirm with instructions to modify the dissolution order.

## FACTS AND PROCEDURAL BACKGROUND

This lawsuit deals with the ownership of a single-family residence in Encino, California (the property).

### I. Chain of Title

In 2002, plaintiffs and appellants David and Victoria Westley (the Westleys) purchased the property with a loan secured by a deed of trust. In 2008, the Westleys defaulted on the loan and the bank initiated foreclosure proceedings. While those proceedings were ongoing, the Westleys in May 2009 sold the property to Zhangiang Han (Mr. Han), who paid off the Westley's outstanding loan and financed his purchase with a $1,040,000 loan from Bank of America secured by a deed of trust on the property. Within a month, Mr. Han transferred title to the property to plaintiff and appellant Han Realty as a "bonafide gift." Han Realty, despite what its name suggests, was formed by the Westleys days before they sold the property; to this day, Han Realty is controlled by the Westleys. Although the terms of the deed of trust provide that Mr. Han's "rights and benefits" under the deed of trust may be transferred, such a transfer requires the bank's written consent, and that consent was never sought or granted. The net effect of these various transactions was to leave Westleys (through Han Realty) with title to the property but to swap the defaulted mortgage in the Westleys' name for a new mortgage in Mr. Han's name.

### II. Foreclosure Proceedings and Sale of Property

In March 2011, Mr. Han defaulted on the Bank of America loan on the property. ReconTrust Company (ReconTrust), who was the trustee on the deed of trust, initiated

foreclosure proceedings and ultimately scheduled a trustee's sale of the property for April 5, 2012.

Two days before the scheduled sale, Han Realty sued Bank of America and ReconTrust for (1) declaratory relief; (2) wrongful foreclosure; and (3) unfair business practices. Han Realty simultaneously filed an ex parte application for a temporary restraining order (TRO) to stop the foreclosure sale. All of Han Realty's claims and its ex parte application were based on Bank of America's failure to have a preforeclosure discussion with the Westleys regarding alternatives to foreclosure as required by Civil Code section 2923.5. With its ex parte application, Han Realty included copies of the grant deed, the notice of default and the notice of trustee's sale; Han Realty did not include a copy of the deed of trust itself or address its requirement that Han Realty obtain Bank of America's written consent before asserting any rights arising from the deed of trust. The very same day, and without any opposition, Judge James A. Kaddo (the first judge) granted the ex parte application, issued a TRO enjoining any sale of the property and issued an order to show cause why a preliminary injunction should not issue. The same day, Han Realty served Bank of America with these orders by giving a copy of them to one of its "teller operations specialists" and served ReconTrust through one of its litigation intake specialists.

The foreclosure sale went forward as originally scheduled on April 5, 2012. Defendant-respondent Woodley Trust #4950, City Investment Capital, Trustee (Woodley Trust) bought the property. Han Realty filed and served a lis pendens on the property the same day as the sale.

Less than two weeks later, on April 17, 2012, the first judge issued a preliminary injunction enjoining any foreclosure sale and striking the notice of default and notice of trustee's sale. ReconTrust knew of the TRO by April 13, 2012, but neither ReconTrust nor Bank of America opposed the preliminary injunction or appeared at the April 17 hearing.

## III. Eviction of the Westleys

Eight days after the foreclosure sale, Woodley Trust learned that the TRO had been in place at the time of the sale. However, Woodley Trust was told that Bank of America had advised ReconTrust "not to rescind the sale and to move forward with normal post sale servicing activity." Woodley Trust recorded the trustee's deed of sale on May 3, 2012, posted a notice of possession on the property on May 10, 2012, and filed an unlawful detainer action against Mr. Han and all occupants of the property on May 14, 2012. Han Realty appeared as a defendant in the action. The action went to trial in August 2012, and resulted in an August 14, 2012, order granting Woodley Trust possession of the property.

Approximately a week later, on August 20, 2012, ReconTrust recorded a notice of rescission of trustee's deed upon sale. During the unlawful detainer trial, Woodley Trust's attorney was unaware that Bank of America or ReconTrust had taken any action to rescind the foreclosure sale.

## IV. Sustaining of Demurrer without Leave To Amend

By 2013, the operative pleading in Han Realty's case was the (modified) third amended complaint.[1] This complaint added the Westleys as plaintiffs, and Woodley Trust as a defendant; it also alleged a total of seven claims: (1) declaratory relief (against all defendants); (2) violation of statutory duties for not discussing options before foreclosure, not properly posting notice of the foreclosure sale on the property, and holding the sale in violation of a court order, as barred by Civil Code sections 2923.5,

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[1] Han Realty filed a first amended complaint in July 2012 and, before the trial court ruled on a demurrer to that complaint, a second amended complaint in October 2012. The trial court sustained a demurrer to the second amended complaint in April 2013, a month after Han Realty filed its third amended complaint. Han Realty thereafter filed its (modified) third amended complaint. The (modified) third amended complaint is substantively identical to an October 2012 cross-complaint that Han Realty and the Westleys filed in response to an action filed by Woodley Trust in August 2012 against Bank of America, ReconTrust and Han Realty involving the foreclosure sale.

2924f, and 2924g (against all defendants); (3) conspiracy to wrongfully foreclose (against all defendants); (4) wrongful eviction (against all defendants); (5) breach of the implied covenant of good faith and fair dealing (against Bank of America and ReconTrust); (6) unfair business practices (against all defendants); and (7) quasi-contract (against Bank of America and ReconTrust).

Bank of America and ReconTrust demurred and Woodley Trust moved for judgment on the pleadings. In October 2013, Judge Maria Stratton (the second judge) sustained the demurrer without leave to amend (as to Bank of America and ReconTrust) and granted judgment on the pleadings (as to Woodley Trust) on five of the claims: (1) declaratory relief; (2) violation of statutory duties; (3) conspiracy to wrongfully foreclose; (4) breach of the implied covenant of good faith and fair dealing; and (5) quasi contract. The court reasoned that these claims are "all based on the deed of trust"; that the deed of trust on its face names Mr. Han as the trustor and plaintiffs never "allege[] that they are parties to the deed of trust"; and that plaintiffs consequently "lack standing to bring these causes of action." The court overruled the demurrer as to the remaining two claims for wrongful eviction and unfair business practices.[2]

## V. Dissolution of Preliminary Injunction

In August 2014, Woodley Trust filed a motion to dissolve the April 2012 preliminary injunction nunc pro tunc under Code of Civil Procedure section 533.[3] The motion argued that two changed circumstances warranted dissolution of the injunction: (1) the second judge's sustaining of the demurrer as to "all causes of action challenging

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[2] The second judge also denied Han Realty's motion for judgment on the pleadings to the operative pleading in Woodley Trust's action. Han Realty and the Westleys sought writs of mandate to overturn that denial as well as the sustaining of the demurrer against five of their causes of action. We denied both writs. (No. B252827 & B247608.)

[3] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

the foreclosure sale"; and (2) the inadequacy of Han Realty's compliance with the statutory notice provisions regarding the TRO. Judge Pro Tem Josh M. Fredericks (the third judge) granted the motion to dissolve.[4]

## VI. This Appeal

Han Realty and the Westleys (collectively, the plaintiffs) timely appeal the order dissolving the preliminary injunction.

## DISCUSSION

The sole issue in this appeal is whether the third judge erred in dissolving the preliminary injunction. In pertinent part, section 533 empowers a trial court to "modify or dissolve an injunction . . . upon a showing that there has been a material change in the facts upon which the injunction . . . was granted, that the law upon which the injunction . . . was granted has changed, or that the ends of justice would be served by the . . . dissolution of the injunction . . ." (§ 533.) We review a court's dissolution order under this section for an abuse of discretion (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505), but review any antecedent legal questions de novo and any factual findings for substantial evidence (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 739).

Plaintiffs raise three categories of challenges to the trial court's dissolution order. First, they argue that several threshold procedural issues prevent Woodley Trust from bringing a motion to dissolve. Second, plaintiffs contend that the trial court erred on the merits because there were no changed circumstances and because several equitable

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[4] Judge Russel Kussman (the fourth judge) granted summary adjudication to Bank of America and ReconTrust on Han Realty and the Westleys' remaining two claims. The propriety of that order is before us in a separate appeal. (See No. B262817.)

The fourth judge also held a trial on Woodley Trust's quiet title and declaratory relief claims in September 2015. He issued a ruling in January 2016, of which we take judicial notice. (Evid. Code, §§ 459 & 452.) The judge concluded that title should be vested in Han Realty because Bank of America executed and recorded a notice of rescission, and that the foreclosure sale was otherwise invalid because conducted in violation of the TRO.

defenses preclude relief. Lastly, plaintiffs assert that the trial court erred in making its dissolution order nunc pro tunc. For the reasons discussed below, we disagree with plaintiffs' first two arguments, but agree with their final argument.

## I. Threshold Procedural Issues

Plaintiffs challenge Woodley Trust's right to bring the motion to dissolve the preliminary injunction on five grounds. None of them has merit.

First, plaintiffs assert that Woodley Trust lacks standing to seek dissolution of the injunction because the injunction enjoins Bank of America and ReconTrust, not Woodley Trust. We reject this argument. To begin, a person has standing to oppose an injunction as long as "enforcement" of that injunction "affect[s]" that person; the person need not also be an enjoined party. (*New Tech Developments v. Bank of Nova Scotia* (1987) 191 Cal.App.3d 1065, 1068, fn. 1 (*New Tech Developments*).) The validity of the TRO enjoining the foreclosure sale impacts Woodley Trust as the buyer at that sale. A trial court's power to dissolve an injunction is in any event not dependent upon a motion made by a party with standing because a court has the authority "to modify, amend or dissolve an injunction" on its own motion. (*Board of Medical Examiners v. Terminal-Hudson Electronics, Inc.* (1977) 73 Cal.App.3d 376, 384.)

Second, plaintiffs contend that Woodley Trust's motion is, in effect, a motion for reconsideration under section 1008, which is now untimely. Plaintiff is wrong. A motion for reconsideration, like a motion under section 533, may be "based upon new or different facts, circumstances, or law"; a section 1008 motion is timely only if made within 10 days of the order sought to be reconsidered. (§ 1008.) However, section 533 applies specifically to the dissolution of injunctions and thus, to the extent there is any conflict, controls over the more general reconsideration provisions in section 1008. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960 ["'specific provisions take precedence over more general ones [citation]'"]; *In re Marriage of Hobdy* (2004) 123 Cal.App.4th 360, 366-367 [more specific family code provision regarding reconsideration of attorney's fees orders controls over more general section 1008].) Otherwise, an injunction would be immune from dissolution ten days after its issuance, a

result that would be absurd in light of longstanding precedent recognizing that injunctions are of a "preventative nature [that] . . . [are] always subject to modification . . . [when] continued enforcement in the future in its present form would effect an injustice. [Citation.]" (*Woods v. Corsey* (1948) 89 Cal.App.2d 105, 113; *Branker v. Superior Court* (1958) 165 Cal.App.2d 816, 818-819; see generally *California Charter Schools Assn. v. Los Angeles Unified School Dist.* (2015) 60 Cal.4th 1221, 1237 [statutes should be construed to avoid "absurd results"].)

Third, plaintiffs argue that allowing the third judge to consider Woodley Trust's motion for dissolution of an injunction originally entered by the first judge runs afoul of the so-called "one judge rule." Again, we disagree. It is well settled that "one superior court judge, no matter how well intended, [cannot] . . . nullify a duly made, erroneous ruling of another superior court judge" because such power would "place[] the second judge in the role of a one-judge appellate court" (*In re Alberto* (2002) 102 Cal.App.4th 421, 426-427), thereby violating our Constitution's requirement of three-judge appellate review (*People v. Konow* (2004) 32 Cal.4th 995, 1018). It is equally well settled, however, that this rule does not apply "when a statute expressly authorizes a later judge to reconsider the ruling, usually on the basis of new circumstances." (*People v. Barros* (2012) 209 Cal.App.4th 1581, 1598.) Section 533 is just such a statute, and thus does not offend the one-judge rule. (See *In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1577-1578 [second judge has power to modify sealing orders issued by first judge following reassignment].)

Fourth, plaintiffs argue that Woodley Trust's motion is barred by res judicata because Bank of America and ReconTrust made two prior, unsuccessful motions to dissolve the injunction and never appealed the denial of those motions. The first motion to dissolve the injunction rested on a different factual basis than Woodley Trust's motion before us now because it alleged that Han Realty was not a corporation in good standing and that Han Realty's second amended complaint lacked merit. To be sure, the second motion to dissolve raised plaintiff's standing to assert rights under the deed of trust, which is the rationale underlying the second judge's sustaining of the demurrer to the

(modified) third amended complaint. However, the judge denied the second motion to dissolve *without prejudice* and at the same time sustained the demurrer to the second amended complaint *with leave to amend*. The rulings on the prior motions to dissolve thus did not purport to be final; principles of res judicata simply do not apply. (See *George Arakelian Farms v. Agricultural Labor Relations Board* (1989) 49 Cal.3d 1279, 1290 ["the rules of res judicata do not apply" where "finality is lacking"].) And although Bank of America or ReconTrust could have appealed the denial of their motions (§ 904.1, subd. (a)(6) [authorizing appeal of "an order . . . refusing to . . . dissolve an injunction"]), their failure to do so did not make the denials any more final in this case. That is because the trial court's denial, without prejudice, of the second motion to dismiss—the only one raising the same factual basis at issue here—clearly contemplated further pleadings and further motions to dissolve.[5] Although a party's failure to appeal a judgment can render that judgment final and conclusive for purposes of res judicata (*Proctor v. Vishay Intertechnology, Inc.* (2013) 213 Cal.App.4th 1258, 1270), it makes no sense to apply that principle to an order that explicitly invites parties to revisit that issue in the future.

Lastly, plaintiffs assert that Woodley Trust's motion was procedurally defective because it lacked a supporting declaration. No such declaration is required. (Cal. Rules of Court, rule 3.112(a) & (b) [declaration is optional].) More importantly, Woodley Trust supplied the factual basis for its motion through its request that the court take judicial notice of the second judge's ruling on demurrer; this was an appropriate use of judicial notice. (Evid. Code, § 452.)

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**5** What is more, the court's decision to allow the injunction to remain in force pending further amendment was proper. (*Handyspot Co. of Northern California v. Buegelstein* (1954) 128 Cal.App.2d 191, 195 [injunction may be continued after sustaining of a demurrer with leave to amend because of possibility of viable amendment to pleading].)

## II. The Merits

### *A. Changed circumstances*

As the text of section 533 makes plain, a trial court may dissolve an injunction "if it finds a change in the facts *or* law *or* the ends of justice would be served by" dissolution. (*New Tech Developments, supra,* 191 Cal.App.3d at p. 1072; § 533.) The third judge dissolved the injunction in this case based on the second judge's finding that plaintiffs had no rights under the deed of trust in Mr. Han's name and after the second judge's resulting dismissal, on demurrer, of all plaintiff's deed-of-trust-based claims due to lack of standing. Because the first judge issued the preliminary injunction to protect plaintiff's rights under that same deed of trust, the second judge's ruling undermined the factual and legal premise of the injunction. The pendency of plaintiffs' appeal of the second judge's ruling is of no moment, as that ruling remains in effect until the appeal is resolved.[6] The third judge accordingly did not abuse his discretion in concluding that Woodley Trust was entitled to relief under section 533 due to a change in the facts, a change in the law, and/or because continuing an injunction with an invalidated premise would not serve the "ends of justice."[7]

In response, plaintiffs contend that there was no *change* in circumstances because the trial court knew from the very beginning that Mr. Han was the trustor on the deed of trust because that fact was plainly set forth in the notice of default and notice of trustee's

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[6] We express no opinion on the merits of that appeal, which is separately pending before us now. (See No. B262817.)

[7] We also note that the preliminary injunction rested on an alleged violation of Civil Code section 2923.5, but that section at the time of the injunction's issuance applied only to "mortgages or deeds of trust recorded from January 1, 2003, to December 31, 2007, inclusive." (*Stebley v. Litton Loan Servicing,* LLP (2011) 202 Cal.App.4th 522, 526, fn. 3, citing former Civ. Code, § 2923.5, subd. (i).) Because Mr. Han's deed of trust was recorded in July 2009, even a party with proper standing could not have asserted a violation of former Civil Code section 2923.5 as to Mr. Han's deed of trust. (Accord, *Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282, fn. 17 [prior version of section 2923.5 did not apply to deed of trust recorded in 2008].)

sale attached to plaintiff's initial request for a TRO. But what the trial court did *not* know—because plaintiffs did not include a copy of the deed of trust itself—was that (1) the deed of trust required written consent from the Bank before plaintiffs could assume Mr. Han's rights under the deed of trust; and (2) plaintiffs had not obtained that consent. (See *Green v. Central Mortgage Company* (N.D. Cal., Sept. 2, 2015, 14-cv-04281-LB) 2015 WL 5157479, at *5 ["a successor in interest does not assume a borrower's obligations simply upon obtaining title to property when the deed of trust requires an assumption be made in writing and approved by the lender"], collecting cases.) Indeed, it was not until April 2013 that the trial court first took judicial notice of the deed of trust in the course of ruling on the demurrer to plaintiff's second amended complaint; the court sustained that demurrer with leave to amend, and it was plaintiffs' subsequent inability to plead standing under the deed of trust that lead to the dismissal of all deed-of-trust-based claims in the (modified) third amended complaint.

***B. Equitable defenses***

Plaintiffs further argue that, even if section 533's requirements are met, Woodley Trust should be denied relief under three equitable doctrines—unclean hands, disentitlement, and laches. We review the applicability of these doctrines for an abuse of discretion (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1109 [unclean hands]; *In re L.J.* (2013) 216 Cal.App.4th 1125, 1136 (*L.J.*) [disentitlement is a "discretionary tool"]; *Straley v. Gamble* (2013) 217 Cal.App.4th 533, 537 [laches]), and any preliminary factual issues for substantial evidence (*East West Bank v. Rio School Dist.* (2015) 235 Cal.App.4th 742, 751 (*East West Bank*) [noting that applicability of unclean hands can turn on "question[s] of fact"]). We conclude there was no abuse.

**1. Unclean hands**

"'The defense of unclean hands arises from the maxim: "He who comes into Equity must come with clean hands."'" (*East West Bank, supra,* 235 Cal.App.4th at p. 751, quoting *Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1059 (*Blain*).) Whether the doctrine bars relief in any particular case "depends on [(1)] analogous case law, [(2)] the nature of the misconduct, and [(3)] the relationship of the misconduct to the

claimed injuries." (*Blain*, at p. 1060.) The required nexus is missing in this case. Although the facts seem to suggest that Bank of America and ReconTrust became aware of the TRO and preliminary injunction after the foreclosure sale and did not take action to rescind the sale until months later, the pertinent question before us is whether *Woodley Trust* had "unclean hands." As noted above, Bank of America and ReconTrust informed Woodley Trust's counsel that they did not view the TRO as necessitating rescission of the foreclosure sale and Woodley Trust's counsel stated that she was unaware that either entity had changed its position and taken any action to rescind the sale until *after* Woodley Trust's unlawful detainer action had gone to judgment. These facts constitute substantial evidence that supports a finding that Woodley Trust did not act with unclean hands.[8]

**2. Disentitlement**

Under the disentitlement doctrine, "[a] party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts . . . ." (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277; accord, *L.J.*, *supra*, 216 Cal.App.4th at p. 1136.) Because Woodley Trust was not served with the TRO or injunction barring the foreclosure sale and because, as recounted above, substantial evidence supports a finding that Woodley Trust did not knowingly disregard any effort by Bank of America or ReconTrust to rescind the foreclosure sale while prosecuting its unlawful detainer action, the disentitlement doctrine does not as a matter of law bar Woodley Trust's motion to dissolve the injunction.

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[8] We recognize that additional evidence was adduced at the September 2015 trial (see *ante*, p. 6, fn. 4) bearing on Woodley Trust's knowledge of Bank of America and ReconTrust's plans to seek rescission of the sale. However, that evidence is not part of the record in this appeal and we may not consider it.

### 3. Laches

"Laches is based on the principle that those who neglect their rights may be barred, in equity, from obtaining relief." (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 248.) The doctrine requires proof of (1) "unreasonable delay," and (2) either "acquiescence in the matter at issue or prejudice to the defendant resulting from the delay." (*Ibid.*) Plaintiffs argue that laches should bar Woodley Trust's request to dissolve the injunction because it waited too long after the second judge dismissed plaintiffs' claims to seek dissolution. We need not decide whether Woodley Trust's nearly 10-month delay constitutes "unreasonable delay" because plaintiffs have not demonstrated how they were prejudiced by that delay.

## III. Scope of Dissolution Order

Plaintiffs lastly argue that the trial court erred in dissolving the preliminary injunction nunc pro tunc—that is, in effectively backdating the dissolution order to April 17, 2012, so that the injunction is deemed to have been invalid from the outset. This was error.

"'All courts have the inherent power to enter orders *nunc pro tunc* . . . .'" (*Martin v. Martin* (1970) 2 Cal.3d 752, 760-761; *Norton v. Pomona* (1935) 5 Cal.2d 54, 62 ["'[t]he power to enter judgments *nunc pro tunc* is inherent in the courts'"].) However, "'[t]he function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made.'" (*APRI Ins. Co. S.A. v. Superior Court* (1999) 76 Cal.App.4th 176, 185 (*APRI*); *Mather v. Mather* (1943) 22 Cal.2d 713, 719 [noting that nunc pro tunc orders may issue "to preserv[e] . . . the legitimate fruits of the [prior] litigation"].) Thus, courts may enter nunc pro tunc orders to correct "clerical errors," but may not enter them to fix "judicial errors." (*APRI*, at p. 185.) "The distinction between a clerical error and a judicial error does not depend so much on the person making it as it does on whether it was the deliberate result of judicial reasoning and determination." (*Lee v. Offenberg* (1969) 275 Cal.App.2d 575, 582.)

In this case, Woodley Trust sought a nunc pro tunc dissolution of the preliminary injunction on the ground that the first judge who entered it was misled by plaintiffs' failure to include the deed of trust in its ex parte application and their resulting concealment of their lack of standing to assert rights under that deed. Put differently, Woodley Trust concedes that the record correctly reflects that the first judge entered the preliminary injunction; its complaint is that the judge did so based on a misapprehension of the true facts. But such misapprehension is a judicial error, not a clerical error. "[C]lerical errors do not include those made by the court because of its failure to correctly interpret the law or apply the facts. [Citations.]" (*Estate of Eckstrom* (1960) 54 Cal.2d 540, 545.) Thus, "it is not proper to amend an order nunc pro tunc to correct judicial inadvertence, omission, oversight or error, or to show what the court might or should have done as distinguished from what it actually did." (*Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890-892.)

Woodley Trust further argues that our resolution of this question is academic because the second judge, in dismissing all of plaintiffs' deed-of-trust-based claims, implicitly found that the preliminary injunction was void *ab initio*. We are unpersuaded. The second judge's conclusion that plaintiffs are unable to plead claims grounded in the deed of trust is *not* the same as a finding that the preliminary injunction was void all along. A TRO or injunction may be issued on a basis that is later determined to be wrong, but until that time, the TRO or injunction "'"must be obeyed . . . however erroneous the action of the court may [later] be [found to be] . . . ."'" (*Wanke, Industrial, Commercial, Residential, Inc. v. Keck* (2012) 209 Cal.App.4th 1151, 1172-1173, italics omitted; *In re Application of Brambini* (1923) 192 Cal. 19, 28 ["[a]n injunction . . . erroneously issued cannot be disobeyed with impunity"].) We decline to infer from the

second judge's silence an order of retroactive invalidation that is squarely at odds with settled law.[9]

**DISPOSITION**

We affirm the order dissolving the preliminary injunction issued on April 17, 2012, but strike the language declaring it to be nunc pro tunc. Each party to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P.J.
BOREN

_____, J.
ASHMANN-GERST

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**9** The fourth judge, in his January 2016 order, concluded that the order dissolving the preliminary injunction had some nunc pro tunc effect—namely, back to the date of the second judge's order sustaining the demurrer to Han Realty's (modified) third amended complaint. Although we note that this conclusion is different from ours, we also observe that both we and the fourth judge agree that a facially valid injunction order *was* in effect at the time of the foreclosure sale. We express no opinion at this time on the correctness of the fourth judge's order.