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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AFSHAN MULTANI, et al., Plaintiffs and Appellants, v. APB PROPERTIES, Defendant and Respondent.	B260610, B265172 (Los Angeles County Super. Ct. No. GC044440)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Laura A. Matz, Judge. Judgment affirmed; order awarding attorneys' fees reversed.

Law office of Gary Kurtz and Gary Kurtz for Plaintiffs and Appellants.

Ross Wersching & Wolcott, Alan G. Ross and Daniel J. Lee for Defendant and Respondent.

The Castle Green Homeowners Association notified Afshan and Rahim Multani they were delinquent in paying their monthly condominium assessment fees. After the Multanis disputed the debt, the Association conducted a nonjudicial foreclosure and sold the property to Pro Value Properties. The Multanis sued the Association and Pro Value Properties seeking to set aside the sale based on irregularities in the foreclosure procedures. The trial court granted summary judgment in favor of the Association, and judgment on the pleadings in favor of Pro Value Properties. While the Multanis' appeal of those judgments was pending before this court, Pro Value Properties transferred its interest in the property to APB Properties.

In *Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428 (*Multani I*), we reversed the judgment in favor of the Association. We affirmed, however, the judgment in favor of Pro Value Properties. Upon remand to the trial court, the Multanis filed a "Doe amendment" naming APB Properties as a defendant. APB filed a motion for summary judgment arguing that the Multanis' claims, which sought to cancel the deed APB had acquired from PVP, were precluded under principles of res judicata. The court granted the motion and entered judgment in APB's favor. APB then filed a motion for attorneys' fees which the court granted, ordering the Multanis to pay approximately $70,000 in fees.

The Multanis filed separate appeals of the judgment in favor of APB (Case No. B260610), and the postjudgment order awarding APB attorneys' fees (Case No. B265172). We affirm the judgment in favor of APB, but reverse the order awarding attorneys' fees.

FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of the Multanis' Complaint

1. Plaintiffs' factual allegations

In January of 2010, plaintiffs Afshan and Rahim Multani filed a complaint against the Castle Green Homeowners Association (the Association) and numerous other parties arising from a foreclosure of the Multanis' condominium unit. The complaint alleged

that, beginning in 2005, the Multanis became involved in a long-running dispute with the Association and its agents regarding unpaid homeowner assessment fees. In February of 2008, the Association recorded a notice of "delinquent assessment lien" against the Multanis' property. Approximately six months later, the Association and its trustee, Witkin & Neal, filed a notice announcing a nonjudicial foreclosure sale was scheduled for January 27, 2009. After several postponements, the Association sold the property to Pro Value Properties (PVP) at a foreclosure sale held on July 23, 2009. (See *Multani I, supra*, 215 Cal.App.4th at pp. 1434-1436.[1])

According to the complaint, the Association had failed to inform the Multanis when the foreclosure was scheduled to occur, and also failed to notify them that the sale had been completed. The Multanis alleged they first learned about the foreclosure sale after receiving an unlawful detainer complaint that indicated a trustee deed of sale had been recorded on October 24, 2009. Shortly after the Multanis received the unlawful detainer complaint, PVP changed the locks on their condominium unit and threatened to have the Multanis arrested for trespass. Rather than risk arrest, the Multanis chose to relinquish possession of their unit and initiate a lawsuit against the Association, several of its agents (collectively the Association defendants) and PVP. (See *Multani I, supra*, 215 Cal.App.4th at pp. 1436-1437.)

2. Summary of plaintiffs' claims

The Multanis' complaint alleged several claims seeking to set aside the foreclosure sale, including quiet title (alleged against all defendants), cancellation of deed (alleged against PVP), wrongful foreclosure (alleged against the Association defendants), rescission (alleged against all defendants) and declaratory relief (alleged against all defendants). The claims asserted the Association defendants had failed to comply with various statutory requirements that govern nonjudicial foreclosures predicated on

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1 Our opinion in *Multani I, supra*, 214 Cal.App.4th 1428, provides a more thorough summary of the allegations in the plaintiffs' complaint and the trial court proceedings that occurred prior to the events that gave rise to this appeal.

delinquent homeowner association assessment fees. (See Civil Code, §§ 1367 et seq.; 2924 et seq.)[2] According to the complaint, these statutory violations had resulted in the wrongful termination of the Multanis' interest in their property, and rendered PVP's title and deed void. (See *Multani I, supra*, 215 Cal.App.4th at p. 1437.)

The complaint also alleged numerous tort claims based on conduct the defendants had engaged in during and after the foreclosure proceedings, which included: (1) intentionally "'impos[ing] unwarranted dues and other charges'" on the Multanis' account (*Multani I, supra*, 215 Cal.App.4th at p. 1437); (2) "'conspir[ing] to conduct a [nonjudicial foreclosure] sale without any notice to prevent plaintiffs from opposing such sale'" (*ibid.*); (3) interfering with the Multanis' relationships with prospective tenants; and (4) using threats of arrest "in furtherance of a scheme to take [plaintiffs'] property." The complaint also alleged that defendants' conduct violated numerous statues, including the Unruh Civil Rights Act (§ 51 et seq.), the Fair Debt Collection Practices Act (§ 1788 et seq.), the federal Racketeer Influence and Corrupt Organization Act (18 U.S.C § 1961 et seq.) and California's unfair competition law. (Bus. & Prof. Code, § 17200 et seq.)

3. The trial court's judgments in favor of defendants

In June of 2011, the Association defendants filed a motion for summary judgment or, alternatively, summary adjudication arguing that: (1) the evidence demonstrated they had substantially complied with all statutory requirements governing the nonjudicial foreclosure process; and (2) the Multanis' remaining claims were predicated on the processing of a foreclosure, which was privileged activity under section 47, subdivision (b). (See *Multani I, supra*, 215 Cal.App.4th at pp. 1437-1438.) On August 23, 2011, the trial court granted the motion and subsequently entered judgments in favor of all the Association defendants.[3] After the court had ruled on the motion for summary judgment,

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[2] Unless otherwise noted, all further statutory citations are to the Civil Code.

[3] The trial court's August 23 order granted summary judgment in favor of two of the Association defendants: Witkin & Neal and LB Property Management. The order granted the remaining Association defendants (including the Association) summary

PVP filed a motion for judgment on the pleadings arguing that the court's rulings in favor of the Association defendants effectively precluded plaintiffs' derivative claims against PVP, which sought to cancel the title PVP had acquired at the foreclosure sale. The court granted PVP's motion and entered judgment in its favor. (See *Multani I*, *supra*, 215 Cal.App.4th at pp. 1442-1443.)

The Multanis filed a notice of appeal that referenced both the judgment in favor of the Association defendants and the judgment entered in favor of PVP. In their appellate briefing, however, the Multanis only presented arguments regarding their claims against the Association defendants. The briefing did not provide any argument explaining why the trial court had erred in dismissing their claims against defendant PVP, nor did it request reversal of PVP's judgment.

B. Our Decision in Multani I

In *Multani I, supra,* 215 Cal.App.4th 1428, we reversed the trial court's judgment in favor of the Association defendants with respect to plaintiffs' second (declaratory relief), third (quiet title), sixth (wrongful disclosure) and seventh (rescission) claims, each of which sought to set aside the foreclosure sale. In our analysis, we concluded the Association defendants had failed to make a prima facie evidentiary showing that they provided the Multanis notice of their right to redemption as required under section 729.050. (*Multani I, supra,* 215 Cal.App.4th at pp. 1449-1450.)[4] We further concluded,

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adjudication on all but three of the claims alleged against them. The court found it lacked authority to dismiss these remaining three claims because the Association defendants' motion had failed to address them. The Association defendants subsequently filed a motion for judgment on the pleadings seeking dismissal of the remaining three claims, which the court granted on October 19, 2011. The court entered judgment in favor of the remaining Association defendants on November 9, 2011.

[4] We also rejected the Association defendants' contentions that: (1) the evidence conclusively demonstrated that any violation of section 729.050 was harmless (see *Multani I, supra,* 215 Cal.App.4th at pp. 1450-1454); and (2) the Multanis' foreclosure claims were precluded under the tender rule. (*Id*. at pp. 1454-1456 ["we conclude that a debtor is properly excused from complying with the tender requirement where the

however, that plaintiffs had forfeited all of their remaining claims by failing to provide "'adequate factual or legal analysis.' [Citation.]" (*Id.* at pp. 1457-1458.)

After we issued our decision, the Multanis filed a petition for rehearing arguing that, in addition to reversing portions of the judgment in favor of the Association defendants, we should have also reversed the judgment in favor of PVP with respect to the four claims that sought to cancel the title PVP had acquired through the foreclosure sale.[5] The plaintiffs argued that although their appellate briefing had failed to address their claims against PVP, reinstating those claims would nonetheless "be consistent" with our decision to reverse the summary judgment on the Association defendants' foreclosure claims.

We denied the petition for rehearing and ordered that our decision be modified to add the following footnote: "Although plaintiffs' notice of appeal references [the trial court's order granting PVP's motion for judgment on the pleadings], their briefs contain no legal analysis of [PVP's] claims or the court's order granting [PVP] judgment on those claims. Plaintiffs have therefore abandoned any claim of error regarding the trial court's order granting [PVP's] motion for judgment on the pleadings. [Citation.]" (*Multani I, supra,* 215 Cal.App.4th at p. 1442, fn. 6.)

C. Subsequent Proceedings in the Trial Court

During the pendency of *Multani I,* PVP transferred its interest in the property to APB Properties. After remittitur had issued, plaintiffs filed a "Doe amendment" in the trial court naming APB as "Doe defendant 1." (See Code Civ. Proc., § 474.) APB filed a motion for summary judgment arguing that plaintiffs' claims were "barred by the doctrine of res judicata and collateral estoppel" because APB's predecessor in interest, PVP, had already been "dismissed from th[e] lawsuit following the grant of its motion for

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nonjudicial foreclosure is subject to a statutory right of redemption and the trustee has failed to provide the notice required under section 729.050"].)

5 These four claims included declaratory relief, quiet title, cancellation of deed and rescission.

judgment on the pleadings, [which] was affirmed [on appeal]." According to APB, plaintiffs were not permitted to "relitigate the same issues previously litigated against PVP." In support of its motion, APB provided copies of the deed that conveyed title from PVP to APB, the trial court's prior judgment in favor of PVP and our decision in *Multani I* affirming that judgment.

The Multanis argued res judicata was inapplicable because the claims it intended to pursue against APB (cancellation of title, quiet title, rescission and declaratory relief) involved a different "primary right" than the claims it had previously litigated against PVP. Specifically, the Multanis contended the "primary right" at issue in their claims against APB was the right to have APB's deed cancelled, while the "primary right" at issue in their claims against PVP was the right to have PVP's deed cancelled. According to plaintiffs, the fact they had sought cancellation of "one particular recorded document relating to . . . one particular defendant" had no effect on their ability to seek identical claims against a subsequent owner of the property.

Alternatively, the Multanis argued that even if APB had established the "threshold elements of res judicata," the court should nonetheless decline to apply the doctrine to avoid injustice that would otherwise result. The plaintiffs contended that if they were prohibited from pursuing their claims against APB, they would be unable to set aside the foreclosure sale that was at issue in their pending claims against the Association defendants. Plaintiffs argued such an outcome would be both unfair, and "inconsistent" with our decision in *Multani I*.

At the motion hearing, plaintiffs' counsel conceded that if PVP still owned the property, the Multanis would be precluded from bringing any claim challenging PVP's title. Counsel further conceded that APB was PVP's successor in interest, and had therefore taken whatever rights and title PVP had previously held to the property. Counsel argued, however, that the title APB acquired from PVP contained a "reversionary interest" that allowed the plaintiffs to reacquire the property by exercising their right to redemption. Counsel further contended that, pursuant to the requirements set forth in section 729.050, this reversionary interest continued until 90 days after the

Multanis were provided notice of the redemption amount, which had not yet occurred. Counsel argued the Multanis should be permitted to litigate this "flaw" in title regardless of whether they would be allowed to pursue such a claim against PVP. Alternatively, counsel argued that applying the doctrine of res judicata would lead to unjust and inconsistent results by depriving plaintiffs of "the ability to recover their property even though [there has] been a wrongful foreclosure [and] a violation of the requirement that they be properly served with their notice of right of redemption."

The trial court ruled plaintiffs' claims were barred, explaining that whatever flaw might exist in APB's title had also existed in PVP's title at the time it obtained judgment. The court concluded that because plaintiffs had a fair and full opportunity to litigate that alleged flaw against PVP, they were precluded from relitigating the same issue against APB. The court also found that this bar would not result in any injustice to the plaintiffs, nor would it result in any inconsistency with *Multani I*. The court explained that any harm plaintiffs might suffer through application of res judicata was caused by their failure to seek reversal of PVP's judgment during the appellate process. The court further explained that although a judgment in APB's favor might ultimately preclude plaintiffs from regaining title to their property, they could still seek other remedies (including damages) on their wrongful foreclosure claims against the Association defendants.

Following the hearing, the trial court issued an order granting APB's motion for summary judgment stating: "The claims against defendant APB . . . seek only to determine whether [APB] has title to the property pursuant to a grant deed from [PVP]. It is undisputed that . . . [the trial court] . . . entered judgment in favor of [PVP] and against plaintiffs on all causes of action. The Court of Appeal . . . affirmed that ruling. [¶] . . . [¶] Given that the Court of Appeal affirmed judgment for [PVP] and [that] opinion is now final, collateral estoppel prevents relitigation of these claims against APB which acquired [PVP's] rights." On November 17, 2014, the court entered judgment in favor of APB.

D. Trial court's award of attorneys' fees

Following entry of judgment, APB filed a motion for attorneys' fees pursuant to Civil Code section 5975, subdivision (c), which states: "In an action to enforce the governing documents [of a common interest development homeowners association], the prevailing party shall be awarded reasonable attorney's fees and costs." APB asserted plaintiffs' claims qualified as "an action to enforce the [Association's] governing documents" because they had alleged the Association had breached various procedural requirements set forth in the declaration of covenants conditions and restrictions (CC&Rs) that governed the collection of assessment fees and the foreclosure process. Alternatively, APB argued it had a contractual right to fees under a provision in the CC&Rs stating: "Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys fees . . . in favor of the prevailing party." APB argued this provision applied because the Association's CC&Rs were relevant to all of plaintiffs' foreclosure claims.

The Multanis, however, argued that none of their claims against APB sought to enforce the CC&Rs, nor were they brought pursuant to the CC&Rs. Rather, according to plaintiffs, they had named APB as a defendant based solely on its status as the current title holder, which made it a necessary party. Plaintiffs reiterated these arguments at the motion hearing, asserting that "the substantive actions, the allegations of wrongdoing, are alleged against [the Association defendants only]. The prevailing party here – APB – is merely the . . . present holder of title, and . . . arguably an indispensable party. . . . But there's no allegation of wrong doing against them. There [i]s no allegation that they violated anything in the CCRs."

In response to these arguments, APB's counsel argued the attorneys' fees provisions in section 5975 and the CC&Rs extended not only to claims seeking to enforce the Association's government documents, but also to any claim that "derived" from an enforcement claim: "I understand that the [Association] is the party [plaintiffs are] claiming to have breached the CC&Rs. [¶] . . . [¶] But . . . even if it's the [Association] who breached the CC&Rs, it's through that CC&Rs that [they are] bringing this action

against all the other parties. So derivatively, because the crux of [their] claim is violation of the CC&Rs, it allows for attorneys' fees to everybody in the community who is brought into this action because of the alleged violation of the CC&Rs."

The trial court granted the motion, concluding that APB was a "prevailing party in the action and that the matter arose out of enforcement of the [CC&Rs], giving rise to a statutory and contractual entitlement to fees." The court ordered plaintiffs to pay approximately $70,000 in attorneys' fees.

DISCUSSION

A. The Multanis' Claims Against APB Are Precluded Under Res Judicata

The Multanis argue the prior judgment in favor of PVP does not preclude them from litigating claims that seek to cancel the title and deed that APB acquired from PVP. The Multanis contend the trial court committed two errors in concluding their title claims against APB were precluded under res judicata. First, they assert the court erred in finding APB had satisfied the threshold elements necessary to establish res judicata. Second, they argue that even if the elements of res judicata were satisfied, the trial court should have declined to apply the doctrine to avoid injustice and inconsistent results.

Because the relevant facts are undisputed, we review the trial court's application of res judicata de novo. (See *Smith v. Exxon Mobil Oil Corp.* (2007) 153 Cal.App.4th 1407, 1415 (*Smith*) [where facts are undisputed, "de novo review is appropriate with respect to [both] the presence of the three elements essential to [res judicata]" and the "trial court's determination of the 'fairness' of applying [the doctrine]"]; *Roos v. Red* (2005) 130 Cal.App.4th 870, 878 (*Roos*) [when facts are undisputed, "application of . . . [of res judicata] is a question of law to which we apply an independent standard of review"].)[6]

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6 The parties agree that we should apply de novo review to the trial court's determination that APB established the threshold elements of res judicata. They disagree, however, as to what standard we should use to assess the court's determination that applying the doctrine would not result in injustice or inconsistent results. APB contends

1. APB established the threshold elements of res judicata

Under res judicata, or claim preclusion, a "prior judgment bars a subsequent lawsuit on the same cause of action between the parties or their privies."[7] (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 972 (*Busick*); see also *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (*Mycogen*).) "[T]he doctrine 'rests upon the ground that the party to be affected . . . had an opportunity to litigate the same

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a trial court's decision not to apply res judicata is a matter of discretion, and should therefore be reviewed under the abuse of discretion standard. (See *Louie v. BFS Retail and Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1562 [describing application of the "manifest injustice" exception to res judicata as an "equitable and discretionary" act]; *Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 942 [noting that federal trial courts are provided "broad discretion to determine when" exception to res judicata should be applied based on inconsistent verdicts].) The Multanis, however, argue that because the material facts are undisputed, we should apply de novo review in determining "whether application of res judicata . . . would be fair and just. . . ." (See *Smith, supra,* 153 Cal.App.4th at p. 1415 [although "reasonable minds may differ" on the issue, when facts are undisputed, de novo review applies to a trial court's determination whether application of res judicata would be unfair].) For the purposes of this appeal, we need not resolve that issue because we would affirm the trial court's decision under either standard.

[7] California courts have traditionally defined the doctrine of res judicata to include both "claim preclusion" and "a broader principle . . . commonly referred to as 'collateral estoppel' or 'issue preclusion.' Under this principle an issue necessarily decided in prior litigation may be conclusively determined as against the parties or their privies in a subsequent lawsuit on a different cause of action. [Citation.]" (*Roos, supra,* 130 Cal.App.4th at p. 879; see also *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556 ["The [res judicata] doctrine has two aspects. It applies to both a previously litigated cause of action, referred to as claim preclusion, and to an issue necessarily decided in a prior action, referred to as issue preclusion"].) Our Supreme Court has clarified, however, that although "collateral estoppel is one aspect of the concept of res judicata[], . . . the two terms have distinct meanings." (*Mycogen, supra,* 28 Cal.4th at p. 896, fn. 7.) Under modern "California usage," the term "res judicata" is used to refer to "claim preclusion" and "collateral estoppel" is used to refer to "issue preclusion." (*Johnson v. GlaxoSmithKline* (2008) 166 Cal.App.4th 1497, 1507, fn. 5; see also *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82, fn. 3 (*Zevnik*) [using "res judicata to mean claim preclusion and collateral estoppel to mean issue preclusion"].) This case involves only the claim preclusion aspect of res judicata.

matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation." (*Busick, supra,* 7 Cal.3d at p. 973.)

To establish res judicata, the moving party must establish the following three elements: "(1) the decision in the prior proceeding is final and on the merits; (2) the present action is on the same cause of action as the prior proceeding; and (3) the parties in the present action or parties in privity with them were parties to the prior proceeding. [Citation.] " (*Zevnik, supra,* 159 Cal.App.4th at p. 82; see also *Busick, supra*, 7 Cal.3d at p. 974.) The Multanis do not dispute there has been a final judgment on the merits regarding their claims against PVP, which sought to cancel the title PVP acquired through its purchase at the foreclosure sale. Nor do they dispute that because APB acquired its title from PVP, the two parties are in privity with one another for the purposes of res judicata. (See *Swartfager v. Wells* (1942) 53 Cal.App.2d 522, 529 (*Swartfager*) [for the purposes of res judicata, a property owner is in privity with its successors in interest].) They contend, however, that the second element was not established because their action against APB involves a different cause of action than their prior action against PVP.

"California law defines a cause of action for purposes of the res judicata doctrine by analyzing the primary right at stake: [A] 'cause of action' is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action." (*Le Parc Community Assn. v. Workers' Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1170.) "'As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. [Citation.] It must therefore be distinguished from the legal theory on which liability for that injury is premised: "Even where there are multiple legal theories upon which

recovery might be predicated, one injury gives rise to only one claim for relief." [Citation.]." [Citation.]'" (*Mycogen, supra*, 28 Cal.4th at p. 904.)

The Multanis contend their prior claims against PVP and their current claims against APB involve different "primary rights" because each set of claims challenges title held by a different party: their prior claims against PVP were predicated on a defect in the title that PVP held to the property, while their current claims against APB are predicated on a defect in the title APB now holds. The Multanis concede that in both instances this alleged "defect" arises from the Association defendants' claimed failure to comply with section 729.050, which required the Association to notify plaintiffs they had a right of redemption that would terminate 90 days after the foreclosure sale. (See § 729.050 [requiring homeowner association to provide notice of right to redemption]; *Multani I, supra*, 215 Cal.App.4th at pp. 1444-1447 [discussing requirements under § 729 et seq.].) According to plaintiffs, section 729.050 effectively establishes a "reversionary interest" in the property that continues until 90 days after the Association provides the required notice of the right to redemption. Plaintiffs contend that while their claims against PVP and APB involve the same "legal theory" (a title defect arising from the Association's failure to comply with section 729.050), the "primary right differs with each titled owner that takes title. . . . Because the reversionary interest exists in the title unless and until extinguished by proper notice and the expiration of the redemption period, the critical matter is that each titled owner maintains a unique and different primary duty to relinquish title if [the Multanis] redeem their ownership."

We fail to see how plaintiffs' claims against the two parties could be deemed to involve different primary rights. The primary right at issue in the plaintiffs' claims against PVP was whether they were entitled to have PVP's title to the property declared void due to defects in the foreclosure procedures. Their claims against APB involve the same primary right: whether they are entitled to have the title that APB acquired from PVP during the pendency of this action declared void due to the same defects in the foreclosure procedures. In both instances, the "'the particular injury suffered'"

(*Mycogen, supra,* 28 Cal.4th at p. 904) involved the wrongful transfer of title to their property that resulted from an unlawful foreclosure sale.

Our courts have previously held that "'the general rule is that . . . one to whom . . . property is granted by a party to an action during the pendency thereof is regarded as in privity with such party within the meaning of the doctrine of res judicata," and that "a judgment is [therefore] regarded as conclusive . . . between the parties and their successors in interest by title acquired subsequent to the commencement of the action." (*Swartfager, supra,* 53 Cal.App.2d at p. 529; see also *McDonald v. Smoke Creek Live Stock Co*. (1930) 209 Cal. 231, 238-239 [res judicata applied where defendant had previously prevailed on title claims against plaintiff's predecessor in interest]; *Morse v. E. A. Robey & Co.*(1963) 214 Cal.App.2d 464 [judgment declaring that a defendant's commercial property encroached on plaintiff's land was binding on the defendant's "successor in interest"].) That rule applies here: after plaintiffs commenced this action, PVP transferred its interest in the property to APB, meaning that the judgment in favor of PVP is conclusive as to APB. Because plaintiffs had a full and fair opportunity to litigate their title claims against PVP,[8] res judicata precludes them from pursuing identical claims against PVP's successor in interest.

2. Application of res judicata does not result in manifest injustice or inconsistent results

Plaintiffs contend that even if APB established the elements of res judicata, the trial court should have declined to apply the doctrine to avoid injustice and inconsistency with our prior decision in *Multani I*.

"Even if the[] threshold requirements are established, res judicata will not be applied 'if injustice would result . . . . [Citations.]' [Citation.]" (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1065; see also *Kopp v. Fair Pol., Practices Com.* (1995) 11 Cal.4th 607, 622 [""""'when the issue is a

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8 During the trial court hearing on APB's motion for summary judgment, the Multanis specifically acknowledged they had a full and fair opportunity to litigate their title claims against PVP.

question of law rather than of fact, the prior determination is not conclusive . . . if injustice would result"""]; *Greenfield v. Mather* (1948) 32 Cal.2d 23, 35 [res judicata "will not be applied so rigidly as to defeat the ends of justice"]; but see *Slater v. Blackwood* (1975) 15 Cal.3d 791, 796 [stating that "manifest injustice" exception to res judicata is "of doubtful validity" and has been "severely criticized"].) The Multanis argue that, in this case, it would be unjust to preclude them from challenging APB's title given that they never received notice of their right to redemption as required under section 729.050. This argument ignores the fact that the Multanis already litigated these same title claims against APB's predecessor in interest, PVP. In *Multani I, supra,* 215 Cal.App.4th 1428, we affirmed the trial court's judgment in favor of PVP because the plaintiffs' appellate briefs failed to include any argument regarding their claims against PVP, nor did they request that we reverse PVP's judgment. It is therefore clear that any "injustice" plaintiffs may now suffer through the application of res judicata is the result of their own conduct in the prior appeal. (See *Johnson v. American Airlines, Inc.* (1984) 157 Cal.App.3d 427, 433 [injustice exception inapplicable where purported harm to appellant was the "direct result of her voluntary decision not to participate in or appeal [prior class action] settlement"].)

The Multanis contend they did not address their claims against PVP in the underlying appeal because they "assumed" we would "summarily reverse" PVP's judgment "once the [Association defendants'] judgment was reversed." Although the Multanis now acknowledge this assumption was "erroneous," they argue that such an error should not preclude them from pursuing their claims against APB. "It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and '"'all intendments and presumptions are indulged in favor of its correctness.' "[Citation .] '[Citation.] An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument . . ., [they are] waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of

correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]" (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, fn. omitted.) The Multanis' after the fact assertion of failure to understand their burdens in the underlying appeal does not warrant a departure from the normal rules of res judicata. (See *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 531 [res judicata "rests on the principle that a plaintiff is entitled to only one fair opportunity to litigate a given cause of action. He cannot . . . expect to be given a second opportunity to cure legal or factual deficiencies that led to his defeat in a prior suit"].)

Alternatively, the Multanis argue that "[d]ismissing APB on res judicata grounds" would be "inconsistent" with *Multani I*'s holding that they may pursue their wrongful foreclosure claims against the Association defendants. In support, the Multanis cite cases holding that a court may decline to apply res judicata "when the judgment in the prior action is inconsistent with previous judgments for the defendant on the matter." (*Roos, supra,* 130 Cal.App.4th at p. 888.) These cases, however, arise in the context of "offensive collateral estoppel," which occurs when "'the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party.'" (*Smith, supra,* 153 Cal.App.4th at p. 1414.) The inconsistent results exception recognizes that "offensive collateral estoppel" may be "unfair to a defendant if the judgment relied upon as a basis for estoppel is itself inconsistent with one or more previous judgments in favor of the defendant." (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 942 (*Sandoval*).) The following example, set forth in *Sandoval, supra,* 140 Cal.App.3d 932, is illustrative: "50 passengers [injured in a single railroad collision] . . . all bring separate actions against the railroad. After the railroad wins the first 25 suits, a plaintiff wins in suit 26. [A]n offensive use of collateral estoppel should not be allowed to permit plaintiffs 27 through 50 to recover automatically." (*Id.* at p. 942.) As explained in *Sandoval,* applying collateral estoppel under such circumstances "'appear[s] arbitrary to a defendant who has had favorable judgments on the same issue," and "undermines the premise that different juries reach

equally valid verdicts. [Citation.] One jury's determination should not, merely because it comes later in time, bind another jury's determination of an issue over which there are equally reasonable resolutions of doubt.' [Citation.]" (*Ibid.*)

The "inconsistent results" exception described above does not apply here. APB is not relying on offensive collateral estoppel, nor have there been prior inconsistent judgments involving the rights of APB or its predecessor in interest PVP. Instead, there has been a single prior judgment that was entered in favor of APB's predecessor in interest PVP.

The Multanis maintain, however, that applying res judicata here could nonetheless result in "inconsistent" judgments because "it is possible [they] will prevail on their [wrongful foreclosure] claims against [the Association], which would be inconsistent with a judgment that [they] cannot quiet title against APB." The Multanis do not explain how a judgment finding that the Association defendants wrongfully foreclosed on their property would be "inconsistent" with a judgment dismissing their title claims against APB. Although APB's judgment might preclude plaintiffs from pursuing one potential remedy in their claims against the Association defendants (reacquiring title to their property), the judgment would not be inconsistent with a finding that the Association defendants acted in a manner that resulted in the wrongful foreclosure of the property.

B. The Trial Court Erred in Concluding APB Is Entitled to Attorneys' Fees

The Multanis also appeal the trial court's order awarding APB approximately $70,000 in attorneys' fees. The court concluded APB had a statutory right to fees under Civil Code section 5975, subdivision (c), as well as a contractual right to fees pursuant to section 13.1, subdivision (i) of the CC&Rs that govern the Association. The Multanis argue that neither of these attorneys' fees provisions applies to the type of claims they alleged against APB.

Because the material facts underlying the court's attorneys' fees award are undisputed, "and the question is how to apply statutory [or contractual] language to a given factual and procedural context, the reviewing court applies a de novo standard of

review to the legal determinations made by the trial court." (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 929].)

1. APB is not entitled to attorneys' fees under Civil Code section 5975

The property at issue is part of a common interest development (CID) that is subject to the provisions of the Davis-Stirling Common Interest Development Act (see § 4000 et seq.; former § 1350, et seq.[9]) (the Act). Under the Act, "[c]ommon interest developments are required to be managed by a homeowners association [citation] . . . , which homeowners are generally mandated to join." (*Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 81.) "The primary governing document of the association is the declaration—the document that contains a legal description of the development and 'the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.' [Citations.] This document is frequently referred to as the 'covenants, conditions, and restrictions,' or the 'CC&R's.' Other documents included in the governing documents of the association are 'documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.' [Citation]" (*Ostayan v. Nordhoff Townhomes Homeowners Assn., Inc*. (2003) 110 Cal.App.4th 120, 127; see also § 4150 [defining "governing documents"] [former § 1351, subd. (j)]; § 4135 [defining declaration] [former § 1351, subd. (h)]; § 4250 [describing contents of declaration] [former § 1353, subd. (a)].)

Section 5975 (former § 1354) of the Act describes who may bring an action to enforce the governing documents, and provides attorneys' fees to the party who prevails in any such enforcement action:

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9 Effective January 1, 2014, the Davis-Stirling Act was reorganized and recodified from Civil Code section 1350, et seq. to section 4000, et seq. (Stats. 2012, ch. 180, §§ 1–2.) (See *McArthur v. McArthur* (2014) 224 Cal.App.4th 651, 660, fn. 9.)

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

APB argues the Multanis' claims, which sought to cancel the title PVP acquired at the foreclosure sale and then transferred to APB, qualify as an "action to enforce the governing documents" within the meaning of section 5975, subdivision (c). APB contends the Multanis' claims against the Association are predicated in part on the breach of provisions in the CC&Rs that govern the assessment of homeowner fees and the foreclosure process. They further contend that because the Multanis' claims against the Association are based on a breach of the CC&Rs, their claims against APB necessarily "derive" from the CC&Rs, and therefore qualify as "an action to enforce" the CC&Rs. The Multanis do not dispute their claims against the Association seek to enforce the CC&Rs.[10] They argue, however, that their claims against APB did not seek to enforce

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[10] The second amended complaint does not actually contain any language alleging the Association defendants violated the CC&Rs. Instead, the complaint alleges the Association defendants violated Civil Code provisions that govern nonjudicial foreclosures, including various special provisions that apply to nonjudicial foreclosures predicated on delinquent homeowner assessment fees. (See § 1367 et seq.; § 2924 et seq.) The CC&Rs do, however, include provisions that set forth the manner in which assessments are to be collected, and that require the Association to conduct any nonjudicial foreclosure in accordance with the California Civil Code. Because the parties do not dispute the issue, we will assume for the purpose of this argument that the Multanis' claims against the Association defendants do in fact seek to enforce these provisions of the CC&Rs.

the CC&Rs, but rather sought only to cancel the title APB's predecessor in interest had acquired at the foreclosure sale.

The complaint does not allege APB (or its predecessor in interest PVP) participated in the foreclosure process other than through its purchase at the foreclosure sale. Nor is there any allegation that APB or PVP breached the CC&Rs, or engaged in any other form of wrongdoing during the foreclosure process.[11] Instead, the complaint alleges the deed "by which PVP [now APB] currently holds title . . . is unlawful, void and/or voidable" based on the Association defendants' failure to comply with statutory requirements that govern nonjudicial foreclosures. The complaint further alleges that the plaintiffs seeks to "quiet title against . . . [APB] so that [their] title securing ownership is restored." These allegations demonstrate PVP and its successor in interest APB were included in the lawsuit not because they were alleged to have violated any provision in the CC&Rs, but rather because their inclusion was necessary to obtain a binding judgment quieting title to the property. (See generally *Lake Merced Golf and Country Club v. Ocean Shore Railroad Co.* (1962) 206 Cal.App.2d 421, 432 ["It is . . . well established that in a quiet title action a court may not adjudicate the rights of one who is not a party to the action"]; *Reichert v. Rabun* (1928) 89 Cal.App. 375, 381 [in quiet title action, all owners of the property "were necessary parties to the controversy and should have been joined as such"]; Code Civ. Proc., § 389.)

APB, however, argues we should broadly interpret section 5975, subdivision (c) to apply not only to claims that seek to enforce the governing documents, but also to any claims that "derive" from another party's alleged violation of the governing documents. "In ascertaining the meaning of a statute, we look to the intent of the Legislature as expressed by the actual words of the statute. [Citation.]" (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1117.) Section 5975 is divided into

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11 The complaint does allege PVP engaged in certain tortious conduct after the foreclosure sale occurred. Those claims, however, have been adjudicated in PVP's favor, and the only claims the Multanis have alleged against APB involve cancellation of the title it received from PVP.

three subdivisions. Subdivision (a) states that the covenants and restrictions set forth in the CC&Rs "may be enforced by any owner of a separate interest or by the association, or by both," and subdivision (b) states that any other governing documents "may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association." Subdivision (c), in turn, provides attorneys' fees to the prevailing party in "an action to enforce the governing documents." Thus, subdivisions (a) and (b) collectively authorize owners and the association to bring actions to enforce the governing documents, and subdivision (c) provides attorney's fees to the party who prevails in any such enforcement action. There is no language in the statute suggesting subdivision (c) was intended to extend to homeowner claims against third parties that have some relation to, or otherwise arise from, an association's violation of the governing documents. Had the Legislature intended section 5975 to apply in such a broad manner, it could have included language stating as much. Instead, the Legislature chose "narrow statutory language" (see *Gil v. Mansano* (2004) 121 Cal.App.4th 739, 745 [describing former section 1354, subd. (c)]) that limits attorneys' fees to claims that actually seek to enforce the terms of the governing documents. Plaintiffs' claims against APB, which seek to void APB's title based on conduct the Association is alleged to have committed, do not fall within this narrow category of claims.

2. APB is not entitled to attorneys' fees under the CC&Rs

APB also argues it had a "contractual right to [attorney's] fees" under section 13.1, subdivision (i) of the CC&Rs, which states: "Any judgment rendered in any action or proceeding pursuant to this declaration shall include a sum for attorney's fees in such amount as the court . . . . may deem reasonable, in favor of the prevailing party . . ." APB contends that because the Multanis' claims against the Association defendants sought to enforce the terms of the CC&Rs, their quiet title claims against APB were necessarily brought "pursuant to" the CC&Rs. This argument is essentially identical to APB's claim for fees under section 5975.

Section 13.1 of the CC&Rs is entitled "Enforcement of Restrictions." The section contains numerous subdivisions setting forth the procedures the Association and homeowners must follow when seeking to enforce an alleged violation of the CC&Rs. Subdivision (h) states that "the Board and any Owner may enforce the [CC&Rs]," and that each owner has a "right of action against the Association for the Association's failure to comply with the CC&Rs." The attorneys' fees provision appears in the next subdivision (subdivision (i)), stating that any judgment rendered in any "action or proceeding pursuant to the CC&Rs shall include a sum for attorneys' fees." Given that Section 13.1 governs enforcement of the CC&Rs, we think it clear that subdivision (i)'s use of the phrase "action or proceeding pursuant to the CC&Rs" is intended to refer to claims seeking to enforce the CC&Rs. As explained above, the Multanis' claims against APB did not seek to enforce any term of the CC&Rs, nor did they allege APB violated any aspect of the CC&Rs. Instead, the Multanis named APB as a defendant based solely on its status as the current title holder, making it a necessary party to the quiet title action. Consistent with our analysis of section 5975, we find no basis to conclude section 13.1, subdivision (i) was intended to extend to a homeowner's quiet title claims against a third party who is not alleged to have breached the CC&Rs.

DISPOSITION

In Case No. B260610, the trial court's judgment in favor of respondent is affirmed.[12] In Case No. B265172, the trial court's order awarding respondent attorneys' fees is reversed. Each party shall bear its own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.

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[12] After the parties completed briefing in Case No. B260610, APB filed a motion requesting that we take judicial notice of a recent statement of decision in which the trial court found in favor of plaintiffs on their wrongful foreclosure claims against the Association, and awarded them damages. We find it unnecessary to consider the statement of decision, which is not relevant to our analysis or our disposition of the issues. The request for judicial notice is therefore denied. (See *Stop the Casino 101 Coalition v. Brown* (2014) 230 Cal.App.4th 280, 291, fn 10 [denying request for judicial notice where materials were "irrelevant or unnecessary to resolution of the issues on appeal"].)