Filed 7/26/12 Gamilla v. Kwon CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DINIA GAMILLA, Plaintiff and Appellant, v. YUL KWON et al., Defendants and Respondents.	B236885 (Los Angeles County Super. Ct. No. BC441412)

APPEAL from an order of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Herbert Abrams for Plaintiff and Appellant.

Silverberg Law Corporation and Peter M. Cho for Defendants and Respondents.

Plaintiff and appellant Dinia Gamilla (Gamilla or the buyer) appeals an order of dismissal following the sustaining without leave to amend of a demurrer interposed by defendants and respondents Yul Kwon and Hee S. Lee (collectively, Kwon or the sellers) to the first amended complaint.

Gamilla purchased an apartment building from the sellers. Gamilla sued the sellers for breach of contract and breach of warranty on the ground that only two of the three apartment units were legally authorized by the City of Los Angeles (the City). In sustaining the demurrer without leave, the trial court ruled the "Purchase Agreement and Joint Escrow Instructions, attached to the First Amended Complaint, does not contain a representation or warranty regarding the number of legally approved units," paragraph 12b of the agreement was "blank as to the number of units on the property," and "no implied warranty applicable to the grant deed relates to the alleged number of legally approved units on the property."

We affirm. The purchase agreement did not contain a representation or warranty regarding the number of legally approved units, and a grant deed does not contain an implied warranty of compliance with building codes.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Pleadings.*

a. *Pertinent allegations of the first amended complaint.*

The operative first amended complaint, filed June 16, 2011, set forth two causes of action: breach of contract and breach of warranty. The complaint alleged in pertinent part:

On April 8, 2006, Gamilla and the sellers entered into a written contract (attached to the complaint as exhibit A) for the purchase and sale of the subject real property at 801 South Detroit Street in Los Angeles. Escrow closed on July 13, 2006 and a grant deed was delivered to Gamilla.

The sellers "warranted by the delivery of said Grant Deed, that said Real Property consisted of three (3) units, pursuant to the terms and conditions of said written contract between Plaintiff and Defendants attached as Exhibit A hereto, which warranty was a

continuing obligation of said Defendants thereunder." Defendants breached said contract "in that said Real Property consisted of only two (2) units which were authorized by the City of Los Angeles, and not three (3) units as warranted by said Defendants."

Further, the "breach of contract by Defendants as [set] forth hereinabove and the delivery of said Grant Deed from said Defendants to Plaintiff constituted a breach of the warranty resulting from the delivery of said Grant Deed . . . to Plaintiff in that said Real Property consisted of three (3) units. In fact, only two (2) were authorized by the City of Los Angeles."

b. *Exhibits attached to the pleading.*

The purchase agreement, which was attached as Exhibit A to the pleading, stated in pertinent part at paragraph 12b: "Seller warrants that the Property is legally approved as ___ units." Thus, in the purchase agreement, the space for the number of *legally approved* units was left blank.

The complaint also appended a copy of the "Wood Destroying Pest Inspection and Allocation of Cost Addendum" (termite addendum) to the purchase agreement. The termite addendum required the sellers to pay for a pest control report, with the report to cover the following "structures on the Property: ALL THREE UNITS AND GARAGE."

Finally, the complaint appended a copy of a "Report of Residential Property Records" (City Report) issued by the City's Superintendent of Building on April 25, 2006, during the escrow. The City Report indicated the property consisted of three dwelling units: a single family dwelling and a two-family dwelling. The City Report also contained the following advisement: "The City does not certify, guarantee, or warrant that the property in question necessarily satisfies all present or future requirements of the L.A.M.C. nor does the City assume any liability for errors or omissions in the furnishing of any information required to be provided in this report."[1]

---

[1] The City Report, which was issued during the escrow, indicated the property consists of three dwelling units. The complaint does not indicate when or how Gamilla learned that only two of the three units are legally approved.

2. *Demurrer.*

The sellers demurred to the complaint in its entirety.

With respect to Gamilla's cause of action for breach of contract, the sellers asserted no cause of action was stated because the purchase agreement did not contain a warranty by the sellers that the property was legally approved as three units. Further, the purchase agreement expressly provided (1) the sellers had no duty to investigate and disclose potential permit-related defects; (2) the buyer had the duty of investigation; (3) the sellers were not obligated to repair any such defects; (4) the buyer had the right to cancel the agreement if the buyer discovered such defects and the sellers refused to remedy them; and (5) the buyer removed the contingency of her acceptance of the condition of the property by receiving title and taking possession of the property.

As for Gamilla's cause of action for breach of warranty, the sellers contended it failed to state a claim because a grant deed contains only two implied warranties – warranty of title and warranty of freedom from encumbrances, and said warranties do not encompass a promise that the property is in compliance with building codes.

3. *Trial court's ruling.*

On August 30, 2011, after taking the matter under submission, the trial court sustained the demurrer to the first amended complaint on the grounds stated in the moving papers. The trial court ruled: "Plaintiff alleges that defendants warranted that the property consists of three legally approved units when apparently the City of Los Angeles is now taking the position that only two units are legally approved. The Purchase Agreement and Joint Escrow Instructions, attached to the First Amended Complaint, does not contain a representation or warranty regarding the number of legally approved units. In fact paragraph 12b of the agreement addressing conditions affecting the property is blank as to the number of units on the property. The references in the agreement and addendum relating to the termite inspection of three units [are] not a representation by defendants that three units are legally approved. In addition, no implied warranty applicable to the grant deed relates to the alleged number of legally approved units on the property. [¶] Leave to amend is denied since plaintiff has failed to

cure these defects after they were identified in connection with the demurrer to the original complaint."

Gamilla filed a timely notice of appeal from the order of dismissal.

CONTENTIONS

Gamilla contends she properly alleged causes of action for breach of contract and breach of warranty, and the trial court erred as to the number of units on the property.

DISCUSSION

1. *Standard of appellate review.*

In determining whether a plaintiff has properly stated a claim for relief, "our standard of review is clear: ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Our review is de novo. (*Ibid*.)

2. *No allegation of nondisclosure or misrepresentation.*

As a preliminary matter, Gamilla expressly eschews any claim that the sellers misled her with respect to the number of legally approved units. Gamilla's reply brief states: "It is clear that the City of Los Angeles issued an incorrect Report as to the number of units. *Both parties are innocent of any wrongdoing or failure to act.* In this situation the burden of the loss should fall upon the Seller or the grantor under the grant deed . . . , since Defendants received a purchase price for a three unit building, not a two unit building." (Italics added.)

Given Gamilla's concession that the sellers were innocent of any wrongdoing, there is no issue as to whether Gamilla is capable of amending her pleading to state a cause of action on a theory of misrepresentation or nondisclosure.

3. *No cause of action stated for breach of warranty; grant deed did not contain implied warranty that property complied with governmental requirements.*

A grant deed carries only two implied warranties: "that the grantor has not previously conveyed an interest in the estate to any other person and that the estate is free from encumbrances created or suffered by the grantor. (Civ. Code, § 1113.)" (*American Title Co. v. Anderson* (1975) 52 Cal.App.3d 255, 258.)[2] The term " 'incumbrances' includes taxes, assessments, and all liens upon real property." (Civ. Code, § 1114.) Thus, noncompliance with building codes or zoning restrictions does not constitute an encumbrance within the meaning of the statute.

Because the implied warranties in a grant deed do not include a warranty that the property being conveyed is in compliance with governmental requirements, the instant grant deed did not contain an implied warranty that the subject real property consisted of three legal units. Accordingly, Gamilla failed to state a cause of action for breach of warranty under the grant deed based on the number of legally approved dwelling units.

---

[2] Civil Code section 1113 states in pertinent part: "From the use of the word 'grant' in any conveyance by which an estate of inheritance or fee simple is to be passed, *the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied*, unless restrained by express terms contained in such conveyance: [¶] 1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; [¶] 2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him." (Italics added.)

4. *No cause of action stated for breach of contract; the contract did not contain a representation or warranty regarding the number of legally approved units.*

Gamilla pled the sellers breached the purchase agreement/contract "in that said Real Property consisted of only two (2) units which were authorized by the City of Los Angeles, and not three (3) units as warranted by said Defendants."

However, the contract on which Gamilla is suing contained no such warranty. As indicated, Paragraph 12b of the purchase agreement, a copy of which was appended to the complaint, was *blank* as to the number of legally approved units.

Gamilla's reliance on the termite addendum similarly is misplaced. The termite addendum, which also was appended to the complaint, required the sellers to pay for a pest control report, with the report to cover the following "structures on the Property: ALL THREE UNITS AND GARAGE." However, the termite addendum was not a representation that the property consisted of three *legally approved* units; the termite addendum merely specified the physical scope of the termite inspection.

Lastly, Gamilla sought to rely on the City Report, issued by the City's Superintendent of Building during the escrow. The City Report indicated the property consisted of three dwelling units: a single family dwelling and a two-family dwelling. The City Report also contained the following advisement: "The City does not certify, guarantee, or warrant that the property in question necessarily satisfies all present or future requirements of the L.A.M.C. nor does the City assume any liability for errors or omissions in the furnishing of any information required to be provided in this report."

Gamilla's reliance on the City Report to state a cause of action against the sellers for breach of contract is unavailing. The City Report, which was a *governmental report* of residential property records relating to the subject property, was not a warranty *by the sellers* that the property consisted of three *legally approved* units.

In sum, because the contract did not contain a representation or warranty by the sellers that the property consisted of three *legally approved* units, Gamilla failed to state a cause of action against the sellers for breach of contract.

DISPOSITION

The order of dismissal is affirmed. The parties shall bear their respective costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.