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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SAUL HERNANDEZ,

Plaintiff, Cross-defendant and
Appellant,

v.

FLAGSTAR BANK, FSB et al.,

Defendants, Cross-complainants and
Respondents;

CONSUMER SOLUTIONS REO, LLC
et al.,

Defendants and Respondents.

B259460

(Los Angeles County
Super. Ct. No. BC480949)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry A. Green, Judge. Affirmed.

Law Office of Nick A. Alden, Nick A. Alden and Aleksey Sirotin for Plaintiff, Cross-defendant and Appellant.

Marcus, Watanabe & Enowitz and Wendy Y. Watanabe for Defendants, Cross-complainants and Respondents.

No appearance for Defendants and Respondents.

Plaintiff Saul Hernandez (Hernandez) appeals from a judgment in favor of defendants Scott Chandler, Ashley Chandler (Chandlers), and Flagstar Bank, FSB (Flagstar) after the trial court granted summary judgment in favor of the Chandlers and Flagstar and denied Hernandez's summary judgment motion. Hernandez also challenges the denial of his application for entry of a default judgment against Consumer Solutions REO, LLC and Consumer Solutions, LLC (collectively, Consumer Solutions). The trial court declared the Chandlers the sole and exclusive owners of title to a parcel of real property, subject to a deed of trust in favor of Flagstar. The court determined that a default judgment in a prior action declaring Hernandez the sole and exclusive owner of the property to the exclusion of the whole world is not enforceable against the Chandlers and Flagstar. The court also found that Hernandez's complaint for declaratory relief, to quiet title, and for cancellation of documents is barred by the statute of limitations.

Hernandez contends the default judgment in the prior action is enforceable against the Chandlers and Flagstar and invalidates their purported property interests. Hernandez also contends the statute of limitations is inapplicable to his complaint, and even if it applies it does not bar his complaint. Hernandez contends he is entitled to quiet title against the Chandlers and Flagstar, and a default judgment canceling conveyances to and by Consumer Solutions.

We conclude that the trial court properly granted summary judgment in favor of the Chandlers and Flagstar. The default judgment in the prior action is not enforceable against the Chandlers and Flagstar because Hernandez did not name them as parties to the prior action, their claims were recorded before the recordation of any lis pendens or judgment in the prior action, and they had no actual or constructive notice of the pendency of the prior action. We also conclude the court properly found that Hernandez failed to file his complaint within the applicable three-year limitations period (Code Civ. Proc., § 338, subd. (d)), so his complaint is time-barred, and properly denied Hernandez's application for entry of a default judgment against Consumer Solutions. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Purchase and Sale of the Property in Hernandez's Name*

In or about September 2005, Hernandez made an offer through his real estate agent, Cecilia Alvarez, to purchase a house located at 13208 Clearwood Avenue in La Mirada (La Mirada property). Alvarez informed him that his offer was accepted and later informed him that the purchase had been completed. When Hernandez reviewed some of the paperwork, he learned that title to the La Mirada property was in his name together with Alejandro R. Segura, a person Hernandez did not know and had never met. Hernandez told Alvarez that he did not want to share title with Segura. Alvarez responded that she would take care of it.

On December 6, 2005, a grant deed was recorded conveying title to the property from Pablo L. Chavez and Agustina Soltero to Segura and Hernandez as joint tenants.¹ On that same date, two deeds of trust were recorded naming New Century Mortgage Corporation (New Century) as beneficiary and Segura and Hernandez as trustors. The deeds of trust secured two promissory notes in the total amount of \$540,000. According to Hernandez, he became aware of the deeds of trust when he began receiving correspondence from New Century asking him to make payments on the loans for the La Miranda property, but had never signed any loan documents, and claimed his signatures on the documents were forged.²

¹ Also on December 6, 2005, an interspousal transfer deed was recorded conveying title to the property from Virginia Hernandez, as Hernandez's wife, to Hernandez as his sole and separate property. In fact, Virginia Hernandez was Hernandez's sister, and not his wife.

² Hernandez also claims the signature of Virginia Hernandez on the interspousal transfer deed was a forgery. Jay Sidney Klein, who purportedly notarized the interspousal transfer deed and the grant deed to Segura, testified in a deposition that he never notarized those documents and that his notary stamp and book had been stolen.

Alvarez later informed Hernandez that she had sold the La Mirada property. On January 25, 2006, a grant deed was recorded conveying the La Mirada property from Segura and Hernandez as joint tenants to Segura. According to Hernandez, he never authorized the sale to Segura and his signature on the grant deed was forged. On April 13, 2006, a grant deed was recorded conveying the La Mirada property from Segura to Jose F. Velazco. On that same date, two deeds of trust were recorded naming New Century as beneficiary and Velazco as trustor.

B. *Hernandez's First Lawsuit and the Foreclosure by New Century*

On October 11, 2006, Hernandez and his sister, Virginia Hernandez (Virginia), filed a verified complaint against City Capital Financial, Inc., New Century, Alvarez, Aziz S. Popal, Klein, Segura, and Velazco (*Hernandez et al. v. City Capital Financial, Inc.* (Sup. Ct. L.A. County, 2006, No. BC360106)). They filed a verified first amended complaint against the same defendants on October 26, 2006 (the prior action).³ They alleged that Alvarez had used Hernandez's identity and credit without his permission and had forged his signature on the loan documents to purchase the La Mirada property. In addition, they alleged that Hernandez's signature on the subsequent grant deed transferring Hernandez's interest in the La Mirada property to Segura was a forgery. They also alleged causes of action against Segura, Velazco, and New Century for declaratory relief and fraud, a cause of action against Velazco and others for conspiracy to commit identity theft, and other causes of action.

In their first cause of action for declaratory relief, Hernandez and Virginia alleged that Hernandez never signed the New Century loan documents and New Century never made him a loan, so he did not owe New Century any money. In their second cause of action for declaratory relief, they alleged that Velazco, Segura, New Century and other defendants had purchased the La Mirada property by forging Hernandez's and Virginia's

³ The complaint and first amended complaint identified Velazco as "Jose F. Velasco," rather than "Jose F. Velazco."

signatures on the grant deed to Segura, and that New Century had refinanced the La Mirada property with knowledge of the forged deed. They prayed for a declaration that they did not owe any money to New Century for the loans obtained to purchase the La Mirada property; a declaration that Segura, Velazco, New Century, and their successors did not own any interest in the La Mirada property; and compensatory and punitive damages. Hernandez and Virginia did not denominate a cause of action to “quiet title” in the complaint or first amended complaint, and they did not file a notice of the pendency of the action (lis pendens) or record a lis pendens.

On February 15, 2007, New Century filed a cross-complaint for indemnity, contribution, and other relief against the other defendants. On March 21, 2007, New Century completed a nonjudicial foreclosure on one of its deeds of trust. New Century purchased the La Mirada property at the trustee’s sale and recorded a trustee’s deed on April 5, 2007.⁴

On June 21, 2007, the clerk of the court entered Velazco’s default. On December 6, 2007, New Century voluntarily dismissed its cross-complaint for indemnification and contribution.

On June 24, 2008, Hernandez filed an application for entry of a default and default judgment against Popal. Hernandez filed a declaration by his attorney, Nick A. Alden, stating that Alvarez had worked for City Capital Financial, Inc., a company owned by Popal. Alden declared that Alvarez had forged Hernandez’s signature on the loan documents to purchase the La Mirada property and on the grant deed transferring Hernandez’s interest in the property to Segura, who later sold the property to Velazco. Alden also declared that New Century, as beneficiary of deeds of trust obtained by Velazco to purchase the La Mirada property, had foreclosed on the La Mirada property, as shown on a title report attached as an exhibit to the declaration. Hernandez sought damages including one-half of the claimed value of the La Mirada property at the time of

⁴ On April 2, 2007, New Century filed a chapter 11 bankruptcy petition.

the transfer from Segura and Hernandez to Segura (\$342,500) and other amounts. On June 24, 2008, the court entered a default judgment against Popal.⁵ Hernandez voluntarily dismissed his complaint against Klein and Segura on that same date.

C. *Subsequent Conveyances of the Property*

On February 6, 2009, a quitclaim deed was recorded conveying New Century's interest in the La Mirada property to Consumer Solutions.⁶ On that same date, a grant deed was recorded conveying title to the property from Consumer Solutions to the Chandlers. The Chandlers relied on a title report that did not disclose Hernandez's claim of title to the La Mirada property. Prior to their purchase, the Chandlers did not know of Hernandez's claim to title. The Chandlers, as trustors, executed a deed of trust in favor of Flagstar Bank, as beneficiary, to purchase the La Mirada property. The Flagstar deed of trust was recorded on February 6, 2009. The Chandlers have occupied the La Mirada property since that same date.

D. *The Default Judgment Against Velazco and Dismissal of the Complaint Against New Century*

On February 8, 2010, the trial court set an order to show cause regarding dismissal for failure to prosecute the complaint or, in the alternative, a default prove-up against Velazco. Hernandez testified and presented evidence in the default prove-up.

On March 8, 2010, the court entered a default judgment declaring null and void both the grant deed from Segura and Hernandez to Segura and the grant deed from Segura to Velazco. The default judgment also stated, "The Subject Property reverts to Plaintiff, Saul Hernandez, as of January 12, 2006, at the exclusion of the whole world."

⁵ The appellate record does not include the default judgment against Popal.

⁶ Consumer Solutions executed the quitclaim deed on behalf of New Century as its attorney-in-fact.

On July 14, 2010, the trial court set an order to show cause regarding dismissal for failure to prosecute the complaint against New Century. On July 30, Hernandez failed to appear for the order to show cause hearing, so the court dismissed the complaint against New Century without prejudice.

E. *Hernandez's Complaint in the Present Action*

On March 16, 2012, Hernandez filed his complaint in the present action against Consumer Solutions, Flagstar, the Chandlers, and other defendants. As in his prior complaint, Hernandez alleges that his signature on the grant deed to Segura was forged, and that he is the sole and exclusive owner of the La Mirada property by virtue of the grant deed recorded on December 6, 2005, and the default judgment filed on March 8, 2010. He alleges causes of action for (1) declaratory relief, seeking a declaration that the Chandlers, Flagstar, and the other defendants have no interest in the La Mirada property; (2) quiet title; and (3) cancellation of instruments, seeking to cancel the quitclaim deed to Consumer Solutions and the grant deed to the Chandlers.

Both Flagstar and the Chandlers filed verified answers to the complaint, and asserted as affirmative defenses the statute of limitations and Hernandez's failure to file and record a lis pendens.

Consumer Solutions did not respond to the complaint. On October 23, 2012, the clerk of the court entered defaults (for Consumer Solutions, REO, LLC and Consumer Solutions, LLC).

F. *Flagstar's Cross-Complaint*

On December 9, 2013, Flagstar filed a cross-complaint against Hernandez and Segura. Flagstar alleges that the Chandlers are the legal owners and bona fide purchasers of the La Mirada property, that it provided the Chandlers with a loan to purchase the La Mirada property and, at the time, neither Flagstar nor the Chandlers knew of any adverse claim to the La Mirada property. Flagstar also alleges that Hernandez paid no consideration for the La Mirada property and never made any payments on the New

Century deeds of trust. In addition, Flagstar alleges that, if there were a conspiracy to commit fraud, Hernandez and Segura were aware of the conspiracy and Flagstar was unaware. Flagstar alleges causes of action for (1) quiet title, (2) imposition and foreclosure of an equitable lien to secure repayment of funds the Chandlers and Flagstar paid to purchase the La Mirada property if the conveyance to the Chandlers is deemed void, and (3) fraud.

The Chandlers filed a joinder in Flagstar's cross-complaint.

G. *Hernandez's Application for Entry of Default Judgment Against Consumer Solutions*

On February 26, 2014, Hernandez filed an application for entry of a default judgment against Consumer Solutions in the present action. He sought a judgment canceling both the quitclaim deed from New Century to Consumer Solutions and the grant deed from Consumer Solutions to the Chandlers.⁷

H. *The Summary Judgment Motions*

On March 7, 2014, Flagstar and the Chandlers filed a motion for summary judgment against Hernandez's complaint in the present action or, alternatively, summary adjudication of the equitable lien cause of action in Flagstar's and the Chandler's cross-complaint. They argued that, at the time Hernandez filed his complaint in the prior action on October 11, 2006, Hernandez knew that the New Century loans in his name had been fully repaid and the deeds of trust had been reconveyed when the La Mirada property was sold to Velazco in April 2006. They argued that Hernandez learned of New Century's foreclosure in May or June 2008, yet he proceeded to obtain a default judgment against

⁷ The trial court later scheduled a hearing on the application to occur after the hearing on the summary judgment motions. The trial court ultimately denied the application when it denied Hernandez's motion for reconsideration of its grant of summary judgment in favor of the Chandlers and Flagstar.

Velazco in March 2010, long after Velazco had lost any interest in the La Mirada property. They also argued that Hernandez's claims in the present action were based on the same facts as his claims in the prior action.

Flagstar and the Chandlers argued that the three-year statute of limitations under Code of Civil Procedure section 338, applicable to an action for relief based on fraud or mistake, barred Hernandez's present complaint in its entirety. They argued that the limitations period began to run when Hernandez first became aware of the facts on which his claims were based. They argued that Hernandez knew those facts when he filed his complaint in 2006 in the prior action, or, at the latest, in June 2008 when he learned of New Century's foreclosure on the La Mirada property, or February 2009 when the quitclaim deed to Consumer Solutions and the grant deed to the Chandlers were recorded. Flagstar and the Chandlers also argued that Hernandez had an opportunity to prosecute his claims against New Century in the prior action regarding the enforceability of its deeds of trust and the validity of its title, but he failed to do so.

Flagstar and the Chandlers also argued that the default judgment against Velazco was not enforceable against them because, in the prior action, Hernandez did not allege a cause of action for quiet title or satisfy the statutory requirements for such an action, and because they acquired their interests in the La Mirada property in February 2009 before the March 2010 entry of the default judgment. They argued further that, under the doctrines of ratification and estoppel, Hernandez could not claim title to the La Mirada property while at the same time disputing the validity of the grant deed by which he acquired title and the associated deeds of trust to purchase the La Mirada property. Finally, they argued that they were entitled to an equitable lien if the prior deeds and deeds of trust were subject to cancellation.

Hernandez also moved for summary judgment or summary adjudication on his complaint in the present action or summary adjudication against the causes of action in Flagstar's cross-complaint for quiet title and an equitable lien. He argued that Flagstar and the Chandlers could not obtain any interest in the La Mirada property through a chain of title that included a forged deed (i.e., the deed from Segura and Hernandez to Segura).

Hernandez argued that he had intended to purchase the La Mirada property, but he did not intend to share title with Segura. Hernandez argued that he learned of the foreclosure by New Century only after it had occurred, and the default judgment unconditionally established his title “as of January 12, 2006, [to] the exclusion of the whole world.” He also argued that New Century was a party to the prior action at the time of the default judgment and did not oppose the default judgment, move to set it aside, or file an appeal. In addition, he argued that he was unaware of the sale of the La Mirada property to the Chandlers before the entry of the default judgment against Velazco.

Hernandez further argued that the default judgment against Velazco was final and the doctrine of res judicata precluded any claim seeking to relitigate his title to the La Mirada property. He argued that because the deeds to Segura and Velazco were void, New Century did not acquire any interest through its foreclosure and, in turn, Flagstar and the Chandlers did not acquire any interest through New Century. He also argued that the undisputed facts established that the deeds to Segura and Velazco were void even apart from the default judgment. In addition, Hernandez argued that Flagstar and the Chandlers had no interest in the La Mirada property because New Century had conveyed its purported interest in the property to another party before quitclaiming its interest to Consumer Solutions and that New Century had conveyed its interest while in bankruptcy proceedings without approval from the bankruptcy trustee. Finally, Hernandez argued that Flagstar and the Chandlers were not entitled to an equitable lien because Hernandez had received no benefit from the Chandlers’ purchase money loan and Flagstar and the Chandlers did not pay off any of the New Century loans.

I. *The Ruling on the Summary Judgment Motions*

On April 28, 2014, the trial court conducted a hearing on Flagstar’s and the Chandlers’ summary judgment motion, as well as Hernandez’s summary judgment motion. The court began by asking Hernandez’s counsel if his position was that Hernandez owned the La Mirada property free and clear despite the facts that he originally owned the property jointly with Segura, he never paid any money for the La

Mirada property, and he never lived there, while the Chandlers, who were completely innocent of any wrongdoing, had been paying the mortgage and living on the La Mirada property since 2009. Hernandez's counsel acknowledged that this was his position. Referencing Charles Dickens' *Oliver Twist*, the court stated that it "endeavored not to make the law into either an ass or an idiot."

On April 28, 2014, the trial court granted the summary judgment motion by Flagstar and the Chandlers, denying the motion by Hernandez, and directing the Chandlers and Flagstar to prepare an order and judgment.

J. *Hernandez's Motion to Reconsider*

On July 2, 2014, Hernandez filed a motion to reconsider the ruling on the summary judgment motions. He asserted as a basis for reconsideration that he had found different case law that supported his position that he justifiably had not cited prior to the hearing on the summary judgment motions. Hernandez argued that the March 8, 2010, default judgment was final and the doctrine of *res judicata* barred relitigation of his title to the property, and the trial court had no authority to set it aside. He also argued that the forged deed from Segura and Hernandez to Segura was void, Flagstar and Chandler could not obtain good title through the forged deed, and that the statute of limitations did not bar his present action because a lawsuit to set aside a void deed could be brought at any time. He argued that even if the statute of limitations applied, the limitations period did not begin to run until he learned about the conveyances to Consumer Solutions and the Chandlers, which he did not learn about until after entry of the default judgment against Velazco in March 2010, less than three years before he filed his complaint in the present action.

K. *The Ruling on the Motion to Reconsider and Application for a Default Judgment, and the Signed Order Ruling on the Summary Judgment Motions*

On August 11, 2014, the trial court heard Hernandez's motion to reconsider and application for a default judgment. The court denied the motion for reconsideration and

the application for a default judgment, stating that the proposed default judgment against Consumer Solutions was inconsistent with the court's ruling quieting title in favor of the Chandlers.

On that same date, the court filed a signed order ruling on the summary judgment motions. The order stated that the three-year statute of limitations under Code of Civil Procedure section 338 applied and barred each cause of action alleged in Hernandez's complaint. It stated that Hernandez's prior action and his current action were based on the same factual allegations of fraud and forgery. It stated that the three-year limitations period began to run either when Hernandez filed his complaint in the prior action (on October 11, 2006), when Hernandez learned of the foreclosure by New Century (no later than June 24, 2008), or, at the latest, when the Chandlers acquired title to the La Mirada property (on February 6, 2009). The order stated that, in the prior action, Hernandez had an opportunity to pursue a judgment against New Century regarding the enforceability of its deeds of trust and its ownership of the La Mirada property, but Hernandez failed to prosecute his complaint against New Century.

The order ruling on the summary judgment motions also stated that the default judgment against Velazco was not enforceable against Flagstar, the Chandlers, or their predecessors in title. It stated that Hernandez did not prosecute the prior action against New Century, which owned the La Mirada property at the time of the default judgment; Hernandez failed to satisfy the requirements for a quiet title action, including the recording of a lis pendens; and Flagstar and the Chandlers had acquired their interests without notice of Hernandez's adverse claim and prior to the entry of the default judgment.

The order stated further that the default judgment was void to the extent that it purported to adjudicate any claims to an interest in the La Mirada property by parties other than Velazco. It stated that the declaration that Hernandez was the sole and exclusive owner of the property to the exclusion of the entire world encompassed parties that had no notice of the prior action, exceeded the relief requested in the complaint in the prior action, and therefore was void.

Regarding the summary judgment motion by Flagstar and the Chandlers, the order stated that the defendants were entitled to summary judgment against the complaint and summary judgment on the quiet title cause of action in Flagstar's cross-complaint for the same reasons stated above. It stated that the parties had stipulated to dismiss the fraud cause of action and the equitable lien cause of action was moot. The trial court also ruled on the parties' evidentiary objections.

L. *The Judgment and Appeal*

On August 11, 2014, the trial court entered a judgment in favor of Flagstar and the Chandlers and against Hernandez on the complaint and cross-complaint. The judgment declares that the Chandlers are the sole and exclusive owners of legal and equitable fee title to the La Mirada property as of February 6, 2009, subject to a first priority deed of trust in favor of Flagstar as beneficiary, and Hernandez has no interest in the La Mirada property.

Hernandez filed a timely appeal from the judgment.⁸

DISCUSSION

A. *Summary Judgment Standard of Review*

Summary judgment is proper if there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc.,⁹ § 437c, subd. (c).) We review the trial court's ruling on a summary judgment motion de novo

⁸ Hernandez purports to appeal from both the judgment and the order denying his application for a default judgment. The trial court denied the application for a default judgment in a minute order filed on August 11, 2014, prior to the entry of judgment that same day. The denial of the application for a default judgment therefore is encompassed within the judgment and is not separately appealable as a postjudgment order.

⁹ All undesignated statutory references are to the Code of Civil Procedure.

and independently determine whether the moving party is entitled to judgment as a matter of law. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) We consider all of the evidence set forth in the moving and opposing papers, except that as to which objections have been made and sustained. (§ 437c, subd. (c).) We liberally construe the evidence in favor of the party opposing summary judgment and resolve all doubts concerning the evidence in favor of that party. (*Hampton*, at p. 347.)

B. *The Trial Court Properly Granted Summary Judgment in Favor of the Chandlers and Flagstar on Hernandez’s Complaint and on the Quiet Title Cause of Action in the Cross-Complaint*

Hernandez argues the trial court erred in granting summary judgment in favor of the Chandlers and Flagstar on the complaint and on their cause of action in the cross-complaint to quiet title. He contends the default judgment he obtained against Velazco, giving Hernandez title to the La Mirada property “[at] the exclusion of the whole world,” is enforceable against Flagstar and the Chandlers and invalidates their purported property interests. He also contends the statute of limitations does not bar his complaint because a lawsuit to set aside a void deed can be brought at any time and, even if the statute of limitations applies, the limitations period began to run when Hernandez learned of Flagstar’s and the Chandlers’ claimed interests in the property, which occurred after entry of the default judgment and less than three years before he filed his complaint.

We conclude, however, Hernandez’s failure in his prior action to comply with the procedural requirements governing quiet title actions under section 760.010 et seq. precludes him from enforcing against the Chandlers, Flagstar, or their predecessor in title the default judgment he obtained against Velazco in the prior action. We also conclude the statute of limitations bars Hernandez’s complaint.

1. *Default Judgment Against Velazco Is Not Enforceable Against the Chandlers and Flagstar or Their Predecessor in Title*

Section 760.020, subdivision (a), provides that a plaintiff seeking to establish title to real property against adverse claims may file an action to quiet title. (§ 760.020, subd. (a).) The purpose of a quiet title action is to “‘finally settle . . . all conflicting claims to the property in controversy,’” and to determine the interest to the property to which each party may be entitled. (*Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284, quoting *Peterson v. Gibbs* (1905) 147 Cal. 1, 5.)

A plaintiff seeking to bring a quiet title action must file a verified complaint including a description of the property, the basis for the plaintiff’s claim of title, the adverse claims the plaintiff seeks to adjudicate, the date as of which the plaintiff seeks to adjudicate those claims, and a prayer for the determination of the plaintiff’s title against the adverse claims. (§ 761.020.) The plaintiff must name as defendants the persons having adverse claims against which the plaintiff seeks a determination. (§ 762.010.) If the plaintiff does not know the names of persons who may have adverse claims, the plaintiff may also name as defendants “‘all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff’s title, or any cloud upon plaintiff’s title thereto.’” (§ 762.060, subd. (a).)

Immediately upon commencing a quiet title action, the plaintiff must record a lis pendens in the office of the county recorder for each county in which the property is located. (§ 761.010, subd. (b).) If the trial court determines that the plaintiff has exercised reasonable diligence to identify and serve the persons named as unknown defendants, the court must order service by publication. (§ 763.010, subd. (b).)

Once a plaintiff has satisfied the procedural requirements for a quiet title action, “[t]he court shall examine into and determine the plaintiff’s title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff’s title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by

the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law.” (§ 764.010.)

The judgment in a quiet title action is binding and conclusive on all persons known and unknown who were parties to the action. (§ 764.030, subd. (a).) The judgment is also binding and conclusive on all persons who were not parties to the action whose claim was not of record at the time the lis pendens was recorded or, if no lis pendens was recorded, at the time the judgment was recorded. (*Id.*, subd. (b).) The judgment is binding and conclusive on a successor in interest of a party to the action if the successor had actual or constructive notice of the pending action. (§ 1908, subd. (a)(2); see § 764.045.)

The judgment in a quiet title action does not affect a claim of any person who was not a party to the action if the claim was of record at the time the lis pendens was recorded or, if no lis pendens was recorded, at the time the judgment was recorded. (§ 764.045, subd. (a).) The judgment also does not affect a claim of any person who was not a party to the action if the plaintiff actually knew of the claim or the claim would have been reasonably apparent to the plaintiff upon a reasonable inspection of the property at the time the lis pendens was recorded or, if no lis pendens was recorded, at the time the judgment was recorded. (*Id.*, subd. (b).) The sole exception to this rule is that the judgment is binding and conclusive on a person who was not a party to the action if the person is a successor in interest of a party to the action and the successor had actual or constructive notice of the pending action. (§§ 764.045, 1908, subd. (a)(2); see *Deutsche Bank National Trust Co. v. McGurk* (2012) 206 Cal.App.4th 201, 211 & fn. 12.)

Hernandez and Virginia filed a verified first amended complaint in the prior action alleging that Alvarez had purchased the property in the names of Hernandez and Segura. They alleged that Alvarez had forged Hernandez’s signature on the loan documents and forged his name on the grant deed to Segura. They sought a declaration that Hernandez did not owe any money to New Century and that Segura, Velazco, New Century, and their successors did not own any interest in the La Mirada property. Thus, Hernandez

sought to defeat the defendants' and their successors' claims of title to an interest in the property so as to establish his own title free and clear of any interest of the defendants or their successors. Although Hernandez did not expressly allege a cause of action for "quiet title," the gravamen of his declaratory relief claims against Segura, Velazco, and New Century was to quiet title as to them. Accordingly, we regard the prior action against those defendants as a quiet title action. (See *Ephraim v. Metropolitan Trust Co.* (1946) 28 Cal.2d 824, 833 [causes of action for quiet title and declaratory relief to remove a cloud on title, based on the same facts and seeking the same relief, constituted a single cause of action].)

Hernandez did not name the Chandlers and Flagstar as parties to the prior action. Nor did he name "[a]ll persons . . . unknown" claiming an interest in the property. As such, section 764.030, subdivision (a), is inapplicable and does not make the default judgment binding and conclusive on them. Also, the Chandlers' grant deed and Flagstar's deed of trust were recorded on February 6, 2009, before the recording of any lis pendens (Hernandez did not record a lis pendens) or the default judgment against Velazco in March 2010. Thus, section 764.030, subdivision (b), is inapplicable and does not make the default judgment binding and conclusive on them. In addition, the undisputed facts in the record demonstrate the Chandlers and Flagstar had no actual or constructive knowledge that the prior action was pending before entry of the default judgment, so section 1908, subdivision (a)(2), does not make the default judgment binding and conclusive on them as New Century's successors.¹⁰

Moreover, section 764.045 makes it clear that the default judgment does not affect the Chandlers' and Flagstar's interests in the property because (1) they were not parties to the prior action, (2) their claims (i.e., the Chandlers' grant deed and Flagstar's deed of trust) were recorded before any lis pendens or judgment was recorded, and (3) the

¹⁰ Hernandez did not controvert the evidence that he never recorded a lis pendens in the prior action and that the Chandlers and Flagstar had no actual or constructive knowledge of his claim of title.

Chandlers and Flagstar had no actual or constructive notice of the pendency of the prior action. (§§ 764.045, 1908, subd. (a)(2).) We therefore conclude that the default judgment is not enforceable against the Chandlers and Flagstar and does not affect their interests in the property.¹¹

2. *The Statute of Limitations Bars Hernandez’s Complaint*

Similarly, we find no error in the trial court’s grant of summary judgment in favor of the Chandlers and Flagstar on Hernandez’s complaint based on the determination that Hernandez’s claims are barred by the statute of limitations under section 338, subdivision (d).

The underlying theory of relief or gravamen of the cause of action, rather than the form of the action or the relief requested, determines the applicable statute of limitations. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23; *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 347.)

Section 338, subdivision (d), establishes a three-year limitations period for “[a]n action for relief on the ground of fraud or mistake.” A quiet title cause of action based on fraud is subject to the three-year limitations period of section 338. (*Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615 [“the theory of relief underlying an action for quiet title, in this case fraud or mistake, determines which statute of limitations applies”].)

¹¹ In light of our conclusion, we need not decide whether the default judgment is void or the impact of the language in section 764.010 prohibiting any default judgment in a quiet title action. (Compare *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 947 [“the unambiguous language of [§] 764.010 precludes a traditional default prove-up in quiet title actions and imposes an absolute ban on a ‘judgment by default’ in such actions”] and *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1502-1508 [§ 764.010 prohibits a default judgment and requires an evidentiary hearing in which all defendants, including the defaulting defendant, have an opportunity to present evidence] with *Yeung v. Soos* (2004) 119 Cal.App.4th 576, 580-581 [§ 764.010 does not prohibit a default judgment, but requires an evidentiary hearing].)

Hernandez's causes of action for declaratory relief and cancellation of instruments are based on the same alleged fraudulent acts and same theory of relief and therefore are subject to the same statute of limitations. (*Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 734 ["the period of limitations applicable to ordinary actions at law and suits in equity should be applied in like manner to actions for declaratory relief"]; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155 ["the statute of limitations governing a request for declaratory relief is the one applicable to an ordinary legal or equitable action based on the same claim"]; *Hatch v. Collins* (1990) 225 Cal.App.3d 1104, 1110 [applied the three-year statute of limitations under § 338 to an action to cancel a trustee's deed based on fraud].)

The three-year limitations period under section 338, subdivision (d), begins to run when the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, the facts constituting the fraud or mistake.¹² (*Ibid.*; *Cleveland v. Internet Specialties West, Inc.* (2009) 171 Cal.App.4th 24, 31.) Hernandez discovered the facts regarding the alleged unauthorized use of his identity and credit and forging of his signature in connection with the conveyance of the property to Segura by, at the latest, October 11, 2006, the date he filed his complaint in the prior action alleging those facts. He filed his complaint in the present action more than five years later, on March 16, 2012, long after the three-year limitations period had expired.

Hernandez argues that a forged deed is void and therefore can be attacked at any time, and such a lawsuit logically cannot be subject to any statute of limitations.

¹² Section 338, subdivision (d), states that a cause of action for relief based on fraud or mistake accrues upon the plaintiff's "discovery . . . of the facts constituting the fraud or mistake." Thus, the cause of action accrued when Hernandez discovered, or reasonably should have discovered, the facts constituting the alleged fraud. Contrary to Hernandez's argument, the cause of action did not accrue when he discovered, or reasonably should have discovered, the adverse claims of Flagstar and the Chandlers. Hernandez was aware of the foreclosure by New Century by June 24, 2008 at the latest and at that time could have pursued a judgment in the prior action against New Century and any unknown persons claiming an interest in the property, but he failed to do so.

Hernandez cites no authority for the proposition that a void deed is subject to attack at any time and immune from the statute of limitations. In other contexts, courts have held that causes of action challenging an instrument as void were subject to the applicable statute of limitations. (E.g., *Moss v. Moss* (1942) 20 Cal.2d 640, 644-645 [statute of limitations barred an action to cancel a property settlement agreement as void]; *Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861, 878-879 [statute of limitations barred an action to declare void a lease of public-use property].) Similarly here, we conclude that Hernandez's complaint is not immune from the statute of limitations. The three-year statute of limitations bars Hernandez's complaint.¹³

C. *The Trial Court Properly Denied Hernandez's Application for Entry of a Default Judgment*

Hernandez argues that the trial court erred by granting summary judgment in favor of the Chandlers and Flagstar, so it follows that the court also erred by refusing to enter a default judgment against Consumer Solutions on his complaint. The proposed default judgment would have canceled both the quitclaim deed from New Century to Consumer Solutions and the grant deed from Consumer Solutions to the Chandlers. We conclude that the court properly granted summary judgment in favor of the Chandlers and Flagstar, as stated. The court properly refused to enter the proposed default judgment against Consumer Solutions as inconsistent with the court's ruling quieting title in favor of the Chandlers.

¹³ Our conclusion that the statute of limitations bars Hernandez's complaint also disposes of Hernandez's contention on appeal that the Chandlers and Flagstar never acquired any interest in the property because the grant deed to Segura was forged and therefore is void. This contention is based on the central claim alleged in Hernandez's complaint, which is barred by the statute of limitations.

DISPOSITION

The judgment is affirmed. The Chandlers and Flagstar are entitled to costs on appeal.

GARNETT, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.