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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

BRUCE KUYPER et al., Plaintiffs and Appellants, v. NEW BEL-AIR ASSOCIATION et al., Defendants and Respondents.	B288413 (Los Angeles County Super. Ct. No. SC126837)

APPEAL from an order of the Los Angeles County Superior Court, Lisa Hart Cole, Judge. Affirmed.

Cooksey, Toolen, Gage, Duffy & Woog, Phil Woog and Robert D. Matranga for Plaintiffs and Appellants.

Browne George Ross, Eric M. George, Russell F. Wolpert and Ira Bibbero for Defendants and Respondents.

INTRODUCTION

After he was ousted from the board of directors of a homeowners association called the Bel-Air Association, Bruce Kuyper filed an action against what he referred to as the "New Bel-Air Association" and members of the association's newly constituted board. In that action, *Bruce Kuyper v. New Bel-Air Association, et al.* (Super. Ct. Los Angeles County, 2016, No. BC616011) (*Kuyper I*), Kuyper asserted a single cause of action for declaratory relief under Corporations Code section 7616,[1] challenging the validity of the election that removed him from the board of directors. After receiving a tentative ruling in the matter that was not entirely to his liking, Kuyper voluntarily dismissed *Kuyper I*.

Kuyper then filed this action, *Bruce Kuyper, et al. v. New Bel-Air Association, et al.* (Super. Ct. Los Angeles County, 2016, No. SC126837) (*Kuyper II*), asserting the same cause of action against the same defendants. His operative amended complaint, however, dropped the cause of action under section 7616, added the Bel-Air Association as a plaintiff, and asserted several tort causes of action. The trial court sustained a demurrer to these tort causes of action without leave to amend, and Kuyper and the Bel-Air Association appealed.

At oral argument in this court, Kuyper conceded that his tort causes of action are barred and that the only issue in this appeal is whether the trial court erred in sustaining the demurrer to the Bel-Air Association's tort causes of action. We affirm.

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[1] Undesignated statutory references are to the Corporations Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Something Happens on March 17, 2016*

The Bel-Air Association is a non-profit mutual benefit corporation. As the trial court observed, "significant hostility has arisen within this community over leadership of the Association." Embroiled in that dispute is Kuyper, an attorney who alleges that, at all relevant times, he was and "remains" a member, a director, the secretary, and the general counsel of the Bel-Air Association. Others members of the association beg to differ.

They claim that on March 17, 2016 an election occurred that removed Kuyper and other board members and replaced them with new board members. Kuyper rejects that description of what happened on March 17, 2016. According to him, the new board members "engaged in a hostile takeover of [the Bel-Air Association] by holding an unauthorized and invalid 'special meeting' at which, without power or authority to do so, they engaged in a sham vote to purportedly elect a new board of directors and to purportedly amend the By-laws of [the Bel-Air Association]. Following that, along with counsel, [the new board members] broke into [the Bel-Air Association] offices at night and forcibly took possession of the premises, then went to the bank, falsely represented themselves as the new board of the [Bel-Air Association], and converted all of [the Bel-Air Association's] funds into their own accounts." (Italics omitted).

Kuyper has also taken the position, as he does on this appeal, that "nothing" occurred in the Bel-Air Association on March 17, 2016. In particular, he maintains that no election of the association's board of directors occurred on that date because the members of the association who called for the election did not

have authority to do so. He also claims no such election has occurred since that date. In sum, Kuyper maintains he is still a director of the Bel-Air Association, and he "does not recognize" any of the supposedly new directors as directors.

B. *Kuyper Files* Kuyper I

In April 2016 Kuyper filed *Kuyper I*, naming as defendants the "New Bel-Air Association" and individual members Kuyper says are claiming to constitute the Bel-Air Association's new board. Kuyper asserted one cause of action under section 7616, which provides that "[u]pon the filing of an action therefor by any director or member or by any person who had the right to vote in the election at issue, the superior court of the proper county shall determine the validity of any election or appointment of any director of any corporation." (§ 7616, subd. (a).) Invoking the trial court's jurisdiction under this provision, Kuyper alleged that "[o]n March 17, 2016 [the defendants] staged an unlawful 'special meeting,' purporting to be a meeting noticed, held, and conducted by [the Bel-Air Association], but which was none of these," and that the defendants "engaged in a vote at that meeting" without the "power or authority to do so . . . ." Kuyper sought "declaratory relief that Defendants' March 17, 2016 [meeting] did not constitute official [Bel-Air Association] action, did not result in the ouster of the existing board of directors, [including Kuyper,] and did not result in the election of Defendants."

In June 2016 the court in *Kuyper I* held a hearing and issued a tentative ruling that, on the merits, was in Kuyper's favor. The trial court tentatively ruled the bylaws enacted by the new board of directors and the March 17, 2016 election were invalid. The tentative ruling, however, did not give Kuyper the

relief he sought. Instead of reinstating Kuyper and other ousted members to the board of directors, the trial court proposed holding a new election consistent with the original bylaws and overseen by a retired judge.

Kuyper filed objections to the tentative ruling, and the trial court set a hearing to address them. Before the hearing, however, Kuyper filed a request for dismissal without prejudice, apparently to avoid the effect of the relief proposed in the tentative ruling.[2]

C. *Kuyper Files* Kuyper II *(This Action)*

Six months later, in December 2016, Kuyper filed this action, asserting the same single cause of action against the same defendants based on essentially the same allegations. He then filed a first amended complaint that added the Bel-Air Association as a plaintiff and that asserted causes of action by Kuyper and the Bel-Air Association for trespass, conversion, forcible entry, and forcible detainer. These tort causes of action rested on Kuyper's allegations that, following whatever did or did not happen on March 17, 2016, the defendants broke into the association's offices, forcibly took possession of the premises, and later converted association funds at the bank.

The defendants demurred to the first amended complaint, arguing it was barred by res judicata, laches, and waiver. They also demurred to the tort causes of action on the ground, among others, Kuyper had no personal interest in the property allegedly trespassed on, converted, forcibly entered upon, and forcibly detained.

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[2] The court never adopted the tentative ruling as its final ruling.

The trial court sustained the demurrer to the cause of action under section 7616 without leave to amend, ruling the doctrine of res judicata barred the plaintiffs from bringing the same cause of action brought in *Kuyper I*.[3] The trial court sustained the demurrer to the tort causes of action with leave to amend, suggesting that if Kuyper could allege he was a current member of the board of directors, he could pursue remedies on behalf of the Bel-Air Association. Kuyper and the Bel-Air Association do not challenge these rulings.

Kuyper and the Bel-Air Association filed a second amended complaint, asserting the same tort causes of action, based on virtually the same allegations, as those in the first amended complaint. Again the defendants demurred. They argued (again) Kuyper could not state the tort causes of action on behalf of himself because he had no personal interest in the property at issue and could not state those causes of action on behalf of the Bel-Air Association because he had no authority to do so. His purported authority, they argued, rested on his claims that the March 17, 2016 election was an "invalid" "hostile takeover" and that he "accordingly remains a director of" the Bel-Air Association—claims foreclosed by the "full res judicata effect" of the dismissal of *Kuyper I*. The defendants continued to insist that, because the March 17, 2016 election was never invalidated,

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[3] The trial court ruled that, although Kuyper purported to dismiss *Kuyper I* without prejudice, for purposes of res judicata the dismissal was with prejudice under Code of Civil Procedure section 581, subdivision (e). This ruling rested on the court's conclusions that "trial" in *Kuyper I* had commenced, Kuyper "clearly believed that the [final] ruling that would come from that hearing would also be against his interests," and *Kuyper I* and *Kuyper II* sought the same relief.

they in fact were the members of the board with authority to act on behalf of the association.

The trial court sustained the demurrer without leave to amend. The court stated that Kuyper "does not allege in his [second amended complaint] that he is a director of the existing board of directors" and that, "[g]iven the res judicata effect of the previous demurrer, Kuyper cannot allege that he is an existing director." "Since he is not an existing director," the court ruled, Kuyper "has no standing to assert the claims in the [second amended complaint]" or to sue as the representative of the Bel-Air Association. As for the Bel-Air Association plaintiff, the trial court ruled that "the only way the entity has standing is if it is the existing association" and that the Bel-Air Association "implie[d]" by the second amended complaint "no longer exists." Finally, the trial court noted the "March [17,] 2016 election has never been invalidated, and it is beyond the time permitted to make such a claim under [section] 7616." Kuyper and the Bel-Air Association appealed.

DISCUSSION

A. *Appealability*

The trial court's order sustaining the demurrer to the second amended complaint without leave to amend is dated December 18, 2017. Kuyper and the Bel-Air Association filed their notice of appeal from that order on February 16, 2018, stating the appeal is from "[t]he order sustaining Defendants' demurrer to the entirety of the 1st Amended Complaint, entered December 18, 2018." The trial court entered a judgment of dismissal on March 14, 2018.

We liberally construe the notice of appeal to correct its typographical errors so that the notice states the appeal is from the December 18, 2017 (not 2018) order sustaining the demurrer to the second amended (not first amended) complaint without leave to amend. (See *Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 913, fn. 7; Cal. Rules of Court, rule 8.100(a)(2).) And because an order sustaining a demurrer is not appealable (*Fierro v. Landry's Restaurant Inc.* (2019) 32 Cal.App.5th 276, 280, fn. 4; *Shahbazian v. City of Rancho Palos Verdes* (2017) 17 Cal.App.5th 823, 829, fn. 3), we further liberally construe the notice of appeal to include an appeal from the subsequent judgment for purposes of reviewing the December 18, 2017 order. (See *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 96, fn. 1 [premature appeal, filed after entry of nonappealable order sustaining the demurrer without leave to amend and before entry of the judgment of dismissal, was deemed an appeal from the subsequent judgment of dismissal]; *Brown v. County of Los Angeles* (2014) 229 Cal.App.4th 320, 322, fn. 1 [same].)

B. *Standard of Review*

"'"'"On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.'" [Citation.] In reviewing the complaint, "we must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable." [Citation.] We may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling.'" (*Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, 1174; see *Krolikowski v. San Diego City*

Employees' Retirement System (2018) 24 Cal.App.5th 537, 549.) We review de novo any issue of statutory interpretation. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527.)

C. *The Trial Court Did Not Err in Sustaining the Demurrer to the Tort Causes of Action Without Leave To Amend*

As mentioned, during oral argument counsel for Kuyper conceded Kuyper's tort causes of action are barred by the claim-preclusive effect of *Kuyper I*. That resolves Kuyper's appeal.

But the claim-preclusive effect of *Kuyper I* also forecloses the tort causes of action brought by the Bel-Air Association—at least the ones brought in this case by the "Bel-Air Association" alleged to be the remaining plaintiff, i.e., a Bel-Air Association with Kuyper on its board of directors.[4] In fact, the result in *Kuyper I* forecloses that entity's existence.

For a Bel-Air Association with Kuyper on its board to exist and maintain tort causes of action against the defendants, a court would have to declare the election that allegedly removed Kuyper invalid. But that is no longer a possibility. In sustaining the demurrer to the section 7616 cause of action in the first amended complaint without leave to amend, the trial court ruled the result in *Kuyper I* barred that cause of action in this case under the doctrine of claim preclusion. Neither appellant has challenged that ruling. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 [claim preclusion "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them"]; accord, *DKN Holdings LLC v.*

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[4] From this point we will at times refer to this entity as "the plaintiff Bel-Air Association."

Faerber (2015) 61 Cal.4th 813, 826.) Thus, as the trial court stated in sustaining the demurrer to the second amended complaint, citing the preclusive effect of its previous ruling, the "March [17,] 2016 election has never been invalidated, and it is beyond the time permitted to make such a claim under [section] 7616."

Significantly, there is no suggestion anywhere in the record of this or the prior action that anyone with authority to bring these tort causes of action on behalf of the Bel-Air Association as presently constituted, i.e., without Kuyper on the board, has authorized this action. (Indeed, nine of the current directors are defendants in this action.) Which only makes sense: Although the gravamen of the tort causes of action is that the Bel-Air Association as presently constituted committed torts against the Bel-Air Association as previously constituted, there is and always has been only one Bel-Air Association—and it cannot convert its own funds, trespass on its own property, or forcibly enter or detain its own property. (See *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1150 [conversion requires the "'wrongful exercise of dominion over personal property of another"']; *Albert v. Truck Ins. Exchange* (2018) 23 Cal.App.5th 367, 379 [""'The essence of the cause of action for trespass is an 'unauthorized entry' onto the land of another.'"']; see also *Daluiso v. Boone* (1969) 71 Cal.2d 484, 494 ["'forcible entry and detainer, not in terms, but by necessary construction, forbids a forcible entry, even by the owner, upon the actual possession of another"'].)

Although the appellants have not challenged the trial court's ruling (in sustaining the demurrer to the first amended complaint) in this action that the result in *Kuyper I* barred the section 7616 cause of action in *Kuyper II* under the doctrine of

claim preclusion, the plaintiff Bel-Air Association nevertheless argues the doctrine does not apply because in *Kuyper I* the court lacked "subject matter jurisdiction over the [section] 7616 cause of action." And because the court in *Kuyper I* lacked subject matter jurisdiction, the plaintiff Bel-Air Association argues, its judgment was "void" and therefore without claim-preclusive effect. (See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196 (*Varian Medical*) ["any judgment or order rendered by a court lacking subject matter jurisdiction is 'void on its face'"].) Even assuming we can reach the merits of this argument, it has none.

The plaintiff Bel-Air Association argues the trial court lacked subject matter jurisdiction over the section 7616 cause of action in *Kuyper I* because Kuyper lacked standing to bring that cause of action. It argues Kuyper lacked standing because "[f]or Section 7616 to apply, there must be a corporate election at issue at which members of the corporation would have the right to vote" and no such election occurred here. Rather, according to plaintiff Bel-Air Association, whatever occurred on March 17, 2016 was "a legal nullity," and therefore "no one had standing to sue under section 7616."

We doubt Kuyper lacked standing to bring the section 7616 cause of action in *Kuyper I*, at least for the reasons argued by the plaintiff Bel-Air Association. But even assuming he lacked standing, his lack of standing did not deprive the court of subject matter jurisdiction. "Subject matter jurisdiction is conferred by constitutional or statutory law. [Citations.] The California Supreme Court has defined subject matter jurisdiction thusly: 'Subject matter jurisdiction . . . is the power of the court over a cause of action or to act in a particular way.' [Citations.] By

contrast, the lack of subject matter jurisdiction means the entire absence of power to hear or determine a case; i.e., an absence of authority over the subject matter." (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42; see *Varian Medical*, *supra*, 35 Cal.4th at p. 196 ["'The principle of "subject matter jurisdiction" relates to the inherent authority of the court involved to deal with the case or matter before it.'"].) Section 7616 confers jurisdiction on the superior court over the subject matter of "determin[ing] the validity of any election" of the sort at issue here. (See § 7616, subd. (a).)

Subject matter jurisdiction does not turn on a plaintiff's standing to bring a cause of action. (See *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, 1338 ["the two issues (standing to sue and subject matter jurisdiction of the court) are totally unrelated in the law"].) """[A] complaint by a party lacking standing fails to state a cause of action by the particular named plaintiff, inasmuch as the claim belongs to somebody else. [Citation.] A more accurately stated rationale would be that there is a defect in the parties, since the party named as plaintiff is not the real party in interest."'" (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501 (*Cummings*).) "'Defects or errors in relation to parties,'" however, "'do not affect subject matter jurisdiction.'" (*The Rossdale Group, LLC v. Walton* (2017) 12 Cal.App.5th 936, 944; accord, 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 99, p. 672; see *County of Riverside v. Loma Linda University* (1981) 118 Cal.App.3d 300, 319 ["lack of standing as a real party in interest is not jurisdictional; it is equivalent only to a failure to state a cause of action"].)[5]

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[5] Courts sometimes describe lack of standing as relating to jurisdiction. (See, e.g., *Cummings*, *supra*, 177 Cal.App.4th at

DISPOSITION

The judgment is affirmed. The defendants are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J. FEUER, J.

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p. 501 ["A lack of standing is a jurisdictional defect to an action that mandates dismissal."].) "Jurisdiction," however, "means different things in different situations." (*National Union Fire Ins. Co. v. Stites Prof. Law Corp.* (1991) 235 Cal.App.3d 1718, 1723; see *Mt. Holyoke Homes, LP v. California Coastal Com.* (2008) 167 Cal.App.4th 830, 840 ["There are essentially two kinds of jurisdictional errors with different consequences."].) "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 289.) "[T]he phrase 'lack of jurisdiction' 'may also "be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no 'jurisdiction' (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites."'" (*Mt. Holyoke*, at p. 841.) To the extent lack of standing is characterized as a "jurisdictional defect," the defect is not jurisdictional in the "fundamental sense" of depriving the court of subject matter jurisdiction. (*Abelleira*, at p. 288; see *The Rossdale Group, LLC v. Walton*, *supra*, 12 Cal.App.5th at p. 944.)