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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TAYLOR CONCRETE PUMPING
CORP. et al.,

Plaintiffs and Appellants,

v.

ZIPPY'S CURRENCY X-CHANGE,
INC. et al.,

Defendants and Respondents.

B269522

(Los Angeles County
Super. Ct. No. BC418774)

APPEAL from a judgment of the Superior Court for Los Angeles
County, Mark A. Borenstein, Judge. Affirmed.

Gary V. Hixon, in pro. per., for Plaintiffs and Appellants.

No appearance for Defendants and Respondents.

This appeal involves the attempted enforcement of a judgment by Gary V. Hixon, as assignee of judgment creditors/plaintiffs Taylor Concrete Pumping Corp. and Taylor Transportation, Inc. (collectively, Taylor), against judgment debtors/defendants Zippy's Currency X-Change, Inc., Mark J. Zippert, and Carol Zippert (collectively, the Zippert defendants), and the Zippert defendants' ultimately successful attempts to end Hixon's attempted enforcement, based upon an agreement between Taylor and the Zippert defendants regarding satisfaction of the judgments in this case and a related case. That agreement (the stipulation) required Taylor to file a satisfaction of judgment as to the Zippert defendants in both this case and the related case if certain payments were made within specified time limits. Taylor subsequently assigned the judgments in both cases to Hixon. The trial court in the related case found the payments were timely made, and ordered Hixon to file an acknowledgment of satisfaction of judgment in that case. That order was affirmed on appeal by our colleagues in Division Three. The trial court in this case (which was the same judge as in the related case) subsequently granted the Zippert defendants' motion to compel acknowledgment and satisfaction of judgment in this case and their motion to quash a writ of execution. Hixon appeals that order. We affirm.

BACKGROUND

This case is the first of four related cases. To understand Hixon's arguments on appeal, an overview of those cases and certain post-judgment activity is required. Much of background also was set forth in

two opinions filed by Division Three in two related cases on July 30, 2015 (Case No. B256900, arising from L.A.S.C. Case No. BC438252, and Case No. B256439, arising from L.A.S.C. Case No. BC527402).

A. *This Case (Case 1)*

Taylor filed a complaint against the Zippert defendants and Doug L. DeCoster¹ in July 2009, for fraud, common counts, and other related claims. Following a bench trial, the court entered judgment on May 18, 2010 awarding Taylor damages in the amount of \$163,259.18, plus prejudgment interest; the judgment later was amended to include the amount of prejudgment interest and costs, resulting in a total judgment of \$183,849.60, plus post-judgment interest.

Taylor obtained a writ of execution on the judgment in July 2010, and in October 2010, the Los Angeles County Sheriff levied on a \$100,000 certificate of deposit held by Farmers & Merchants Bank (the Bank) under the writ. The Bank did not release the funds at that time, however, because the certificate of deposit had not yet matured.

B. *Case No. BC438252 (Case 2) and the Stipulation*

Shortly after the original judgment in Case 1 was entered, on May 26, 2010, Taylor filed another lawsuit against the Zippert defendants and DeCoster,² alleging that they transferred their assets before the

¹ DeCoster is not a party to this appeal; the satisfaction of judgment at issue here is as to the Zippert defendants only.

² DeCoster subsequently was dismissed from Case 2.

trial in Case 1 in order to defraud their creditors. The complaint alleged claims to set aside the fraudulent transfers and for recovery of a claim under the bulk sales law.

In August 2011, Taylor and the Zippert defendants entered into a stipulation for entry of judgment in Case 2 (i.e., the stipulation). Under the stipulation, the Zippert defendants assigned to Taylor Transportation, Inc. the \$100,000 certificate of deposit held by the Bank,³ and agreed to pay \$10,000 to Taylor in two installments (\$5,000 to be paid no later than August 31, 2011, and \$5,000 to be paid no later than September 30, 2011). The Zippert defendants also stipulated to entry of judgment for fraud in the amount of \$195,000, but the parties agreed that once the \$10,000 payment and the proceeds of the certificate of deposit were received by Taylor, Taylor “shall cause a partial satisfaction of judgment to be filed, in full as to [the Zippert defendants] in the action entitled ‘TAYLOR CONCRETE PUMPING CORP, ET AL. V. ZIPPY’S CURRENCY X-CHANGE INC., ET AL[.]’ (abbreviated caption), Los Angeles Superior Court Case No. BC418774 [i.e., Case 1], as well as a partial satisfaction of judgment to be filed, in full as to [the Zippert defendants] in this ACTION [i.e., Case 2].” The stipulation provided, however, that Taylor would be entitled to pursue all available collection remedies to collect the full judgment in Case 2 if

³ The stipulation attached a signed assignment of the certificate of deposit. The Zippert defendants warranted that the Zipperts would use their best efforts to ensure that the proceeds of the certificate of deposit would be disbursed to Taylor on or before August 31, 2011, and that the maturity of the certificate of deposit would be no later than June 30, 2012.

the Zipperts failed to timely pay Taylor either of the two \$5,000 payments or if the proceeds of the certificate of deposit were not received by Taylor on or before June 30, 2012.

The stipulation included an order, signed by the trial court in Case 2, stating that the court had read and considered the stipulation, and ordering that judgment for fraud be entered in favor of Taylor and against the Zippert defendants in the amount of \$195,000. Judgment was entered on October 28, 2011.

C. *The Initial Settlement Payments*

Counsel for the Zippert defendants sent counsel for Taylor a check for \$5,000 on August 26, 2011, and another check for \$5,000 on September 22, 2011. Although the second check was not received by Taylor's counsel by September 30, counsel granted the Zippert defendants an extension on the deadline; the Zipperts then wired \$5,000 to Taylor and his attorney on October 5, 2011.

D. *Assignment of Judgments and Hixon's Attempts to Collect*

On December 19, 2011, Taylor executed assignments of judgments in this case (Case 1) and Case 2, assigning the judgments in both cases to Hixon, doing business as HBH Services. Hixon filed the assignments in both cases that same day, and served notices of assignment on February 15, 2012. The notices stated that all payments to satisfy the judgments must be made to Hixon, and any payments made to Taylor after the date of the notices would not apply toward satisfaction of the judgments.

In March 2012, Hixon obtained writs of execution on both judgments. He levied on the Zippert defendants' bank account on April 2, 2012, receiving \$6,613, and also attempted to levy on the \$100,000 certificate of deposit. Counsel for the Zippert defendants sent a letter to Hixon on April 5, 2012, informing Hixon that Taylor and the Zippert defendants had entered into a settlement agreement, which limited Hixon's rights to collect on the assigned judgments. Counsel included a copy of the stipulation (although a critical page was missing from that copy), and stated, "According to the settlement, your recovery is limited to a certificate of deposit and nothing more." Counsel demanded that Hixon cease all enforcement efforts and return the levied funds. A series of letters and emails between the Zippert defendants' counsel and Hixon followed, with Hixon insisting he had the right to collect on the judgments, and counsel insisting that Hixon was limited to collecting the \$100,000 certificate of deposit.

E. *Responses to Hixon's Attempts to Collect*

Both the Zippert defendants and Taylor attempted to stop Hixon's efforts to collect on the judgments through various means. The Zippert defendants filed a lawsuit against Hixon (Case 3, discussed in section F., *post*), and filed an ex parte application in Case 2 for an order quashing the writs of execution obtained by Hixon. The trial court

initially granted the ex parte application, but subsequently granted Hixon's motion for reconsideration and vacated its prior order.⁴

Taylor filed an ex parte application in this case (Case 1) for an order staying Hixon's enforcement of the judgment and directing the sheriff to disburse the execution proceeds from the levy on the certificate of deposit to Taylor and its counsel, Wayne S. Marshall. Taylor argued that the sheriff had levied on the certificate of deposit under Taylor's earlier writ of execution, that Marshall maintained an attorneys' lien against the funds, that Taylor had assigned the certificate of deposit to Marshall before it assigned the judgment to Hixon, and that Hixon obtained the assignment of judgment by fraud or mistake and for no consideration. In a declaration filed in support of the ex parte application, Marshall presented evidence that the Bank had released the proceeds of the certificate of deposit (in the amount of \$100,472.90) to the sheriff on June 28, 2012. The trial court denied the ex parte application.

Marshall, Taylor's counsel, served on the sheriff a third-party claim of ownership on levied property, filed a petition for a hearing on his third-party claim, and filed an ex parte application in this case (Case 1) for an order staying disposition of the proceeds of the certificate

⁴ The reason for reconsideration and vacation of the order had to do with the Zippert defendants' proof that the second \$5,000 payment under the stipulation was timely made. The court had ordered the Zippert defendants to produce for oral testimony the lawyer who had granted them an extension of time to make that payment, but they instead produced someone from that lawyer's office who did not have personal knowledge of the grant of the extension.

of deposit pending a ruling on the validity of his third-party claim. The trial court denied the ex parte application on procedural grounds, and heard and denied the third-party claim.

On October 19, 2012, the trial court in this case entered an order directing the sheriff to disburse the proceeds of the certificate of deposit to Hixon as Taylor's assignee.

F. *Case No. BC483103 (Case 3)*

On April 19, 2012, the Zippert defendants filed a complaint against Hixon for, among other claims, breach of contract and breach of the implied covenant of good faith and fair dealing, based upon his collection efforts (L.A.S.C. Case No. BC483103). We will refer to this case as Case 3. The complaint alleged that the stipulation was a settlement agreement, to which Hixon was a party as assignee of the judgments, and that Hixon breached the settlement agreement by enforcing the judgments before June 30, 2012, the date by which the Zippert defendants were required to turn over the proceeds from the certificate of deposit.

Case 3 proceeded through a bench trial in June 2013, at which the trial court granted Hixon's motion for nonsuit on the ground that the Zippert defendants failed to carry their burden of proof. The trial court subsequently denied the Zippert defendants' motion for a new trial. In its ruling, the court stated, in part: "Although not pleaded in their complaint, the court understands that [the Zippert defendants] claim that [Hixon] breached the settlement agreement when he undertook collection efforts in April of 2012. At trial, for the first time, [the

Zippert defendants] established that the two \$5,000 payments required under the settlement agreement were timely paid. [The Zippert defendants] failed to attach proof of the payments to their complaint in this case and failed to supply proof of payments in connection with their efforts to quash the writs obtained by [Hixon]. In the absence of such proof, [Hixon's] efforts to execute on the judgments were not a breach of the settlement agreement.”

G. *Case No. BC527402 (Case 4)*

On November 12, 2013, Hixon filed a complaint against the Zippert defendants and their attorneys for malicious prosecution and abuse of process (L.A.S.C. Case No. BC527402). We will refer to this case as Case 4. He alleged that before filing Case 3, the Zippert defendants and their counsel knew that the Zippert defendants had failed to timely comply with the terms of the stipulation in that they failed to turn over the certificate of deposit by August 31, 2011, and had failed to timely make the payments required under the stipulation, and therefore they prosecuted their claims without probable cause and with malice.

The Zippert defendants and their counsel filed a special motion to strike the complaint. Hixon argued in opposition to the motion that the gravamen of the Zippert defendants' claims in Case 3 was that Hixon had no right to enforce the judgment in Case 2 because the Zippert defendants had satisfied their obligations under the stipulation. He contended the Zippert defendants and their counsel lacked probable cause to bring those claims because they failed to produce evidence of

timely payment of the second \$5,000 payment and failed to turn over the certificate of deposit by August 31, 2011, which Hixon asserted was required under the terms of the stipulation.

On May 10, 2014, the trial court in Case 4 granted the special motion to strike as to the abuse of process claim, but denied it as to the malicious prosecution claim, finding that Hixon had presented evidence to support each element of that cause of action. The Zippert defendants and their counsel appealed from the denial in part of their special motion to strike, contending that they had probable cause to sue Hixon in Case 3 as a matter of law, and that there was no evidence of malice.

The Court of Appeal (Division Three, Case No. B256439) reversed the trial court's order with directions to enter a new order granting the motion in its entirety. The appellate court's detailed opinion described all of the relevant motions, ex parte applications, and orders in all four related cases. It "interpret[ed] the stipulation to mean that the timely delivery by [the Zippert defendants] of the two \$5,000 payments to Taylor and their delivery of the proceeds of the certificate of deposit by June 30, 2012, would fully satisfy their obligations under the judgments in [Case 1] and [Case 2]. As we interpret the stipulation, Taylor, and Hixon as Taylor's assignee, could enforce the judgment only if [the Zippert defendants] failed to timely deliver the agreed payments." The court found that the evidence presented showed that (1) the first \$5,000 payment was timely made; (2) the second \$5,000 payment was timely made under the extension Marshall granted to the Zippert defendants; and (3) Hixon attempted to levy the certificate of deposit in April 2012, before the time the Zippert defendants were required under the

stipulation to deliver the proceeds of the certificate of deposit. It observed that, because the two \$5,000 payments were timely made and delivery of the proceeds of the certificate of deposit was not yet due, “Hixon’s enforcement efforts were premature and arguably breached the stipulation and the implied covenant of good faith and fair dealing.” Therefore, it concluded as a matter of law that the Zippert defendants and their counsel had probable cause to initiate and prosecute their complaint against Hixon for breach of contract, breach of the implied covenant, and specific performance.

H. *Motions for Acknowledgment of Satisfaction of Judgments*

In the meantime, on April 3, 2014, counsel for the Zippert defendants sent a letter to Hixon and his counsel demanding that Hixon execute and deliver or file acknowledgments of satisfaction of judgment in Case 1 and Case 2. Counsel stated that the Zippert defendants had fully performed the requirements under the stipulation, in that the two \$5,000 payments were timely made and the proceeds from the certificate of deposit were released to the sheriff, as Hixon’s agent, three days before the June 30, 2012 deadline set forth in the stipulation. Therefore, under the terms of the stipulation, Hixon was required to acknowledge the satisfaction of the judgments in both Case 1 and Case 2. The letter included a warning stating: “If this judgment has been satisfied, the law requires that you comply with this demand not later than 15 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my (defendants’) reasonable attorney’s fees in the proceeding if the court

determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I (defendants) sustain by reason of such failure and will also forfeit one hundred dollars to me (defendants).”

1. *Motion Filed in Case 2*

On May 8, 2014, the Zippert defendants filed in Case 2 a motion to compel an acknowledgment of satisfaction of judgment, requesting an acknowledgment with respect to the judgments in both this case (Case 1) and Case 2.⁵ They contended they had fully performed their obligations under the stipulation and therefore were entitled to an acknowledgment that the judgments in both cases were fully satisfied. In opposition to the motion, Hixon argued that the trial court in Case 2 and the other related cases had previously determined that the Zippert defendants did not timely pay the amounts due under the stipulation, that the motion was a disguised motion for reconsideration of prior orders, and that the doctrines of res judicata and collateral estoppel precluded the relitigation of issues that had been asserted unsuccessfully in prior proceedings. Hixon also argued that the Zippert defendants failed to prove they had timely and fully complied with their obligations under the stipulation.

⁵ Although Case 1 and Case 2 were separate proceedings, they both were before the same judge at this point.

The trial court granted the Zippert defendants' motion in open court on June 6, 2014. Because neither party had requested a court reporter for the court's decision on June 6, the court issued a minute order on June 9, 2014 setting forth its reasons for its ruling. The court found that the Zippert defendants fully satisfied all of the conditions set forth in the stipulation, including "(a) the proper assignment of the \$100,000 certificate of deposit before August 31, 2011; (b) the timely payment of \$5000 on August 31, 2011 and an additional \$5000, after the due date of September 30, 2011, but with the consent of the original Plaintiff, Taylor Concrete; and (c) the effective receipt by Taylor or its assignee of the proceeds of the \$100,000 CD not later than June 30, 2012. Since these conditions were satisfied, [the Zippert defendants] were entitled to the requested satisfaction."

Addressing Hixon's argument that res judicata and collateral estoppel preclude relitigation of issues regarding the payment of the second \$5,000 and the receipt of the proceeds from the certificate of deposit that had been determined in prior proceedings, the trial court stated: "The Court carefully examined each of the eleven prior proceedings to determine what actually was litigated, whether there was a full and fair opportunity to present evidence on the issues and whether there was a final decision on any of these issues. . . . [¶] Although many of the proceedings involved the argument that the second \$5000 check was not timely received and/or the proceeds from the CD were not received by Taylor or Hixon by June 30, 2011 [*sic*], the required elements for collateral estoppel were not met as to any of the proceedings. In every case either there was no full and fair proceeding

(as with most of the ex parte applications); or the decision actually reached did not concern the \$5000 or the CD (as with several of the ex parties where the sole issue was irreparable injury); or the issues were not conclusively determined against the [Zippert] Defendants (such as the non-suit and motion for a new trial); or there was a different standard of proof at the prior hearing than on the current motion (as with the decision on the anti-SLAPP motion). It is true one side or the other mentioned the second \$5000 check and/or the CD proceeds in just about all these proceedings, but in none of them did Hixon or his predecessor demonstrate a final decision, after a full and fair hearing where the issue to be estopped was necessarily and conclusively established against the [Zippert] Defendants.”

In a separate minute order, the trial court ordered Hixon to “execute a Full Acknowledgment and Satisfaction of Judgment by 6-13-2014 at 5:00 p.m.” Neither that order nor the order setting forth the court’s reasons for granting the motion specifically addressed the Zippert defendants’ request for an acknowledgment of satisfaction of the judgment in Case 1.

2. Appeal From Case 2 Motion

Hixon appealed from the order granting the Zippert defendants’ motion. The Court of Appeal (Div. Three, Case No. B256900) affirmed in an unpublished opinion filed on July 30, 2015 (the same day it issued its decision in the Case 4 appeal). The court set forth Hixon’s contentions on appeal as follows: “Hixon does not challenge the sufficiency of the evidence supporting the trial court’s finding that [the

Zippert] Defendants satisfied all of the conditions under the [stipulation] so as to require an acknowledgment of full satisfaction of judgment. Instead, he contends the trial court erred because (1) the motion to compel an acknowledgment of satisfaction of judgment was a collateral attack on the judgment, and the order granting the motion improperly undermines the finality of the judgment; (2) the doctrines of collateral estoppel and res judicata preclude the relitigation of claims and issues that were conclusively decided in prior proceedings in this case and other cases; and (3) the motion was a disguised motion for reconsideration (Code Civ. Proc., § 1008, subd. (a)) and [the Zippert] Defendants failed to satisfy the statutory requirements for such a motion.”

Our colleagues in Division Three rejected all of Hixon’s contentions. Their discussion of Hixon’s first contention makes clear their entire focus was on the judgment in Case 2; like the trial court, the appellate court did not address the fact that the Zippert defendants’ motion requested an order from the trial court in Case 2 compelling Hixon to acknowledge the satisfaction of the judgment in Case 1.

3. *Motions to Compel Acknowledgment of Satisfaction of Judgment Filed in the Present Case (Case 1) Before Appellate Decision in Case 2*

In April 2015, the Zippert defendants filed a motion in the present case to compel acknowledgment of satisfaction of judgment. On May 5, 2015, the trial court denied the motion without prejudice for reasons

unknown to us; no reporter's transcript from this hearing was designated to be included in the record on appeal.

The Zippert defendants filed another motion to compel acknowledgment of satisfaction of judgment in this case on May 27, 2015. The trial court denied the motion for reasons unknown to us; once again, no reporter's transcript was designated to be included in the record on appeal. It appears from the notice of ruling, however, that the trial court may have denied the motion without prejudice pending the decision on the appeal in Case 2.

I. *Motions at Issue in Present Appeal*

As noted, the appellate opinion affirming the Zippert defendants' motion to compel acknowledgment of satisfaction of judgment in Case 2 was issued on July 30, 2015; remittitur was entered on October 8, 2015. Five days later, on October 13, 2015, Hixon obtained a writ of execution to enforce the judgment in this case (Case 1) and levied upon Zippy's Currency X-Change, Inc.'s bank accounts.

On November 17, 2015, the Zippert defendants filed the motion at issue in the present appeal -- a motion to compel acknowledgment of satisfaction of the judgment in this case -- along with a motion to quash the writ of execution issued on October 8, 2015.⁶ In both motions, the Zippert defendants argued collateral estoppel precludes Hixon from

⁶ Although the order from which Hixon appeals includes the trial court's ruling on both motions, Hixon does not address the motion to quash in his appeal.

relitigating whether the terms of the stipulation have been satisfied and whether the Zippert defendants are entitled to an acknowledgment of satisfaction of judgment.

In his opposition to both motions, Hixon argued that the trial court had no jurisdiction to grant the requested relief because the Zippert defendants had requested in their motion to compel acknowledgment of satisfaction of judgment filed in Case 2 that the trial court in that case compel Hixon to acknowledge satisfaction of the judgment in Case 1. Hixon contended that, since the trial court in Case 2 did not grant relief with respect to the judgment in Case 1 and the Zippert defendants did not appeal from the purported denial of that request, the purported denial was final and cannot be challenged. Hixon also raised procedural arguments regarding service of the moving papers and the identity of the parties to the judgment.

The trial court granted both motions, and ordered Hixon to comply with the court's order by January 13, 2016. Hixon timely filed a notice of appeal from the trial court's order.

DISCUSSION

On appeal, Hixon purports to make two arguments, but they really boil down to a single contention. He contends the trial court erred in granting the Zippert defendants' motion to compel acknowledgment of satisfaction of judgment in this case because the same defendants requested the same relief with regard to the judgment in this case in their motion filed in Case 2. Since the order granting the motion in Case 2 did not address that request and has been affirmed on

appeal, Hixon argues the doctrines of collateral estoppel and res judicata precluded the trial court in this case from granting the motion.

While our discussion of the (mostly procedural) background was lengthy (because it was necessary for an understanding of this issue), our discussion of Hixon's contention is brief.

“Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.)

The collateral estoppel doctrine applies “only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.]’ [Citation.]” (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511.)

Hixon argues that collateral estoppel applies because (1) the Zippert defendants raised the same issue -- whether the judgment in this case (Case 1) has been satisfied -- in their motion brought in Case 2; (2) the issue was actually litigated because it was raised 15 times in

the prior motion; (3) the issue was decided in that prior motion because the trial court did not grant the requested relief with regard to the judgment in Case 1; (4) the trial court's ruling in Case 2 is final because it has been affirmed on appeal; and (5) the parties in Case 1 and Case 2 are identical.

His argument fails at the second requirement. "For purposes of collateral estoppel, an issue was actually litigated in a prior proceeding *if it was properly raised*, submitted for determination, and determined in that proceeding." (*Hernandez v. City of Pomona, supra*, 46 Cal.4th at p. 511, italics added.) Hixon is correct that the Zippert defendants raised the issue in their motion in Case 2, but it was not *properly* raised because it asked for relief the trial court in Case 2 did not have jurisdiction to give. While it may have seemed appropriate to request that relief in the motion because the relief in both cases was dependent upon the same stipulation and same facts, and both cases were before the same judge, the motion was brought only in Case 2. Therefore, in ruling on the motion, the judge could rule only on issues relating to the case over which it was presiding at that time, i.e., Case 2. Accordingly, collateral estoppel does not apply to preclude the Zippert defendants' motion properly brought in Case 1.⁷

For similar reasons, we reject Hixon's argument that res judicata, or claim preclusion, precludes the Zippert defendants' motion in this case. "Under this doctrine, all claims based on the same cause of action

⁷ In fact, collateral estoppel applied in this case to preclude Hixon from relitigating the issue whether the Zippert defendants complied with the terms of the stipulation.

must be decided in a single suit; if not brought initially, they may not be raised at a later date. “Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief.” [Citation.]” (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 897.) Even if a motion to compel acknowledgment of satisfaction of judgment properly could be deemed a cause of action, the motions at issue here are not the same because they involve different judgments in different cases, even though the Zippert defendants improperly sought relief in the Case 2 motion that could only be awarded in Case 1. Thus, res judicata does not apply.

DISPOSITION

The order granting the Zippert defendants’ motion to compel acknowledgment of satisfaction of judgment and motion to quash the writ of execution obtained by Hixon is affirmed. The Zippert defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.