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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROXANNE VALLIEN

Plaintiff and Appellant,

v.

QUEEN ARMS OWNERS  
ASSOCIATION S.B.S. et al.,

Defendants and Respondents.

B259563

(Los Angeles County  
Super. Ct. No. YC066699)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ramona S. Gee, Judge. Affirmed.

Roxanne Vallien, in pro. per.; Law Offices of Wayne P. Higgins and Wayne P. Higgins for Plaintiff and Appellant.

Slaughter, Reagan & Cole, Barry J. Reagan and Gabriele M. Lashly for Defendants and Respondents.

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## INTRODUCTION

Plaintiff Roxanne Vallien appeals from a summary judgment in favor of defendants Queen Arms Owners Association, International Realty and Investments, and Malcolm Bennett (collectively, Defendants). Before moving for summary judgment, Defendants served Plaintiff with requests for admissions concerning her claims that Defendants unlawfully foreclosed on her condominium. Plaintiff failed to respond, resulting in an order deeming admitted the truth of all matters specified in the requests. In granting summary judgment, the trial court ruled Plaintiff's admissions precluded her from introducing contradictory evidence to create triable issues of fact. We agree with the court's ruling, and affirm.

## FACTS<sup>1</sup> AND PROCEDURAL BACKGROUND

Plaintiff owned a condominium in the Queen Arms condominium complex. Defendant Queen Arms Owners Association (the Association) is the home owners association for the complex.

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<sup>1</sup> We draw the facts from the parties' separate statements and the supporting evidence admitted by the trial court. (See, e.g., *Fenn v. Sherriff* (2003) 109 Cal.App.4th 1466, 1480.) In ruling on the summary judgment motion, the trial court sustained several objections to Plaintiff's declaration on the ground that the proffered facts contradicted matters deemed admitted by the court's order on Defendants' requests for admission. We conclude these evidentiary rulings were proper for the reasons discussed below. In accordance with the rules governing such admissions, we do not recite the facts this contradictory evidence purports to show. (Code Civ. Proc., § 2033.280, subds. (b) & (c); see *Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 736 (*Murillo*) ["Absent leave of court to amend or withdraw the admission, no contradictory evidence may be introduced"].) As for the evidence admitted by the trial court, we state it in the light most favorable to Plaintiff, as the nonmoving party. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

In July 2010, the Association retained defendant International Realty and Investment (IRI) as its property management company. On August 2, 2010, Plaintiff sent an email to IRI stating, "I will not pay an Association that has irresponsible people as HOA board members who have squandered money in the past or refuse to pay what they owe." In November 2010, Plaintiff stopped paying dues to the Association.

In January 2011, IRI sent Plaintiff a letter regarding her delinquent account. In February 2011, IRI sent plaintiff a second letter informing her that her account would be submitted to SBS Lien Services (SBS) for non-payment of dues. In March 2011, the Association approved a resolution authorizing SBS to begin foreclosure proceedings pursuant to the Association's Declaration of Covenants, Conditions and Restrictions (CC&R's).

On May 3, 2011, SBS sent a letter to Plaintiff informing her that she owed \$1,951.31 in outstanding dues. The letter advised Plaintiff that SBS would record a Notice of Delinquent Assessment Lien against her condominium unless she paid the outstanding amount by June 6, 2011. The letter also advised Plaintiff that she had the right to request alternative dispute resolution and inspect the Association's records. Plaintiff failed to pay the delinquent balance.

On June 20, 2011, SBS recorded a Notice of Delinquent Lien Assessment against Plaintiff's property. Three days later, SBS sent Plaintiff a letter informing her of the recording. The letter advised Plaintiff that to prevent enforcement of the lien she must either pay the delinquent amount or contact SBS to discuss a payment plan. Plaintiff did not pay the delinquent amount or request a payment plan.

On August 3, 2011, SBS recorded a Notice of Default and Election to Sell. The Notice advised Plaintiff that, "If your property is in foreclosure because you are behind in your payments, it may be sold without any court action." (Boldface

and some capitalization omitted.) Plaintiff did not respond to the Notice.

On November 17, 2011, SBS recorded a Notice of Trustee's Sale against the property. The Notice advised Plaintiff that the sale would occur on December 16, 2011, unless she took action to redeem the property. At the time, Plaintiff had been delinquent on her dues payments for a year, and her outstanding balance totaled \$5,964.58. Plaintiff did not redeem the property.

On December 16, 2011, the Association purchased the property at the trustee's sale for a bid of \$6,195.04. On December 22, 2011, SBS sent Plaintiff a Notice to Owner/Judgment Debtor of Right of Redemption of Property After Non-Judicial Foreclosure Sale. The Notice advised Plaintiff that the property had been sold subject to a 90-day right of redemption. Plaintiff did not exercise the right of redemption.

On March 15, 2012, Plaintiff filed the instant action. The operative first amended complaint asserted seven causes of action: (1) conspiracy to violate a statute and violation of a statute; (2) conspiracy to violate law and association bylaws and rules; (3) to vacate and set aside trustee's sale; (4) to enlarge and extend owner's right of redemption period; (5) for cancellation of an instrument; (6) for accounting; and (7) for injunctive relief. With respect to the first cause of action, the complaint alleged Defendants conspired to violate Civil Code section 2923.5 by refusing to "contact and in good faith assess the homeowner's financial situation and explore options for the homeowner to avoid foreclosure." The second cause of action alleged Defendants conspired to hire IRI in violation of the Association's bylaws and statutory law, and subsequently conspired to have IRI record a delinquent assessment lien against the property without the requisite board approvals. The third, fourth, fifth, sixth and seventh causes of action sought equitable relief based on the foregoing factual allegations.

On January 16, 2013, Defendants served Plaintiff with requests for admissions. Among other things, the requests included the following:

- “Admit that YOU failed to pay the entirety of the HOA assessments and/or dues for the SUBJECT PROPERTY.”
- “Admit that the HOA’s foreclosure on the SUBJECT PROPERTY was lawful.”
- “Admit that YOU were not authorized to act as an agent of the HOA when YOU contacted the HOA’s vendors following the HOA’s hiring of [IRI].”
- “Admit that the HOA did not violate the duties imposed on it by its Bylaws.”
- “Admit that the HOA did not violate the duties imposed on it by its Declaration of Covenants, Conditions and Restrictions.”

On March 22, 2013, Defendants filed a motion to deem admitted the matters set forth in the requests for admissions. The evidence offered in support of the motion showed that, despite Defendants’ efforts to meet and confer, Plaintiff had failed to respond to the requests. Plaintiff did not file an opposition to the motion and she did not respond to the requests for admissions. On April 23, 2013, the trial court entered an order deeming admitted the truth of the matters specified in the requests.

On June 18, 2013, Plaintiff filed a motion to withdraw or amend her deemed admissions. Defendants opposed the motion. On August 14, 2013, before the noticed hearing date, Plaintiff filed a notice of settlement and took the motion to withdraw her admissions off calendar. On August 16, 2013, the trial court issued an order to show cause regarding the parties’ failure to file a dismissal in connection with the noticed settlement. In response, the parties notified the court that they had been unable to reach a settlement. The court vacated its order to show cause

and issued a new order setting dates for a final status conference and trial.

After the settlement foundered, Defendants filed their motion for summary judgment. Defendants supported the motion with declarations by an IRI employee, an SBS employee, and an Association board member, who offered evidence concerning Plaintiff's delinquent account, the foreclosure process, and Plaintiff's failure to redeem the property following the trustee sale. Defendants argued Plaintiff was precluded from introducing contrary evidence in view of her deemed admissions that the foreclosure had been conducted in accordance with the law, the Association's bylaws, and the Association's CC&R's.

Plaintiff opposed the summary judgment motion, but did not renew her motion to withdraw or amend her deemed admissions.<sup>2</sup> In support of her opposition, Plaintiff offered her own declaration, wherein she asserted the Association had failed to hold proper elections since 2007 and, therefore, did not have a properly constituted board. As a result, Plaintiff maintained the Association had no authority to initiate a non-judicial foreclosure against her unit. She also asserted the foreclosure violated certain procedural requirements set forth in the Davis-Stirling Common Interest Development Act, and that the Association failed to offer her the opportunity to redeem the property. Defendants objected to the declaration, both in its entirety and with respect to specific factual assertions, on the ground that it sought to introduce evidence contradicting Plaintiff's deemed admissions.

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<sup>2</sup> Because Plaintiff took her motion off calendar in connection with filing the notice of settlement, and she failed to renew or re-notice the motion for hearing after the court ruled on its order to show cause, we reject her claim that the trial court erred by failing to rule on the motion to withdraw or amend the admissions.

On July 15, 2014, after hearing argument and taking the matter under submission, the trial court issued an order granting Defendants’ summary judgment motion. The court ruled Plaintiff’s deemed admissions were “fatal” to her claims and the “factual theories underlying the causes of action.” In that regard, the court sustained Defendants’ objections to most of the factual assertions in Plaintiff’s declaration, concluding Plaintiff was precluded from introducing the subject evidence on account of her deemed admissions. Absent this evidence, the court ruled Plaintiff could not create a triable issue of fact with respect to any of her claims.

## DISCUSSION

### A. *Standard of Review*

To prevail on a motion for summary judgment, a defendant must show that one or more elements of the plaintiff’s cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) “A court may grant summary judgment only when the evidence in support of the moving party establishes that there is no issue of fact to be tried.” (*Neighbarger v. Irwin Industries, Inc.* (1994) 8 Cal.4th 532, 547.) Summary judgment should be granted only when a moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

In general, we review a trial court’s decision on summary judgment de novo, determining independently whether the facts not subject to dispute support summary judgment. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348.) Doubts are resolved in favor of the party opposing the judgment, and we are not bound by the trial court’s reasons for the summary judgment ruling. (*Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, 97; *M.B. v. City of San Diego* (1991) 233 Cal.App.3d 699, 703-704; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 85.) Evidentiary rulings made in the context of summary judgment, however, are generally subject to an abuse of discretion review. (*Landale-*

*Cameron Court, Inc. v. Ahonen* (2007) 155 Cal.App.4th 1401, 1407; *In re S.A.* (2010) 182 Cal.App.4th 1128, 1135.) “ ‘A trial court’s exercise of discretion in admitting or excluding evidence . . . will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.’ ” (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1419 (*San Lorenzo Valley Community Advocates*).)

B. *Plaintiff’s Deemed Admissions Preclude Her from Introducing Contradictory Evidence to Create a Triable Issue of Fact; The Trial Court Properly Granted Summary Judgment*

In granting Defendants’ motion for summary judgment, the trial court sustained several objections to Plaintiff’s declaration on the ground that the subject evidence contradicted Plaintiff’s deemed admissions. Absent this evidence, the court concluded Plaintiff had failed to create a triable issue of fact on one or more elements of her causes of action, thereby entitling Defendants to judgment as a matter of law. We conclude the court reasonably sustained the objections and its summary judgment ruling was legally sound.

“Although requests for admissions are included in the Code of Civil Procedure among discovery procedures (Code Civ. Proc., § 2019.010, subd. (e)), they ‘differ fundamentally from other forms of discovery. Rather than seeking to uncover information, they seek to eliminate the need for proof.’ ” (*Murillo, supra*, 143 Cal.App.4th at p. 735.) In this way, requests for admissions are more than a mere discovery device, “[t]hey also serve a function similar to the pleadings in a lawsuit in that they are ‘aimed primarily at setting at rest a triable issue so it will not have to be tried.’ ” (*Jahn v. Brickey* (1985) 168 Cal.App.3d 399, 404; *Fredericks v. Kontos Industries, Inc.* (1987) 189 Cal.App.3d



272, 276 [request for admission’s objective is “ ‘the same as that of the pretrial conference: To obtain admission of uncontroverted facts learned through other discovery methods, and thereby to narrow the issues and save the time and expense of preparing for unnecessary proof.’ ”].)

When a party to whom requests for admissions are directed fails to serve a timely response, “[t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted.” (Code Civ. Proc., § 2033.280, subd. (b).) “[A] deemed admitted order establishes, by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained therein.” (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 979 (*Wilcox*)). The admissions are “treated in effect as stipulations to the truthfulness of the matters admitted. Therefore, no other evidence is necessary to establish the point at trial and no contrary evidence is admissible unless leave of court is obtained to withdraw or amend the response.” (Edmon, Rylaarsdam & Karnow, Cal. Prac. Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶8:1388; *Murillo, supra*, 143 Cal.App.4th at p. 736 [for summary judgment purposes, “an admission is conclusive in the action as to the party making it” and “no contradictory evidence may be introduced” absent leave of court to amend or withdraw the admission]; see also *Bank of America v. Baker* (1965) 238 Cal.App.2d 778, 779.)

“[A]fter a matter is deemed admitted, the scope and effect of the admission must be determined by the trial court. The trial court has broad discretion in determining the admissibility and relevance of evidence.” (*Milton v. Montgomery Ward & Co., Inc.* (1973) 33 Cal.App.3d 133, 138 (*Milton*); *San Lorenzo Valley Community Advocates, supra*, 139 Cal.App.4th at p. 1419.)

Plaintiff’s complaint alleges Defendants violated Civil Code section 2923.5 by commencing and completing a nonjudicial foreclosure without ever assessing Plaintiff’s financial situation

or exploring options with her to avoid foreclosure.<sup>3</sup> The complaint similarly alleges Defendants violated the Association's bylaws and CC&R's by carrying out a nonjudicial foreclosure without the requisite board approvals. In moving for summary judgment, Defendants introduced evidence showing they had obtained the requisite board approvals and had contacted Plaintiff several times before recording a notice of delinquent assessment. This was sufficient to meet Defendants' initial burden for summary judgment. (Code Civ. Proc., § 437c, subd. (p)(2).)

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<sup>3</sup> Plaintiff bases her claim on Civil Code section 2923.5, subdivision (a)(2), which provides a mortgage servicer may not record a notice of default until the servicer has "contact[ed] the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." While courts have recognized a private right of action for violation of Civil Code section 2923.5, "[t]he only remedy for noncompliance with the statute is the postponement of the foreclosure sale." (*Skov v. U.S. Bank National Assn.* (2012) 207 Cal.App.4th 690, 696; *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 214.) Separate and apart from Plaintiff's deemed admissions, the trial court concluded there was no legal remedy for her statutory violation claim because the foreclosure sale had already occurred.

Moreover, Civil Code section 5710 governs the procedures for trustee sales commissioned by a common interest development home owners association. The statute provides that "[a]ny sale by the trustee shall be conducted in accordance with *Sections 2924, 2924b, and 2924c* applicable to the exercise of powers of sale in mortgages and deeds of trust." (Civ. Code, § 5710, subd. (a), italics added.) Defendants cannot be held liable for violating Civil Code section 2923.5 because the statute does not apply to their alleged conduct. We conclude these legal grounds supply an independent and sufficient basis to affirm the judgment.

With her opposition, Plaintiff sought to introduce evidence showing Defendants acted illegally insofar as they purportedly failed to comply with certain provisions of the Davis-Stirling Common Interest Development Act (Civ. Code, § 4000 et seq.) concerning board elections and board actions taken in connection with a nonjudicial foreclosure. As for the efforts to confer with Plaintiff in advance of the foreclosure, Plaintiff challenged Defendants' evidence by asserting she had not received several of the communications. She likewise maintained she had never received a post-sale notice regarding her right to redemption.

The trial court sustained Defendants' objections to each of the foregoing factual assertions on the ground that they conflicted with Plaintiff's deemed admissions. That ruling was consistent with a reasonable interpretation of the admissions' scope and effect. (See *Milton, supra*, 33 Cal.App.3d at p. 138.) Defendants' requests asked Plaintiff to admit (1) "the HOA's foreclosure on the SUBJECT PROPERTY was lawful"; (2) "the HOA did not violate the duties imposed on it by its Bylaws"; and (3) "the HOA did not violate the duties imposed on it by its Declaration of Covenants, Conditions and Restrictions." Because a deemed admission "admit[s] the truth of *all matters contained therein*," the trial court could reasonably construe Plaintiff's admissions to embrace all underlying facts concerning Defendants' election of board members and management of the

foreclosure proceedings.<sup>4</sup> (*Wilcox, supra*, 21 Cal.4th at p. 979, italics added.) In view of that plausible interpretation, the court did not abuse its discretion by refusing to admit evidence purporting to show Defendants acted unlawfully or in contravention of their duties under the Association’s bylaws and CC&R’s.

*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959 (*Lattimore*) is instructive. There, a physician in a wrongful death action, Dr. Dickey, moved for summary judgment on the ground that the plaintiff could not establish he breached the standard of care when he canceled a surgery to remove a hemorrhagic clot from the decedent’s intestine. The physician relied in part on a discovery order in which the plaintiff was “deemed to have admitted that Dr. Dickey’s care and treatment of [the patient] met the applicable standard of care.” (*Id.* at p. 964.) The plaintiff opposed the motion with an expert declaration by a board-certified physician in family and emergency medicine, Dr. Turner, who opined Dr. Dickey should have performed the surgery and that such intervention would have given the decedent a chance of survival. (*Id.* at p. 965.) The trial court granted summary judgment, ruling Dr. Turner was not competent to testify on Dr. Dickey’s standard of care. (*Id.* at

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<sup>4</sup> Plaintiff argues the requests were improper because, in Plaintiff’s view, they called for a legal conclusion. We disagree. Though framed in terms of lawfulness, the requests called upon Plaintiff to admit facts about the actions Defendants undertook in connection with the foreclosure. This is not improper, as the Discovery Act plainly permits a party to request an admission concerning “the truth of specified matters of fact, opinion relating to fact, or *application of law to fact*.” (Code Civ. Proc., § 2033.010, italics added; see *Burke v. Superior Court* (1969) 71 Cal.2d 276, 282 [“when a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law”].)

p. 966.) The court of appeal affirmed, but on an alternative ground.

The *Lattimore* court concluded Dr. Turner's training in emergency medicine qualified him to opine on the relevant standard of care, and the trial court erred in that regard.

(*Lattimore, supra*, 239 Cal.App.4th at pp. 969-970.)

Nevertheless, the appellate court held Dr. Turner's declaration was properly excluded on the alternative ground that it conflicted with the plaintiff's deemed admission. Though the admission was stated in broad terms, and did not specifically define the nature of Dr. Dickey's standard of care, the *Lattimore* court held it was sufficient to exclude Dr. Turner's contrary opinion because, under *Wilcox*, "[A] deemed admitted order establishes, by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained therein." (*Lattimore*, at p. 971, quoting *Wilcox, supra*, 21 Cal.4th at p. 979.)

Like the deemed admission in *Lattimore*, Plaintiff's admissions broadly concede that Defendants complied with the legal and contractual standards established by statute and the Association's bylaws and CC&R's. Though the admissions do not specifically identify those standards or Defendants' relevant conduct, they implicitly concede, like the admission in *Lattimore*, that Defendants took all actions necessary to comply with those standards. Any effort to prove otherwise, by declaring for instance that the board did not take a requisite vote or that Plaintiff did not receive a required notice, was properly subject to the trial court's discretion to exclude evidence contrary to Plaintiff's deemed admission. (See *Murillo, supra*, 143 Cal.App.4th at p. 736 [deemed admission bars introduction of contradictory evidence in opposition to summary judgment].)

Without the evidence excluded by the trial court, Plaintiff failed to raise a triable issue with respect to her first and second causes of action for conspiracy to violate the law and conspiracy to violate the Association's bylaws and rules. Because Plaintiff's other causes of action merely sought equitable relief based on the facts alleged in the first and second claims, we conclude the trial court properly granted summary judgment as to the entire complaint.<sup>5</sup>

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<sup>5</sup> Plaintiff contends Defendants' motion was procedurally deficient because Defendants' separate statement did not comply with California Rules of Court, rule 3.1350(d)'s mandate to separately identify "(A) Each cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion; and [¶] (B) Each supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense." The argument does not present a ground for reversal. As stated in rule 3.1350(h), separately identified issues are required only for "[s]upporting and opposing separate statements in a motion for summary adjudication." (Cal. Rules of Court, rule 3.1350(h); see also Cal. Rules of Court, rule 3.1350(b).) Because Defendants sought summary judgment, the court was not compelled to reject the motion on account of the separate statement's format. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118 [observing, "even if some additional headings had been required, the court's power to deny summary judgment on the basis of failure to comply with California Rules of Court, rule 3.1350 is discretionary, not mandatory"].)

## **DISPOSITION**

The judgment is affirmed. Defendants Queen Arms Owners Association, International Realty and Investments, and Malcolm Bennett, are entitled to their costs.

## **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

STRATTON, J.\*

We concur:

ALDRICH, Acting P. J.

LAVIN, J.

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