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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LORRI LYNNE HERR,

Plaintiff, Cross-Defendant,  
and Appellant,

v.

OCWEN LOAN SERVICING et  
al.,

Defendants and Respondents,

and

LATH GROUP, INC.,

Defendant, Cross-  
Complainant, and Respondent.

2d Civil No. B292396  
(Super. Ct. No. 56-2016-  
00487396-CU-BC-VTA;  
Consolidated with  
56-2017-00492685-CU-WE-  
VTA)  
(Ventura County)

Lorri Lynne Herr appeals an order denying her  
postjudgment motion to vacate a summary judgment and

judgment on the pleadings entered in favor of respondents Ocwen Loan Servicing, LLC, U.S. Bank National Association, Western Progressive, LLC, and Lath Group, Inc. (Code Civ. Proc., § 473, subd. (b).)<sup>1</sup> We affirm.

*Facts and Procedural History*

In 2006, appellant purchased a single family residence in Ventura and financed the purchase with a \$487,900 loan from First California Mortgage Company. The loan was secured by a deed of trust and assigned to Western Progressive, LLC, as trustee of U.S. Bank National Association (U.S. Bank). U.S. Bank foreclosed in 2016 after appellant defaulted on the loan, and purchased the property at the trustee's sale with a full credit bid. U.S. Bank then sold the property to Lath Group, Inc. who filed an unlawful detainer complaint to evict appellant. (Super. Ct. Ventura County, 2016, No. 56-2016-00487396-CU-BC-VTA.)

In 2017, appellant sued U.S. Bank, Western Progressive, LLC, the loan servicer Ocwen Loan Servicing, LLC. (Ocwen), and Lath Group for wrongful foreclosure. (Super. Ct. Ventura County, 2017, No. 56-2017-00492685-CU-WE-VTA.) The First Amended Complaint (ninth and tenth causes of action) alleged that Lath Group was not a bona fide purchaser and prayed for rescission of the trustee's sale and injunctive relief to enjoin Lath Group from selling or transferring the property. It alleged that U.S. Bank, Ocwen, and Lath Group were "partners, agents, or principals and co-conspirators of each other." Lath Group filed a cross-complaint for declaratory relief after the two cases were consolidated (i.e., the unlawful detainer and wrongful foreclosure

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<sup>1</sup> All statutory references are to the Code of Civil Procedure.

cases) and the unlawful detainer case (No. 56-2016-00487396-CU-BC-VTA) was designated as the lead case.

*U.S. Bank's Motion for Summary Judgment*

U.S. Bank, Ocwen, and Western Progressive, LLC filed a motion for summary judgment which was granted on May 2, 2018. The trial court denied appellant's motion for reconsideration on the ground that judgment had already been entered and the court lacked jurisdiction to rule on the motion for reconsideration. (Code Civ. Proc., § 1008, subd. (a); *APRI Ins. Co. S.A. v. Superior Court* (1999) 76 Cal.App.4th 176, 181.)

Based on the U.S. Bank/Ocwen summary judgment, Lath Group filed a motion for judgment on the pleadings with respect to the cross-complaint on the ground that appellant no longer had standing to challenge Lath Group's fee simple ownership of the property. (§ 438.) The trial court granted judgment on the pleadings for Lath Group on the first amended complaint and the cross-complaint.

Rather than appeal, appellant filed a statutory motion to vacate the judgments with respect to the summary judgment on the first amended complaint and the judgment on the pleadings with respect to Lath Group's cross-complaint. (§ 473, subd. b.) Appellant claimed that the U.S. Bank/Ocwen summary judgment was the product of appellant's mistake and excusable negligence because appellant did not agree to shorten the 75 day notice period for the motion, resulting in appellant's failure to file timely opposition to U.S. Bank's motion for summary judgment. The trial court denied the motion to vacate the judgments and this appeal followed.

*Motion to Vacate Summary Judgment*

Appellant contends that the trial court erred in not vacating the summary judgment (first amended complaint) because appellant believed that U.S. Bank was required to provide 75 days notice before the summary judgment motion was heard. (§ 437c, subd. (a)(2).) Appellant, however, stipulated that U.S. Bank could file and serve the motion less than 75 days before the hearing date. Appellant entered into the stipulation at her deposition and the stipulation was confirmed in an email.

Appellant argues that she appeared in propria persona and did not knowingly agree to shorten the notice period on the summary motion. That is not grounds for relief. “The law does not entitle a party to proceed experimentally without counsel and then turn back the clock” by retaining counsel and claiming surprise or excusable neglect. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1413.) Nor is appellant entitled to relief as a matter of equity. (See *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 260 [relief afforded under section 473 is concurrent with the remedy afforded by equity under proper circumstances].) Appellant has lived rent and mortgage free on the property since 2013 and the Lath Group cannot rent or sell the property until appellant is evicted.<sup>2</sup> The motion to vacate the judgment is also defective

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<sup>2</sup> We have taken judicial notice of the Ventura County Superior Court registrar of actions which reflects that the unlawful detainer action was tried on August 6, 2019 and Lath Group was awarded judgment of possession with zero damages. (Evid. Code, §§ 459, subd. (a), 452, subd. (d).) After the trial court issued writ of possession on August 8, 2019, it denied appellant’s ex parte application to stay execution of judgment. It has been a long and costly litigation; the registrar of actions is 35 pages long.

because appellant failed to submit her proposed opposition to the summary judgment motion. (See Weil et al., Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2019) ¶ 5:305.10, p. 5-91.) Section 473, subdivision (b) provides that the motion “shall be accompanied by a copy of the answer or other pleading proposed to be filed . . . otherwise the [motion] shall not be granted.”

*Judgment on the Pleadings – Lath’s Cross-Complaint*

Appellant’s challenge to the judgment on the pleadings (Lath Group’s cross-complaint) is equally without merit. An order granting a motion for judgment on the pleadings is equivalent to a general demurrer and is reviewed de novo. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.)

Appellant’s appeal from the summary judgment is untimely. (Cal. Rules of Court, rule 8.104 (a)(1)(B).) It is a final judgment and creates a res judicata/collateral estoppel bar that extends to the Lath Group, the subsequent purchaser of the property. (See *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 875 [res judicata “privity” refers to a mutual or successive relationship to the same rights of property]; *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency* (9th Cir. 2003) 322 F.3d 1064, 1077–1078 [collateral estoppels applies where there is a mutual or successive relationship to the same rights of property, and privity]; *Vella v. Hudgins* (1977) 20 Cal.3d 251, 256 [subsequent fraud or quiet title founded upon allegations of irregularity in a trustee’s sale barred by prior unlawful detainer judgment]; *Malkoskie v. Option One Mortgage Corp.* (2010) 188 Cal.App.4th 968, 973–974 [quiet

title and related claims to set aside foreclosure and eviction barred by unlawful detainer judgment].)

The causes of action for quiet title and declaratory relief are entirely derivative of the wrongful foreclosure claim and subject to a res judicata/collateral estoppel bar. Appellant cannot establish title and the basis for that title, a requisite element for quiet title relief. (§ 761.020, subd. (b).)

*Disposition*

The judgment is affirmed. Respondents are awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Kent Kellegrew, Judge  
Superior Court County of Ventura

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Lorri Lynne Herr, in propria persona for Plaintiff and  
Appellant.

Cunningham, Treadwell & Bartelstone and David S.  
Bartelstone for Defendant and Respondent, Lath Group, Inc.

Bryan Cave Leighton Paisner, Christopher L.  
Dueringer and Kristin S. Webb for Defendants and Respondents,  
Ocwen Loan Servicing, U.S. Bank National Association and  
Western Progressive.