

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

AUDREY COOPER,

Plaintiff and Appellant,

v.

SDLA PROPERTIES, L.P., et al.,

Defendants and Respondents.

B259535 (consolidated with  
B264669)

(Los Angeles County  
Super. Ct. Nos. BC431878 and  
BC543978)

APPEALS from an order and a judgment of the Superior Court of Los Angeles County, Elizabeth R. Feffer and Michael Johnson, Judges. Affirmed.

Michael Chappars for Plaintiff and Appellant.

Law Offices of Michael Wright and Michael Wright for  
Defendants and Respondents.

---

In these consolidated appeals, plaintiff and appellant Audrey Cooper (Cooper) appeals (1) a September 18, 2014 order denying her motion to vacate an order enforcing Cooper's liability on a \$20,000 cash deposit that was a condition of Cooper's obtaining a preliminary injunction against the foreclosure of her home (Super. Ct. L.A. County, No. BC431878; 2d Civ. No. B259535); and (2) a May 27, 2015 judgment on the pleadings in favor of defendants and respondents SDLA Properties LP (SDLA), Pacifica Homes LP (Pacifica Homes), and Pacifica Companies LLC (Pacifica Companies) (collectively, the SDLA defendants) (Super. Ct. L.A. County, No. BC543978; 2d Civ. No. B264669).

As explained below, Cooper's contentions lack merit, and the order and judgment are affirmed.

#### **FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

Cooper, who was born in 1929, was the longtime owner of a single family residence located at 923 East 109th Place in Los Angeles. On February 18, 2010, the property was sold at a trustee's sale for the benefit of the lender, Texas Capital Bank, for the sum of \$104,000. SDLA was the purchaser of the property. The trustee's deed upon sale was recorded on March 4, 2010.

1. *The First Action by Cooper and the related unlawful detainer (UD) action.*

On February 18, 2010, the day of the trustee's sale, Cooper filed a lawsuit against the lender and others (the First Action) for financial elder abuse, negligence, conversion, and constructive fraud. (Super. Ct. L.A. County, No. BC431878.) The gravamen of

---

<sup>1</sup> This summary is developed from the clerks' transcripts.

the action was that Cooper was coerced to enter into a home remodeling contract and was fraudulently induced to sign a loan agreement for a debt that she could not afford to pay. The SDLA defendants were not named in the original complaint. On February 24, 2010, Cooper filed a first amended complaint that identified Pacifica Homes and Pacifica Companies (but not SDLA) in the caption as defendants, but did not set forth any facts or allegations as to those entities.<sup>2</sup>

On February 25, 2010, Cooper unsuccessfully moved ex parte to enjoin any further sale of the property.

On March 12, 2010, SDLA filed a UD complaint to obtain possession of the subject property. Cooper did not answer the UD complaint. Instead, while the UD action was pending, she brought a motion in the First Action to set aside the trustee's sale and stay all other proceedings regarding the trustee's sale.

On March 16, 2010, the trial court (Judge Yaffe) ruled in the First Action that the trustee's sale was made in violation of Civil Code section 2923.5 because the "declaration" included in the notice of default (notice recorded on July 23, 2009) was not made under penalty of perjury and thus was not a declaration within the meaning of the statute. The trial court ruled that to the extent the foreclosure sale had not been completed, by recording the trustee's deed or by the transfer of the purchase price from the trustee to the beneficiary, or for any other reason, Cooper was entitled to a preliminary injunction prohibiting the

---

<sup>2</sup> Similarly, the subsequently filed second amended complaint (which was the operative pleading) listed Pacifica Homes and Pacifica Companies (but not SDLA) in the caption, without setting forth any facts or allegations as to them in the body of the complaint.

defendants from taking any further action to complete the transfer of the property pending the entry of judgment in the First Action. As a condition of the issuance of a preliminary injunction, pursuant to Code of Civil Procedure section 529, the trial court ordered Cooper to post an undertaking in the sum of \$20,000.<sup>3</sup> Cooper deposited \$20,000 with the court.

In May 2011, SDLA sent Cooper a letter stating that the preliminary injunction did not prevent SDLA from proceeding with the UD action, and that SDLA intended to take her default. Following Cooper's failure to answer the UD complaint, SDLA obtained a default judgment and caused a writ of possession and notice to vacate to be served on her. Cooper was evicted by the sheriff on July 20, 2011.

Before the eviction, Cooper moved to vacate the default judgment in the UD action. On July 18, 2011, the trial court denied Cooper's motion to vacate, finding "no grounds for relief exist" and "lack of diligence." On July 29, 2011, Cooper filed a petition for writ of mandate in this court (2d Civ. No. B234784), contending she reasonably relied on the preliminary injunction to maintain the status quo and therefore her failure to answer the

---

<sup>3</sup> Code of Civil Procedure section 529 states in relevant part at subdivision (a): "On granting an injunction, the court or judge must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined any damages, not exceeding an amount to be specified, the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction."

All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

UD complaint was excusable. On August 10, 2011, this court summarily denied Cooper's petition for writ of mandate.

Meanwhile, the First Action was ongoing. On March 30, 2012, the trial court entered the defaults of SDLA, Pacifica Homes and Pacifica Companies. On May 25, 2012, Cooper filed a motion for leave to file a third amended complaint.<sup>4</sup> With respect to the SDLA defendants, Cooper proposed to add allegations against them "for locking [her] out in violation of an injunction and putting her personal property into a storage facility, which cost her thousands of dollars to retrieve."

In its tentative decision, the trial court noted that although the SDLA defendants purported to file an opposition to the motion, because the SDLA defendants were in default, their purported opposition could not be considered. Nonetheless, the trial court denied Cooper's motion for leave to file a third amended complaint because Cooper proposed to raise "entirely new causes of action against these defendants, based on events which occurred long after this action was filed. . . . [¶] It would not prejudice [Cooper] to be required to file a new complaint against these defendants because, as the acts alleged in the amended complaint against [the SDLA defendants] occurred after this complaint was filed, [Cooper] would not be barred from bringing another action against them."

Apparently, the tentative decision became final and on August 20, 2012, the trial court (Judge Rita Miller) entered an order denying Cooper's motion for leave to file a third amended complaint.

---

<sup>4</sup> Cooper's motion for leave to file a third amended complaint in the First Action is the focus of this appeal.

Thereafter, the SDLA defendants brought an ex parte application to vacate the entry of their default on the ground that Cooper failed to state any cause of action against them. On December 21, 2012, pursuant to section 473, subdivision (d), the trial court granted the ex parte application, entered an order vacating the defaults of the SDLA defendants, and entered judgment in their favor.

On March 12, 2013, Cooper filed notice of appeal from the December 21, 2012 judgment. (2d Civ. No. B247460)

On June 17, 2013, the appeal was dismissed for failure to file a case information statement (Cal. Rules of Court, rule 8.100(g)). The remittitur issued on September 25, 2013.

*2. Postjudgment proceedings relating to enforcement of Cooper's liability on the \$20,000 undertaking.*

On February 10, 2014, SDLA filed a postjudgment motion to enforce Cooper's liability on the \$20,000 cash deposit in lieu of bond, contending it was entitled to the funds pursuant to section 996.440.<sup>5</sup> SDLA argued it had a right to the funds because it had

---

<sup>5</sup> Section 996.440 states in relevant part: "(a) If a bond is given in an action or proceeding, the liability on the bond may be enforced on motion made in the court without the necessity of an independent action. [¶] (b) *The motion shall not be made until after entry of the final judgment in the action or proceeding in which the bond is given and the time for appeal has expired or, if an appeal is taken, until the appeal is finally determined.* The motion shall not be made or notice of motion served more than one year after the later of the preceding dates. [¶] (c) Notice of motion shall be served on the principal and sureties at least 30 days before the time set for hearing of the motion. The notice shall state the amount of the claim and shall be supported by affidavits setting forth the facts on which the claim is based. The notice and affidavits shall be served in accordance with any

prevailed in the action; judgment had been entered in SDLA's favor in December 2012 and Cooper's appeal from the judgment had been dismissed. A supporting declaration by Dan Renwick, the supervisor of asset managers at SDLA, stated that SDLA had been damaged in the minimum amount of \$21,589 as a result of the delay in recovering possession of the property due to the preliminary injunction.

In opposition, Cooper argued the foreclosure sale resulted in a void deed, SDLA was not a bona fide purchaser, and that she was entitled to the return of her deposit.

On April 17, 2014, the trial court (Judge Kalin) granted SDLA's motion and entered an order directing the clerk of the court to release the \$20,000 to SDLA.

On April 28, 2014, Cooper filed a motion to vacate the April 17, 2014 ruling (§ 473), reiterating her earlier arguments and seeking return of her deposit.<sup>6</sup> On September 18, 2014, the trial court (Judge Feffer) denied Cooper's motion to vacate the April 17, 2014 order enforcing Cooper's liability on the undertaking.

---

procedure authorized by Chapter 5 (commencing with Section 1010). [¶] (d) Judgment shall be entered against the principal and sureties in accordance with the motion unless the principal or sureties serve and file affidavits in opposition to the motion showing such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue of fact. If such a showing is made, the issues to be tried shall be specified by the court." (Italics added.)

<sup>6</sup> On July 22, 2014, Cooper obtained a default judgment against other defendants in the First Action, and was awarded damages totaling \$1,012,000.

On October 15, 2014, Cooper filed a timely notice of appeal from the September 18, 2014 order. (2d Civ. No. B259535.)<sup>7</sup>

3. *The Second Action.*

On April 28, 2014, Cooper filed a new lawsuit (Super. Ct. L.A. County, No. BC543978) (the Second Action) against the three SDLA defendants and others. The operative first amended complaint therein sought to quiet Cooper's alleged title to her former residence.

On March 18, 2015, the SDLA defendants filed a motion for judgment on the pleadings. They contended the first amended complaint was facially untimely because Cooper was aware of SDLA's adverse claims to the property more than three years before filing the Second Action. They also argued Cooper's monetary judgment for fraud in the First Action precluded the Second Action based on the same allegations.

On May 27, 2015, the trial court (Judge Michael Johnson) granted the motion for judgment on the pleadings and entered judgment in favor of the SDLA defendants and against Cooper.

On June 8, 2015, Cooper filed a timely notice of appeal from the judgment on the pleadings. (2d Civ. No. B264669.) We consolidated the two appeals.

### **CONTENTIONS**

Cooper contends the trial court erred (1) in denying her motion for leave to amend in the First Action to file a third amended complaint adding claims to cancel a void trustee's deed

---

<sup>7</sup> The September 18, 2014 order denying the motion under section 473 to vacate the April 17, 2014 postjudgment order is appealable as an order denying a statutory motion to vacate an appealable order. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 200, p. 276.)



and to quiet title to the property; and (2) in denying her motion for return of the \$20,000 that she deposited as a condition of obtaining a preliminary injunction against the foreclosure of her home.

## DISCUSSION

1. *No merit to Cooper's contention that the trial court in the First Action abused its discretion in denying her leave to file a third amended complaint; that ruling was only reviewable on the appeal from the December 21, 2012 judgment, which is long since final.*

Although Cooper's second appeal was taken from the judgment on the pleadings in the Second Action, entered on May 27, 2015, her briefs do not address the Second Action.<sup>8</sup> Instead, Cooper argues in the briefs that the trial court (Judge Miller) erred in 2012 when it denied her motion in the *First Action* for leave to file a third amended complaint.

As detailed above, on December 21, 2012, the trial court entered judgment in the First Action in favor of the SDLA defendants, Cooper appealed that judgment, and her appeal was dismissed in 2013. (2d Civ. No. B247460.) Had that earlier appeal gone forward, it would have been the vehicle for Cooper to obtain review of the August 2012 order denying her leave to file a third amended complaint in the First Action. However, the December 21, 2012 judgment is long since final. Cooper cannot

---

<sup>8</sup> Due to Cooper's failure to assert any error with respect to the May 27, 2015 judgment on the pleadings, that issue has been forfeited. (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 295 [failure to raise a claim of error in the opening brief forfeits the argument].)

through the medium of the instant appeal revive a contention that was resolved by the dismissal of the prior appeal in 2013.

In supplemental briefing, Cooper contends she is not barred from arguing the trial court erred in denying her leave to file the third amended complaint because the earlier appeal, “filed March 12, 2013[,] did not include [that] contention.” Cooper asserts that an examination of that notice of appeal “shows the appeal was limited to one order, not the entire proceedings. The notice of appeal [solely specified] the order vacating the default filed on December 21, 2012.” Cooper argues that while she could have appealed the order denying leave to amend at that time, “she did not. That does not mean she waived her right to appeal.” Cooper also asserts her March 12, 2013 notice of appeal was untimely because it was filed more than 60 days after notice of entry of judgment, and therefore her contention with respect to denial of leave to amend could not have been reviewed in the prior appeal. These arguments are meritless. “California follows a ‘one shot’ rule under which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited.” (*In re Baycol Cases I and II* (2011) 51 Cal.4th 751, 761, fn. 8.) To obtain appellate review of the August 2012 order denying her leave to file a third amended complaint in the First Action, Cooper needed to perfect her appeal from the December 21, 2012 judgment. Having failed to do so, Cooper lost her opportunity for appellate review of that issue.

2. *No merit to Cooper’s contention the trial court erred in refusing to order return of her cash deposit.*

Cooper contends the trial court should have ordered return of the \$20,000 cash deposit because the July 2014 default judgment against SDLA’s codefendants established that the

codefendants were guilty of fraud, and therefore the trustee's sale deed to SDLA was "void" and SDLA could not be a bona fide purchaser. Cooper also contends the release of the funds to SDLA was premature and should have awaited the resolution of the instant appeal. Cooper's arguments with respect to the release of her deposit to SDLA are unpersuasive.

Contrary to Cooper's argument, SDLA's motion to enforce Cooper's liability on the cash deposit was not premature. The cash deposit was posted in the *First Action*, and SDLA was entitled to seek release of the funds after the First Action had concluded. By statute, "[t]he motion shall not be made until after entry of the final judgment *in the action or proceeding in which the bond is given* and the time for appeal has expired or, if an appeal is taken, *until the appeal is finally determined.*" (§ 996.440, subd. (b), italics added.) Cooper's appeal from the December 21, 2012 judgment terminated with the issuance of the remittitur on September 25, 2013. SDLA's motion to enforce Cooper's liability on the deposit was timely because it was filed on February 10, 2014, within one year of the issuance of the remittitur. (§ 996.440, subd. (b).)

Cooper's other argument is that SDLA was not entitled to the \$20,000 because the trial court had determined "that all of the defendants *other than the SDLA group* had been guilty of fraud." (Italics added.) That ruling has no bearing on the SDLA defendants, who in December 2012 obtained a favorable judgment that became final upon dismissal of Cooper's appeal in 2013. Although Cooper argues the fraudulent conduct of the other defendants led to the "void" trustee's deed in favor of SDLA, Cooper failed to state a cause of action against the SDLA defendants in the First Action (or in the Second Action). Having

defeated Cooper's claims, SDLA was the prevailing party and was entitled to enforce Cooper's liability on the \$20,000 cash deposit, based on its showing that it incurred a loss exceeding that amount due to the delay in obtaining possession of the property.

### **DISPOSITION**

The September 18, 2014 order denying the motion to vacate (Super. Ct. L.A. County, No. BC431878) and the May 27, 2015 judgment on the pleadings (Super. Ct. L.A. County, No. BC543978) are affirmed. The parties shall bear their respective costs on appeal.

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

EDMON, P. J.

We concur:

LAVIN, J.

STONE, J.\*

---

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