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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

COASTLINE RE HOLDINGS
CORPORATION,

Plaintiff and Respondent,

v.

PIERRICK BRILLOUET et al.,

Defendants and Appellants.

2d Civil No. B282382
(Super. Ct. No. 56-2014-
00461981-CL-UD-VTA)
(Ventura County)

Pierrick Brillouet and Yong Brillouet (the Brillouets) appeal judgment after a court trial in this unlawful detainer action. They separately appeal a postjudgment order awarding attorney's fees. The court awarded Coastline RE Holdings Corporation (Coastline) possession, \$44,760.83 in damages for 10 months of lost rent, and \$210,000 in contractual attorney's fees.

Coastline filed this action as an unlimited civil action, but a superior court clerk mistakenly designated it as limited. The Brillouets contend it is a limited civil action and thus the court exceeded its jurisdiction when it awarded

Coastline \$44,760.83 in damages for lost rent and heard a motion for attorney's fees more than 30 days after notice of entry of judgment. They also contend the \$210,000 fee award is not authorized by contract and is excessive. We affirm.

BACKGROUND

The Brillouets bought a property from Alexander Low in 2009. They assumed Low's obligations under a \$1.1 million construction loan (the assumption agreement). Low's promissory note was secured by a deed of trust on the property which contains a fee provision. The deed of trust was modified to name the Brillouets as grantors. The promissory note contains a fee provision and its terms are incorporated by reference into the assumption agreement.

The Brillouets made no payments on the loan after October 2011. The lender recorded a notice of default. The Brillouets delayed foreclosure by quitclaiming the property to various entities which in turn filed bankruptcy petitions, each of which was dismissed. The bankruptcy court found the filing of these 11 bankruptcy actions was part of a scheme to hinder, delay, or defraud creditors.

In 2014, Coastline bought the property in a nonjudicial foreclosure sale and served a three-day notice to quit on the Brillouets. When the Brillouets did not vacate the property, Coastline filed this action for unlawful detainer.

Coastline identified the action as an unlimited civil action on the case information sheet.¹ But a clerk of the superior

¹ At oral argument, counsel for the Brillouets misstated that Coastline filed the action as a limited civil action. When questioned, counsel cited page 955 of the clerk's record which is the clerk's index, not a document filed by Coastline.

court mistakenly designated the case as a limited case in the register of actions.

After 10 months of litigation and a court trial, the court awarded possession to Coastline along with damages for 10 months of lost rent. It awarded Coastline costs as the prevailing party and entered judgment in its favor.

Coastline filed a motion for contractual attorney's fees two months later, based on the deed of trust's fee provision. The Brillouets opposed on the grounds that the fee motion was untimely under rules applicable in limited civil actions, that the fee provision did not apply, and that Coastline's heavily redacted billing statements did not adequately demonstrate the fees were reasonably incurred in this action.

The trial court ordered Coastline to submit unredacted statements, and gave the Brillouets an opportunity to respond to them. Coastline complied, but the Brillouets' response did not challenge any specific services rendered. The court found that the Brillouets did not "even attempt[] to carry the burden of attacking fees as demanded." It reduced the fees slightly, and found \$210,000 in claimed fees were reasonably related to the action.

The Brillouets filed an appeal from the judgment, and another appeal from the fee award, in the appellate division of the superior court. After the appellate division requested briefing from the parties on the classification of the action, it reclassified the action as unlimited and transferred it to our court with written findings that the action was misclassified due to clerical error.

DISCUSSION

Unlimited Civil Action

The Brillouets contend the judgment is void because the trial court lacked jurisdiction to award more than \$25,000 in damages. (*People v. National Automobile & Casualty Ins. Co.* (2000) 82 Cal.App.4th 120, 125 [acts which exceed power of court defined by express statutory declaration exceed jurisdiction].) But Coastline designated this as an unlimited civil action at its inception. The clerk mistakenly misclassified the action, but when a “case has been classified in an incorrect jurisdictional classification,” the court “on its own motion, may reclassify [the] case at any time.” (Code Civ. Proc., § 403.040, subd. (a).) It did so here. Moreover, the Brillouets are judicially estopped from claiming this is a limited civil action because they acquiesced when the case proceeded as an unlimited civil action, they did not timely object to the statement of decision which awarded more than \$25,000, and they did not raise the issue until after judgment was entered. (*AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 509.)

Timeliness of the Fee Motion

The 30-day deadline to file a fee motion after service of entry of judgment in limited civil actions does not apply because this is not a limited civil action. (Cal. Rules of Court, rules 3.1702(b)(1), 8.822(a)(1)(A).) Even if it were, no service of notice of entry of judgment appears in the record and Coastline served its fee motion within 90 days of entry of judgment. (Cal. Rules of Court, rule 8.822(a)(1)(C).)

Contractual Basis for Fee Award

Coastline is entitled to fees under the terms of the deed of trust which allows the prevailing party to recover fees,

“[i]f Lender institutes any suit or action to enforce any of the terms of this Deed of Trust.” (Code Civ. Proc., §§ 1032, subd. (b), 1033.5, subd. (a)(10)(A).) The Brillouets assumed Low’s obligations under the deed of trust, and violated its terms when they remained in possession after foreclosure. Coastline is the lender’s successor in interest and brought this action to enforce its rights under the deed of trust.

Collateral estoppel does not apply to the Ventura County Superior Court’s finding in another case that Coastline’s predecessor in interest could not recover fees under the same loan documents. (*Pierrick Brillouet et al. v. Western Commercial Bank*, Ventura County Superior Court case No. 56-2014-00458447-CU-OR-VTA.) That case was a fraud action by the Brillouets, not an action brought by the lender “to enforce any of the terms of [the] Deed of Trust” or “to collect [the] note,” and it was not a suit “brought to enforce or interpret the terms of [the assumption] Agreement.” And neither the parties nor the issues are identical. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511.)

Amount of Fee Award

The Brillouets contend the court abused its discretion when it awarded \$210,000 in fees because Coastline did not demonstrate the fees were reasonable for a two-hour court trial in a routine unlawful detainer action. (*Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816 [The party seeking fees has the burden of proving the time spent and hourly fees charged are reasonable].)

The Brillouets forfeited their claim when they did not object in the trial court to any particular item claimed. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee*

Assn. (2008) 163 Cal.App.4th 550, 564.) Moreover, the unredacted and undisputed statements disprove the Brillouets' claim that the services were rendered before the foreclosure sale or were not reasonably related to the unlawful detainer action. The legal services rendered here were substantial and extensive. The amount of a fee award rests in the sound discretion of the trial court. (*Pope v. Pope* (1951) 107 Cal.App.2d 537, 539.) The verified time statements support its determination that the fees were reasonable and necessarily incurred.

Standing

In a late-filed reply brief, the Brillouets argue for the first time that Coastline does not have standing to enforce the assumption agreement because the record does not include a receiver's deed evidencing the conveyance from Federal Deposit Insurance Corporation. The Brillouets waived the contention when they stipulated at trial to the fact of the conveyance and stipulated that its validity was not one of the eight issues to be decided at trial.

DISPOSITION

The judgment and order are affirmed. Coastline shall recover its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Matthew P. Guasco, Judge
Superior Court County of Ventura

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