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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ISAAC POSADA, as Trustee, etc., et
al.,

Plaintiffs and Appellants,

v.

QUEST EQUITY FUND, LLC,

Defendant and Appellant.

B270971

(Los Angeles County
Super. Ct. No. BC517236)

APPEAL from a judgment of the Superior Court of Los Angeles County, John L. Segal, Josh M. Fredericks, and Teresa A. Beaudet, Judges. Affirmed.

Law Office of Walter R. Huff and Walter R. Huff for
Plaintiffs and Appellants.

Hennelly & Grossfeld, Ronald K. Giller for Defendant and
Appellant.

In order to protect a family member from potential criminal liability for forging home-loan-related documents, the relatives who had title to the real property that served as security for the loan chose not to disclose the forgery until years after they discovered it. They first disclosed the fraud only in connection with a lawsuit they brought against the lender, after the lender had foreclosed on the property and evicted the occupants via an unlawful detainer action. We consider whether judgment was properly entered for the lender on statute of limitations and claim preclusion grounds.

I. BACKGROUND

A. *Factual and Procedural History Prior to This Lawsuit*

In 2000, plaintiff and appellant Evangelina Posada (Evangelina)¹ and her husband, Luis Posada (Luis), acquired a house in Downey (the Property). In 2002, Luis transferred his interest in the Property to Evangelina. In 2004, Evangelina transferred the Property to herself and two relatives, plaintiffs and appellants Isaac Posada (Isaac) and Marisol Navar (Marisol) (collectively, plaintiffs). The 2004 grant deed states Evangelina gifted interests to Isaac, “a single man,” and Marisol, “a single woman,” and the three held their interests as joint tenants. Isaac was one of Evangelina’s sons; Marisol was her niece. Marisol never resided at the Property. Isaac lived there until he got married in August 2008.

In the spring of 2008, Evangelina’s son Noe Posada (Noe) forged Isaac and Marisol’s signatures on quitclaim deeds

¹ Because some of the parties share the same last name, we refer to them individually by their first names.

transferring their interests in the Property to Evangelina. Noe then obtained a \$165,500 home equity loan in Evangelina's name, secured by the Property under a deed of trust that bears her forged signature. The trust deed names defendant and respondent Quest Equity Fund, LLC (defendant) as the beneficiary.²

In July 2008, Noe admitted to Marisol that he had forged the quitclaim deeds and the deed of trust. Evangelina and Isaac learned of Noe's forgeries and the outstanding loan in late 2008 or early 2009.

The first of many late payment notices on the loan balance was sent to Evangelina in April 2009. In September 2009, a "Notice of Default and Election to Sell Under Deed of Trust" was sent to Evangelina because of overdue loan payments. In December 2009, a "Notice of Trustee's Sale" was sent to Evangelina. No foreclosure sale took place, however, because Noe obtained a lower interest rate on the loan and Luis then helped pay the amount in arrears. Although Noe obtained the loan by what plaintiffs assert are various forged signatures, Evangelina deducted mortgage interest on the loan on her tax returns for the years 2008 through 2012.

After Luis initially helped to bring the loan balance current, the loan payments again fell into arrears. Evangelina continued to receive past due notices throughout 2010, 2011, and early 2012. In November 2012, Evangelina filed a Chapter 13 bankruptcy petition to stop a foreclosure sale of the Property that was scheduled for the following day. Defendant moved for relief

² Defendant was the second mortgage holder on the Property. Chase Home Finance held a first mortgage interest.

from the automatic stay, which the bankruptcy court granted in April 2013. Evangelina's bankruptcy case was then dismissed. Ten days later, Evangelina filed another Chapter 13 petition, and sought to impose another automatic stay, in a second attempt to stop the foreclosure. Evangelina never raised the forged deed and loan documents in the bankruptcy proceedings.

On May 10, 2013, defendant purchased the Property at a trustee foreclosure sale for \$233,971.79, which was the amount of the unpaid debt plus costs. On May 21, 2013, defendant served Evangelina and "ALL OTHERS IN POSSESSION" with a three-day notice to quit the Property. About a week later, Evangelina filed an action against defendant in bankruptcy court for violating the automatic stay associated with her second bankruptcy proceeding. Evangelina did not raise the issue of Noe's forgery in this adversarial proceeding in the bankruptcy court.

On June 10, 2013, defendant filed an unlawful detainer action against Evangelina and unidentified Does also in possession of the Property, pursuant to Code of Civil Procedure section 1161a.³ Defendant alleged in its complaint that it had purchased the Property in proceedings "as prescribed by California Civil Code § 2924, under an express power of sale contained in a deed of trust executed by [Evangelina], and the title under the sale has been duly perfected by law."⁴ Defendant

³ Undesignated statutory references that follow are to the Code of Civil Procedure.

⁴ Before a nonjudicial foreclosure sale authorized by a deed of trust containing a power of sale upon default can be held, Civil Code section 2924 requires the trustee to record a notice of

supplied a “Prejudgment Claim of Right to Possession” form, pursuant to section 415.46, to the occupants of the Property. The form stated that if an occupant not named in the summons and complaint asserted a right to possession, he or she should file a claim thereon, which the unlawful detainer court would then determine. If an occupant did not file a claim, he or she would be evicted without a hearing. There is no indication in the record that anyone filed a claim of possession with respect to the Property.

In her answer to defendant’s unlawful detainer complaint, Evangelina stated “ownership of the property is in dispute” and the foreclosure sale was “void ab initio” because the property was subject to an automatic stay. Evangelina asked that defendant be “restrained and enjoined from attempting to perfect title or gain right to possession” pending resolution of her adversary proceeding in bankruptcy court alleging violation of the automatic stay.

On August 1, 2013, the bankruptcy court heard a motion by defendant to dismiss Evangelina’s action for violating the automatic stay. The court granted the motion, concluding the grant of relief from the automatic stay entered in April 2013 was binding in Evangelina’s second bankruptcy proceeding.

default that describes the property, the nature of the breach, and whether the default is curable. (Civ. Code, § 2924, subd. (a)(1).) The trustee must then wait three months before issuing a notice of sale, which must be published, posted, and recorded at least 20 days before the sale. (Civ. Code, §§ 2924, subd. (a)(2), 2924f, subds. (b)(1)–(4).)

That same month, the superior court hearing the unlawful detainer action adjudged defendant entitled to possession of the Property against Evangelina and all other occupants. Evangelina did not raise Noe's forgeries at the unlawful detainer hearing.⁵

B. This Lawsuit

On August 6, 2013, the same day the court entered judgment for defendant in the unlawful detainer action, Isaac sued defendant and alleged causes of action for quiet title, cancellation of written instrument, and fraud.⁶ Isaac's suit was the first time plaintiffs alerted defendant to the issue of the forged deeds and associated documents.

Isaac also filed three successive applications to obtain a temporary restraining order, apparently to prevent the actual eviction from the Property from going forward (the record does not reveal the precise conduct Isaac sought to enjoin). In declarations accompanying each application, Isaac said he learned about Noe's forgeries in 2012. He additionally declared Evangelina deeded to him and Marisol each "a one-third joint tenancy interest" in "our home" in order to "prevent [Evangelina]

⁵ The record contains no reporter's transcript that memorializes what transpired at the hearing, but counsel for both plaintiffs and defendant have represented Evangelina did not raise the forgery at that time.

⁶ Isaac also brought claims against Noe and the person who notarized Isaac's signature on the forged deed. Those claims are not at issue in this appeal.

from being influenced and somehow deprived of her ownership interest” without Isaac and Marisol’s knowledge.

The trial court denied each of Isaac’s temporary restraining order applications. Evangelina and the other occupants of the Property, including Bernarda Navarez (Bernarda), who was Evangelina’s mother and Isaac and Marisol’s grandmother, were evicted on September 13, 2013.

Later that month, Isaac filed a first amended complaint in which Evangelina and Marisol were added as plaintiffs. The first amended complaint stated the same causes of action against defendant as the initial complaint and was verified with respect to plaintiffs’ quiet title cause of action. Plaintiffs’ first amended complaint alleged they each held an “undivided one-third joint tenancy ownership interest” in the Property and had “learned within the past three years” that Noe had forged deeds and other documents in order to obtain a loan secured by the Property from defendant. Plaintiffs claimed the forged deeds were “void ab initio . . . even as to a bona fide purchaser”

Defendant filed a cross-complaint for fraud and negligence against Noe, the notaries who had notarized the signatures on the Property grant deeds and deed of trust, and the surety companies for those notaries. Defendant eventually dismissed its cross-complaint against the notaries and surety companies because the statute of limitations against those parties had expired.

In early December 2014, defendant moved to file a first amended answer because it discovered facts that would support defenses it had not asserted earlier, including the statute of limitations. Defendant explained it had learned through depositions that plaintiffs discovered Noe’s forgeries in late 2008

or early 2009, which predated plaintiff's complaint by more than three years and therefore belied plaintiffs' representation in their verified complaint that they discovered the fraud sometime after August 2010. The court granted defendant's motion to amend.

C. Defendant's Motion for Summary Judgment

Defendant moved for summary judgment or, alternatively, summary adjudication, of plaintiffs' claims. Defendant contended that plaintiffs' three causes of action against it—quiet title, cancellation of written instrument, and fraud—were all barred by the three-year statute of limitations imposed by section 338, subdivision (d) (actions based on fraud or mistake). Defendant further contended plaintiffs' cause of action for fraud was meritless because there was no evidence defendant participated in Noe's wrongdoing.

Plaintiffs opposed defendant's motion. Plaintiffs admitted they had not contended, before filing this lawsuit, that there were any forged documents because they "did not want Noe to go to jail." But plaintiffs argued the statute of limitations had not expired on their quiet title and cancellation of written instrument claims because prior cases had held the limitations periods for those actions did not run against one who possessed the property at issue. Plaintiffs averred they continuously resided at the Property until their eviction in September 2013. Plaintiffs additionally argued their fraud claim withstood summary adjudication because there were triable issues of fact regarding defendant's possible participation in Noe's misconduct.

In its reply, defendant implicitly acknowledged possession of property could toll the statute of limitations in a quiet title action, but it argued the doctrine was inapplicable to this case for

two reasons. First, Isaac and Marisol could not benefit from a tolled limitations period because neither had resided at the Property within the three-year limitations period. Isaac moved out of the Property in August 2008, and Marisol admitted she had never lived there. Defendant additionally argued that Evangelina's possession did not toll the statute of limitations because the doctrine required possession to be "exclusive and undisputed" and Evangelina knew her possession had been disputed since 2009, when defendant began seeking to enforce its interest in the Property.

The trial court denied summary adjudication of Evangelina's quiet title claim, and of Evangelina and Isaac's cancellation of instrument claims. But the trial court granted defendant's motion for summary adjudication as to plaintiffs' fraud claims, Isaac and Marisol's quiet title claims, and Marisol's cancellation of written instrument claim.⁷

The trial court accepted plaintiffs' argument that the statute of limitations did not run on their quiet title claims as

⁷ On the day of the hearing on defendant's motion for summary judgment, plaintiffs applied, ex parte, to file a second amended complaint for the purpose of alleging Isaac and Marisol held their ownership interests as trustees on behalf of Bernarda (their grandmother who lived with Evangelina at the Property). Plaintiffs intended to argue that Bernarda's possession of the Property, rather than Isaac and Marisol's, would operate to toll Isaac and Marisol's claims. Plaintiffs asserted they had not raised the possession argument earlier because it was not necessary until defendant indicated it would rely on the statute of limitations as a defense. The court denied plaintiffs' ex parte application without prejudice to their bringing a noticed motion.

long as they retained possession of the Property. On that basis, the court concluded Evangelina's quiet title claim withstood summary adjudication because she had lived at the Property within three years of the lawsuit. Marisol and Isaac's claims to quiet title failed, on the other hand, because they had not resided at the Property during that same period.

The court also applied this tolling-by-possession doctrine to plaintiffs' claims for cancellation of the forged quitclaim deed. Concluding a five-year statute of limitations applied to that cause of action, the court granted summary adjudication with respect to Marisol because she never lived at the Property and had discovered the fraud in July 2008, which predated the August 6, 2013, complaint by more than five years. The court denied summary adjudication of Isaac and Evangelina's claims.⁸

The court granted summary adjudication for defendant on plaintiffs' fraud cause of action because there was no evidence

⁸ In regard to Isaac's claim, the court ruled: "Whether the five-year statute of limitations bars [Isaac's] quiet title [*sic*] claim depends on when in 2008 he married and moved out of the property. There is no evidence of this. Therefore, the motion for summary adjudication is denied as to [Isaac]." Plaintiffs assert this statement indicates the court concluded a five-year (as opposed to three-year) limitations period applied to the lawsuit's quiet title claims and that Isaac's quiet title claim therefore withstood summary adjudication. That is not how we read the record. The reference to "quiet title" in the sentence quoted above is a mere typographical error. The reference is made as part of the court's discussion of plaintiffs' cause of action to "Cancel May 19, 2008, Quitclaim Deed," and it is obvious the court meant to refer to plaintiffs' cancellation of instrument cause of action but mistakenly referred to "quiet title" instead.

defendants committed any wrongdoing in making the loan and because the statute of limitations on the claim expired more than two years before they filed suit.

D. Plaintiffs File a Second Amended Complaint

Over defendant's opposition, the court allowed plaintiffs to file a second amended complaint after its summary adjudication ruling. In contrast to the first amended complaint, which plaintiffs brought as "individuals," the second amended complaint identified Isaac and Marisol as "trustees." The second amended complaint alleged Isaac and Marisol "[held their] interest[s] in the Property only as trustee[s] for the benefit of [their] grandmother Bernarda Navarez." The prayer for relief stated Isaac and Marisol together held a one-half interest in the Property on behalf of Bernarda (in contrast to the first amended complaint which stated each held a one-third interest). The second amended complaint contained no further allegations describing Isaac and Marisol's status as trustees or the terms of any trust. Defendant's answer to plaintiffs' second amended complaint asserted additional affirmative defenses, including res judicata.

E. Motions for Judgment on the Pleadings Filed by Defendant and by Evangelina

Following the trial court's summary adjudication ruling, Evangelina and defendant filed dueling motions for judgment on the pleadings. Evangelina contended she was entitled to judgment because defendant could not controvert the fact that the deed to the Property was forged, and a forged deed was void ab initio. Defendant contended Evangelina's claims were barred

by res judicata, by virtue of the judgments rendered against her in defendant's unlawful detainer action and in Evangelina's adversary proceeding against defendant in the bankruptcy court (for violating the automatic stay). Defendant asked the trial court to take judicial notice of filings and orders in the bankruptcy and unlawful detainer actions.

Evangelina opposed defendant's motion, arguing res judicata had no application in a forged deed case because the deed was treated as though it never existed. Evangelina further argued that unlawful detainer judgments had limited res judicata effect because they were summary proceedings focused only on a party's right to immediate possession of property. In particular, Evangelina asserted that because cross-complaints are not permitted in unlawful detainer actions and because the abbreviated timeline of such actions prevented substantial discovery, she had no ability to litigate the forgery issue in that proceeding.

In its reply, defendant contended the unlawful detainer action had res judicata effect because it was brought under section 1161a, pursuant to which defendant demonstrated it had perfected title. Defendant emphasized that even though Evangelina did not raise the forgery in the unlawful detainer proceeding, she did argue defendant lacked valid title when she asserted the Property's ownership was "in dispute," defendant's purchase was "void ab initio," and defendant should be "enjoined from attempting to perfect title."

At a hearing on the motions for judgment on the pleadings, the trial court asked counsel to address whether an unlawful detainer action could preclude a later action challenging foreclosure on the basis of a void title. Evangelina's counsel

acknowledged an unlawful detainer action might bar a later proceeding based on a “technical deficiency” in the foreclosure proceedings but argued res judicata had no application to a foreclosure challenged on the ground that the title itself was invalid. Defendant’s counsel argued the distinction drawn by Evangelina was immaterial because the sole issue to be resolved in an unlawful detainer action pursuant to section 1161a was title “[a]nd whether the title is resolved by way of a defect in the foreclosure itself or by way of forgery or some other issue, it has to be resolved.”

The court granted defendant’s motion for judgment on the pleadings and denied Evangelina’s. The court reasoned that pursuant to *Malkoskie v. Option One Mortgage Corp.* (2010) 188 Cal.App.4th 968 (*Malkoskie*), a judgment in an unlawful detainer action brought under section 1161a, subdivision (b)(3), which was the basis for defendant’s unlawful detainer action against Evangelina, “necessarily resolved the validity of [defendant’s] title” and therefore barred future litigation over a later challenge to the validity of title between the same parties.

F. Defendant’s Motion for Judgment on the Pleadings as to the Remaining Claims Asserted by Isaac and Marisol

Defendant filed a separate motion for judgment on the pleadings with respect to the claims of Isaac and Marisol, as trustees. Defendant argued the second amended complaint revealed Isaac and Marisol lacked standing as trustees and also failed to allege facts sufficient to state causes of action against it. Defendant urged the court to reject the characterization of Isaac and Marisol as trustees because it contradicted their prior

pleadings, declarations, and recorded documents, and its sole purpose was to avoid the statute of limitations, which had proved an obstacle to their claims in the summary adjudication proceedings. Defendant also argued Isaac and Marisol did not allege an adequate basis to demonstrate their standing as trustees because they failed to allege the existence of an express trust. Defendant further argued Isaac and Marisol's fraud claims were time-barred and, in any event, they failed to allege the necessary requirements for a fraud claim. In support of its motion, defendant requested the trial court take judicial notice of the quitclaim deed by which Isaac and Marisol took their interests in the Property, and declarations of Isaac and Marisol in support of Isaac's failed applications for injunctive relief.

In their opposition to defendant's motion for judgment on the pleadings, Isaac and Marisol contended the second amended complaint sufficiently alleged their standing to sue as trustees. They also contended the second amended complaint did not change the underlying basis of their claims; it merely provided more specificity regarding the nature of Isaac and Marisol's interests in the Property.

At a hearing on defendant's motion, the court told plaintiffs' counsel the second amended complaint seemed "to be some kind of end [run around] . . . a motion for summary judgment or adjudication that has resolved all of this." Counsel responded plaintiffs had not previously "elaborate[d]" Isaac and Marisol's trustee status because it was not an issue until defendant raised the statute of limitations as a defense. Counsel also asserted Isaac and Marisol held their interests on Bernarda's behalf pursuant to an express trust, which plaintiffs would identify if defendant made an appropriate discovery request. The

court granted defendant's motion "as to the first [quiet title], second [cancellation of instrument] and fourth [fraud] causes of action without leave to amend."⁹

G. Judgment and Appeal

Judgment was entered in favor of defendant on all of plaintiffs' causes of action against it, whether brought as individuals or trustees. The court concluded Isaac and Marisol filed the first amended complaint in their individual capacities and they dismissed or abandoned any individual claims that had survived summary adjudication when they filed the second amended complaint.¹⁰

Plaintiffs appeal the summary adjudications and judgment on the pleadings in favor of defendant. Their notice of appeal identifies the appealing parties as "Isaac Posada, Trustee, Evangelina Posada, Marisol Navar, Trustee." Defendant appeals the partial denial of its motion for summary judgment.

II. DISCUSSION

A. Standard of Review

We consider the trial court's decisions de novo. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777 [motion for judgment on the pleadings akin to demurrer

⁹ The trial court did not issue a statement of decision or minute order setting forth the reasons for its decision.

¹⁰ The court opined that because the complaints were brought by different parties, they should have been filed as separate actions which were then related and consolidated, but it was "all water under the bridge" at that point.

and governed by same de novo standard] (*Pac Anchor*); *Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 460 [grant of summary judgment or adjudication reviewed de novo]; *Regents of the University of California v. Superior Court* (1999) 20 Cal.4th 509, 531 [denial of summary judgment motion subject to independent review].)

A party is entitled to summary judgment “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (§ 437c, subd. (c); see also § 437c, subd. (f) [summary adjudication].) In reviewing a grant or denial of summary judgment or summary adjudication, we consider the record before the trial court at the time of its ruling and we resolve any doubts concerning the evidence in favor of the nonmoving party. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286 (*Hartford*).)

A trial court may grant a defendant’s nonstatutory motion for judgment on the pleadings where it determines the complaint fails to state facts sufficient to constitute a cause of action. (*Smiley v. Citibank (South Dakota) N.A.* (1995) 11 Cal.4th 138, 145 (*Smiley*); *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5; see also § 438, subd. (c)(1)(B)(ii).) Because a motion for judgment on the pleadings has the same “purpose and effect of a general demurrer,” our review procedure for both devices is the same. (*Smiley, supra*, at p. 146, citation omitted.) We accept the truth of all material facts properly alleged in the challenged pleading and limit our consideration to the pleadings and any matters properly subject to judicial notice. (*Ibid.*; *Pac Anchor, supra*, 59 Cal.4th at p. 777; *Hardy v. America’s Best Home Loans* (2014) 232 Cal.App.4th 795, 802.)

*B. Evangelina's Quiet Title and Cancellation of
Instrument Claims are Barred by Res Judicata*

Evangelina contends the unlawful detainer action did not preclude her claims against defendant because she lacked an adequate opportunity to litigate the forgeries in the earlier action. We conclude the trial court committed no error in applying res judicata.

Res judicata, or claim preclusion, “acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*); see also *Franceschi v. Franchise Tax Board* (2016) 1 Cal.App.5th 247, 259 [“If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged”].) The doctrine “benefits both the parties and the courts because it ‘seeks to curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.’ [Citation.]” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897 (*Mycogen*).)

Claim preclusion principles require that “all claims based on the same cause of action . . . be decided in a single suit; if not brought initially, they may not be raised at a later date.” (*Mycogen, supra*, 28 Cal.4th 888, 897.) Claims are based on the same cause of action where they involve the same “primary right,” regardless of the particular theory of recovery or remedy sought. (*Id.* at p. 904.) The “primary right is simply the plaintiff’s right to be free from the particular injury suffered.” (*Ibid.*, citation omitted.)

Claim preclusion bars relitigation of “(1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit.” (*DKN Holdings, supra*, 61 Cal.4th at p. 824.) “A judgment is on the merits for purposes of res judicata ‘if the substance of the claim is tried and determined’” (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77.)

Vella v. Hudgins (1977) 20 Cal.3d 251 (*Vella*) addressed when an unlawful detainer action precludes subsequent litigation challenging a foreclosure sale of the property at issue. *Vella* stated that unlawful detainer actions “usually ha[ve] very limited res judicata effect” because the proceeding is “summary in character” and ordinarily determines “only claims bearing directly upon the right of immediate possession” (*Id.* at p. 255.)

Vella recognized that actions brought pursuant to section 1161a constituted a “qualified exception” to the general rule, however, because claimants of possession under section 1161a must show they have “duly perfected” their title to the property after acquiring it “at a regularly conducted sale.” (*Vella, supra*, 20 Cal.3d at p. 255.) According to *Vella*, judgments in those actions are routinely preclusive with respect to title issues “directly connected with the conduct of the sale” because the unlawful detainer court necessarily determines such issues. (*Id.* at p. 256.) Issues not directly connected with the conduct of the sale, however, are precluded from being raised in a later action only if the party had a “full and fair opportunity” to litigate those issues in the unlawful detainer proceeding. (*Id.* at p. 257.)

The *Vella* court held the appellant in that case lacked a full and fair opportunity to litigate issues raised in a subsequent action. In the unlawful detainer action brought against her, the

appellant argued the purchaser of the property had obtained it by fraudulently inducing her to default on a note secured by a deed of trust on the property. (*Vella, supra*, 20 Cal.3d at pp. 253-254.) The court hearing the unlawful detainer action had a jurisdictional limit far below the value of the property, and there was no indication in the record that the parties had actually litigated the fraud issue. (*Id.* at pp. 257-258.) The *Vella* court distinguished the case before it from *Wood v. Herson* (1974) 39 Cal.App.3d 737, in which the parties to an unlawful detainer action fully litigated fraud allegations in a court with jurisdiction to determine them. (*Id.* at pp. 256-257.)

Here, Evangelina's counsel argued that even if she had raised the forgery in the unlawful detainer action, the summary nature of the proceeding would have prevented her from fully presenting her defense. The trial court rejected that argument, with the judge noting he had "heard [unlawful detainer] actions for many years [and did not] think [counsel's characterization was] actually accurate of all [unlawful detainer actions]." The court instead agreed with defendant that *Malkoskie, supra*, 188 Cal.App.4th 968 determined the outcome in Evangelina's case.

In *Malkoskie*, the plaintiffs' home was purchased via a nonjudicial foreclosure sale after the plaintiffs defaulted on a loan secured by the property. (*Malkoskie, supra*, 188 Cal.App.4th at p. 971.) The purchaser filed an unlawful detainer action against the plaintiffs pursuant to section 1161a. (*Id.* at p. 974.) The plaintiffs stipulated to a judgment against them in that action and then filed a separate lawsuit against the purchaser asserting claims including quiet title, cancellation of deed, and wrongful foreclosure. (*Id.* at p. 972.)

The Court of Appeal concluded the plaintiffs' claims were barred by the claim preclusion doctrine. The court held the issues in the second lawsuit, which related to "[t]he conduct of the sale and the validity of the resulting transfer of title," were necessarily resolved by the unlawful detainer proceedings. (*Id.* at p. 974.) By stipulating to a judgment against them, the plaintiffs "conceded the validity of [the purchaser's] allegations that the sale had been duly conducted and operated to transfer 'duly perfected' legal title to the property." (*Id.* at p. 975.)

We conclude the trial court did not err in finding claim preclusion applicable to Evangelina's claims because Evangelina possessed—and chose not to avail herself of—a full and fair opportunity to be heard by the unlawful detainer court on her forgery defense. In answering defendant's complaint in that action, Evangelina asserted the deed was void and asked the court to enjoin defendant from attempting to perfect its title on account of the concurrent adversary proceeding in the bankruptcy court.¹¹ There is nothing in the record to indicate the unlawful detainer court would not, or could not, have considered the forgery issue as well before coming to its decision. (See, e.g., *Green v. Superior Court* (1974) 10 Cal.3d 616, 632 & fn. 16 ["nothing in the statutory provisions governing unlawful detainer proceedings prohibits the assertion of any defense"]; *Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 387 [where complex issues of title are raised in unlawful detainer suit, court may treat the case as ordinary civil action rather than summary

¹¹ It appears the court in the unlawful detainer action may have waited to decide that case until the bankruptcy action was determined.

proceeding]; *Kessler v. Bridge* (1958) 161 Cal.App.2d Supp. 837, 841-842 [unlawful detainer court has jurisdiction to consider forgery affecting validity of deed in proceeding under 1161a because title cannot be “perfected” if deed is based on forgery].) Thus, we see no error in the trial court’s implicit finding that Evangelina had an adequate opportunity to be heard in the unlawful detainer action.

Gonzales v. Gem Properties, Inc. (1974) 37 Cal.App.3d 1029 (*Gonzales*), on which Evangelina relies, does not compel a contrary result. In *Gonzales*, the defendant in an unlawful detainer action attempted to argue the trustee’s sale of his property was invalid for fraud, a claim he had also made as a plaintiff in a concurrent superior court action. (*Id.* at p. 1032.) The court in the unlawful detainer action struck his cross-complaint, and the record was unclear as to whether it considered any of his allegations. (*Id.* at pp. 1032-1033.) After the superior court ruled in the plaintiff’s favor on the fraud claim, the Court of Appeal upheld that ruling and rejected the argument that claim preclusion applied because the plaintiff lacked an adequate opportunity to litigate the issue in the earlier proceeding. (*Id.* at pp. 1036-1037.) The Court of Appeal emphasized the record did not show the parties actually litigated the fraud allegations before the unlawful detainer court, and that court appeared to lack the ability to receive and hear evidence of the alleged fraud. (*Id.* at p. 1036.)

The facts here concerning Evangelina are different. Unlike the plaintiff in *Gonzales*, Evangelina did not raise Noe’s fraud in the unlawful detainer action. Thus, there is no significance to the fact that the unlawful detainer court did not address it. Nor has Evangelina shown that the unlawful detainer court lacked

the power to consider issues relating to the forgery. She therefore fails to provide sufficient reason to reverse the trial court's implicit finding that unlawful detainer actions may reach such issues. Indeed, Evangelina's decision not to disclose the forgery in the unlawful detainer action may be understood as a decision not to contest defendant's acquisition of title to the Property against a forgery challenge insofar as it could be determined by the unlawful detainer court. (See *Malkoskie, supra*, 188 Cal.App.4th at p. 975 ["[p]laintiffs' consent to judgment conclusively determined the specific factual contentions embraced by the complaint, namely that [the purchaser] had obtained valid record title pursuant to a nonjudicial foreclosure sale that had been duly conducted pursuant to statute"]; *Needelman v. DeWolf Realty Co., Inc.* (2015) 239 Cal.App.4th 750, 759 [by stipulating to settlement in unlawful detainer action, party was precluded from later litigating any claims that could have been raised as defenses in settled action].)

C. Judgment Against Isaac and Marisol

1. Isaac and Marisol's individual claims are barred by the statute of limitations

Defendant argues Isaac and Marisol lack standing to challenge the trial court's summary adjudication of their claims because those decisions concerned causes of action brought by Isaac and Marisol in their individual capacities, which they abandoned when they filed the second amended complaint, and because plaintiffs' notice of appeal identifies Isaac and Marisol as appellants solely in their trustee capacities. Plaintiffs respond this is "nothing more than a difference without a distinction,"

arguing that Isaac and Marisol were always acting as trustees and the second amended complaint merely clarified that fact.

A particular designation in the notice of appeal does not necessarily preclude us from reviewing a decision against the appealing party in another capacity. (See, e.g., *Estate of Hawkins* (1987) 194 Cal.App.3d 102, 105 [treating notice of appeal by party in representative capacity as also an appeal by the party in its individual capacity].) Accordingly, we may consider the trial court's summary adjudication of Isaac and Marisol's individual claims, and we conclude it was appropriate for the trial court to summarily adjudicate all of the claims in defendant's favor.

We review a grant of summary judgment or summary adjudication considering the record that was before the trial court at the time it ruled. (*Hartford, supra*, 59 Cal.4th at p. 286; *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 327.) At that time, Isaac and Marisol were seeking to recover as individuals, not as trustees. They filed the lawsuit in their individual capacities, and they supported their claims by attaching the quitclaim deed to the Property in which they appeared to receive their ownership interests as individuals. Plaintiffs' statements of undisputed fact relating to Bernarda may have indicated *why* Isaac and Marisol were granted ownership rights in the Property, but those statements, in themselves, did not establish that Isaac and Marisol were acting as trustees pursuant to an express trust.¹²

¹² Plaintiffs assert they did not initially specify their trustee status because defendant did not initially mount a statute of limitations defense that made their trustee status relevant. But plaintiffs initially misrepresented when they discovered Noe's fraud, and defendant had no reason to raise the statute of

Plaintiffs contend no statute of limitations applies to a legal challenge to a deed with a forged signature because it is “void ab initio,” but we hold, consistent with *Robertson v. Superior Court* (2001) 90 Cal.App.4th 1319 (*Robertson*), that such a challenge is indeed subject to a limitations period. Relying on statutory and case authority, *Robertson* persuasively reasoned that a limitations period should apply to a claim for cancellation of an allegedly void quitclaim deed. (*Id.* at pp. 1325-1329; see also *Walters v. Boosinger* (2016) 2 Cal.App.5th 421, 428-433 [relying on *Robertson*, with additional analysis, to hold that a quiet title claim based on a void deed is subject to a statute of limitations].) As we now explain, all of Isaac and Marisol’s individual claims against defendant were barred by the three-year statute of limitations applicable to causes of action arising from fraud. (§ 338, subd. (d).)

The statute of limitations for a quiet title cause of action depends on the underlying theory of relief. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560 (*Muktarian*).) “Generally, the most likely time limits for a quiet title action are the five-year limitations period for adverse possession, the four-year limitations period for the cancellation of an instrument, or the three-year limitations period for claims based on fraud and mistake.” (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 476-477 (*Salazar*).) Here, the three-year statute of limitations period set forth in section 338, subdivision (d) applies to Isaac and Marisol’s quiet title claims because the gist of those claims is that Noe defrauded them of their interests in the Property. (See, e.g.,

limitations until it discovered plaintiffs’ misrepresentation during its depositions of plaintiffs.

Ankoanda v. Walker-Smith (1996) 44 Cal.App.4th 610, 615.) It is undisputed that Marisol learned of Noe's misconduct in July 2008 and Isaac in early 2009, at the latest. Thus, their 2013 complaint fell outside the limitations period.

Because the undisputed facts demonstrated Marisol never lived at the Property and Isaac lived there only until sometime in August 2008, they cannot rely on their possession to toll the three-year limitations period.¹³ (Compare *Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231, 1237 ["It long has been the law that whether a statute of limitations bars an action to quiet title may turn on whether the plaintiff is in undisturbed possession of the land"]; *Muktarian, supra*, 63 Cal.2d at p. 560 ["no statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property"].)

We also hold defendant is entitled to judgment on both Isaac and Marisol's claims for cancellation of written instrument because those claims are also subject to the three-year statute of limitations set forth in section 338, subdivision (d). "Ordinarily a suit to set aside and cancel a void instrument is governed by section 343 of the Code of Civil Procedure. (*Moss v. Moss*, 20 Cal.2d 640, 644 [].) However when the gravamen of the cause of

¹³ Consistent with our determination that plaintiffs' first amended complaint sought recovery solely in plaintiffs' individual capacities, it provides no basis for Isaac and Marisol's argument that Bernarda's residence at the Property operated to prevent the statute of limitations from beginning to run. It was not until their second amended complaint, which they filed after the decision on defendant's motion for summary judgment, that plaintiffs presented a basis for tolling by reason of Bernarda's possession.

action stated involves fraud or a mistake, [former] Code of Civil Procedure, section 338(4) is the statute of limitations applicable” (*Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725 (*Zakaessian*); see also *Salazar, supra*, 236 Cal.App.4th at p. 477, fn. 8 [noting the four-year period usually applicable to cancellation of instrument claims is based on the catchall provision in section 343].) Here, plaintiffs’ cause of action for cancellation of a written instrument is specifically described as “Cancellation Of Note And Deed Based On Forgery” Accordingly, as in *Zakaessian*, it is governed by the three-year statute of limitations applicable to fraud claims.

The trial court concluded a five-year limitations period applied to plaintiffs’ cause of action for cancellation of a written instrument, based on *Robertson, supra*, 90 Cal.App.4th 1319. We are not convinced that *Robertson* requires a five-year limitations period. In that case, the plaintiff sought to cancel a 1949 quitclaim deed on the ground that the grantor was mentally incompetent when she signed the deed. (*Id.* at p. 1321.) The plaintiff filed his lawsuit in or around 2000, at which point the defendant, Robertson, had owned a portion of the property at issue for 41 years. (*Ibid.*) The trial court denied Robertson’s demurrer on the ground that no statute of limitations applied to a cause of action to cancel a void written instrument. (*Id.* at p. 1323.) The Court of Appeal vacated that decision on a writ petition, concluding the plaintiff’s cause of action was subject to a statute of limitations because it was “the sort of action covered by Code of Civil Procedure sections 318, 319, and 328.”¹⁴ (*Id.* at p.

¹⁴ Section 318 prohibits lawsuits to recover real property, or possession thereof, unless the plaintiff or a predecessor possessed

1329.) The appellate court instructed the trial court to sustain the demurrer and determine on remand whether the plaintiff should be granted leave to amend. (*Ibid.*)

In finding sections 318, 319, and 328 applicable to the plaintiff's action to cancel a written instrument, the *Robertson* court did not hold that such a claim is always subject to a five-year limitations period. The court relied on those statutes, rather, to refute the plaintiff's argument that *no* statute of limitations applies to an action seeking to void a written instrument. A holding by the *Robertson* court that a five-year limitations period applies to all such actions would clearly conflict with earlier cases holding three- and four-year limitations periods potentially applicable. In fact, the *Robertson* court reached its decision by relying on one such case, *Zakaessian*, *supra*, 70 Cal.App.2d 721, that applied a three-year limitations period to an action to cancel a written instrument based on fraud or mistake. (*Robertson*, *supra*, 90 Cal.App.4th at p. 1326.) Thus, we do not read *Robertson* as dictating a five-year statute of limitations for actions to cancel a written instrument on the ground of fraud. (See also *Estate of Young* (2008) 160 Cal.App.4th 62, 78 [three-year limitations period in action to establish ownership of property held in trusts allegedly established by fraud does not conflict with *Robertson*].)

the property within five years before commencing the lawsuit. Section 319 also requires possession of property within five years of filing a lawsuit, or defending against a claim, arising out of the title to real property or rents or profits therefrom. Section 328 tolls the limitation period in actions described in sections 318 and 319 while the person entitled to file a claim or defense is a minor or lacks legal capacity.

The final cause of action asserted by Isaac and Marisol was their fraud cause of action. By its very name, it was unquestionably subject to, and therefore barred by, section 338, subdivision (d)'s three-year limitations period.

2. *Isaac and Marisol fail to state valid trustee claims*

We also conclude defendant was entitled to judgment against Isaac and Marisol as trustees. Isaac and Marisol are not entitled to a tolling of the three-year limitations period applicable to the causes of action in their second amended complaint and they fail, therefore, to state a valid cause of action against defendant.

The second amended complaint alleges Isaac and Marisol “hold[] [their] interest[s] in the Property only as trustee[s] for the benefit of [their] grandmother Bernarda Navarez.” There is no dispute that plaintiffs’ purpose in amending the complaint was to argue that Bernarda’s possession of the Property tolled the statute of limitations on Isaac and Marisol’s quiet title and cancellation of instrument claims.¹⁵

The basis of the trial court’s judgment against Isaac and Marisol as trustees is not explicitly stated, but we will affirm the decision “if it is proper on any grounds stated in [defendant’s]

¹⁵ The second amended complaint also includes a cause of action for fraud, as to which the court previously granted summary adjudication in favor of defendant against Isaac and Marisol as individuals. Isaac and Marisol present no valid reason why their status as trustees should alter the determination that their fraud claim is barred by a three-year limitations period.

motion, whether or not the trial court relied on any of those grounds.” (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) Here, defendant argued Isaac and Marisol lacked standing to bring their claims as trustees and failed to allege facts sufficient to state a cause of action.

Defendant argued before the trial court that Isaac and Marisol did not show they had standing to sue as trustees because they failed to plead the existence of an express trust. (See, e.g., Prob. Code, § 15206 [statute of frauds requirement that trust relating to real property be evidenced by a written instrument]; *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 947-948 [requirements for express trust].) Defendant also suggested Isaac and Marisol’s trustee allegations were a sham because they contradicted plaintiffs’ earlier pleadings and other filings. (See, e.g., *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 946 [amended complaint is sham where it includes allegations inconsistent with prior pleading in attempt to avoid incurable defect affecting prior pleading].) We conclude that plaintiffs’ failure to allege a written trust instrument in their complaint was not necessarily fatal (see *McLaughlin v. McLaughlin* (1958) 159 Cal.App.2d 287, 292 [in hearing motion for judgment on the pleadings, court presumes contract is in writing where statutorily required even if not specified as such in complaint]) and the inconsistencies between the second amended complaint and prior filings—for example, with respect to the percentage of plaintiffs’ relative ownership interests in the Property—were not blatant contradictions only explainable as an attempt to avoid dismissal (compare *Owens v. King Supermarket* (1988) 198 Cal.App.3d 379 [proper to disregard allegation in second amended complaint that plaintiff was injured on defendant’s premises where prior

complaints alleged plaintiff was injured outside of defendant's premises].)

Nevertheless, we conclude Isaac and Marisol failed to state a cause of action against defendant because principles of fiduciary duty bar them from relying on Bernarda's possession to toll the statute of limitations and *res judicata* applies to their claims.¹⁶ Even though defendant did not specifically move for judgment on the pleadings on these bases, they fall within the general scope of defendant's motion. Moreover, we also find relevant defendant's motion for judgment on the pleadings against Evangelina, which is fairly treated as part of defendant's motion for judgment against Isaac and Marisol considering that both motions challenged the sufficiency of the second amended complaint. We also consider, in reaching our decision, the documents to which the trial court took judicial notice as well as uncontroverted admissions by plaintiffs. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485 [in reviewing demurrer, court may take judicial notice of admissions and concessions that "can not reasonably be controverted"]; *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 990 [taking judicial notice, in reviewing grant of motion for judgment on the pleadings, of uncontroverted evidence including declarations, deposition testimony, and separate statement of undisputed fact]; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123

¹⁶ For the purposes of this appeal, we assume without deciding that Bernarda's possession, as the purported beneficiary of a trust in real property, would determine whether Isaac and Marisol's trustee claims for both quiet title and cancellation of instrument could be tolled.

Cal.App.3d 593, 604-605 [court reviewing demurrer may take judicial notice of party's statements that are "inconsistent with the allegations of the pleading before the court"].)

Unless a trust instrument provides otherwise, a trustee "shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument." (Prob. Code, § 16040, subds. (a) & (b).) Here, Isaac and Marisol have not described or provided any terms of the purported trust by which they act as fiduciaries for Bernarda, other than to assert they owned the Property as trustees on her behalf. As trustees, Isaac and Marisol had "a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property." (Prob. Code, § 16006.) They were also obligated "to take reasonable steps to defend actions that [might] result in a loss to the trust." (Prob. Code, § 16011.)

In order to initiate foreclosure proceedings in accordance with Civil Code section 2924, defendant recorded a notice of default that described the Property at least three months before posting a notice of sale. (Civ. Code, § 2924, subd. (a)(1)-(2).) After purchasing the Property, defendant served a notice to quit the premises on Evangelina "AND ALL OTHERS IN POSSESSION." When Evangelina and the other occupants, including Bernarda, remained in possession, defendant commenced an unlawful detainer action against them by serving them with a complaint and a prejudgment claim of right to possession giving all occupants an opportunity to file a claim. Neither Bernarda, nor Isaac or Marisol on her behalf, filed a

claim of possession. On the day the court adjudged defendant entitled to possession, Isaac filed the initial complaint in this case.

In light of the circumstances and their status as trustees, Isaac and Marisol had actual or constructive knowledge of defendant's claim to possession and title of the Property. Because the foreclosure sale was initially scheduled for November 2012, defendant's claim to the Property should have been apparent to Isaac and Marisol at least since the fall of that year. And they had known for at least three years prior that their ownership of the Property—and therefore Bernarda's interest—had been compromised by Noe's forgeries. They had a duty during that time to protect Bernarda's interest in the Property by asserting defenses on her behalf, yet they admitted as an undisputed fact that “[b]efore Plaintiffs commenced this action in August 2013, Plaintiffs had not previously contended in any legal proceeding that there were any forged documents in connection with the [loan by defendant].” While the statute of limitations might not bar a party in possession of property from pressing a known quiet title claim, purposely delaying such a claim risks loss of the property through defenses such as laches or, as this case demonstrates, *res judicata*. (*Muktarian, supra*, 63 Cal.2d at p. 561.)

Given Isaac and Marisol's conduct vis-à-vis Bernarda's purported interest in the Property, we conclude they should not benefit from a tolling of the statute of limitations based on Bernarda's possession. Despite calling themselves “trustees” in the second amended complaint, the pleadings and admissions in this case indicate Isaac and Marisol were not acting as fiduciaries toward Bernarda because they did not act to protect her interest

in the Property. While Isaac and Marisol may have adequately pled they were trustees in name, they have fallen short in pleading they were trustees in deed. Given that they cannot state claims against defendant in their individual capacities, it would be unfair to allow them to pursue those same claims in trustee capacities where they did not abide by their trustee obligations.

We also conclude, based on our analysis regarding defendant's judgment against Evangelina, that claim preclusion principles bar Isaac and Marisol from pressing their claims of quiet title and cancellation of written instrument.

Neither Bernarda herself, nor Isaac or Marisol on her behalf, filed a claim to possession of the Property in the unlawful detainer action. The court's judgment in that action was issued not only against Evangelina but also against Bernarda as an occupant of the Property. Even though Isaac and Marisol were not named as defendants, or themselves occupants of the Property at the time, we conclude it is fair to bind them to the judgment considering their fiduciary obligations toward Bernarda, who was subject to the judgment.

In addition, Isaac and Marisol qualify as being in privity with Evangelina for purposes of considering the claim preclusion effect of the unlawful detainer action. "The concept of privity . . . refers 'to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is "sufficiently close" so as to justify application of the doctrine of collateral estoppel. [Citations.]' [Citations.]"

(*Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal.App.4th 1053, 1069-1070.) ““Due process requires that the nonparty have had an identity or community of interest with, and adequate representation by, the . . . party in the first action. [Citations.] The circumstances must also have been such that the nonparty should reasonably have expected to be bound by the prior adjudication” [Citations.]” (*Id.* at p. 1070.) “In the final analysis, the determination of privity depends upon the fairness of binding appellant with the result obtained in earlier proceedings in which it did not participate.” (*Ibid.*)

Concluding Isaac and Marisol were in privity with Evangelina is appropriate in this case. Prior to Noe’s forgeries, Isaac and Marisol shared their interests in the Property with Evangelina and it is those very interests on which their causes of action in this case are based. Isaac and Marisol’s interests were in complete alignment with Evangelina’s, the three shared the same attorney and relied on the same arguments throughout the proceedings, and there is no basis on which Isaac and Marisol have shown Evangelina lacked the ability to represent their interests in the unlawful detainer action. Under the circumstances, Isaac and Marisol, as trustees, are fairly bound by the earlier judgment against Evangelina.

DISPOSITION

The judgment is affirmed. Quest Equity Fund, LLC is to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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