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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

W PARTNERS, LLC, et al., Cross-complainants and Appellants, v. GREGORY ROMAN, et al., Cross-defendants and Respondents.	B268110 (Los Angeles County Super. Ct. No. SC117026)

APPEAL from an order of the Superior Court of Los Angeles County, Richard A. Stone, Judge. Reversed.

Law Offices of Bruce M. Lorman, Bruce M. Lorman, for Cross-complainants and Appellants.

Anderson, McPharlin & Conners, Vanessa H. Widener, Lisa Anne Coe for Cross-defendants and Respondents.

Generally, once a nonjudicial foreclosure sale is completed the debtor has no right of redemption. But when nonjudicial foreclosure is initiated by a homeowner association for the collection of delinquent assessment fees, a special procedure applies. In such a case, the homeowner may redeem the property up to 90 days after the foreclosure sale, thus invalidating the sale and retaining title. Accordingly, the levying officer at such a sale must convey to the buyer not a deed of trust, as in normal circumstance, but a "certificate of sale." This certificate of sale confirms that the property has been sold subject to the right of redemption.

Here, a homeowner association seeking to recover unpaid association fees foreclosed on an owner's condominium and sold it at a nonjudicial foreclosure sale. However, the levying officer, instead of issuing the buyer a certificate of sale, mistakenly issued a deed of trust. The buyer then sold the property to bona fide third party purchasers. When the owner and her successor in interest attempted to redeem the property and invalidate the sale, the buyer instituted these proceedings for declaratory relief, contending the sale was valid. The owner and her successor in interest then cross-complained for quiet title. The bona fide purchasers demurred to the cross-complaint, contending the levying officer's failure to issue a certificate of sale did not invalidate the sale.

The trial court sustained the bona fide purchasers' demurrer without leave to amend on the ground that no quiet title action will lie against a bona fide purchaser even if the deed by which the purchaser took title was void.

We conclude the deed of trust was void and conveyed no title to the buyer, who therefore had no title to convey to the bona

fide purchasers. We further conclude the cross-complaint reveals no other impediment to the owner and her successor in interest seeking quiet title against the bona fide purchasers. Therefore, we reverse.

BACKGROUND

The facts are undisputed. Harriet Topkis owned a condominium in Los Angeles which was part of a common interest development. When she defaulted on her obligation to pay homeowners association dues to Wilshire Regent Homeowners Association (the association or Wilshire Regent), the association recorded a notice of delinquent assessment, and California Lien Services, LLC (CLS or the trustee) recorded a notice of trustee's sale.

On February 10, 2012, Arden Management, LLC (Arden) attended the subsequent foreclosure sale and purchased the property. Instead of issuing Arden a certificate of sale, as required by Code of Civil Procedure section 729.040,[1] CLS issued a deed of trust upon sale, which Arden recorded.

On April 23, 2012, Topkis sold her interest in the property to W Partners, LLC by way of two agreements, entitled "Equity Purchase Agreement" and "Real Property Agreement." Pursuant to the agreements, W Partners agreed to redeem the property from Wilshire Regent on Topkis's behalf, after which Topkis would transfer title to W Partners. The Equity Purchase Agreement states that W Partners "shall take title" to the property. The Real Property Agreement states that W Partners will be "the owner of record of the PROPERTY pursuant to the

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[1] Undesignated statutory references will be to the Code of Civil Procedure.

EQUITY PURCHASE AGREEMENT." W Partners would then renovate the property and sell it, and the parties would share the proceeds.

On May 2, 2012, W Partners attempted to redeem the property by tendering a payment in the amount of $48,345.46 to CLS, along with a document entitled "Redemption Authorization" by which Topkis authorized W Partners to "obtain redemption figures" so that she "may redeem" the property. CLS refused the tender, presumably on the ground that the redemption authorization was ineffective because it granted W Partners authority only to "obtain redemption figures," not to redeem the property itself.

The second amended cross-complaint alleges that "following" this ineffective tender, W Partners, in a letter "dated May 10, 2012," sent CLS copies of the Equity Purchase Agreement and Real Property Agreement," along with an affidavit establishing that W Partners was Topkis's successor in interest and could therefore redeem the property in its own right. CLS again rejected W Partners' attempt to redeem the property.

On May 11, 2012, Arden filed a complaint seeking a declaration as to its ownership of the property and Topkis's and W Partners' right of redemption.

On February 27, 2013, Topkis and W Partners cross-complained against numerous entities, asserting causes of action for declaratory relief and quiet title, and on March 6, 2013, they recorded a concomitant lis pendens.

On January 31, 2014, the trial court sustained Arden's demurrer to the first cause of action in Topkis's and W Partners' first amended cross-complaint with leave to amend, but overruled the demurrer as to the quiet title cause of action. Cross-

complainants failed to amend, and on February 21, 2014, the court mistakenly dismissed the cross-complaint and expunged the lis pendens.

On March 24, 2014, while the cross-complaint was dismissed and lis pendens expunged, Arden sold the property to Gregory and Farzaneh Roman.

On August 22, 2014, the trial court vacated dismissal of the cross-complaint, and Topkis and W Partners then filed the operative second amended cross-complaint. In it they asserted, as pertinent here, a cause of action for quiet title against the Romans.

The Romans demurred to the second amended cross-complaint on the ground that as bona fide purchasers, they were shielded from any cause of action for quiet title. The trial court agreed, finding that no cause of action for quiet title would lie against the Romans "even assuming arguendo that Cross-Complainants each have an enforceable interest in the property, and even assuming arguendo that the Trustee's Deed Upon Sale is void."

Topkis and W Partners appeal.

DISCUSSION

I. Standard of Review

In reviewing a demurrer, "we accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924.)

II. A Quiet Title Action will Lie Against a Bona Fide Purchaser

The Romans argue at length that as bona fide purchasers they are shielded from any quiet title action. They are incorrect. "Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a good title, even under the equitable doctrine of *bona fide* purchase." (*Trout v. Taylor* (1934) 220 Cal. 652, 656; accord *Bryce v. O'Brien* (1936) 5 Cal.2d 615, 616; *Montgomery v. Bank of America* (1948) 85 Cal.App.2d 559, 564; *Gibson v. Westoby* (1953) 115 Cal.App.2d 273, 276-277.) A bona fide purchase is "far from being a guarantee of ownership, for there are a good many elements that make title void or voidable and that are not deducible from the record. Examples are a grantor's incapacity to contract, fraud in procuring a transfer, forgery, or lack of delivery. . . . Because of these and numerous other uncertainties in the record title, the practice of securing policies of title insurance before purchasing property has become almost universal." (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 325.)

III. The Deed of Trust was Void

A deed issued prior to the expiration of the applicable right of redemption is void. (*Bernal v. Gleim* (1867) 33 Cal. 668, 675; *Perham v. Kuper* (1882) 61 Cal. 331, 332.) Here, LLC issued the trust deed to Arden on February 10, 2012, the day of the foreclosure sale. Topkis's right of redemption did not expire until May 10, 2012. Therefore, the deed was void. A void instrument conveys no title. (*Wutzke v. Bill Reid Painting Serv., Inc.* (1984) 151 Cal.App.3d 36, 43; see *Yvanova v. New Century Mortgage*

Corp., *supra*, 62 Cal.4th at p. 929 [“‘“A void thing is as no thing”’”].)

The Romans argue the trust deed here ripened into an effective instrument when Topkis failed to redeem the property within 90 days of the foreclosure sale. Topkis made no attempt to redeem the property, only W Partners made such an attempt. But the purported redemption by W Partners was ineffective, the Romans argue, because W Partners had no interest in the property and therefore could neither redeem it nor seek quiet title. The arguments are without merit.

“As a general rule, the debtor in a nonjudicial foreclosure may avoid the loss of the property by ‘pay[ing] all amounts due at any time prior to the sale . . . .’ [Citation.] However, ‘[o]nce the . . . sale is completed, the trustor has no further rights of redemption.’ [Citation.] Prior to 2006, these same rules applied to nonjudicial foreclosures by an association for delinquent assessments. [¶] In 2005, however, the Legislature adopted Senate Bill No. 137 (2005-2006 Reg. Sess.) (Stats. 2005, ch. 452, § 5, p. 3649), which placed numerous limitations on an association’s ability to utilize foreclosure as a means to collect assessments. The legislative history indicates that Senate Bill No. 137 was intended to ‘institute[] . . . important procedural . . . requirements to protect [Common Interest Development (CID)] homeowners’ from the ‘extreme hammer of non-judicial foreclosure in order to collect relatively small amounts of overdue assessments.’ [Citation.] Supporters of the bill argued that there had been ‘too many instances’ in which ‘CID associations [had] . . . initiated [foreclosures] for relatively small amounts . . . , [and then] sold [the property] for an all-too-often shockingly small fraction of its actual value.’ [Citation.] The bill sought to avoid

similar outcomes in the future by providing 'CID homeowners' additional 'due process protections.'" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1444-1445 (*Multani*).)

Senate Bill No. 137 added section 729.035, which provides that "Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development . . . ."

"The redemption process, which is normally available only in the context of judicial foreclosure, is governed by requirements set forth in the Code of Civil Procedure. Section 729.040 mandates that, following a foreclosure subject to a right of redemption, the trustee must deliver a 'certificate of sale' to the purchaser and record a duplicate of the certificate in the office of the county recorder." (*Multani*, *supra*, 215 Cal.App.4th at p. 1446, fn. omitted.) "Sections 729.060 to 729.090 describe how the debtor may redeem his or her property following the foreclosure sale. '[S]ection 729.060, subdivision (a) requires "[a] person who seeks to redeem the property [to] deposit the redemption price with the levying officer who conducted the sale before the expiration of the redemption period."'" (*Ibid*.) "If the debtor does not deposit the redemption price or otherwise file a petition challenging the redemption price within the applicable redemption period, the trustee must deliver an executed trustee's deed to the purchaser and provide the debtor notice that the trustee sale has occurred. (§ 729.080, subd. (a).) If, however, the debtor tenders 'the redemption price determined by court order or agreed upon by the purchaser, 'the' effect of the sale is terminated and the person who redeemed the property is restored

to the estate therein sold at the sale.' (§ 729.080, subds. (c), (d).)" (*Id*. at p. 1447.)

"Property sold subject to the right of redemption may be redeemed only by the judgment debtor or the judgment debtor's successor in interest." (§ 729.020.)

"A person who seeks to redeem the property shall deposit the redemption price with the levying officer who conducted the sale before the expiration of the redemption period. If a successor in interest to the judgment debtor seeks to redeem the property, the successor in interest shall, at the time the redemption price is deposited, file with the levying officer either (1) a certified copy of a recorded conveyance or (2) a copy of an assignment *or any other evidence of the interest verified by an affidavit of the successor in interest or of a subscribing witness thereto*." (§ 729.060, subd. (a), italics added.)

Here, W Partners alleges facts establishing it timely redeemed the property as Topkis's successor in interest.[2] For purposes of demurrer, therefore, the effect of the sale was terminated, W Partners was restored to the estate sold at the sale, and the void trust deed was never cured.

The Romans argue W Partners' redemption was defective because the Equity Purchase Agreement and Real Property

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[2] That W Partners alleged the redemption was timely is not technically correct. The redemption deadline was May 10, 2012. W Partners alleges it redeemed the property by way of a letter "dated" May 10, 2012, but does not expressly allege the letter was delivered on that date. But because no party contests that W Partners attempted to redeem the property on May 10, 2012, and because we construe a complaint liberally at the demurrer stage, we ignore the technical lapse.

Agreement, by which W Partners purports to have obtained an interest in the property, granted W Partners no interest in *title* to the property but merely an interest in the *proceeds* from its eventual sale, leaving them with no standing either to redeem the property or seek quiet title here. The argument is without merit.

"At the time of the execution of the contract of sale, the grantee acquires an equitable title to the estate being sold; the grantor retains the legal title as security for the purchase price. The legal title passes to the grantee at the time of his completion of the conditions precedent, whether or not the escrow holder gives him physical possession of the deed." (*Osborn v. Osborn* (1954) 42 Cal.2d 358, 363.) "'An executory contract to convey has the effect of vesting the equitable estate in the vendee, leaving in the vendor the naked legal title.'" (*Alhambra Redevelopment Agency v. Transamerica Financial Services* (1989) 212 Cal.App.3d 1370, 1375-1376.)

Here, the Equity Purchase Agreement states that W Partners "shall take title" to the property. The Real Property Agreement states that W Partners will be "the owner of record of the PROPERTY pursuant to the EQUITY PURCHASE AGREEMENT." These agreements vested a cognizable interest in the property in W Partners. "Generally, in the context of real estate transactions, a purchaser 'acquires, except against interests prior in right, a conditional, equitable title to the property in fee simple,' '[o]n the execution of an agreement for the purchase and sale.'" "Therefore, equitable title is a 'beneficial interest,' as it is one stick in the bundle of full legal rights to real property." (*RC Royal Development & Realty Corp. v. Standard Pacific Corp.* (2009) 177 Cal.App.4th 1410, 1419.) W Partners

therefore had standing both to redeem the property as Topkis's successor in interest and to pursue quiet title in its own right.

The Romans argue that conveyance of a trust deed rather than a certificate of sale to Arden did not invalidate the foreclosure sale. We do not disagree, although we observe that unauthorized conveyance of an trust deed was a nugatory exercise that transferred no title to Arden. It was W Partners' alleged redemption of the property that negated the foreclosure sale.

DISPOSITION

The judgment is reversed. Appellants are to receive their costs on appeal.

NOT TO BE PUBLISHED

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.