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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CINDY R. KUYAT et al., Plaintiffs and Appellants, v. LAN THANH PHAN, Defendant and Respondent.	B233248 (Los Angeles County Super. Ct. No. YC062314)

APPEAL from an order of the Superior Court of Los Angeles County, Cary H. Nishimoto, Judge. Affirmed.

Law Offices of James N. Crowell, James N. Crowell; Otten & Joyce and Brigid Joyce for Plaintiffs and Appellants.

Gilbert & Nguyen and Jonathan T. Nguyen for Defendant and Respondent.

The trial court sustained a demurrer to the complaint without leave to amend, concluding that this action is barred by res judicata. We agree and affirm.

I

BACKGROUND

In September 2002, plaintiffs Cindy R. Kuyat and Darlene R. Kuyat (collectively Kuyats) entered into a written purchase agreement with one of three members of a family, Khanh Doan Phan (Son), to acquire real property in Hawthorne, California. At the time, the property was owned jointly by Mai Huynh Doan (Mother), Lan Thanh Phan (Daughter), and Son. Son refused to honor the purchase agreement and did not sell the property to the Kuyats. On January 30, 2003, Son transferred his one-third interest in the property to Mother and Daughter and, on the same day, recorded a quitclaim deed reflecting the transfer.

Almost two months later, on March 20, 2003, the Kuyats sued Mother, Daughter, and Son, seeking specific performance of the purchase agreement (*Kuyat v. Phan* (Super. Ct. L.A. County, No. YC046144)) (*Kuyat I*). The case was tried to a jury commencing on September 21, 2004. Before the jury returned a verdict, the superior court, Judge Jean Matusinka presiding, granted Mother and Daughter's motion for nonsuit on the ground that the statute of frauds (Civ. Code, § 1624) precluded a finding of liability against them because they had not appointed Son as their sales agent by way of a written agreement. Judge Matusinka also concluded that the doctrine of equitable estoppel did not apply to an oral agreement to appoint an agent for the sale of real property.

The trial went forward as to Son. The jury returned a verdict against him, finding he had breached the purchase agreement. The judgment, dated October 6, 2004, recited that Son was to execute "documentation" to transfer his one-third interest in the property to the Kuyats in exchange for an amount to be determined by the court, which the judgment estimated to be around $7,300. Son was unable to comply with the judgment because he had transferred his interest in the property to Mother and Daughter before the Kuyats filed suit. Son subsequently filed a bankruptcy petition

under chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 701–784) and received an order of discharge.

After the entry of judgment on the jury verdict, the Kuyats appealed the nonsuits as to Mother and Daughter. In an unpublished opinion filed on March 21, 2007, Division Seven of this district reversed the nonsuit as to Mother and remanded that aspect of the case to the superior court for further proceedings. The Court of Appeal affirmed the nonsuit as to Daughter, explaining: "[T]he evidence at trial was not sufficient to raise a question of fact whether [Daughter] should be equitably estopped from asserting a statute of frauds defense. . . . [Daughter], who at the time of the transaction lived primarily in Oakland and was traveling extensively to New York and Asia in connection with her business, testified that, although she had spoken with [Mother] and [Mother's real estate broker] about the possibility of selling the property in late December 2001, she did not know the property had in fact been listed for sale and did not speak with [the broker] until after the sale had been cancelled. There was no testimony or other evidence to indicate [Daughter] knew about the pending sale to the Kuyats or engaged in any conduct that might give rise to equitable estoppel." (*Kuyat v. Doan* (Mar. 21, 2007, B180381 & B181205).)

On remand, the case was assigned to Judge Andrew C. Kaufman. The Kuyats filed a motion seeking leave to amend or supplement the original complaint, claiming their right to Son's former interest in the property, which had been transferred to Daughter. The Kuyats also sought to pursue Mother's interest in the property. Proceedings were temporarily stayed while Mother sought bankruptcy protection under chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 701–784). Mother received an order of discharge on April 15, 2009. Thereafter, the superior court granted the Kuyats' motion to file a supplemental complaint. Before Daughter responded to the complaint, the superior court issued an order sua sponte, striking the Kuyats' supplemental complaint without prejudice to the filing of a new action.

On May 4, 2010, the Kuyats filed the present action against Daughter only, claiming they were entitled to recover *Son's* former one-third interest from her. The

complaint alleged that after the entry of judgment in *Kuyat I*, Daughter became the owner of the property in its entirety through a series of property transfers. The complaint alleged causes of action for (1) constructive trust, (2) an accounting, (3) fraudulent transfer, (4) conspiracy, (5) quiet title, and (6) damages.

Daughter filed a demurrer to the complaint, contending that all of the causes of action were barred by res judicata and the statute of limitations. The demurrer also challenged each cause of action on separate grounds. The Kuyats filed opposition.

The demurrer was heard on October 26, 2010. The trial court, Judge Cary H. Nishimoto presiding, concluded that all of the causes of action were barred by res judicata, collateral estoppel, and the statute of limitations. As to res judicata, the trial court reasoned that the Kuyats' claim to Son's former interest in the property could have been litigated against Daughter in *Kuyat I*. The court sustained the demurrer without leave to amend as to the "cause of action" for constructive trust on the ground that a constructive trust is a remedy, not a cause of action. The court sustained the demurrer with leave to amend as to the other causes of action.

The Kuyats filed a first amended complaint, essentially realleging the previous causes of action. Daughter demurred, arguing the entire complaint was barred by res judicata, collateral estoppel, and the statute of limitations. The Kuyats filed opposition.

The demurrer came on for hearing on February 28, 2011. The trial court sustained the demurrer as to all causes of action, concluding the suit was barred by res judicata and collateral estoppel. By order dated March 2, 2011, the trial court dismissed the case with prejudice. The Kuyats appealed.

II

DISCUSSION

In reviewing the ruling on a demurrer, "we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . . We also consider matters which may be judicially noticed.' . . . When a demurrer is sustained, we determine

whether the complaint states facts sufficient to constitute a cause of action. . . . And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. . . . The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, citations omitted; accord, Code Civ. Proc., § 452.)

The question on appeal is straightforward and requires little in the way of analysis. As the trial court correctly concluded, res judicata precludes the causes of action in the present suit against Daughter because they could have been litigated in *Kuyat I.*

"'Res judicata prohibits the relitigation of claims and issues which have already been adjudicated in an earlier proceeding. The doctrine has two components. "'In its primary aspect the doctrine of res judicata [or "claim preclusion"] operates as a bar to the maintenance of a second suit between the same parties on the same cause of action.' . . . The secondary aspect is 'collateral estoppel' or 'issue preclusion,' which does not bar a second action but 'precludes a party to an action from relitigating in a second proceeding matters litigated and determined in a prior proceeding.'"' . . . 'Res judicata serves as a bar to all causes of action that were litigated or that *could have been litigated . . . .*'" (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 514.)

"[I]f [a matter] is actually raised by proper pleadings and treated as an issue in the cause, it is conclusively determined by the first judgment. But the rule [of res judicata] goes further. 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 reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 202,

original italics; accord, *Villacres v. ABM Industries Inc*. (2010) 189 Cal.App.4th 562, 575–576.)

Almost two months before the complaint was filed in *Kuyat I*, Son transferred his one-third interest in the real property to Mother and Daughter. The transfer was evidenced by a quitclaim deed that was recorded on January 30, 2003. The complaint in *Kuyat I* was filed on March 20, 2003. "Any instrument affecting the title to real property may be recorded by the county recorder of the county where the property is situated. . . . Recorded instruments provide constructive notice [of the change in title]." (*Beyer v. Tahoe Sands Resort* (2005) 129 Cal.App.4th 1458, 1463, fn. 8, citations omitted.)

Notwithstanding the recording of the quitclaim deed, the complaint in *Kuyat I* alleged that the real property was jointly owned by Mother, Daughter, *and* Son. In light of the remedy sought in *Kuyat I* — specific enforcement of a real property purchase agreement — the Kuyats should have (1) conducted a title search, or (2) employed any of several discovery methods to determine who held title to the property, or (3) both. By failing to offer evidence during the trial in *Kuyat I* that Son had transferred his interest in the property to the other two defendants, Daughter was entitled to a nonsuit. As Division Seven concluded: "[T]he evidence at trial was not sufficient to raise a question of fact whether [Daughter] should be equitably estopped from asserting a statute of frauds defense. . . . There was no testimony or other evidence to indicate [Daughter] knew about the pending sale to the Kuyats or engaged in any conduct that might give rise to equitable estoppel." (*Kuyat v. Doan*, *supra*, B180381 & B181205.) The judgment in favor of Daughter in *Kuyat I* precludes a second attempt to acquire from her *any* interest in the property.

The Kuyats argue that res judicata does not apply because, as stated in Civil Code section 3395, "[w]henever *an obligation* in respect to real property would be specifically enforced against *a particular person*, it may be in like manner enforced against *any other person* claiming under him by a title created *subsequently to the obligation* . . . ." (Italics added.) The Kuyats contend that, when Son executed the

purchase agreement in September 2002, "an obligation" arose on the part of Son — "a particular person" — and "subsequent to [that] obligation," Daughter — "any other person" — claimed title "under him" to the property. As a result, so the argument goes, the Kuyats may seek to recover Son's former one-third interest from Daughter in the present action. But the question before us is not *whether* the Kuyats could acquire Son's former one-third interest from Daughter but *when* they had to raise that claim. We conclude that, in accordance with the principles of res judicata, they could and should have raised that claim in *Kuyat I*. The question of *who* held *what interest* in the property was within "the scope of the [prior] action, related to the subject-matter and relevant to the issues." (*Sutphin v. Speik*, *supra*, 15 Cal.2d at p. 202.) The prior judgment precludes the Kuyats from pursuing the same one-third interest in the property against a defendant who was previously sued and exonerated.

Thus, the trial court properly dismissed the case on the ground it was barred by res judicata.

III

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.