Filed 12/29/17 McKenzie v. Petrolia Avenue Loan Co. CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| GARY MCKENZIE,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>PETROLIA AVENUE LOAN LLC,<br><br>Defendant and Respondent. | B265405<br><br>(Los Angeles County Super. Ct. No. TC027368) |

APPEAL from a judgment of the Superior Court of Los Angeles County, William P. Barry, Judge. Reversed and remanded for further proceedings.

Ronald D. Tym for Plaintiff and Appellant.

The Geraci Law Firm, Paul Sievers and Josh A. Lazar, for Defendant and Respondent.

Gary McKenzie (plaintiff) sued Petrolia Avenue Loan LLC (defendant lender) to quiet title in commercial property located in Compton as of a specific date, November 7, 2011. He based his ownership claim on a 2009 grant deed in his favor from nonparty Anthony Bustamante (hereafter, 2009 Bustamante grant deed). McKenzie recorded the Bustamante grant deed on October 20, 2011.

Defendant lender did not claim to be the record owner of the property; but on November 7, 2011, it recorded a deed of trust on the property to secure its $1.2 million loan to nonparty Petrolla Avenue LLC (PA). Nonparty PA recorded a grant deed in its favor for the property on same day. The grantor on PA's grant deed was Bustamante, the individual who controlled PA and signed the earlier recorded grant deed to McKenzie.

The five-day court trial proved to be quite a tangled tale of deeds and dissonant testimony.[1] Posttrial briefing and statement of decision skirmishes consumed most of the following year. The trial court entered judgment in defendant lender's favor based on its decision to quiet title to the property in nonparty PA. The trial court found (1) the 2009 Bustamante grant deed McKenzie relied on to establish his title was void; (2) the grant deed conveying title from nonparty Bustamante to nonparty PA was valid; (3) defendant lender's deed of trust was accordingly valid; and (4) the final 2013 grant deed whereby PA conveyed title back to McKenzie was void. We reverse and remand for further proceedings.

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[1] The trial judge's remark, "I've seen things in this case I've never seen before . . . ," does not appear to be hyperbole.

## FACTUAL BACKGROUND

We rely on trial testimony for the facts and begin with plaintiff's case in chief: McKenzie purchased the property that is the subject of this litigation from his father in 1979 and moved the family chrome plating business there. The property includes several contiguous lots and four buildings. McKenzie eventually sold the business and leased portions of the premises to others.

McKenzie met Bustamante in 2008. Bustamante represented he owned a sandrail business that did a fair amount of chrome work and was looking to expand his commercial space. Bustamante expressed an interest in buying the property and the idle chrome plating equipment.

McKenzie and Bustamante settled on a purchase price of $4 million—$3 million for the property and $1 million for the chrome plating equipment. According to McKenzie, Bustamante was waiting for a $6 million settlement resulting from litigation over real property Bustamante inherited. Real estate swindlers "got different deeds on it and sold it."[2] McKenzie tried to verify the financial information, but Bustamante demurred, advising the settlement was confidential. Bustamante did, however, "have his mother call [plaintiff], and he had an attorney call . . . and tell [plaintiff] yes, [the settlement] was done."

In late 2008 or early 2009, while waiting for the nonexistent settlement money, Bustamante took possession of two of the buildings on the property under a written lease with plaintiff to start his new chrome plating business. McKenzie

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[2] Bustamante admitted at trial he lied about the settlement. According to plaintiff, Bustamante also lied about owning a sandrail business.

never took additional steps to verify Bustamante's financial wherewithal.

On September 10, 2009, in the presence of a notary, McKenzie signed a grant deed transferring the property to Bustamante. On the same date and in the presence of the same notary, Bustamante signed a grant deed for the subject property back to McKenzie (the 2009 Bustamante grant deed). The grant deed verbiage identified Bustamante as "Bustamonte," but the notary correctly identified him on her portion of the page as "Bustamante." Neither grant deed was recorded at that time.

Plaintiff testified Henry Rivera, Bustamante's loan broker, arranged for the grant deed signing. Perpetuating the charade that settlement money was forthcoming, Rivera advised Bustamante needed to be the record owner of the property to obtain a bridge loan while waiting for the settlement money. McKenzie had not yet learned that Bustamante was lying about the settlement.

Rivera was not a trial witness. The notary who witnessed the McKenzie and Bustamante signatures on the deed did testify. She was also Rivera's former girlfriend. Her testimony was consistent with that of plaintiff and provided greater specificity.

Several weeks after the deed signing, McKenzie told his lawyer what he had done. His attorney drafted a brief agreement that both memorialized a $4 million sale of the property and business equipment and acknowledged the grant deed signed by McKenzie "is not to be effective, and is not to be recorded, until payment of the first two installments totaling $3,500,000.00 is made, and, if the payment of those two installments is not made as indicated above, the grant deed is to be ineffective, and shall be returned and surrendered to [plaintiff]." McKenzie would take

a note for the remaining $500,000. McKenzie, Bustamante, and Rivera signed the document. This document did not mention the 2009 Bustamante grant deed.

The 2009 grant deed signed by McKenzie was never recorded. On April 1, 2010, in the presence of a notary and again at Rivera's request, plaintiff signed another grant deed for the subject property to Bustamante. Once more, Bustamante was identified on the grant deed as "Busta<u>monte</u>." (Underline added.) The deed was to facilitate a $625,000 loan to Bustamante. McKenzie expected to receive the balance of the purchase price, almost $3.5 million, at that time. Instead, the grant deed was recorded on April 7, 2010, and McKenzie received $326,000 from escrow.

The lender, JL Financial (JL), recorded a deed of trust on the property. The borrower on the JL deed of trust was identified as "Anthony Bustamonte," both on the face page of the deed of trust, on the signature line, and on the notary's affidavit. Bustamante's signature appeared above the signature line with his typed name—misspelled—underneath.

According to McKenzie, Bustamante never paid any rent due under the lease, so the $326,000 represented lease arrearages, not a first payment on the purchase price. Plaintiff telephoned Rivera, who advised Bustamante did not qualify for the loan he wanted, so the $326,000 McKenzie received from escrow represented a portion of a bridge loan until Bustamante had a longer track record in the chrome plating business.[3]

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[3] McKenzie also did not know at the time that Rivera was not licensed as a loan broker. McKenzie, Bustamante, and the notary all testified Rivera was subsequently convicted of at least one felony and sentenced to prison. Skipping ahead in the

McKenzie could not remember the date or time frame, but on a Friday sometime in 2011, he received a call from Bustamante's lender advising the JL loan was in arrears and the property was in foreclosure and would be sold on Monday. McKenzie brought the loan current and made additional monthly payments. No one inquired at trial as to why plaintiff, who was not the record owner of the property, would receive a telephone call from Bustamante's lender.

At some point before October 11, 2011, McKenzie and Bustamante spoke about a new loan large enough to pay off the current JL loan and finally consummate Bustamante's purchase of the property and business equipment. Bustamante declined to share details about the potential loan and represented he did not know the lender's identity.

According to McKenzie, Bustamante agreed to provide a grant deed to the property so plaintiff would be protected and could be involved in obtaining the new loan. An employee of Bustamante's chrome plating business (Richard Amezaga) supported McKenzie's version of the events, but he was a long-time friend of McKenzie's. McKenzie testified that several days later Bustamante voluntarily gave him the original notarized 2009 Bustamante grant deed and did not object when plaintiff

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narrative, a portion of the posttrial briefing was devoted to identifying various property liens that had been recorded under Bustamante's ownership and which were extinguished with defendant lender's loan proceeds. One of them was a $20,000 lien for Rivera's bail bond, apparently authorized by Bustamante.

advised he would record the grant deed. McKenzie recorded the grant deed on October 20, 2011.[4]

On November 1, 2011, in the presence of a notary, Bustamante signed a grant deed in favor of PA.[5] That grant deed recited the deed was conveyed by "Anthony Bustamante who acquired title as Anthony Bustamonte . . . ." Also on that date, defendant lender recorded a deed of trust on the subject property to secure a $1.2 million loan to PA Deed. A portion of those proceeds paid off the JL loan and various liens on the property.

Before making the loan, defendant lender retained the services of a title insurer. The title insurer did not discover the Bustamante grant deed in favor of McKenzie that had been recorded several weeks earlier.

Within days after November 7, 2011, McKenzie learned Bustamante obtained a new loan on the property but did not intend to pay him from the proceeds. McKenzie permitted Bustamante to keep possession of the subject property "because [Bustamante] needed a way to pay the loan, and he said he was going to try to get another loan to pay that loan off."

On August 29, 2012, PA executed a grant deed to transfer title to the property back to plaintiff. Plaintiff testified Bustamante provided the deed willingly. Plaintiff waited until

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[4] In his opening brief, McKenzie asserts he voluntarily dismissed Bustamante without prejudice from this lawsuit because the latter signed a declaration admitting the validity and delivery of the October 2011 deed.

[5] McKenzie states in his appellate briefs that nonparty Bustamante "controlled" nonparty PA. Defendant essentially agrees, advising in a letter brief that PA is "Bustamante's company which took out [PA]'s $1.2 million loan."

January 2013, shortly before initiating this action, to record this deed in his favor.

In September 2012, PA stopped making payments on defendant lender's loan. Defendant lender sent McKenzie a letter concerning the default. That document was received into evidence (exh. 316), but was not included in the appellate record.[6] On January 15, 2013, McKenzie recorded the 2012 grant deed from PA. McKenzie then initiated this lawsuit as part of his efforts to prevent defendant lender from foreclosing on the property.

The defense presented quite a different picture. Bustamante testified pursuant to a defense subpoena. He admitted lying about the $6 million settlement. He agreed to buy plaintiff's property and equipment for $4 million. He also agreed there had been "some discussion" about signing reciprocal deeds with McKenzie. He would sign blank checks and other documents, including "things that I shouldn't have" at Rivera's request. Bustamante remembered McKenzie signed a document in front of Rivera and the notary.

On direct examination, Bustamante testified he first saw the 2009 Bustamante grant deed bearing his signature after the PA loan funded, i.e., after November 7, 2011. He acknowledged his signature, but maintained the grant deed was blank when he signed it. He added he would have noticed if his name was misspelled on a legal document and had never signed a legal document where his name was spelled with an "o" instead of a second "a." On cross-examination, he was impeached with the JL

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[6] No one asked any witness at trial why defendant would contact McKenzie when the PA loan went into default.

loan documentation, which bore his signature even though it identified him as "Bustamonte."

Bustamante testified he never had a conversation with McKenzie or the employee about delivering the 2009 Bustamante grant deed back to plaintiff. Presented with his 2013 declaration affirming he delivered the 2009 Bustamante grant deed to McKenzie, Bustamante testified he lied in the declaration. He also testified he signed the blank grant deed "after I received the deed from Mr. McKenzie," but could not recall if that was in 2009. Bustamante denied delivering the Bustamante grant deed to McKenzie at any time for any purpose.

## PROCEDURAL BACKGROUND

### A. Trial Court

McKenzie sued a number of parties, including Bustamante and defendant lender, on a number of theories and causes of action. The original verified complaint was filed in March 2013 on McKenzie's behalf by attorney Maureen C. Taylor. According to State Bar records, she is now deceased. McKenzie himself did not verify the pleading. All parties agree the original complaint was verified by Roger Agajanian. We take judicial notice of State Bar records that confirm Agajanian was disbarred in November 2010 and had been ineligible to practice law since March 2008.[7]

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[7] The signature reads "Gary McKenzie" with an "RA" beside it. Defense counsel acknowledged during opening statement that the original verified complaint "was verified by a disbarred attorney." During his cross-examination of McKenzie, defense counsel again noted "we've established [the original verified complaint] was not signed by you." In a declaration concerning notice for an ex parte hearing, Agajanian identified himself as the principal in Agajanian Investigations.

One of the allegations of the original verified complaint, not repeated in subsequent versions, was that Bustamante did not intend to deliver the 2009 Bustamante grant deed and McKenzie recorded it on October 20, 2011 "against Bustamante's wishes."

McKenzie testified he retained Taylor to prevent foreclosure of defendant lender's deed of trust. As part of that effort, a month after filing suit, Taylor secured a declaration from Bustamante. There, Bustamante declared under penalty of perjury that he delivered the 2009 Bustamante grant deed to McKenzie with the intent to transfer title. Bustamante was dismissed from this action without prejudice in early 2014.

The operative pleading was the verified third amended complaint. McKenzie prayed in his cause of action to quiet title for a declaration from the trial court that as of November 7, 2011, he "was the sole rightful, titled owner of the Subject Property and that [d]efendant . . . had no right, title or interest in and to the Subject Property." McKenzie proceeded to a court trial against defendant lender only to quiet title in the subject property.

The 14th affirmative defense in defendant lender's verified first amended answer was a conditional request for equity, i.e., if McKenzie prevailed, he should be required to reimburse defendant lender for the $785,734.70 it expended to pay off the JL loan and other liens on the property. Defendant lender also filed a cross-complaint for declaratory relief against plaintiff. On the second day of trial, defendant lender sought leave to file a first amended cross-complaint to add causes of action for subrogation and imposition of an equitable lien, based on its 14th affirmative defense and its expenditures for the benefit of the property. Over the objections of McKenzie's counsel, defendant lender was granted leave to do so.

Posttrial briefing included simultaneous initial and reply briefs filed by both parties. McKenzie's posttrial brief addressed the validity of the Bustamante grant deed transferring title back to plaintiff as well as the subrogation and equitable lien causes of action. McKenzie agreed an equitable lien would be appropriate, but only in the sum of $326,000—the amount plaintiff received from the JL loan. McKenzie argued he was not responsible for other encumbrances on the property (which included the previously mentioned $20,000 bail bond lien for alleged loan broker Rivera and payment of Bustamante's personal tax lien). In its posttrial brief, defendant lender focused on the invalidity of the 2009 Bustamante grant deed and noted discrepancies between plaintiff's original verified complaint and the operative pleading, the verified third amended complaint.

Ninety days later, the court provided the parties with a one-page "decision." In an ex parte proceeding, court and counsel agreed that would be deemed the court's tentative decision. McKenzie requested a statement of decision at that time, and the trial court ordered defense counsel to prepare it.

Defense counsel prepared a proposed statement of decision. McKenzie served objections on July 10, 2015, but did not make any counter proposals.[8] The final statement of decision, filed October 29, 2015, included several handwritten nonsubstantive changes by the trial judge; none addressed plaintiff's objections. In fact, McKenzie's objections were not even acknowledged.

The statement of decision recognized its purpose was "to facilitate appellate review." The trial judge noted witness

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[8] Although McKenzie's objections do not bear a file stamp, the trial court referred to them on the record in the July 15, 2015 posttrial hearing.

credibility was an issue and summarized the testimony of various witnesses. The statement of decision determined testimony by McKenzie and witness Amezaga, the employee who testified Bustamante willingly handed plaintiff the 2009 Bustamante grant deed, was not credible on that issue. However, the trial judge made no credibility findings as to Bustamante, who, like every other witness except perhaps the representative from the Los Angeles County Recorder's Office, was impeached on more than one point.

The statement of decision is also devoid of any reporters' transcript references.[9] In a case like this one with so many credibility issues and only limited credibility findings, the statement of decision did not facilitate appellate review.

The statement of decision identified five principal controverted issues:

1. Whether trial exhibit 5, the September 10, 2009 grant deed from Bustamante to McKenzie, recorded on October 20, 2011, "transferred title and ownership of the property to McKenzie on the date it was allegedly signed by Bustamante on September 10, 2009, or at any time thereafter;

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[9] We recognize record references are not required in a statement of decision and in many cases a reporter's transcript might not be available when the statement of decision is prepared. But here, reporter's transcripts were available on January 29, 2015, and the proposed statement of decision was submitted to the court months later.

The statement of decision indicates record references to the testimony of witnesses Amezaga may be found by reading defendant's "Post-Trial Reply Brief and Notice of Errata." There are no record references for any testimony by plaintiff, Bustamante, or any other witness.

2. Whether Bustamante held title in the property on November 7, 2011, and whether he transferred title that same date to his entity, PA;

3. Whether the deed of trust Bustamante executed on behalf of debtor PA in favor of defendant lender to secure the $1.2 million loan was valid and enforceable against the property;

4. Whether trial exhibit 9, the grant deed signed by Bustamante as managing member of PA on August 29, 2012, and recorded January 15, 2013, transferred title and ownership of the property back to McKenzie; and

5. "Who is the current titled owner of the property?"

From these principal issues, the trial court made the following findings:

1. The 2009 Bustamante grant deed was null and void;

2. The 2011 Bustamante grant deed to PA "properly" transferred title and ownership "and that as of November 7, 2011 up to the date of entry of this Judgment, [PA] is and has been the titled owner to the property described above;"

3. Defendant lender's deed of trust "is and has been a valid and effective deed of trust since its recording on November 7, 2011, and has remained a valid and effective Deed of Trust up through the date of entry of this Judgment;

4. The grant deed signed by Bustamante on behalf of PA on August 29, 2012, transferring title to plaintiff is null and void;

5. Title in the property is quieted in PA.

### B. Court of Appeal

While the appeal has been pending, this court denied a petition for writ of supersedeas, invited supplemental briefing and granted McKenzie's request for a bankruptcy stay. Although it was nonparty Bustamante who sought bankruptcy relief, the judgment in this case quieted title in his limited liability entity, PA. We lifted the stay after the bankruptcy court advised PA was not an asset in Bustamante's bankruptcy estate.

## DISCUSSION

### A. The Court Lacked Jurisdiction to Quiet Title in PA

McKenzie sued to quiet title in the property as of November 7, 2011, the date the competing Bustamante grant deed in favor of PA and defendant lender's deed of trust were recorded. Although McKenzie was well aware of Bustamante's actions, he did not proceed against him or PA. Defendant lender never claimed to hold title to the property, but it did not bring Bustamante or PA into the litigation, either. Nonetheless, the trial court rendered a judgment that included quieting title in nonparty PA, finding it was the current record owner of the property. The trial court had no jurisdiction to do so.

"The purpose of a quiet title action is to finally settle and determine the *parties'* conflicting claims to the property and to obtain a declaration of the interest of each *party*." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 298 (italics added); accord, Code Civ. Proc., § 760.020, subd. (a).)[10] The requisites for stating a cause of action for quiet title are set forth in section

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[10] All statutory citations are to the Code of Civil Procedure unless otherwise indicated.

761.020.[11] Nothing in that statute authorizes a court to quiet title in a nonparty.

We invited supplemental briefing as to "the effect, if any, on the judgment as a result of quieting title in a nonparty to this litigation, one that did not comply with the requisites of Code of Civil Procedure section 760.010 et seq." McKenzie agreed the trial court did not have jurisdiction to quiet title in nonparty PA. Defendant lender's response was not unequivocal. It discussed decisions where the trial court quieted title in a party to the action (*Deutsche Bank National Trust Co. v. McGurk* (2012) 206 Cal.App.4th 201; *DuBois v. Larke* (1959) 175 Cal.App.2d 737) and added, "[PA] may at some future date seek to use this favorable finding as collateral estoppel, or in some other defensive or offensive litigation posture, but that is a subject beyond the scope of the Court's inquiry and beyond the scope of this letter."

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[11] "The complaint shall be verified and shall include all of the following: [¶] (a) A description of the property that is the subject of the action. . . . In the case of real property, the description shall include both its legal description and its street address or common designation, if any. [¶] (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession. [¶] (c) The adverse claims to the title of the plaintiff against which a determination is sought. [¶] (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought. [¶] (e) A prayer for the determination of the title of the plaintiff against the adverse claims."

If title is to be quieted in PA, then PA is an indispensable party. We recognize neither McKenzie nor defendant lender sought to bring PA into this action. Once the trial court determined a material issue in the lawsuit was PA's *current* ownership of the property, however, the procedures concerning indispensable parties needed to be followed. (See, e.g., § 389.)

The judgment in favor of nonparty PA was in excess of the court's jurisdiction and void. (*Renoir v. Redstar Corp.* (2004) 123 Cal.App.4th 1145, 1154.) Reversal is required.

This case does not present the situation where a "portion" of the judgment simply may be severed from the balance: the quiet title ruling was the judgment. All material findings were intertwined with the trial court's conclusion that nonparty PA held title to the property, and most such findings, particularly as to the various deeds that were received into evidence, were based on conflicting evidence. (*Harwell v. Harwell* (1938) 26 Cal.App.2d 143, 145 ["[only if] the void portion of the judgment does not infect the whole with invalidity and may be separated from the remainder and treated as surplusage, the judgment will not be avoided *in toto,* but will be upheld as to that portion which was within the jurisdiction and power of the court to render" (internal quotation marks omitted)].)

### B. Guidance for the Parties Upon Further Proceedings

Because we do not know what form further proceedings will take or what evidence will be produced, we eschew comments on the sufficiency of the evidence presented in the trial court. Nonetheless, we provide the following as guidance to the trial

court and parties upon further proceedings. (See *Estate of Hilton* (1996) 44 Cal.App.4th 890, 919.)

*1. Rebuttable Inference of Delivery of the 2009 Bustamante Grant Deed from Bustamante to McKenzie*

McKenzie was in possession of the original 2009 Bustamante grant deed and produced it at trial. The document was notarized, bore Bustamante's signature, and contained the correct legal description of the property. It appeared to be valid on its face and recorded on October 20, 2011, several weeks before defendant lender consummated the PA loan and recorded its deed of trust on the property.

Despite the recording, a grant deed transfers title "only upon its delivery by the grantor." (Civ. Code, § 1054.) As defense counsel conceded at oral argument, McKenzie's possession of the original 2009 Bustamante grant deed created an inference of delivery. (*Miller v. Jansen* (1943) 21 Cal.2d 473, 477.) This inference is rebuttable, however. Typically, the burden shifts to the grantor to establish nondelivery. (*20th Century Plumbing Co. v. Sfregola* (1981) 126 Cal.App.3d 851, 853; *Hennelly v. Bank of America National Trust & Savings Assn.* (1951) 102 Cal.App.2d 754, 758.) If the grantor is not a party to the action, the burden shifts to defendant lender, the party seeking to rebut the inference of delivery.

Although there is a wealth of case law holding that statutory presumptions may be rebutted only by clear and convincing evidence, none of it is applicable here. This case involves "a nonstatutory inference as to the fact of delivery of the instrument where it is in the possession of the grantee."

(*Blackburn v. Drake* (1963) 211 Cal.App.2d 806, 812-13.) The fact of delivery is precisely that—a fact. Placing the burden of proof on the party challenging the inference, the trier of fact will determine, by a preponderance of the evidence, whether there was a delivery.

*2. Rebuttable Presumption that 2009 Bustamante Grant Deed Is What It Purports to Be*

We offer no opinion as to whether the 2009 Bustamante grant deed is valid, void, or actually a mortgage. We note, however, there is a rebuttal presumption that "a deed, absolute on its face, is" what it purports to be, i.e., a deed. (*Spataro v. Domenico* (1950) 96 Cal.App.2d 411, 413 (*Spataro*).) In determining whether a deed "is a mortgage, the intention of the parties is controlling, and in the absence of any writing this intention is manifested by, and inferred from, all of the facts and circumstances of the transaction under which the deed was executed, taken in connection with the conduct of the parties after its execution." (*Ibid.*) The issue presents "a mixed question of law and fact. [Citation.] The test by which to determine whether the instrument is a mortgage is—was there a subsisting, continuing debt and a continuation of the relation of debtor and creditor? The fact is not only a circumstance tending to show that the conveyance is a mortgage, but is indispensable to the existence of a mortgage; if there is no indebtedness for which the conveyance is security, there can be no mortgage. [Citation.] Ordinarily, there must be an agreement, express or implied, on the part of a mortgagor to pay the mortgagee a sum of money. Where there is no promise to pay, the deed will not be construed to be a mortgage." (*Id.* at p. 413)

To overcome the presumption that the 2009 Bustamante grant deed is a deed, the burden to prove otherwise rests with McKenzie. The standard of proof in the trial court to rebut the presumption is clear and convincing evidence. (*Spataro, supra,* 96 Cal.App.2d at p. 413.)

The judgment, which purports to quiet title in nonparty PA is void on its face.[12] As we cannot treat that portion of the judgment as "surplusage," the entire judgment must be reversed.

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[12] Our disposition makes it unnecessary to address McKenzie's due process arguments on the merits. We note only that at no point during the 370 days between the conclusion of trial testimony and the entry of judgment did any ruling remain under submission by the trial court for more than 90 days.

## DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings. In the interests of justice, no costs are awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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