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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

RONALD HILLS, Plaintiff and Appellant, v. JP MORGAN CHASE BANK, N.A., Defendant and Respondent.	B277460 (Los Angeles County Super. Ct. No. BC558325)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Affirmed.

Ronald Hills in pro. per., Law Office of Susan E. Hargrove and Susan E. Hargrove for Plaintiff and Appellant.

Bryan Cave, Glenn J. Plattner, Deborah P. Heald for Defendant and Respondent.

INTRODUCTION

Appellant Ronald Hills sued to quiet title to a parcel of real property. Hills alleged that a third party, Keith A. Rouster, who did not have legal title to the property, fraudulently took out a mortgage on the property with respondent JPMorgan Chase Bank, N.A. (Chase). Hills sued Chase, Rouster, and others to quiet title, alleging that Chase should have known about the fraud at the time Rouster obtained the mortgage.

Hills did not respond to Chase's discovery requests, asserting that Rouster's bankruptcy stayed the case. Chase moved to compel responses and to deem requests for admissions admitted. The trial court rejected Hills's stay argument, holding that Rouster's bankruptcy did not affect the case between Hills and Chase, and in any case, the stay had been lifted. Chase then moved for summary judgment, asserting that there was no evidence of fraud at the time of the mortgage, and that Hills could not establish that he held any rights to the property at the time of the mortgage. The trial court granted the motion, and Hills appealed the judgment and the court's discovery rulings.

We affirm. The notice of Rouster's bankruptcy did not affect Hills's ability to respond to discovery, and the stay had been lifted before the discovery was due. In its motion for summary judgment, Chase presented evidence showing that at the time of the mortgage, documents indicated that Rouster—not Hills—held title to the property. Chase also demonstrated that it was a bona fide encumbrancer. Hills did not present evidence to the contrary, and therefore summary judgment was properly granted.

FACTUAL AND PROCEDURAL BACKGROUND

Our recitation of the facts of this case is somewhat limited by the paucity of the record. With his opening brief, Hills submitted an appellant's appendix with five exhibits: (a) the notice of stay of proceedings due to Rouster's bankruptcy, (b) a 2016 grant deed, (c) the court's ruling on Chase's motion for summary judgment, (d) a minute order referencing the notice of stay of proceedings and setting a status conference, and (e) Hills's revised opposition to Chase's motion for summary judgment.

With its respondent's brief, Chase submitted a number of additional documents, including the operative complaint, Chase's motion for summary judgment, and the evidence Chase submitted in support of its motion. We therefore take many of the facts below from the respondent's appendix, and note where the record is insufficient to explain relevant proceedings below.

A. Complaint

Hills, in pro per, filed the first amended complaint on July 23, 2015; this is the operative pleading for purposes of appeal. Hills named eleven defendants including Chase, Rouster, Kimberly Martin-Bragg, and Ivan Rene Moore. Hills alleged that Moore purchased a real property in Redondo Beach (the property) in 1977. Hills alleged that Moore owned and controlled two corporations; Hills was the secretary and Martin-Bragg was the volunteer bookkeeper for those two corporations. Hills alleged that in May 2005, he transferred (or caused to be transferred) title of the property to Martin-Bragg, for her "to hold in trust for the benefit of [Hills] and for the benefit of [Moore] and his corporations."

The allegations are somewhat unclear and at times inconsistent, but it appears that Hills, Moore, and Martin-Bragg

then transferred title of the property to Rouster to hold in trust for the benefit of Hills, Moore, and Moore's corporations. This was done "for the sole purpose of freeing encumbrances on the property so that the property could be used as collateral for loans secured by Mr. Moore and his corporations." Hills further alleged that "to prevent [Rouster] for ever [*sic*] asserting ownership in the property, a quit claim deed was executed transferring the property to Plaintiff Ronald Hills, Defendant [Moore], and to the corporations owned by Defendant [Moore]."

Hills also alleged that Martin-Bragg and Rouster conspired to secure a mortgage on the property by representing to Chase[1] that Rouster owned the property. Hills alleged that Chase should have known that the representations Rouster made about purchasing the property and the documents used to secure the mortgage were false. A deed of trust was recorded with Chase as beneficiary. Eventually, a notice of default and election to sell the property was served.

The first amended complaint asserted eleven causes of action, but only the cause of action to quiet title survived Chase's demurrer. Quiet title, therefore, is the only cause of action at issue for purposes of appeal.

B. Notice of bankruptcy stay

On September 24, 2015, a notice of stay of proceedings was filed regarding a bankruptcy pending in federal court.[2] The form noted that the case was stayed as to "Keith Rouster (Only)."

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[1] The mortgage was secured through entities later acquired by Chase.

[2] The notice of stay, filed September 24, 2015, does not state who filed it, but it is signed by "Bankruptcy Court Petitioning Creditor Jorge Valdez." The court said that Hills

The documents attached to the notice of stay stated that the bankruptcy case was an involuntary Chapter 7 proceeding, but Rouster was not listed as a debtor. The parties and the court referenced the bankruptcy as pertaining to Rouster, and therefore we assume that is correct.

C. Discovery

Chase moved for an order compelling Hills to respond to discovery and to deem requests for admissions (RFAs) admitted. In a declaration attached to the motion, Chase's attorney stated that RFAs and other discovery were served on Hills on November 7, 2015, and Hills did not serve responses. The attorney contacted Hills to inquire, and Hills said that he did not respond because the case was stayed due to Rouster's bankruptcy. The attorney told Hills that the stay applied to Rouster only, and did not affect Hills's responsibility to respond to discovery. Hills nevertheless did not submit responses to Chase's discovery.

Hills's opposition is not in the record on appeal. However, Chase has provided the court's written order on the motion. According to the order, Hills argued in opposition that the discovery requests were served during a stay. The court rejected this argument, stating that the notice of stay stated that it pertained to "Keith Rouster (Only)." The court noted that Hills himself had engaged in discovery in the same period, including serving written discovery requests and a notice of deposition. The court said, "Hills cannot now credibly argue that he was not aware that the stay was limited to Keith Rouster when he

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himself filed the notice, but the basis for the court's statement is unclear. Rouster later served (but did not file) notice that the involuntary Chapter 7 bankruptcy had been dismissed on September 18, 2015—before the notice of stay was filed.

himself continued to litigate the case . . . . Moreover, this court lifted the stay on November 23, 2015."

The court also stated that "Hills makes no arguments as to the substantive merits of the motion, nor has he stated that he has served responses to the discovery since the motions were filed." The court granted Chase's motion in full, deeming all RFAs admitted, and ordering Hills to respond to Chase's requests for production of documents and special interrogatories.

Hills also moved to compel discovery responses from Chase. The motion, supporting documents, opposition, and reply are not included in the record on appeal. Chase has provided the court's April 19, 2016 written order on the motion.

In the order, the court said Hills contended that he served Chase with requests for production of documents, RFAs, and a notice of deposition on October 1, 2015, and Chase did not respond. Chase argued in opposition that it was never served with these documents. The court noted that the proofs of service with Hills's requests for production of documents and notice of deposition did not include the name of the person who served the documents, and they were not addressed to any particular attorney at the law firm. The proof of service for the RFAs included the name of the server, but also was not addressed to any particular attorney at the law firm. In addition, Hills's motion to compel did not include a meet-and-confer declaration as required by Code of Civil Procedure, section 2025.450, subdivision (b)(2).[3] The court therefore denied the motion.

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[3] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

D. Chase's motion for summary judgment

1. *Motion, opposition, and reply*

On February 25, 2016, Chase filed a motion for summary judgment. Chase argued that Hills could not establish that he had any interest in the property, because grant deeds for the property contradicted that claim. Chase also contended that any unrecorded ownership interest failed against Chase because Chase was a bona fide encumbrancer.

In support of its motion, Chase submitted evidence to show that in July 2005, Martin-Bragg sold the property to Rouster for approximately $850,000. Rouster financed approximately $680,000 through Long Beach Mortgage Company, secured by a deed of trust to the property, which Chase later acquired. Chase asserted that "[t]here is no record that Plaintiff held any interest in the Subject Property when the Subject Loan was funded" in 2005. Loan documents and Rouster's discovery responses showed that Rouster was the sole owner of the property at the time of the loan. Rouster also admitted in written discovery responses that he was not holding the property in trust for Hills or Moore.

Chase also cited several of its RFAs to Hills that had been deemed admitted pursuant to the court's discovery order. Based on these admissions, Hills sold the property to Martin-Bragg for fair market value, and no longer held any interest in the property.

Hills opposed the motion. Hills argued that he "did not sell the property to any of the Defendants in this case. He did not sell the Property to Kimberly Martin-Bragg, nor did he sell it to Defendant Rouster. What they did in combination was to defraud Mr. Hills and Mr. Moore and the Banks." Hills also asserted that Rouster had no right to encumber the property, and

he acquired the loan under fraudulent circumstances. These factual assertions in the opposition are not supported by citations to evidence.

Hills also requested a continuance to obtain additional discovery pursuant to section 437c, subdivision (h). He argued that he was entitled to discovery, and the "denial of any discovery for Plaintiff is simply unjust." He also noted the court's imposition of a "sanction . . . deeming Chase's Request[s] for Admissions to Plaintiff Admitted," and asserted that it was "simply unjust for this Court to impose such a severe sanction for this plaintiff for following Federal bankruptcy rules and law." Hills contended that "[t]his court is simply disposed to grant the Defendant Big Bank what it wants when it wants."

Hills asserted that he has "requested documents from Defendant Chase which go to the very essence of this case." He continued, "Discovery is needed by Mr. Hills, to prove that Chase has no interest in this matter, no beneficial and no legal interest in the Property." He added, "Furthermore, Plaintiff is recently informed of new information which he chooses not to be specific about which will prove his allegations against [*sic*]."

Hills also filed a separate statement, which did not include any responses to Chase's facts. Hills's facts included the following: "Defendant Moore paid the Mortgage payments on the . . . property"; "Rouster signed documents that he had no ownership of the Redondo property"; "Rouster signed documents that he was holding the property in trust for Moore, Hills and the Moore Corporations"; "Documents provided by Chase that Plaintiff has admitted he sold the Subject Property for fair market value were forded [*sic*] by Bragg." Several declarations

are cited in support of these facts, but they are not included in the record on appeal.

Chase filed a reply, arguing in part that Hills failed to demonstrate a triable issue of fact as to whether Chase had prior notice of any unrecorded claim to the property. Chase also asserted that Hills's request for a continuance should be denied because Hills failed to file a declaration demonstrating the existence of facts and evidence relevant to his claims. Chase also apparently filed objections to Hills's evidence because the court ruled on Chase's objections, but the objections are not included in the record on appeal.

2. *Court ruling*

The court provided the parties with a tentative ruling denying the motion. At the May 11, 2016 hearing, the court said, "There are two basic problems with the opposition from Mr. Hills. The first is that all of the evidence that is submitted, including the declarations is probably 95 percent inadmissible. So having someone say there is a deed instead of showing me the deed, having someone say there is something, that's hearsay, and I've gone through every objection as you can see, and there is very little left in terms of evidence. The second issue is Mr. Hills requested a continuance under 437c, subdivision [h], and there is no declaration as required by that section, and there is no good cause for what he expects to find that would prevent Chase from arguing that it is a bona fide encumbrance[r]." Hills's counsel[4] argued that Rouster had no rights to the property, yet he took out a mortgage on it with Long Beach Mortgage. The court said, "There is no evidence in the record that Long Beach Mortgage

[4] Although Hills's documents had been filed in pro per, counsel specially appeared at the hearing on behalf of Hills.

was on notice that Mr. Rouster was not the proper owner of the property. And under that scenario, Long Beach Mortgage, which later became Chase, there is no showing that either Long Beach Mortgage or Chase knew that the property was not owned by Mr. Rouster."

Hills's counsel asserted, "I have not been able to conduct discovery." The court noted that Hills failed to file a declaration explaining his reason for requesting a continuance, and said, "[E]ven in his opposition, he says there is some secret new evidence he has he does not want to disclose to the court as to why he has a good claim. Well, that's not good enough. He needs to state what evidence he thinks 18 months into the case that he believes he's going to get to show that Long Beach Mortgage knew that Mr. Rouster did not have proper title to the property."

Counsel for Chase asserted that Hills had ample opportunity to conduct discovery. She also argued that there was no evidence to demonstrate that Chase was on notice that anything was amiss regarding the title to the property.

The court granted the motion, and stated that it would issue a written order. In the order, the court denied Hills's request for a continuance. The court said, "Hills has failed to show that there are facts essential to opposing the motion that Hills believes exists." The court noted that Hills argued that the court's ruling on Chase's discovery motion was "unjust," but said this argument did not qualify as a defense to a motion for summary judgment. The court concluded, "The court therefore finds that, first, Hills has failed to comply with Code of Civil Procedure Section 437c, subdivision (h) by his failure to submit a declaration supporting his request, second, has failed to show that there are specific facts that he will be able to obtain through

further discovery that would support denial of Chase's motion, and third, has failed to show his diligence in obtaining discovery over the last 19 months since filing this case. Accordingly, the request for a continuance is denied."

Addressing the substance of the motion, the court stated, "Chase has . . . met its initial burden on summary judgment to show that it currently has a valid interest in the property and that Hills has no interest in the property. Hills has failed to produce any substantially responsive evidence that Martin-Bragg only held the property in trust for Hills and other parties or that she had no authority to transfer the property to Rouster." The court also stated that "Hills may not quiet title to the property as against Chase's interest in the property because Chase is a bona fide encumbrancer." The court said, "Chase has met its burden to show that neither it nor Long Beach Mortgage had any knowledge or notice of any unrecorded interest in the Property held by Hills." Hills did not present admissible evidence to the contrary. The court therefore granted the motion.

Judgment was entered in favor of Chase, and Hills timely appealed.

DISCUSSION

Hills asserts eight points of error, which fit into three basic categories: whether the case was stayed due to Rouster's bankruptcy, whether the court erred in granting Chase's motion to deem the RFAs admitted, and whether the court erred in granting Chase's motion for summary judgment. Hills also suggests that the court erred by barring him from conducting any discovery against Chase, which appears to be a challenge to the trial court's ruling on Hills's motion to compel. We address each of these issues below.

A. Bankruptcy stay

In his opening brief, Hills asks, "Does the automatic stay under 11 USC § 362 of the Bankruptcy Statue [*sic*] stay discovery and the litigation in an action regarding bankruptcy estate property when no relief from stay was granted by the bankruptcy court?" He argues that the "willful and deliberate failure of the lower court to adhere to the injunctive authority of the Federal statute is not only an abuse of discretion [but also] a miscarriage of justice [that] has substantially prejudiced appellant." Chase responds that the notice of stay clearly stated that it pertained to Rouster only, and had no bearing on the case between Hills and Chase.

Chase is correct that the notice of stay, filed September 24, 2015, states that it pertains only to Rouster. The notice of stay, on a Judicial Council form, has a section stating, "This case is stayed as follows." The section includes two options: "With regard to all parties" or "With regard to the following parties (specify by name and party designation)." The latter box is checked, and in the blank space it states, "Keith Rouster (only)." Hills also points to a minute order dated October 2, 2015, which noted that the notice of stay was filed, scheduled a status conference regarding the status of the bankruptcy, and stated that a different defendant's demurrer was off calendar.

The filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . [¶] the commencement or continuation . . . of a judicial . . . action or proceeding against the debtor." (11 U.S.C. § 362(a)(1).) However, "a bankruptcy stay is only effective as to the party in bankruptcy; a plaintiff must proceed against nonbankrupt defendants." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1488; see also *Lane v.*

Newport Bldg. Corp. (1986) 176 Cal.App.3d 870, 874 [counsel erred by assuming that the bankruptcy of one among multiple defendants would stay the entire action].) Here, the notice of bankruptcy stay applied to Rouster only. The record on appeal gives no indication that Chase or any party other than Rouster was affected by the stay. The stay therefore did not affect the case between Hills and Chase.

Hills also suggests that the property at issue was part of the bankruptcy estate, and therefore the stay should have applied to the entire litigation. The basis for this assertion is unclear, because Hills's primary claim in this case is that Rouster had no ownership interests in the property. If this assertion is accurate, the property would not be an asset at issue in Rouster's personal bankruptcy proceedings.

Even if the property were part of the bankruptcy estate, however, the record indicates that the bankruptcy was dismissed and the stay was lifted before Hills's discovery responses were due, and before Chase's discovery and summary judgment motions were filed. An attorney declaration included with Chase's discovery motion stated that Rouster informed the court at a status conference on November 20, 2015 that the bankruptcy had been dismissed. In the written order granting Chase's discovery motion, the court stated that it lifted the stay on November 23, 2015. The court also noted that Hills's discovery responses were due December 8, 2015. Thus, the record on appeal indicates that even if the stay affected the property at issue, because the stay was lifted it did not prohibit Hills from responding to discovery.

Hills has provided no suggestion that the these facts are incorrect. "An appellant has the burden to demonstrate

reversible error with reasoned argument and citation to authority." (*Tellez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052, 1066.) Hills has not met this burden, and therefore he has not demonstrated that the bankruptcy stay barred any of the proceedings relevant to this appeal.

B. Chase's discovery motion

Hills contends the court abused its discretion when it deemed Chase's RFAs to Hills admitted. Hills argues the court abused its discretion in imposing this "sanction" because the RFAs were "propounded and served during the automatic stay period and there was no prior discovery abuse" by Hills. Hills contends that he "would have been able to respond to [Chase's] Request[s] for Admissions had the automatic stay not be[en] in effect." Hills makes no effort to address the substance of the court's ruling deeming the RFAs admitted.

We review the trial court's ruling on a discovery motion for abuse of discretion. (See *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) When a party fails to respond to RFAs, "[t]he requesting party may move for an order that . . . the truth of any matters specified in the requests be deemed admitted." (§ 2033.280, subd. (b).) "The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (§ 2033.280, subd. (c).) In other words, "'[i]f the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion. But woe betide the party who fails to serve responses before the hearing. In that instance the court has no discretion but to grant the admission motion, usually with

fatal consequences for the defaulting party. One might call it "two strikes and you're out" as applied to civil procedure.' [Citation.]" (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776 (*St. Mary*).)

The RFAs were served on November 6, 2015. No response from Hills is included in the record. Hills asserts that because of the stay, he had no obligation to respond to Chase's discovery requests. However, the record demonstrates that the stay affected neither Hills nor Chase, and it was lifted on November 23, 2015, before Hills's discovery responses were due on December 8, 2015. Therefore, Hills has not established that the trial court abused its discretion in granting Chase's discovery motion and deeming the RFAs admitted.

In his reply brief, Hills contends for the first time that Chase failed to meet and confer before filing the motion. Typically, arguments raised for the first time in a reply brief are considered forfeited. (See, e.g., *Nolte v. Cedars Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1410.) Even if this argument were not forfeited, it lacks merit. Because Hills did not respond to the RFAs, there was no requirement that Chase meet and confer before filing the motion. Meet-and-confer efforts are required to compel further responses, but not to deem RFAs admitted. (See *St. Mary, supra,* 223 Cal.App.4th at p. 777.) Moreover, the order granting Chase's discovery motion stated that Chase attorneys did attempt to confer with Hills about the discovery responses. Thus, Hills has not demonstrated that the motion should not have been granted due to deficiencies in Chase's meet-and-confer efforts.

Also in his reply brief, Hills argues that the court erred by deeming the requests admitted as a sanction because Hills had

not previously violated a court order. He cites section 2033.290, subdivision (e), which states, "If a party then fails to obey an order compelling further response to requests for admission, the court may order that the matters involved in the requests be deemed admitted." However, this section applies only to situations in which a party has responded to RFAs, the requesting party has moved for an order compelling further responses, and a court has entered such an order. (See § 2033.290, subd. (a).) That was not the case here. Because Hills never responded to the RFAs, the court had the power under section 2033.280 to deem the RFAs admitted. The court did not abuse its discretion by doing so.

C. Hills's discovery motion

Hills mentions several times in his brief that the trial court prevented him from conducting discovery against Chase. For example, he argues that the trial court erred "when it refused to allow [Hills] to conduct any discovery against [Chase] and others in this case." He also asserts that the court "refused to allow [Hills] to propound discovery in this case against [Chase]." In addition, Hills contends that "preventing [Hills] from serving [Chase] with discovery denies [Hills] of his right to due process and his Rights to Equal protection under the law." These assertions do not include additional argument or any citations to the record.

It is unclear whether these assertions pertain to the trial court's denial of Hills's motion to compel, or the court's denial of Hills's request for a continuance relating to the motion for summary judgment. We therefore address both interpretations: the discovery motion is addressed here, and the continuance is addressed in the following section.

The record does not allow us to find that the court erred. Hills has not provided the motion, opposition, or reply in his appendix. Chase has provided the court's order on the motion, which indicates that the discovery was never properly served on Chase. Hills has not made any attempt on appeal to demonstrate that the court's finding was incorrect.

There are "'three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.' [Citation.]" (*Ermoian v. Desert Hosp*. (2007) 152 Cal.App.4th 475, 494.) Here, Hills has not provided an adequate record as to the court's ruling on his motion, and he has not affirmatively proved error. Hills has therefore provided no basis for a finding that the court's ruling on Hills's discovery motion was erroneous.

D. Chase's motion for summary judgment

1. *Continuance*

As noted above, Hills asserts that the trial court "precluded [him] from obtaining discovery from [Chase] on the contested issues of ownership, mortgage fraud, hypothecation fraud, and securitization fraud." He also contends that the court erred by "claiming [Hills] had not been diligent" when in fact Hills had set depositions and propounded discovery. Hills has not developed these contentions in his brief. We address these contentions as they relate to Hills's request for a continuance.

Section 437c, subdivision (h) states in part, "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons

stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." Thus, "'an opposing party can compel a continuance of a summary judgment motion' by making a declaration meeting the requirements of section 437c, subdivision (h)." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395-396.)

"[I]n deciding whether to continue a summary judgment to permit additional discovery courts consider various factors, including (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion." (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 644.) Here, the court denied Hills's request for a continuance for three separate reasons: Hills did not comply with the requirements of section 437c, subdivision (h); he did not demonstrate that there were specific facts that he would be able to obtain through additional discovery; and he did not demonstrate diligence in obtaining discovery.

Hills has not articulated any arguments that the court applied section 437c, subdivision (h) incorrectly when it denied his request for a continuance. "The nonmoving party seeking a continuance 'must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.]" (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 633.) Although the separate

statement submitted with Hills's opposition suggests that Hills submitted a declaration, the declaration is not included in the record on appeal.[5] Hills has not asserted on appeal that the declaration met the requirements in section 437c, subdivision (h), and because it is not in the record on appeal, we cannot review it to determine if the trial court's ruling was erroneous.

Nor has Hills argued that he expected to obtain specific evidence essential to the motion through additional discovery. Hills makes sweeping allegations in his briefs, for example, "Hills requested a continuance of the Summary Judgment hearing to complete some of the discovery which would have uncovered the truth." However, Hills does not cite to any portion of the record in which he demonstrated that specific evidence was needed to oppose the motion for summary judgment, nor does he articulate what discovery he needed to obtain that evidence. Without such a showing, the court did not err in denying Hills's request for a continuance.

The court also found that Hills had not been diligent. As discussed above, Hills asserted that he could not complete discovery because of the bankruptcy stay. However, the court found this argument implausible in its ruling on Chase's discovery motion. The court noted that the discovery stay implicated Rouster only, and that Hills had propounded discovery himself, suggesting that he was not under the impression that discovery was actually stayed. Moreover, the stay was lifted in November 2015, nearly six months before the hearing on the motion for summary judgment. The court did not abuse its

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[5] The court stated at the hearing that "there is no declaration as required by" section 437c, subdivision (h).

discretion in finding that Hills had not been diligent in pursuing discovery relevant to the motion for summary judgment.

Hills has therefore not demonstrated that the trial court erred by denying his request for a continuance.

2. *Substantive issues on summary judgment*

A trial court properly grants a motion for summary judgment where "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).) "A triable issue of material fact exists if, and only if, the evidence reasonably permits the trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof." (*Collin v. CalPortland Company* (2014) 228 Cal.App.4th 582, 588.)

"On review of a summary judgment, the appellant has the burden of showing error, even if he did not bear the burden in the trial court. . . . As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority." (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230.) "'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.'" (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

This case involves a single cause of action to quiet title. "To prevail on a quiet title claim, a plaintiff must establish title to the property in dispute." (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195.) Chase asserted that Hills could not meet this

requirement because title was held by Rouster. In addition, Chase asserted that any unrecorded interest Hills may have had in the property was void against Chase as a bona fide encumbrancer. A bona fide encumbrancer is one who acquires a lien by paying value and without actual or constructive notice of another's rights. (*Branscomb v. JPMorgan Chase Bank N.A.* (2014) 223 Cal.App.4th 801, 811; *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251.)

In support of these two arguments, Chase submitted a grant deed dated March 11, 2003, purportedly signed by Hills, granting the property to Martin-Bragg for valuable consideration. A second grant deed, dated May 31, 2005, granted the property from Martin-Bragg to Rouster for valuable consideration. A U.S. Department of Housing and Urban Development settlement statement showed that Rouster purchased the property from Martin-Bragg for $850,000. Chase also provided documents relating to Rouster's mortgage on the property in July 2005.

Chase also submitted its requests for production of documents to Hills, and Hills's responses. In one request, Chase asked Hills to produce all documents demonstrating Hills's claim that he held title to the property. Hills responded that the documents were public and equally available to Chase. Chase asked Hills for documents supporting Hills's allegation that he had "lawful possession and control" of the property since 1977, and that he held the property for the benefit of Moore and Moore's corporations. Hills responded, "Most of the documents which would respond to this are likely destroyed, because the period they cover is over seven years past." He also said that "the documents demanded are no longer in plaintiff's possession,

custody, and control," and "the documents were last located . . . in the wrongful possession custody and control of third parties."

Chase also submitted Rouster's responses to requests for admissions. In them, Rouster admitted that he purchased the property from Martin-Bragg for valuable consideration, he never held the property for the benefit of Hills or Moore, and he did not communicate to Long Beach Mortgage Company that he was holding the property in trust for anyone else.

The court held that this evidence was sufficient to meet Chase's burden on summary judgment to show that Hills did not hold title to the property in dispute, and Chase did not have notice of Hills's purported rights at the time of the mortgage. We agree. "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it." (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Chase met that burden here, and Hills has not argued that the court's finding was incorrect.

The court also held that Hills failed to produce "any substantially responsive evidence" that Martin-Bragg held the property in trust for Hills's benefit or that she had no authority to transfer it to Rouster. Even if there were such evidence, the court said, Hills did not present evidence to show that Long Beach Mortgage or Chase should have known about any other claims to the property at the time of the mortgage in 2005.

In his separate statement, Hills asserted a number of facts to support his allegations. For example, Hills stated that "Hills has an ownership in the Redondo Property." Hills also asserted, "Rouster signed documents that he had no ownership of the Redondo property," and "Rouster signed documents that he was

holding the property in trust for Moore, Hills, and the Moore Corporations." Hills also stated, "Any document that states plaintiff has admitted he no longer has any interest in the Subject Property were forged by Bragg." None of the evidence Hills cited in support of these facts is included in the record on appeal.

The court held that these facts were insufficient to meet Hills's burden to demonstrate a triable issue of material fact. The court stated, "Hills has introduced no evidence that the property was ever[ ] held by Martin-Bragg or Rouster in trust for Hills or any other entity." The court held that even if there were such an agreement, Hills failed to show that Chase was not a bona fide encumbrancer.

In his briefs on appeal, Hills does not assert that the court's specific findings were incorrect. He does not challenge the court's rulings that much of the evidence he submitted was inadmissible. Rather, in his briefs Hills sets out a number of similar factual assertions about the case. He states, for example, that Rouster "stated in his discovery and in open Court that he did not make any down payment or any monthly or tax payments or upkeep of the subject property. He also stated that he had not been at the subject property for over 10 years." Hills also asserts that "Rouster conceded and also admitted that he did not buy the property from Kimberly Martin-Bragg, and that he paid no consideration for the property purportedly purchased." He states that "Rouster informed Long Beach Mortgage that he was not the owner of the subject property and that he was only holding the property in trust for the benefit of the [*sic*] Ronald Hills, Rene Moore, Moore's family and others." He says that "based on circumstances existing at the time that the subject property was

encumbered," Chase and Long Beach Mortgage "acted with knowledge of a competing lien" on the property and "knowledge of the forged deed by Keith Rouster."

None of Hills's assertions on appeal are supported by citations to the record. Without citations to evidence, Hills's factual assertions alone are insufficient to show that triable issues of fact existed and the court erred by granting Chase's motion. It is well established that "to defeat the motion for summary judgment, the plaintiff must show "'specific facts,'" and cannot rely upon the allegations of the pleadings." (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 805; see also § 437c, subd. (p)(2) ["The plaintiff . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto."].) "A party cannot defeat summary judgment by the expedient of averring he or she has evidence to support a cause of action; instead, such evidence must be presented in opposition to summary judgment." (*Uhrich v. State Farm Fire & Cas. Co*. (2003) 109 Cal.App.4th 598, 616.)

Hills argues that Rouster admitted wrongdoing and returned the property to Hills. Hills asserts that after the motion for summary judgment was granted, Rouster "in open Court confessed to the unlawful conduct and fraudulent acts as alleged." Hills cites to a grant deed included in the record on appeal, executed after the summary judgment motion was granted, showing that on June 7, 2016, Rouster granted the property to Hills individually. Chase correctly points out that events occurring after summary judgment was granted cannot

demonstrate that the trial court erred in granting summary judgment. Moreover, Hills has not cited to any evidence other than the grant deed. We cannot assume from the existence of a 2016 grant deed that Hills had an interest in the property at the time Rouster took out a mortgage in 2005. Moreover, the 2016 grant deed does not demonstrate that Chase was not a bona fide encumbrancer at the time of the loan or when Chase acquired Long Beach Mortgage. Without record evidence to support his assertions that Rouster engaged in wrongdoing with respect to Chase, Hills has not provided us any basis to reverse the judgment.

Finally, Hills invokes the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the California Constitution to argue that the trial court "deprived [Hills] of liberty, or property without due process of law when it entered the summary judgment against [Hills]." Hills does not explain which aspect of the summary judgment proceedings failed to comply with the requirements of due process. With respect to summary judgment, "due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail." (*San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.) From the record, it appears that the notice of motion, motion, and supporting documents provided ample notice of the issues to be decided on summary judgment. Furthermore, the court's ruling addressed the issues in the motion, and did not address issues for which Hills had not received notice. Thus, there is no indication in the record that Hills's due process rights were violated.

Hills has not demonstrated that the trial court erred by granting Chase's motion for summary judgment.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.