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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHARLES VASILE,

Plaintiff, Cross-defendant
and Respondent,

v.

INGLEWOOD BOARD OF
REALTORS, INC.,

Defendant, Cross-
complainant and Appellant.

B281842

(Los Angeles County
Super. Ct. No. YC070030)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stuart Rice, Judge. Affirmed.

Law Office of Thomas H. Edwards, Thomas H. Edwards;
Law Office of Marianne P. Borselle and Marianne P. Borselle for
Defendant, Cross-complainant and Appellant.

The Maloney Firm, Patrick M. Maloney, Carl I. Mueller
and Bud M. Davis for Plaintiff, Cross-defendant, and Respondent.

* * * * *

Dr. Charles Vasile sued the Inglewood Board of Realtors (IBR), the tenant in a commercial property he owned, for back rent, also alleging a conspiracy to avoid paying the full amount of rent each month. IBR filed a cross-complaint for declaratory relief. Vasile dismissed his complaint without prejudice, and moved for judgment on the pleadings on IBR's cross-complaint on the basis that the cross-complaint was "not necessary or proper at the time under all the circumstances." The trial court granted his motion and dismissed the cross-complaint. IBR asks that we reverse the trial court's ruling, arguing the trial court did not have the discretion to dismiss, but if it did, abused that discretion. We affirm the trial court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND¹

In 2007, plaintiff, Dr. Charles Vasile, doing business as Airport Plaza (Vasile), leased commercial office space located at 718 East Manchester Boulevard, Inglewood, California, to IBR pursuant to a written lease for a term of five years. In August 2014, following a dispute over payment of monthly rent, Vasile commenced a breach of contract action against IBR, amending it twice. As alleged in the second amended complaint, filed July 21,

¹ We set out the facts as alleged in the cross-complaint together with any facts of which judicial notice is properly taken, as, in reviewing a ruling on a motion for judgment on the pleadings, we apply the same standard to consideration of the facts as is applied on review of a ruling sustaining a demurrer without leave to amend: we treat the motion for judgment on the pleadings as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [demurrer]; *Eckler v. Neutrogena Corp.* (2015) 238 Cal.App.4th 433, 439 [judgment on the pleadings].)

2015,² the lease called for payments of \$1,872 per month, a security deposit, late charges on unpaid rent, and annual percentage increases in the base lease amount. Vasile alleged the failure to pay the amount due each month as a breach of contract. In addition, he alleged that, beginning in 2012, the individual defendants conspired to pay less than the full amount due each month by issuing checks for less than that amount and writing on each check that it did represent the full monthly rent. Vasile sought monetary damages of \$29,171.72 and reasonable attorney fees.

On October 1, 2015, all defendants filed answers denying all of the allegations. Also on that day, IBR filed a cross-complaint against Vasile alleging two causes of action: (1) that Vasile had failed to account for or return IBR's security deposit within 30 days of regaining possession of the premises, alleging the amount due to be \$3,944; and (2) for declaratory relief.

In its latter claim for relief, IBR alleged "[a]n actual controversy now exists between Vasile and IBR . . ." claiming the controversy to be whether IBR is indebted to Vasile for "various amounts [or any amount] under the Lease." IBR sought a declaration that it was not indebted to Vasile for any amount. Vasile filed an answer to the cross-complaint denying all allegations and asserting multiple affirmative defenses.

² In his second amended complaint, Vasile added three individual defendants, Francis Toliver, Frank Oti and Maria Torres as coconspirators. As they are not parties to this appeal, we mention them only as necessary to set out the relevant factual allegations of the second amended complaint.

On July 21, 2016, Vasile filed a request for dismissal without prejudice of his operative complaint, which was granted and entered the same day.

Trial on the cross-complaint was set for August 23, 2016. The trial court granted Vasile's ex parte request to hear his motion for judgment on the pleadings directed to IBR's declaratory relief claim the same day as, and prior to, commencement of trial. Vasile based his motion on his contention that no viable cause of action for declaratory relief was presented for the reason that Vasile had dismissed his second amended complaint. Following the hearing on that motion on August 23, 2016, the court granted it, dismissing IBR's second cause of action without leave to amend. On October 17, 2016, IBR dismissed its first cause of action without prejudice.

The trial court entered judgment on the cross-complaint for declaratory relief on February 8, 2017, also awarding costs to IBR based on the principle that when both plaintiff and defendant assert claims against one another, and neither obtains relief, the defendant is deemed to have prevailed, citing *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 1450, 1453-1455. IBR filed a timely notice of appeal.

CONTENTION³

IBR contends the trial court did not have discretion to dismiss its request for declaratory relief and, even if it did, it abused its discretion in doing so.

FOLLOWING IBR VACATING THE PREMISES SUBJECT TO LEASE, THERE WAS NO LONGER A CONTROVERSY WARRANTING A DECLARATION OF RIGHTS

IBR's principal contention on appeal is that the trial court erred in granting Vasile's motion for judgment on the pleadings as to IBR's second cause of action for declaratory relief. IBR argues that whether a party's request for declaratory relief is "proper" under Code of Civil Procedure section 1061 depends on whether the relief sought is authorized under section 1060. In our view, IBR omits a critical factor in its analysis, i.e., whether any case or controversy remained after it removed any need for a declaration of rights once it vacated the premises that were the subject of the lease agreement between the parties. We hold that by vacating the premises two years before it filed its cross-complaint IBR removed the key condition precedent to maintenance of its action for declaratory relief.

³ Although as IBR structured its opening brief, it set out several contentions, we have reorganized those claims for discussion in this opinion, separating the remaining principal contention from separate headings IBR had included to address legal principles to be applied. We have also omitted discussion of IBR's original, alternate contention that it should have been granted leave to amend its second amended complaint based on the notice in its reply brief that this claim is now moot.

1. Nature of Declaratory Relief

Declaratory relief is a form of equitable action that may be initiated to determine and to declare the respective rights of the parties prior to an actual invasion of their rights. It operates prospectively rather than merely to redress past wrongs. Thus, Code of Civil Procedure section 1060 provides: “Any person interested under . . . a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an . . . action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.”

Section 1061 of the Code of Civil Procedure provides the court with the discretion to refuse to exercise the power granted by section 1060 “where its declaration or determination is not necessary or proper at the time under all the circumstances.” (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 661.)

In construing an earlier, but virtually identical version of Code of Civil Procedure section 1060, our Supreme Court

explained: “The ‘actual controversy’ referred to in this statute is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117, citing *Silva v. City & County of San Francisco* (1948) 87 Cal.App.2d 784, 789; see *Conroy v. Civil Service Com.* (1946) 75 Cal.App.2d 450, 456.)

Focusing on the “actual controversy” requirement for maintenance of an action for declaratory relief, the court in *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346 emphasized that, “The controversy that is the subject of declaratory relief ‘ ‘ ‘must be of a character which admits of specific and conclusive relief by judgment within the field of judicial determination, as distinguished from an advisory opinion upon a particular or hypothetical state of facts’ ”’ ” (*Id.* at p. 1355, citing *Redwood Coast Watersheds Alliance v. State Bd. of Forestry & Fire Protection* (1999) 70 Cal.App.4th 962, 968.)

And, as described in *Babb v. Superior Court* (1971) 3 Cal.3d 841: “ ‘[D]eclaratory procedure operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them.’ ” (*Id.* at p. 848, citing *Travers v. Loudon* (1967) 254 Cal.App.2d 926, 931; see *Bachis v. State Farm Mutual Auto. Ins. Co.* (1968) 265 Cal.App.2d 722, 727-728.)

The nature of declaratory relief is well-established. “ ‘The principle that courts will not entertain an action which is not founded on an actual controversy is a tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply. . . . A controversy is “ripe” when it has reached, *but has not passed*, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.’ ” (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1722, italics added, quoting *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.) Even where a particular matter is an inherently proper subject of declaratory relief, “ ‘ ‘ ‘a declaratory judgment may not be rendered in respect to [such a matter] in disregard of the customary limitations upon the granting of such relief.’ ” ’ ” (*Bame v. City of Del Mar, supra*, 86 Cal.App.4th at p. 1355, quoting *Redwood Coast Watersheds Alliance v. State Bd. of Forestry & Fire Protection, supra*, 70 Cal.App.4th at p. 968.)

Thus, the presence of an actual controversy is a necessary predicate to a viable declaratory relief claim. (*City of Tiburon v. Northwestern Pac. R.R. Co.* (1970) 4 Cal.App.3d 160, 170.) There is no entitlement to a judgment in a declaratory relief action when there is no antagonistic property interest. (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 831.)

2. Scope of Review

Statutory motions for judgment on the pleadings are authorized by Code of Civil Procedure section 438, subdivision (c)(3)(B)(ii), which provides that such a motion may be granted when “[t]he complaint does not state facts sufficient to constitute a cause of action” Thus, as with a demurrer to a complaint,

“ [t]he task of this court is to determine whether the complaint states a cause of action. All facts alleged in the complaint are deemed admitted, and we give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context. [Citations.] We are not concerned with a plaintiff’s [or cross-complainant’s] possible inability to prove the claims made in the complaint, the allegations of which are accepted as true and liberally construed with a view toward attaining substantial justice.’ ” (*Ludgate Ins. Co v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 602, citing *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198; accord, *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644 ,679, fn. 31.)

In reviewing such a judgment according to this standard, we are not bound by the determination of the trial court but are required to render our independent judgment on whether a cause of action has been stated. (*Hoffman v. State Farm Fire & Casualty Co.* (1993) 16 Cal.App.4th 184, 189.) Thus, our review is de novo. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) All properly pleaded, material facts are deemed true but not contentions, deductions, or conclusions of fact or of law. We also may consider judicially noticeable matters. (*Blank v. Kirwan, supra*, 39 Cal.3d 311, 318.)

Because we are reviewing the grant of a motion for judgment on the pleadings in an action seeking declaratory relief, our standard of review includes acknowledgement of the requirements of both Code of Civil Procedure sections 1060 and 1061. The former states that a “court may make a binding declaration” (Code Civ. Proc., § 1060; see *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647 (*Meyer*).) The latter states: “The court may refuse to [grant declaratory relief] in any

case where its declaration or determination is not necessary or proper at the time under all the circumstances.” (Code Civ. Proc., § 1061.)

Because both statutes indicate granting declaratory relief is permissive, it is established that “[t]he trial court’s decision to entertain an action for declaratory relief is reviewable for abuse of discretion.” (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433.) In *Meyer, supra*, 45 Cal.4th at page 647, our Supreme Court stated that this discretion is not boundless, quoting the following from its earlier decision in *Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 762: “‘Where . . . a case is properly before the trial court, under a complaint which is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is entirely appropriate, the trial court may not properly refuse to assume jurisdiction’”⁴ The same authorities support the view that the contrary is also true: When the facts and circumstances reveal that such an adjudication is not appropriate, the trial court may properly refuse to assume jurisdiction and grant declaratory relief.

With respect to contract actions in particular, including those bottomed on whether a party has failed to comply with contract terms to pay a stated amount of rent, although the declaratory relief statute does not require an existing breach of

⁴ There is no clear indication whether our Supreme Court was suggesting that the text of Code of Civil Procedure section 1060 (or of section 1061) grants the trial court greater discretion to grant a motion for judgment on the pleadings in a declaratory relief action than in other types of actions. In the present case, we need not resolve that issue as the circumstances here fully support the trial court’s ruling, whichever standard is applied.

contract, there must be an “actual controversy.” (*Meyer, supra*, 45 Cal.4th at p. 647; see *Columbia Pictures Corp. v. DeToth, supra*, 26 Cal.2d at p. 760.)

Further, we may affirm for reasons stated or not stated by the trial court as we review the record of the trial court, not necessarily its reasons. (Accord, *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980-981) and affirm if that ruling was correct even if for a reason not relied upon by that court. (See *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 610, citing *Lucas v. Pollock* (1992) 7 Cal.App.4th 668, 673.)

DISCUSSION

IBR filed its cross-complaint on October 1, 2015. Its second cause of action alleged “[a]n actual controversy now exists between Vasile and IBR regarding their respective rights and obligations under the Lease.”⁵ Based on this “actual controversy,” IBR sought a declaration that “it is not indebted to [Vasile] for any amount”

Vasile’s motion for judgment on the pleadings was made on the basis that the second cause of action “fails to state facts sufficient to constitute a cause of action for declaratory relief”

⁵ The full allegation is: “An actual controversy now exists between Vasile and IBR regarding their respective rights and obligations under the Lease. Vasile contends that IBR is indebted to him for various amounts under the Lease; whereas, IBR contends that it is not indebted to him for any amount whatsoever, or in the alternative, that it is not indebted to him for any amount under the Lease after setting off the various amounts that are owed to it by Vasile against any amounts that it owes to Vasile.”

IBR stated in its opposition to the motion that it had vacated the premises on October 16, 2013. The trial court determined that this action by IBR was fatal, pointing out that “cross-complainant contends that it vacated the premises on Oct. 16, 2013.” The trial court properly relied on IBR’s statement in determining that, “[t]herefore, there was no actual and existing controversy with respect to the rights and obligations of the parties”⁶

In making this ruling, the trial court relied in part upon the following reasoning in *Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366 (*Osseous*): “ ‘Declaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy that calls for a declaration of rights, it is no objection that past wrongs are also to be redressed; but *there is no basis for declaratory relief where only past wrongs are involved.*’ ” (Italics added.)

That is the circumstance presented to the trial court below and which we review now: There was no remaining controversy, and thus no basis for declaratory relief.

In addition, we take judicial notice that, a month prior to the hearing on the motion, Vasile had dismissed his complaint to recover what he had alleged to be unpaid rent.⁷ This is an

⁶ It was also clear from the first cause of action of the cross-complaint, which sought recovery of IBR’s security deposit on the basis that the amount had not been returned within 30 days of IBR’s vacating the premises (see Civ. Code, § 1950.7) that it had vacated.

⁷ IBR includes extensive additional arguments concerning the application of *Osseous* to the present case. We need not address those arguments to resolve this case on the central point

additional reason to conclude both that there was no basis upon which to obtain declaratory relief (as there was no remaining actual controversy between the parties) and that the trial court's ruling was not an abuse of discretion.

IBR's other arguments are dependent upon the existence of an actual case or controversy. As none existed, we do not discuss those claims.

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs incurred on appeal.

GOODMAN, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

that vacating the premises eliminated the necessary element that there be an actual existing controversy to support IBR's declaratory relief cause of action.

* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.