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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TIA SMITH, Plaintiff and Appellant, v. AMERICAN MORTGAGE NETWORK et al., Defendants and Respondents.	B271362 (Los Angeles County Super. Ct. No. BC465542)

APPEAL from orders of the Superior Court of Los Angeles County. Teresa A. Beaudet, Judge. Affirmed.

Tia Smith, in propria persona, for Plaintiff and Appellant.

Akerman, Justin D. Balser for Defendants and Respondents.

BACKGROUND

In 2006, Tia Smith executed a promissory note to obtain a loan for $556,000, secured by a deed of trust on real property she owned in Los Angeles. The beneficiary of the trust deed was Mortgage Electronic Registration Systems, Inc. (MERS). By 2007, Smith's trust deed had been acquired by the RALI 2007-QO1 trust, a mortgage pooling security, and her note by Deutsche Bank Trust Company Americas (Deutsche Bank), which was also the trustee for certificate holders of the RALI 2007-QO1 trust. Deutsche Bank retained Aurora Loan Services LLC to service the loan.

In 2011, Aurora Loan Services notified Smith that a notice of trustee's sale had been recorded on the property. Smith filed this lawsuit against MERS, Aurora Loan Services, and Deutsche Bank to prevent foreclosure. Aurora Loan Services eventually foreclosed on the property and purchased it at the trustee's sale. In 2013, the trial court sustained the defendants' demurrer to Smith's third amended complaint without leave to amend and dismissed the action. In 2015, we affirmed the judgment of dismissal. (*Smith v. American Mortgage Network, Inc.*, May 21, 2015, B252585 [nonpub. opn.].)

Upon remand, Smith discovered that Deutsche Bank's attorneys had sometimes misspelled the name of the pooling security as the "RALI 2007-Q01 Trust" rather than the "RALI 2007-QO1 Trust," i.e., they had substituted a *zero* for a capital *O* as the penultimate character in the trust's name. The misspelling was repeated in the judgment of dismissal.

Smith moved to set aside the judgment on the ground that the misspelling constituted extrinsic fraud. In support of her motion she offered her declaration and 24 attached exhibits,

including loan and securitization documents, other documents pertaining to the employment status of persons with whom she had communicated concerning her loan, and such litigation-related filings as defendants' briefs and this court's opinion in the prior appeal. Defendants objected to Smith's declaration on the grounds that it lacked foundation or authentication and assumed facts not in evidence. The trial court sustained all of defendants' objections except for two pertaining to communications Smith had received from loan entities, a ruling Smith does not challenge on appeal.

Defendants moved to modify the judgment, arguing the misspelling was a simple clerical error. In support of the motion Dennis Lueck, Deutsche Bank's attorney, declared that the proper name of the RALI trust was "RALI 2007-QO1 Trust," and the use of a 0 rather than an O in some of the bank's filings was "no more than a typographical error."

The trial court denied Smith's motion and granted defendants' motion to modify the judgment *nunc pro tunc*.

Smith appeals both orders. After filing her notice of appeal Smith requested judicial notice of several documents, which we granted.

DISCUSSION

Smith contends the judgment was obtained by extrinsic fraud, and the trial court therefore had no power to correct it but could only void it. We disagree.

A party may seek equitable relief from a final judgment achieved by fraud which denied the party an opportunity to be heard or to fully present a claim. (*F.E.V. v. City of Anaheim* (2017) 15 Cal.App.5th 462, 471.) " 'Extrinsic fraud usually arises when a party is denied a fair adversary proceeding because he

has been "deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his clam or defense." ' " (*Id*. at pp. 471-472; see, e.g., *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181 [plaintiff falsified a return of summons]; cf. *Sporn v. Home Depot USA, Inc*. (2005) 126 Cal.App.4th 1294, 1300 [defendant failed to show plaintiff falsely represented that the matter would not go forward].)

Fraud is "intrinsic" where a party was given notice of the action and had an opportunity to present her case and protect herself from any mistake or fraud of her adversary, but unreasonably neglected to do so. (*Los Angeles Airways, Inc. v. Hughes Tool Co*. (1979) 95 Cal.App.3d 1, 8.) A party who was deprived of a fair opportunity to fully present a case at trial may challenge the final judgment on equitable grounds, but a party who failed to assemble all her evidence may not. (*In re Marriage of Grissom* (1994) 30 Cal.App.4th 40, 47; see *City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067-1068 [insufficient that the judgment was simply premised upon false facts; the facts must not have been reasonably discoverable prior to the entry of judgment]; *Pour Le Bebe, Inc. v. Guess? Inc*. (2003) 112 Cal.App.4th 810, 828) [intrinsic fraud insufficient to set aside a judgment even where the moving party was unaware of the fraud and had no opportunity to raise it below].)

We review for abuse of discretion an order granting or denying a motion to set aside a judgment on the basis of extrinsic fraud. (*In re Marriage of Grissom*, *supra*, 30 Cal.App.4th at p. 45.)

Smith argues defendants denied her the opportunity to present her claim against the RALI 2007-QO1 trust because trial counsel appeared only on behalf of Deutsche Bank in its capacity

as trustee for the RALI 2007-Q01 trust. The argument is without merit.

A trust cannot be a party in a lawsuit. (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914 [a trust itself cannot sue or be sued].) Unlike a corporation, which the law may deem to be a person, a trust is not deemed a person, but merely " ' "*a fiduciary relationship with respect to property*." ' " (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548.) "Legal title to property owned by a trust is held by the trustee . . . . [Citation.] . . . 'A . . . trust . . . is simply a collection of assets and liabilities.' " (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1343-1344; see *Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787 ["an ordinary express trust is not an entity separate from its trustees"].) Deutsche Bank's attorneys sometimes refer to the trust itself as the defendant, but the bank, as trustee, is the true defendant. "[M]any courts use a shorthand, albeit technically incorrect, description for a judgment against trustees in their representative capacity, referring simply to a judgment against a 'trust.' . . . [Citations.] . . . however, a trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property." (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 474-475.)

A claim may be asserted against a trust by proceeding against the trustee. "[T]he trustee is the real party in interest with standing to sue and defend on the trust's behalf." (*Estate of Bowles* (2008) 169 Cal.App.4th 684, 691.) "[T]he proper procedure for one who wishes to ensure that trust property will be available to satisfy a judgment . . . . [is to] sue the trustee in his or her representative capacity." (*Galdjie v. Darwish*, *supra*, 113 Cal.App.4th at p. 1349.) Naming the trustee in its

representative capacity signals that it will not be held individually liable, and the only property in hazard is that which the trustee holds in trust.

Here, Smith litigated against the appropriate party, Deutsche Bank. The bank's attorneys' misspelling of the name of the trust that Deutsche Bank represented did nothing to deprive Smith of the opportunity to litigate against the bank itself.

In any event, the law does not require that the name of a party to a lawsuit be properly spelled, so long as the party can be identified. (*Grannis v. Ordean* (1914) 234 U.S. 385, 395 ["even in names, 'due process of law' does not require ideal accuracy"].) A judgment will not be set aside where no evidence indicates that a slight misspelling rendered a party unaware that it was the person named as defendant. (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 857.) When the phonology of a correct name and a name as written are similar, the person's identity is presumed known despite a minor misspelling. (*Brum v. Ivins* (1908) 154 Cal. 17, 20.) "[S]light errors in spelling, which do not destroy the virtual identity of name, (*idem sonans*) . . . are disregarded entirely." (*Ibid.*)

Because Deutsche Bank's counsel declared that the misspelling of the name of the RALI trust was inadvertent, and because the misspelling preserved the phonology of the correct name (zero is often spoken as "oh") and largely preserved its visual form, the trial court reasonably found the misspelling to be a minor clerical error. A "court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." (Code Civ. Proc., § 473, subd. (d); see *Russell v. Superior Court In and For Placer County* (1967) 252 Cal.App.2d

1, 8 [attorney drafting error reflected in the final judgment corrected; *Gravert v. Deluse* (1970) 6 Cal.App.3d 576, 581 [misspelling corrected *nunc pro tunc*].)

Smith argues the RALI 2007-QO1 trust does not actually exist, as evidenced by a certificate from the Minnesota Secretary of State indicating the trust is not registered in Minnesota, even though its business address is in that state. The argument presents an evidentiary issue that cannot be resolved on appeal based on judicially noticed records. We will note, however, that a trust, like a corporation, need not conduct business in the state in which it was formed.

Smith argues the trial court had no jurisdiction to correct the judgment while proceedings were stayed during the prior appeal. The argument is without merit. A "trial court may, while an appeal is pending, . . . correct clerical errors in the judgment." (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 923.)

Smith argues the Lueck declaration was largely inadmissible, but she offered no objection to it below and cannot do so for the first time on appeal. (Evid. Code, § 353, subd. (a) [a finding shall not be set aside by reason of the erroneous admission of evidence absent a timely objection].) Smith argues the trial court was biased because it ruled against her. We disagree. " 'The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.' " (*Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 673.) But adverse rulings alone do not reflect judicial bias. (*Id.* at p. 674.)

DISPOSITION

The judgment is affirmed. Respondents are to receive their costs on appeal.

NOT TO BE PUBLISHED

CHANEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

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