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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WILLIE ANDERSON et al.,

Plaintiffs and Appellants,

v.

EQUIFIRST CORPORATION,

Defendant;

JOANNA NGAN CHEUNG, as
Trustee, etc.,

Real Party in Interest and
Respondent.

B280691

(Los Angeles County
Super. Ct. No. BC564593)

APPEAL from orders of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed in part and dismissed in part.

Willie Anderson and Ella M. Anderson, in pro. per., for
Plaintiffs and Appellants.

Law Offices of Gao Peng and Gao Peng for Real Party in Interest and Respondent.

Plaintiffs Willie Anderson and Ella M. Anderson (the Andersons) appeal from the trial court's October 31, 2016 order granting the motion of real party in interest Joanna Ngan Cheung, as Trustee of the Joanna Ngan Cheung Trust 1988 (the Trustee) to vacate the judgment entered on November 20, 2015, quieting title in the Andersons to certain real property in Pomona, California (the Property). We affirm the order vacating the 2015 judgment. We also dismiss the appeal from the 2017 judgment on the pleadings.

FACTUAL AND PROCEDURAL BACKGROUND¹

We discern from the Quiet Title Judgment entered in their favor on November 20, 2015, that on November 21, 2014, the Andersons had filed a complaint to quiet title to the Property against EquiFirst Corporation (EquiFirst) and all unknown persons claiming an adverse interest in it. A copy of the complaint is not in the record on appeal. The 2015 judgment was entered following an evidentiary hearing, also on November 20, 2015.

¹ We set out the facts and procedural history based on the record provided by appellant, which as we explain in the text, is deficient.

On September 28, 2016, the Trustee filed a motion to vacate the quiet title judgment,² arguing she was an indispensable party to the action as the assignee of the deed of trust, and the Andersons' failure to name her as a party in the complaint constituted a fraud on the court. In support of her motion, the Trustee filed a request for judicial notice, which included: (1) a recorded Assignment of Deed of Trust, dated October 8, 2013, assigning all rights under the deed of trust "together with the certain note(s) described therein" from Mortgage Electronic Registration Systems, Inc. (MERS), as nominee of EquiFirst, to the Trustee; (2) a recorded Corrective Assignment of Deed of Trust, dated July 7, 2014, assigning all rights under the deed of trust related to the Property from MERS, as the nominee of EquiFirst, to the Trustee; (3) a recorded Trustee's Deed Upon Sale, dated January 30, 2015, stating the Property had been purchased by the Trustee; and (4) a copy of the Andersons' Application For Publication, filed February 2, 2015, stating the Andersons had "reviewed the records of the Los Angeles County Recorder's Office and did not ascertain any defendants claiming ownership and/or an adverse claim" to the Property.

Wang filed a declaration in support of the Trustee's motion attesting to the Trustee's ownership interest in the Property, also authenticating a copy of a Residential Lease or Month-to-Month Rental Agreement, dated March 1, 2015 for the Property, which

² The motion to vacate was also filed on behalf of Yu Lan Wang, Trustee of the Ace Trust (Wang), who appears to be a 50 percent owner of the Property, along with the Trustee. Wang is not a party to this appeal.

appeared to be signed by both the Trustee, as one of the landlords owning the Property, and the Andersons, as tenants.

The Andersons opposed the motion to vacate, contending, among other things, that the Trustee did not have a valid legal claim to the Property because assignments of deeds of trust were “null and void” since there was no evidence they had been transferred concurrently with the note. The Andersons also filed objections to the Trustee’s request for judicial notice but no factual opposition.

On October 31, 2016, the trial court granted the Trustee’s motion to vacate and set aside the quiet title judgment previously entered in favor of the Andersons.

The Andersons filed a timely notice of appeal.

DISCUSSION³

The Andersons contend the trial court erred in granting the Trustee's motion to vacate the quiet title judgment because (1) the motion failed to meet the requirements of Code of Civil Procedure section 473, subdivision (d)⁴; (2) the Trustee failed to

³ In their opening brief, the Andersons include arguments regarding the trial court's February 6, 2017 order granting the Trustee's motion for judgment on the pleadings, which was issued following the trial court's October order vacating the quiet title judgment. That matter, however, is not properly before us as the Andersons did not designate the judgment which assumedly followed that order in their notice of appeal, or a record adequate to support this aspect of their appeal. "Despite the rule favoring liberal interpretation of notices of appeal, a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed." (*Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041, 1045.) Here, the notice of appeal states the appeal is from an order after judgment, and attaches a copy of the October order, but makes no reference to the February order or to the subsequent judgment. (*DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43 ["[W]here several judgments and/or orders occurring close in time are separately appealable . . . , each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal"].) Because the Andersons did not expressly appeal from the judgment following the February 2017 order, we have no jurisdiction to review that ruling. We also note they provided an entirely inadequate record with respect to their purported appeal from the judgment on the pleadings.

⁴ All further statutory references are to the Code of Civil Procedure.

properly intervene in the action under section 387; and (3) the Trustee “failed to provide any valid evidence that they had an interest in [the Andersons’] debt obligation that was adverse to the evidence [the Andersons] presented at the prove up hearing.” We reject the Andersons’ assertions.

A. *Applicable Legal Principles*

“[I]t is settled that: ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant’s burden on appeal to produce a record “‘which overcomes the presumption of validity favoring [the] judgment’ [citation].” (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) “A ruling on a motion to vacate a judgment rests in the sound discretion of the trial court. [Citation.] We will not reverse the exercise of such discretion except when there is clear abuse.” (*State of Arizona ex rel. Arizona Dept. of Revenue v. Yuen* (2009) 179 Cal.App.4th 169, 178.)

A court may take judicial notice of the fact of a document’s recordation, the date it was signed and recorded, the parties to the transaction reflected in the recorded document, and the document’s legally operative language, provided there is no genuine dispute as to the authenticity of the document. Based on such a document, a court may discern and rely on the legal effect of the recorded document. (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265, disapproved on other grounds in

Yvanova v. New Century Mortgage Corp. (2016) 62 Cal.4th 919, 939, fn. 13; but see *Yvanova*, at p. 924, fn. 1 [approving judicial notice holding of *Fontenot*].)

“A motion to vacate a judgment for extrinsic fraud is not governed by any statutory time limit, but rather is addressed to the court’s ““inherent equity power”” to grant relief from a judgment procured by extrinsic fraud.” (*Department of Industrial Relations v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App.4th 560, 570.) “Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding.” (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067.) “To set aside a judgment based on extrinsic fraud or extrinsic mistake, the moving party must satisfy three elements: ‘First, the defaulted party must demonstrate that it has a meritorious case. Secondly, the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Lastly, the moving party must demonstrate diligence in seeking to set aside the default once it had been discovered.’ [Citations.]” (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290-291, italics omitted.)

B. *Discussion*

The record which the Andersons have provided on this appeal fully supports the trial court’s determination to set aside the default judgment, rather than any merit in their appeal. While the Andersons failed to include in the record on appeal their complaint or a copy of the reporter’s transcript of

proceedings or a settled or agreed statement (see Cal. Rules of Court, rules 8.134, 8.137), they have provided the Trustee's request for judicial notice containing documents recorded in the office of the Los Angeles County Recorder, and their own memorandum of law in opposition to that request. We may presume on this record that the trial court granted the request for judicial notice, and took into consideration that the Andersons offered no facts in opposition to the request to set aside the default judgment prior to granting the motion. The facts established by the grant of the request for judicial notice included not only the Trustee's ownership of the Property (*Fontenot v. Wells Fargo Bank, N.A., supra*, 198 Cal.App.4th at p. 265), but also the Andersons' fraud on the court in claiming they had "reviewed the records of the Los Angeles County Recorder's Office and did not ascertain any defendants claiming ownership and/or an adverse claim" to the Property.

Other evidence, including the lease between the Trustee and the Andersons, confirmed the Andersons were aware of the true owners of the property, but had falsely stated in obtaining the original judgment that they had reviewed the real property records at the county recorder's office and "did not ascertain any defendants claiming ownership and/or an adverse claim" to the Property. As is discernable from records of which the trial court properly took judicial notice, the Trustee held an interest in the Property during the time period relevant to this action and as of the date the Andersons reviewed the real property records and filed the declaration containing the misleading statement quoted above.

This record makes clear the Andersons' third contention on appeal, that the Trustee had failed to present any "valid evidence

that [the Trustee] had an interest,” is without merit. Indeed, the evidence of which the trial court properly took judicial notice establishes that it is the Andersons who had no valid claim to warrant the judgment quieting title to the Property in them.

The Andersons also err in their contention that the Trustee’s motion was brought under section 473. It was not; instead it was predicated upon the equitable power of the trial court. Such a motion is not governed by any statutory time limit, but rather is addressed to the court’s ““inherent equity power”” to grant relief from a judgment procured by extrinsic fraud.” (*Department of Industrial Relations v. Davis Moreno Construction, Inc., supra*, 193 Cal.App.4th at p. 570.) That power was properly exercised in this case.

There is no evidence the Trustee was aware of the existence of the action below until after judgment was entered on November 20, 2015. The ruling of the trial court granting the Andersons judgment in 2015 necessarily had been based on the court’s acceptance as true of the unilateral evidentiary presentation provided by the Andersons, which the Trustee established to be false. Moreover, the Trustee could not intervene in an action when its existence was not known to it. Nor might it have intervened in this action before the 2015 judgment was set aside.

Accordingly, the trial court did not abuse its discretion in granting the Trustee’s motion to vacate the quiet title judgment. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957 [“there is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the trial court’s decision or, alternatively stated, if

that decision falls within the permissible range of options set by the applicable legal criteria”].)

DISPOSITION

The October 31, 2016 order vacating the November 20, 2015 judgment is affirmed. The appeal from the February 6, 2017 order is dismissed. Respondent shall recover its costs on appeal.

GOODMAN, J.*

We Concur:

BIGELOW, P.J.

GRIMES, J.

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