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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

RABOBANK, N.A.,

Plaintiff and Respondent,

v.

ADELE SCHNEIDEREIT,

Defendant and Appellant.

2d Civil No. B275358
(Super. Ct. No. 14CV0581)
(San Luis Obispo County)

Adele Schneidereit appeals from the judgment entered after the trial court granted respondent Rabobank's motion for summary judgment in this action to enforce a guaranty. (Code Civ. Proc., § 437c.)[1] She contends the judgment must be reversed because it is based on a facially void judgment entered in another lawsuit. She contends Rabobank is not entitled to recover its costs and attorney fees for the same reason. We affirm.

[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

Facts

In 2007, appellant Adele Schneidereit and her husband, Jeff Schneidereit, borrowed $544,500 from Mid-State Bank & Trust, the predecessor of respondent Rabobank. That loan was evidenced by a promissory note and secured by a deed of trust on a residence located on Dolliver Street in Pismo Beach, California. At that time, Jeff Schneidereit was the chief executive officer of Jeff Schneidereit Architects Inc. (JSAI); Adele Schneidereit was JSAI's chief financial officer. In their capacity as officers of JSAI, the Schneidereits obtained, also from Rabobank's predecessor, a $100,000 revolving line of credit for the corporation. The line of credit was evidenced by a promissory note and accompanied by a corporate resolution to borrow, each of which were signed by the officers of JSAI. Adele Schneidereit and Jeff Schneidereit each also signed a continuing commercial guaranty of the line of credit.

The Schneidereits stopped making payments on both the real estate loan and the line of credit in February 2009. Their loan defaults have spawned at least three separate lawsuits, four appeals, a petition for writ of mandate and two bankruptcy petitions. Because Adele Schneidereit's contentions on appeal refer to these other matters, we briefly summarize them.

Schneidereit v. Rabobank, No. B233774 (*Schneidereit I*).

After the Schneidereits stopped making payments on the real estate loan, Rabobank attempted to negotiate a forbearance and workout agreement with them. The Schneidereits, however, refused to sign the agreement Rabobank drafted. Rabobank scheduled a foreclosure sale for the property. The Schneidereits filed a complaint against Rabobank to enjoin

the sale. At the hearing on the Schneidereits' motion for a temporary restraining order, the parties again attempted to negotiate a settlement. The Schneidereits agreed to settle their obligations under both the real estate loan and the line of credit by signing a modified Forbearance-Workout Agreement drafted by Rabobank. The trial court dismissed the complaint with the consent of all parties.

Almost immediately after the hearing, the Schneidereits refused to sign the written agreement that incorporated the modifications they accepted at the trial court hearing. Rabobank filed a motion to enforce the settlement agreement, which the trial court granted. (§ 664.6.) We reversed the order because the trial court had not retained jurisdiction to enforce the settlement agreement. (B233774.)

Rabobank v. Jeff Schneidereit Architects, Inc., No. CV 120108.

JSAI defaulted on the line of credit by failing to make monthly payments and by failing to repay the loan in full by the due date. In February 2012, after the Schneidereits refused to sign the Forbearance-Workout Agreement, Rabobank filed a complaint against JSAI to recover the unpaid balance of the line of credit. Appellant and Jeff Schneidereit were not named as defendants in the complaint. JSAI never filed an answer. In September 2012, the trial court entered a default judgment against JSAI for $122,589. Nearly two years later, in June 2014, JSAI filed an ex parte motion to vacate all collateral orders and stay the judgment pending appeal. The motion was denied two days later. We dismissed the appeal in August 2014.

Rabobank v. Schneidereit No. B275358 (*Schneidereit II*).

In 2007, appellant and Jeff Schneidereit each signed a continuing commercial guaranty of the line of credit that Rabobank extended to JSAI. Appellant's guaranty states, "For good and valuable consideration, [Appellant] absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against [Appellant] even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the indebtedness or against any collateral securing the indebtedness, this Guaranty or any other guaranty of the indebtedness. [Appellant] will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents."

On August 28, 2014, Rabobank made a written demand that appellant honor her guaranty and pay the judgment entered against JSAI. Appellant did not pay the judgment.

In November 2014, Rabobank filed a complaint against appellant and Jeff Schneidereit for breach of their respective continuing commercial guaranties. Ten days later, Jeff Schneidereit filed a Chapter 7 bankruptcy petition. The

action was stayed as to Jeff Schneidereit but continued with regard to appellant.[2]

Appellant did not answer the complaint. Instead, she filed a motion to vacate the judgment Rabobank had obtained against JSAI. Appellant contended the judgment against JSAI was void because the trial court in that matter lacked personal and subject matter jurisdiction. Rabobank opposed the motion on the grounds that it violated JSAI's bankruptcy stay and that appellant lacked standing because she was not a party to the JSAI lawsuit. The trial court denied appellant's motion to vacate for those reasons.

Ultimately, the trial court set aside appellant's default in *Schneidereit II* and overruled her demurrer. Rabobank filed a series of motions to compel appellant's responses to various discovery requests and her appearance at her deposition. The trial court granted these motions and imposed monetary sanctions against appellant, but denied Rabobank's request for terminating sanctions.

After the motions to compel were granted, Rabobank filed a motion for summary judgment. Appellant did not oppose the motion. Instead, she filed a motion to vacate the order granting Rabobank's motions to compel and awarding sanctions. The trial court denied the motion to vacate and granted summary judgment to Rabobank. Appellant's motion to set aside and vacate the summary judgment was also denied. Each motion to vacate was based on the same contentions: that the trial court lacked jurisdiction to consider Rabobank's cause of action for

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[2] JSAI filed a Chapter 7 bankruptcy case in October 2014. In that proceeding, JSAI listed the Rabobank judgment as a debt without disputing its legitimacy or finality.

breach of the guaranty because the judgment it obtained against JSAI was void. The judgment against JSAI is void, appellant contends, because the trial court lacked personal jurisdiction over JSAI and the final judgment in *Schneidereit I* bars subsequent litigation on any of the contracts between the parties. Appellant relies on these same contentions in this appeal.

Standard of Review

We independently review the trial court's decision to grant summary judgment, applying the same legal standard as the trial court. (*Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1285, disapproved on another ground, *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826; *Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.) We consider all of the admissible evidence presented to the trial court, and all inferences reasonably drawn from that evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843.)

The moving papers on a motion for summary judgment must show the nonexistence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. (*LPP Mortgage. v. Bizar* (2005) 126 Cal.App.4th 773, 776; § 437c, subd. (c).) A plaintiff moving for summary judgment is required to demonstrate, through admissible evidence, that "there is no defense to the action or proceeding." (§ 437c, subd. (a).) This burden is met if the plaintiff "has proved each element of the cause of action entitling the party to judgment on the cause of action." (§ 437c, subd. (p)(1).) The moving plaintiff's initial burden of proof does not include disproving any affirmative defenses asserted by defendants. (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.*

(2009) 170 Cal.App.4th 554, 564-565.) Once the plaintiff has proved each element of the cause of action, the burden shifts to the defendant "to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (§ 437c, subd. (p)(1).)

Discussion

Breach of Guaranty

Rabobank's complaint against appellant alleges a single cause of action for breach of the continuing guaranty. "A lender is entitled to judgment on a breach of guaranty claim based upon undisputed evidence that (1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty. [Citation.]" (*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486.)

The evidence Rabobank submitted in support of its motion for summary judgment proved each of these facts. Rabobank's predecessor, Mid-State Bank & Trust, made an unsecured commercial loan to JSAI. Appellant signed a written, continuing commercial guaranty of that loan. The bank advanced loan proceeds to JSAI. JSAI defaulted on the loan by failing to make monthly payments, and by failing to repay the loan in full before the due date. Rabobank obtained a judgment against JSAI. After JSAI failed to satisfy the judgment, Rabobank demanded that appellant honor her guaranty and pay the judgment on behalf of JSAI. Appellant breached her guaranty because she did not pay the judgment.

Appellant filed no timely opposition to the motion for summary judgment, nor did she submit any admissible evidence demonstrating the existence of a material factual dispute on any element of Rabobank's cause of action. Consequently, the trial

court correctly concluded that no genuine issue of material fact existed and granted the motion for summary judgment. (§ 437c, subd. (p)(1); *Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.*, *supra*, 170 Cal.App.4th at pp. 564-565.)

Motion to Vacate Judgment

Having failed to file a timely opposition to the motion for summary judgment, appellant challenged the resulting judgment against her by filing a motion to vacate it. The arguments she made in the motion to vacate, which was denied by the trial court, are the same arguments she raises on appeal. Appellant contends the judgment in this matter, and the judgment against JSAI, are void because the trial courts in both matters lacked personal and subject matter jurisdiction. Like the trial court, we reject these contentions.

Waiver of Defenses. Appellant's guaranty included a broad waiver of rights and defenses she might otherwise have asserted. Among other things, appellant waived any right she might have had to require Rabobank to "proceed against any person, including [JSAI], before proceeding against [appellant]," or to "pursue any remedy or course of action in [Rabobank's] power whatsoever." She also waived any defense she might have had "arising by reason of . . . any disability or other defense of [JSAI,]" or "any act of omission or commission by [Rabobank] which directly or indirectly results in or contributes to the discharge of [JSAI] . . . , or the indebtedness" or "arising out of an election of remedies by [Rabobank]."

These waivers are enforceable. (Civ. Code, § 2856; *CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 793 [guarantor's waiver of "antideficiency protections, including the protections embodied in the one-action

rule . . . [is] valid and enforceable"]; *Gray1 CPB, LLC v. Kolokotronis*, *supra*, 202 Cal.App.4th at p. 491 [unconditional and exhaustive waivers of guarantor's rights or defenses under California surety statutes and antideficiency legislation "have withstood challenge and are enforceable"].) They bar appellant from asserting a res judicata defense because she expressly waived any defense relating to the order in which Rabobank pursued its remedies against various debtors and guarantors. This includes a defense, like res judicata, based on Rabobank's having previously obtained a judgment against another debtor or guarantor. Because appellant waived her right to assert these defenses, the trial court properly rejected them and denied the motion to vacate.

Even if appellant had not waived her defenses, we would reject them for the reasons that follow.

Personal Jurisdiction. Appellant contends the judgment against JSAI is void because the trial court lacked personal jurisdiction over JSAI. Initially, the summons and complaint in Rabobank's action against JSAI erroneously identified the defendant as, "Jeff Schneidereit, Inc." One week later, Rabobank cured that error by filing an amended summons and complaint, naming "Jeff Schneidereit Architects, Inc." as the defendant. Rabobank personally served the amended complaint on Jeff Schneidereit at JSAI's place of business. But the process server neglected to check any of the boxes on the bottom portion of the summons. As a consequence, the portion of the summons that is designed to inform the person served of the capacity in which he or she has been served was left blank. Appellant contends that because the bottom portion of the summons was not completed, the trial court never acquired personal jurisdiction

over JSAI, the resulting judgment is void and the obligation imposed by her guaranty never arose.

"[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444.) In California, the original service of process confers jurisdiction and "must conform to statutory requirements or all that follows is void. [Citations.]" (*Honda Motor Co. v. Superior Court* (*Opperwall)* (1992) 10 Cal.App.4th 1043, 1048.)

A summons may be served on a corporation by delivering a copy of the summons and complaint to the corporation's chief executive officer. (§ 416.10, subd. (b).) The summons "shall contain a notice stating in substance: 'To the person served: You are hereby served in the within action (or special proceeding) on behalf of (here state the name of the corporation . . .) as a person upon whom a copy of the summons and of the complaint may be delivered to effect service on said party under the provisions of (here state appropriate provisions of Chapter 4 (commencing with Section 413.10) of the Code of Civil Procedure).'" (§ 412.30.)

Substantial compliance with these provisions is sufficient to confer jurisdiction on the trial court. (*Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778; *Cory v. Crocker National Bank* (1981) 123 Cal.App.3d 665, 670.) Substantial compliance may be found where "(1) the record shows partial or colorable compliance with the requirement on which the objection is predicated; (2) the service relied upon by the plaintiff imparted actual notice to the defendant that the suit was pending and that he was bound to defend; and (3) the manner and objective circumstances of service were such as to

make it highly likely that it would impart such notice." (*Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852, 855.)

Rabobank's service on JSAI substantially complied with section 412.30. The summons and complaint were personally served on the chief executive officer of JSAI, at JSAI's place of business. Although the bottom portion of the summons has not been completed, the top portion of the summons identifies a single defendant, JSAI, and states, "NOTICE! You have been sued." The complaint itself alleges only one cause of action, for breach of contract, against one defendant, JSAI. Jeff Schneidereit, the corporate officer on whom the summons was personally served, is also the person who applied for and signed the promissory note and other loan documents at issue. There is no reasonable possibility that JSAI, or the individual served on its behalf, were in any way confused about the identity of the defendant or the fact that a suit was pending against it that it was bound to defend. These facts demonstrate substantial compliance with the requirements for service of process. (*Cory v. Crocker National Bank*, *supra*, 123 Cal.App.3d at pp. 669-671.) Consequently, the trial court in *Rabobank v. JSAI* acquired personal jurisdiction over JSAI.

Subject Matter Jurisdiction. Appellant contends the trial courts lacked subject matter jurisdiction in this matter and in *Rabobank v. JSAI* because the settlement reached in *Schneidereit I* encompassed the real estate loan, the line of credit and the guaranties. The trial court's order dismissing the complaint in *Schneidereit I* is, appellant contends, a final judgment that precludes subsequent litigation between the parties. Appellant is incorrect.

First, the judgment in *Schneidereit I* does not have the preclusive effect appellant claims. In their complaint in *Schneidereit I*, appellant and her husband alleged the promissory note and deed of trust on the Dolliver Street property were unenforceable based on several statutory and common law theories. They alleged no cause of action relating to the guaranties. The parties dismissed *Schneidereit I* before Rabobank filed an answer or cross-complaint, so Rabobank also never alleged an affirmative defense or cause of action based on the guaranty.

The only issue presented on appeal in *Schneidereit I* was whether Rabobank could rely on section 664.6 to enforce what it regarded as a settlement between the parties. We held that Rabobank could not rely on the expedited procedure provided in section 664.6 because the trial court did not retain jurisdiction to enforce a settlement before it dismissed the complaint. In reaching that holding, we noted there was substantial evidence that the parties had agreed to sign a settlement agreement drafted by Rabobank, rather than a version of the agreement drafted by the Schneidereits. Our holding, however, was limited to the application of section 664.6. Statements relating to the settlement agreement were dicta and consequently have no res judicata or collateral estoppel effect. (*Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 348.)

Second, *Schneidereit I* alleged different causes of action from those alleged in *Rabobank v. JSAI* and in the instant matter. The judgment of dismissal entered in *Schneidereit I* resolved only the causes of action alleged in that matter and has no preclusive effect on any other cause of action. (*Rice v. Crow*

(2000) 81 Cal.App.4th 725, 733-734 [voluntary dismissal with prejudice after settlement is res judicata "only to the same causes of action between the same parties or their privies"].) As a consequence, the judgment in *Schneidereit I* does not render void the judgments later entered in other matters.

"Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. . . . [Citation.]" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896, fn. omitted.) The doctrine prevents piecemeal litigation because it provides that "all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Id.* at p. 897.) A cause of action "is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.]" (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-682.)

Claims based on the same cause of action must be joined in the same suit, but "there is no requirement that *separate* causes of action be brought in the *same* lawsuit." (*Jarman v. HCR ManorCare Inc.* (2017) 9 Cal.App.5th 807, 825.) "Joinder of different causes of action is permissive. . . . 'That the two causes of action might have been joined in one lawsuit under our permissive joinder provisions [citation] does not prevent the plaintiff from bringing them in separate suits if he elects to do so.'" (*Fujifilm Corp. v. Yang* (2014) 223 Cal.App.4th 326, 333,

quoting *Sawyer v. First City Financial Corp.* (1981) 124 Cal.App.3d 390, 402-403.)

A breach of contract gives rise to a single cause of action. All remedies sought for that breach must be joined in a single suit. (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 906.) Conversely, claims arising from the breach of different contracts allege different causes of action and may be raised in different lawsuits, even if the contracts are between the same parties. (See, e.g., *Stanson v. Mott* (1976) 17 Cal.3d 206, 213; *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854.)

An order voluntarily dismissing a complaint with prejudice after settlement is considered a final judgment that may, applying the principles of res judicata, bar subsequent litigation. (*Morris v. Blank* (2001) 94 Cal.App.4th 823, 830.) Res judicata also applies to an affirmative defense or cross-complaint that is resolved by a final judgment on the merits. In that context as in any other, res judicata principles remain the same: "In order for res judicata to apply, the cause of action in the subsequent litigation must be identical to that in the first. [Citation.]" (*Id.* at p. 831; see also *Alpha Mechanical*, *Heating & Air Conditioning*, *Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1328-1332 [cross-complaint resolved by voluntary dismissal with prejudice is res judicata, barring the same party from asserting the same causes of action as affirmative defenses in a subsequent lawsuit].)

Appellant's guaranty is a separate contract from JSAI's revolving line of credit and from the promissory note and deed of trust at issue in *Schneidereit I*. Her breach of the guaranty violates a separate primary right, and gives rise to a

distinct cause of action belonging to Rabobank. That cause of action was not alleged, by way of affirmative defense or cross-complaint, in *Schneidereit I* because the lawsuit was dismissed with prejudice before Rabobank filed any responsive pleading. (§ 426.30, subd. (b)(2); *Morris v. Blank*, *supra*, 94 Cal.App.4th at pp. 831-832.)[3] Because the cause of action for breach of the guaranty is separate from causes of action based on appellant's breaches of other contracts, Rabobank was not required to join this cause of action with those other claims. Rabobank's cause of action for breach of the guaranty was not "merged" into any final judgment entered in the previous lawsuits between the parties. The judgment in *Schneidereit I* does not render void the judgments later entered in *Rabobank v. JSAI* or in the present matter.

Attorneys Fees and Costs

Appellant contends the trial court erred in granting Rabobank's motion for attorney fees and allowing it to recover its costs because both awards are based on the void judgments. We reject these contentions because, as we have explained, the judgments are not void.

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[3] The statute provides, "[I]f a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded. [¶] (b) This section does not apply if . . . [¶] [¶] (2) The person who failed to the plead the related cause of action did not file an answer to the complaint against him." (§ 426.30.)

Conclusion

The judgment is affirmed. Costs to respondent.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Barry T. LaBarbera, Judge

Superior Court County of San Luis Obispo

Adele Schneidereit, in propria persona for Defendant and Appellant.

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