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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

LECIA SHORTER, Plaintiff and Appellant, v. RALPHS GROCERY COMPANY, et al., Defendants and Respondents.	B280375 Los Angeles County Super. Ct. No. BC627843

APPEALS from judgments of the Superior Court of Los Angeles County, Gerald K. Rosenberg, Judge. Affirmed.

Lecia Shorter, in pro. per., for Plaintiff and Appellant.

Wesierski & Zurek, Brent Gerome and Lynne Rasmussen for Defendant and Respondent Ralphs Grocery Company.

Wood, Smith, Henning & Berman, Kevin D. Smith and Nicholas M. Gedo; Wayne & Associates and Eric J. Wayne for Defendant and Respondent ABM Security Services.

INTRODUCTION

Generally speaking, the doctrine of res judicata prohibits the relitigation of claims or issues decided on the merits in a prior court proceeding. One of the primary rationales for the doctrine of res judicata is that it benefits both the parties and the courts by curtailing repeated litigation and thereby avoiding the considerable emotional and financial cost to the parties as well as the waste of judicial resources and taxpayer funds.

This appeal arises out of the second of two actions filed by Lecia Shorter (plaintiff) against defendants and respondents Ralphs Grocery Company (Ralphs) and ABM Security Services (security company). In both actions, plaintiff's complaint alleged that she was assaulted on a patio outside a Ralphs grocery store (store) by two Ralphs patrons (two patrons) and that the absence of security guards in the area outside the store substantially contributed to her injury.

In the first action, the trial court granted Ralphs's summary judgment motion after finding that plaintiff was the primary cause of the altercation with the two patrons. The court concluded as a legal matter that the absence of a nearby security guard could not reasonably be the proximate cause of plaintiff's injury.

In the second action, plaintiff's "new" complaint repeated all the allegations of the complaint filed in the first action and added new negligence theories. Ralphs and the security company demurred on the ground that res judicata barred plaintiff from relitigating her case. The court agreed, sustained the demurrers without leave to amend, and entered judgments of dismissal in favor of both Ralphs and the security company. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. The Incident

According to the operative complaint, shortly before midnight on November 4, 2014, plaintiff purchased several items, including a salad, from a Ralphs grocery store in Westwood. The late hour notwithstanding, plaintiff sat on the patio outside the store (premises) to eat the salad. Plaintiff encountered two other patrons of the store on the premises and claims she was injured during an altercation with them.

2. The Prior Case

2.1. The Complaint

In June 2015, plaintiff filed a lawsuit in the Los Angeles Superior Court (Case No. BC 583960) (the prior case) naming, as pertinent here, Ralphs, the property manager of the premises, and the security company hired by the property manager as defendants.

Plaintiff stated two causes of action in her complaint. The first, against Ralphs and the property manager, was for premises liability. Plaintiff alleged Ralphs was aware that during the hours of 10:00 p.m. and 2:00 a.m., "there is a high volume of traffic of individuals … who purchase alcoholic beverages." Further, Ralphs was aware that due to the store's proximity to a college campus, young adults under the age of 21 would not drink responsibly and would purchase "high volumes of alcoholic beverages during the hours of 10:00 p.m. and 2:00 a.m." Thus, plaintiff claimed, it was reasonably foreseeable that young adults who purchase alcoholic beverages from Ralphs during those hours "may be intoxicated and engage in violent and/or inappropriate behavior toward store patrons" and therefore

Ralphs and the property manager had a duty to provide adequate security at the store and on the premises. Plaintiff alleged she was injured by the two patrons, who she believed were intoxicated and possibly under the legal drinking age, because no security guards were present on the premises.

Plaintiff asserted her second cause of action for breach of contract (as a third party beneficiary) against the security company. She alleged the property manager contracted with the security company to provide uniformed security guard services at the premises for the purpose of protecting patrons such as herself. The security company breached its contract with the property manager by failing to provide a uniformed security guard on the premises at the time she was injured.

2.2. Summary Judgment in Favor of Ralphs

Ralphs, joined by the property manager, moved for summary judgment, arguing that plaintiff could not establish that its conduct caused her alleged injuries. Specifically, Ralphs asserted plaintiff intentionally annoyed the two patrons on the patio by singing loudly in an attempt to disrupt their conversation. When plaintiff heard the two patrons talking about her singing, she initiated a verbal confrontation with them and walked over to them, escalating the situation to a physical confrontation. In short, Ralphs argued, because plaintiff caused the incident, she would be unable to demonstrate that any conduct by Ralphs or the property manager—including ensuring the presence of a security guard—proximately caused her injuries.

The court agreed and granted Ralphs's motion for summary judgment. On the question of causation, the court concluded:

"Plaintiff contends that Defendants were negligent in failing to provide adequate security patrols to prevent the attack from a third party. However, reasonable minds could only conclude from the undisputed facts that the absence of security guards was not the proximate cause of Plaintiff's injury. She initiated and escalated her incident with" the two patrons.[1]

The court granted the summary judgment motion on July 5, 2016, and entered judgment in favor of Ralphs on August 8, 2016. Plaintiff did not appeal.

2.3. Plaintiff's Motion to Amend the Complaint

On June 7, 2016, approximately six weeks after Ralphs filed its motion for summary judgment and roughly one year after she filed her complaint, plaintiff filed a motion seeking to amend her complaint by, as pertinent here, adding causes of action for negligence and negligence per se, i.e., "furnishing alcoholic beverages to obviously intoxicated minors in violation of Business and Professions Code section 25602.1" against Ralphs, and negligent hiring and supervision against all defendants. Plaintiff attached a proposed amended complaint to her motion and claimed the request to amend was "in the furtherance of justice based upon facts which have been uncovered during the discovery phase of this lawsuit." The court denied the motion to amend on July 12, 2016. The basis of the court's ruling is not disclosed by the appellate record.

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[1] Neither the separate statement nor the evidence offered by Ralphs in support of its motion for summary judgment is included in the appellate record.

2.4. Dismissal of Remaining Defendants and Case

On August 17, 2016, at plaintiff's request, the court dismissed all the remaining defendants—including the security company—with prejudice and then dismissed the case.

3. The Current Case

3.1. Initial Proceedings

On July 22, 2016—10 days after the court denied plaintiff's motion to amend her complaint in the prior case—plaintiff filed what appeared to be a new complaint in the Los Angeles Superior Court and the court assigned the matter a new case number (Case No. BC627843) (the current case). In fact, the "new" complaint was virtually identical to the proposed amended complaint plaintiff submitted in the prior case, except that plaintiff reordered the names of the defendants in the caption. Shortly thereafter, at counsel's request, the current case was transferred to the judge who handled the prior case and the court deemed the prior case and the current case to be related.

On August 22, 2016, plaintiff filed a peremptory challenge under Code of Civil Procedure section 170.6, seeking to disqualify the judge. The court struck the challenge, stating that the current case was "a continuation of the original action (BC583960) out of which it arises because this new and related action (BC627843) involves the same parties and substantially the same issues as the original action." Approximately 10 days after the court issued its ruling, plaintiff filed a second peremptory challenge under Code of Civil Procedure section 170.6, again seeking to disqualify the judge. The court struck the second challenge for the reasons stated in the order on the first peremptory challenge.

3.2. The Security Company's Demurrer

The security company demurred to the complaint, noting plaintiff had voluntarily dismissed the security company, with prejudice, from the prior case. The company argued that the dismissal constituted a final determination of the prior case on the merits and that because the claims stated in the current case involved the same primary right at issue in the prior case, the doctrine of res judicata barred plaintiff from prosecuting the current case.

Plaintiff opposed the demurrer, noting that although the court purported to dismiss the security company from the case *with* prejudice on August 17, 2016, the court clerk had entered the security company's dismissal *without* prejudice at plaintiff's request, effective August 1, 2016. Plaintiff asserted that, as a result of the earlier entry of voluntary dismissal without prejudice, the court had no jurisdiction to dismiss the security company from the case *with* prejudice when it did so and therefore its order was void. And because a voluntary dismissal without prejudice does not constitute a resolution on the merits for purposes of res judicata, the doctrine did not bar her from naming the security company as a defendant in the current case.

The court heard argument on the security company's demurrer on October 26, 2016. The court later signed an order sustaining the demurrer without leave to amend, which order was filed on November 16, 2016. The order does not indicate the basis of the court's ruling. No judgment was entered at that time.

However, judgment in favor of the security company was entered on August 14, 2019.[2]

3.3. Ralphs's Demurrer

Ralphs also demurred to the complaint, arguing plaintiff's complaint in the current case was a sham pleading designed to circumvent the court's prior order denying her request to file the proposed amended complaint in the prior case. Further, Ralphs noted the court had entered judgment in its favor in the prior case, which involved substantially the same claims as the current case. Therefore, the doctrine of collateral estoppel barred plaintiff from pursuing the current case.

Plaintiff opposed the demurrer, arguing collateral estoppel did not apply because the current case involved several additional defendants not named in the prior case as well as new causes of action for, as pertinent here, negligence, negligence per se, and negligent supervision and training.

The court heard argument on Ralphs's demurrer on November 23, 2016. According to Ralphs's notice of ruling, the court sustained the demurrer without leave to amend "on the grounds that the elements of res judicata are satisfied, as set forth in the seminal case *Agarwal v. Johnson* (1979) 25 Cal.3d 932." (Italics added.) A judgment of dismissal as to Ralphs was filed on January 23, 2017.

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[2] Because an order sustaining a demurrer without leave to amend is not an appealable order, we invited plaintiff to obtain a judgment of dismissal. She did so and we have augmented the appellate record to include that judgment in favor of the security company.

4. The Court's Rulings and the Appeal

Plaintiff filed a notice of appeal on January 20, 2017, purporting to appeal from an order sustaining the security company's demurrer without leave to amend entered on November 28, 2016, and an order sustaining Ralphs's demurrer without leave to amend entered on November 16, 2016.

DISCUSSION

1. Appealability

We must address any issue relating to appealability, as it concerns our jurisdiction. (See *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [noting "[a] reviewing court must raise the issue [of appealability] on its own initiative whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1"].)

1.1. The Security Company

We must construe a notice of appeal liberally, in favor of its sufficiency. (Cal. Rules of Court, rule 8.100(a)(2); *Luz v. Lopes* (1960) 55 Cal.2d 54, 59.) As to the security company, plaintiff's notice of appeal purports to appeal from a November 28, 2016 order sustaining the security company's demurrer without leave to amend. That order was signed and filed on November 16, 2016, however. Moreover, "[a]n order sustaining a demurrer without leave to amend is not appealable, and an appeal is proper only after entry of a dismissal on such an order." (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1396, citing *Berri v. Superior Court* (1955) 43 Cal.2d 856, 860.)

Here, both plaintiff and the security company urged us to consider the merits of the appeal, notwithstanding the absence of an appealable judgment or order. Although we do not do so, during the pendency of the appeal we alerted plaintiff to the absence of an appealable order or judgment—as well as the possibility that her appeal could be dismissed—and gave her the opportunity to return to the trial court and obtain a judgment of dismissal with respect to the security company. She did so and we have augmented the record to include the newly entered judgment of dismissal in favor of the security company. As plaintiff has now cured the jurisdictional defect, and no prejudice appears, we treat the appeal as from that judgment. (Cal. Rules of Court, rule 8.104(d); see also *Maria D. v. Westec Residential Security, Inc.* (2000) 85 Cal.App.4th 125, 129, fn. 1.)

1.2. Ralphs

As to Ralphs, plaintiff's notice of appeal purports to appeal from the order sustaining its demurrer without leave to amend, entered on November 16, 2018. Again, the date of the order is incorrect. It appears from the record that the matter was heard by the court on November 23, 2016, and on that date Ralphs filed and served a notice of ruling indicating that the court sustained the demurrer without leave to amend "on the grounds that the elements of res judicata are satisfied, as set forth in the seminal case *Agarwal v. Johnson* (1979) 25 Cal.3d 932." (Italics added.) No minute order or other order signed by the court is included in the appellate record.

Ralphs subsequently obtained a judgment of dismissal signed by the court and filed on January 23, 2017. Because a judgment of dismissal has been entered, and no prejudice appears, we liberally construe the appeal to have been taken

from the judgment of dismissal. (See Cal. Rules of Court, rules 8.100(a)(2), 8.104(d); *Los Altos Golf & Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, 202–203.)

2. The court's orders and judgments are not void.

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Plaintiff contends all orders and judgments entered by the court in the current case are void because the judge improperly struck her challenges to him under Code of Civil Procedure section 170.6. As noted, the current case was transferred to the judge who oversaw the prior case and he deemed the two cases to be related. Plaintiff then attempted to disqualify the judge twice and both attempts were rejected.

Although plaintiff contends the judge was disqualified under Code of Civil Procedure section 170.6, she offers no evidence to support that contention. Specifically, the appellate record does not include any of the documents she filed in support of her peremptory challenges. The failure to provide an adequate record requires that the issue be resolved against the appellant.

(*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)[3]

3. The court properly sustained the demurrers without leave to amend.

3.1. Standard of Review

"When reviewing a judgment dismissing a complaint after the granting of a demurrer without leave to amend, courts must assume the truth of the complaint's properly pleaded or implied factual allegations. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Courts must also consider judicially noticed matters. (*Ibid.*) In addition, we give the complaint a reasonable interpretation, and read it in context. (*Ibid.*) If the trial court has sustained the demurer [*sic*], we determine whether the complaint states facts sufficient to state a cause of action." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).)

We may affirm the sustaining of the demurrer if the pleading or matters that are judicially noticeable disclose a complete defense. (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 324; see Code Civ. Proc., § 430.30, subd. (a).) Res judicata is a proper ground for demurrer if the complaint and judicially noticed facts demonstrate its applicability. (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180

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[3] In any event, a petition for writ of mandate is the exclusive method for obtaining review of a denial of a judicial disqualification motion. (See Code Civ. Proc., § 170.3, subd. (d).) Indeed, our Supreme Court has rejected the argument that a disqualification ruling under Code of Civil Procedure section 170.6 is reviewable on appeal from a subsequent judgment. (See *People v. Williams* (1997) 16 Cal.4th 635, 652; *People v. Hull* (1991) 1 Cal.4th 266, 272.)

Cal.App.4th 210, 225 [court may take judicial notice of court records in considering demurrer based on res judicata].)

"If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]" (*Schifando, supra,* 31 Cal.4th at p. 1081.)

3.2. Legal Principles

The court sustained Ralphs's demurrer "on the grounds that the elements of res judicata are satisfied, as set forth in the seminal case *Agarwal v. Johnson* (1979) 25 Cal.3d 932." (Italics added.) The court also sustained the security company's demurrer without leave to amend and although the basis of the court's ruling is not apparent from the appellate record, we presume the court applied the doctrine of res judicata with respect to the security company as well. (See, e.g.*, State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 ["[B]ecause the trial court's order denying defendant's motion for relief does not state its reasons, and defendant has provided no reporter's transcript of the proceedings, we presume the trial court's rejection of [defendant's] motion was based on any rationale supported by the record"]; *Finnie v. District No. 1—Pacific Coast Dist. etc. Assn.* (1992) 9 Cal.App.4th 1311, 1316 [noting appellate courts generally review results, not reasons provided by trial courts].)

" 'As generally understood, "[t]he doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy." [Citation.] The doctrine "has a double aspect." [Citation.] "In its primary aspect," commonly known as claim preclusion, it "operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]" [Citation.] "In its secondary aspect," commonly known as collateral estoppel, "[t]he prior judgment ... 'operates' " in "a second suit ... based on a different cause of action ... 'as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' [Citation.]" [Citation.] "The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]" ' [Citation.]" (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797, italics omitted (*Boeken*).) " ' "Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief." ' " (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897 (*Mycogen*).)

"[F]or purposes of applying the doctrine of res judicata, the phrase 'cause of action' has a more precise meaning: The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citation.]" (*Boeken*, *supra*,

48 Cal.4th at p. 798.) Whether a new cause of action is the same as one in a prior action is not determined on the basis of the legal theory or relief sought, but by whether they are both premised on a violation of the same primary right, i.e., " 'the plaintiff's right to be free from the particular injury suffered.' " (*Mycogen, supra*, 28 Cal.4th at p. 904.) Accordingly, "[e]ven where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. 'Hence a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different *legal ground* for relief.' [Citations.]" (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795; *Boeken,* at p. 798.) In short, "[w]hen two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right. [Citation.]" (*Boeken*, at p. 798.)

3.3. Analysis

The court correctly sustained both demurrers without leave to amend based on res judicata. Taking the required elements in reverse order, the third element—identity of the party against whom res judicata is asserted—is plainly satisfied inasmuch as Shorter was the plaintiff in the prior case and is the plaintiff in the current case. The second element—a final judgment on the merits—is also satisfied. The court's ruling on the summary judgment motion followed by the court's judgment in favor of Ralphs in the prior case is final and it resolved plaintiff's claims on the merits.

We are therefore concerned only with the first element, i.e., whether an issue raised in the current case is identical to an issue litigated in the prior case. We conclude the specific factual finding on which the summary judgment in the prior case was

based—that the absence of security guards on the premises was not the proximate cause of plaintiff's injury—is at issue in the current case.[4]

In the prior case, plaintiff alleged that she suffered injury on the premises at the hands of the two patrons. She claimed Ralphs had a duty to provide adequate security to protect patrons at its store. As to the security company, plaintiff alleged it was obligated to provide uniformed security guards at the premises under the terms of a contract with the property manager, and failed to do so. Plaintiff alleged she sustained injury at the hands of the two patrons as a direct result of the absence of security guards.

The primary right at issue in the prior case was therefore plaintiff's right to be free from violent acts of other patrons while on the premises. And in the prior case, the court found as a factual matter that *plaintiff* initiated and escalated the confrontation with the two patrons that resulted in her injury. Therefore, the court concluded as a legal matter that the absence of security guards could not be considered a proximate cause of plaintiff's injury.

In the prior case, plaintiff advanced only one cause of action against Ralphs—premises liability—and only one cause of action against the security company—breach of contract. In the

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[4] Issue preclusion may properly be asserted here by both Ralphs and the security company, even though the judgment in the prior case related only to Ralphs's motion for summary judgment. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 [issue preclusion may be asserted by a party in privity with another party].) For that reason, we need not reach the security company's argument relating to the dismissal orders in the prior case.

current case, she asserts several different causes of action against these defendants, designated as negligence, negligence per se, breach of contract, and negligent supervision and training. The same primary right is involved in each of the claims in the current case.

On the negligence claim, plaintiff alleges Ralphs had a duty to comply with its lease agreement, including maintaining the premises in a reasonably safe condition for its patrons and conducting its business (particularly the sale of alcoholic beverages) in compliance with laws and applicable permits. She further alleges Ralphs breached its duty by "selling alcohol to obviously intoxicated individuals," "not safely escorting [the two patrons] off the premises," and "allowing [the two patrons] to remain on the premises and consume alcoholic beverages." Plaintiff asserts that as a result of Ralphs's failure to have an appropriate security protocol and its sale of alcohol to the two patrons, she was injured.

With respect to the negligence per se claim, asserted only against Ralphs, plaintiff states that Business and Professions Code section 25602.1 imposes civil liability for the sale of alcohol to an obviously intoxicated minor where the minor's intoxication causes an individual's personal injury. She then alleges that one of the two patrons was an obviously intoxicated minor and that Ralphs's sale of alcohol to the minor was the cause of her injuries.

Plaintiff reasserted the breach of contract (third party beneficiary) claim asserted in the prior case. Then, she only asserted the claim against the security company. But in the current case, she also named Ralphs as a defendant on that claim, alleging Ralphs's lease agreement with the property owner gave it the right to sell alcohol for off-site consumption only.

Plaintiff alleged Ralphs breached the lease agreement by selling alcohol to the two patrons and allowing them to remain on the premises while they consumed it, all of which created an unsafe environment for patrons, including plaintiff. And as before, plaintiff alleged the security company had a contractual obligation to provide uniformed security guards on the premises and failed to do so.

Finally, plaintiff claims several defendants, including Ralphs and the security company, negligently hired, trained, and supervised its employees, thereby creating a risk of harm for patrons, including plaintiff.

Each of these legal theories contains the same essential element—Ralphs's and/or the security company's action or inaction proximately caused plaintiff's alleged injury while she was on the premises. Stated differently, each of these theories relates to the same primary right: plaintiff's right to be free from violent acts of other patrons while on the premises. And on that point, the court's prior determination that *plaintiff's* actions were the primary cause of her injuries—and the absence of security guards in the area could *not* be considered a proximate cause of plaintiff's injuries—is determinative.

Plaintiff does not address the primary right issue. Instead, she asserts that "an erroneous ruling cannot support a claim of res judicata." She then argues, at length, that the court's summary judgment ruling in the prior case was incorrect. On that basis, she claims the application of res judicata in the current case would result in a miscarriage of justice.

As Ralphs points out, plaintiff did not appeal from the judgment entered in Ralphs's favor in the prior case. By failing to appeal, plaintiff forfeited the right to challenge the court's

summary judgment ruling in the prior case and her attempt to undermine it here is improper. (See, e.g., *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1315–1316 [noting that if a judgment or order is appealable, an aggrieved party must file a timely appeal or forever lose the opportunity to obtain appellate review].)

In sum, one of the primary rationales for the doctrine of res judicata is that it "benefits both the parties and the courts because it 'seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration.' " (*Mycogen, supra*, 28 Cal.4th at p. 897, italics omitted.) The application of the doctrine here is consistent with its primary purpose.[5]

[5] Although we conclude plaintiff's appeal is without merit, we do not agree that it is frivolous and was taken solely to cause delay. (Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276(a)(1).) Accordingly, we deny Ralphs's request for sanctions, filed August 2, 2018.

DISPOSITION

The judgments in favor of Ralphs Grocery Company and ABM Security Service are affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.