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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GRIFFIN BURKE, Plaintiff and Appellant, v. BENWORTH CAPITAL PARTNERS, LLC et al., Defendants and Respondents.	G064478 (Super. Ct. No. 30-2023-01319692) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Griffin Burke, in pro. per., for Plaintiff and Appellant.

Klinedinst, Ian A. Rambarran and Robert M. Shaughnessy for Defendants and Respondents.

* * *

Griffin Burke appeals the dismissal of his lawsuit against a lender whom he alleged failed to disburse loan funds under the pandemic-era federal Paycheck Protection Program (PPP). Griffin assigned his causes of action to his mother, Christina Burke, so she could pursue them while he attended graduate school.[1] After bringing the lawsuit in her own name, Christina accepted an offer to compromise under Code of Civil Procedure section 998 (section 998 offer) and dismissed the lawsuit.[2]

Griffin then filed a new lawsuit based on the very same claims. The defendants filed a demurrer, arguing the complaint was barred by res judicata and Griffin's lack of standing. The trial court agreed and sustained the demurrer without leave to amend.

We affirm. Griffin assigned his claims to Christina, who accepted a settlement and dismissed the lawsuit. These claims have been resolved and cannot be revived.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In March 2021, Griffin signed a promissory note for a PPP loan worth $10,907. Benworth Capital Partners, LLC (Benworth) was the lender on the note. On May 9, 2021, Benworth disbursed the loan proceeds into an American Express account identified by Griffin, but American Express returned the funds to Benworth the following day, citing compliance reasons.

Griffin alleged Benworth was aware that many banks were not accepting PPP funds due to compliance reasons. Griffin provided Benworth

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[1] We will refer to Griffin Burke and Christina Burke by their first names to avoid confusion; we intend no disrespect.

[2] All undesignated statutory references are to the Code of Civil Procedure.

with a secondary bank account number so the funds could be re-wired. He also applied for a second draw from the PPP program on May 28, 2021, alleging borrowers were eligible to receive a second draw in the same amount once the first draw was funded.

On May 31, 2021, however, the PPP program ended. Griffin never received funds from the first or second draw. Because he was beginning graduate studies, he assigned his claims based on the nonreceipt of the loan funds to Christina.

Christina filed a complaint against Benworth in May 2022 for breach of contract, fraud, conversion, and unlawful business practices (Bus. & Prof. Code, § 17200) (*Burke v. Benworth Capital Partners, et al.* (case No. 30-2022-01260002) (*Burke I*)). She later amended the complaint to add Benworth's sole member and manager, Bernardo Navarro, as a defendant. In the complaint, Christina alleged Griffin had "assigned all his interests in the Promissory Note and all claims arising from the breach" to her and the assignment "[was] a complete assignment."

Benworth and Navarro (defendants) served a section 998 offer on Christina, offering to resolve the matter for $5,000 "inclusive of all damages, penalties, costs, attorneys' fees, interest, and any claims against Defendants." Christina accepted the section 998 offer. Judgment was entered in *Burke I* on October 21, 2022, based on the section 998 offer. Defendants paid Christina $5,057.81.[3]

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[3] Defendants later filed a motion to vacate the *Burke I* judgment, claiming Christina had refused to file a notice of satisfaction of judgment and Griffin had told defendants' counsel he would be filing a new complaint for the same claims Christina had just settled. The trial court denied defendants' motion to vacate the *Burke I* judgment.

In April 2023, Griffin filed a complaint against Benworth, Navarro, and Womply, Inc. (Womply)[4] for breach of written contract, conversion, intentional misrepresentation, and unlawful business practices (Bus. & Prof. Code, § 17200) (*Burke II*). He later amended his complaint to add OTO Analytics, LLC dba Womply as a defendant.[5] This appeal concerns *Burke II*.

In addition to repeating the allegations from *Burke I*, Griffin alleged in *Burke II* that defendants settled *Burke I* knowing the judgment "did not resolve all the issues." Specifically, Griffin alleged defendants initially asked Christina for a "'settlement agreement with a mutual release of all claims with all Burkes as signatories.'" Griffin claims defendants tried to vacate the *Burke I* judgment because he would not agree to their global settlement proposal. He also alleged defendants attempted to reverse the payment of settlement monies.

Griffin alleged he refused to be a signatory to the *Burke I* judgment and filed *Burke II* because he wanted to "right the wrongs" he believed defendants had committed against PPP loan applicants and borrowers.

Defendants filed a demurrer, arguing Griffin lacked standing to bring the claims, the claims failed to state facts sufficient to constitute a

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[4] Griffin alleged Womply was a company which aided lenders in processing, managing, and tracking PPP loans. The record shows judgment was entered in Womply's favor in November 2023, and Griffin did not appeal from that judgment.

[5] OTO Analytics is not a party to this appeal.

cause of action, and the complaint was uncertain. The trial court sustained the demurrer without leave to amend. Griffin appealed.[6]

DISCUSSION

"On demurrer review, we accept the truth of material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice." (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 346.)

Defendants posited three arguments in support of their demurrer. First, they argued *Burke II* was barred by res judicata because judgment was entered on these same claims after Christina accepted their section 998 offer. Second, they argued Griffin lacked standing to bring the *Burke II* lawsuit because he assigned his claims to his mother and she obtained a judgment on them. Third, they contend Griffin's claims lack legal merit for various reasons. Like the trial court, we need not consider the

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[6] Griffin's appeal is from the minute order sustaining the demurrer without leave to amend, which is not an appealable order. (*Hamilton v. Green* (2023) 98 Cal.App.5th 417, 422–423.) The judgment in favor of defendants was not a part of the appellate record. On our own motion, we augmented the appellate record with the judgment. Pursuant to California Rules of Court, rule 8.104(d)(2), we deem Griffin's premature notice of appeal to have been filed immediately after entry of that judgment.

Defendants oppose augmentation of the record and argue this court should dismiss the appeal as having been taken from a nonappealable order. We reject that argument. The California Supreme Court has upheld the practice of deeming an order sustaining a demurrer without leave to amend to be a final judgment when the ruling is sufficiently final. (*Meinhardt v. City of Sunnyvale* (2024) 16 Cal.5th 643, 654–655.) Thus, augmentation was not strictly necessary in this case, but rather ensures that the record before this court is complete and accurate. In light of our disposition, defendants will suffer no prejudice as a result of this decision.

merits of the allegations, because it is clear Griffin's lawsuit is barred based on both lack of standing and claim preclusion doctrines.

I.

GRIFFIN LACKS STANDING TO BRING THE CLAIMS IN *BURKE II* BECAUSE HE ASSIGNED THOSE CLAIMS TO CHRISTINA

"Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." (§ 367.) "A party who is not the real party in interest lacks standing to sue. [Citation.] 'A real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law.' [Citation.] A complaint filed by someone other than the real party in interest is subject to general demurrer on the ground that it fails to state a cause of action. [Citation.] The purpose of this section is to protect a defendant from harassment by other claimants on the same demand. [Citation.]" (*Redevelopment Agency of San Diego v. San Diego Gas & Electric Co.* (2003) 111 Cal.App.4th 912, 920–921.)

"As the court in *Johnson v. County of Fresno* (2003) 111 Cal.App.4th 1087, 1096 . . . explains, an assignee stands in the assignor's shoes: 'An assignment carries with it all the rights of the assignor. [Citations] "The assignment merely transfers the interest of the assignor. The assignee 'stands in the shoes' of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment." [Citation.] Once a claim has been assigned, the assignee is the owner and has the right to sue on it. [Citations.] In fact, once the transfer has been made, the assignor lacks standing to sue on the claim. [Citation.]'" (*Searles Valley Minerals Operations Inc. v. Ralph M. Parsons Service Co.* (2011) 191 Cal.App.4th 1394, 1402.)

Griffin alleges he assigned his rights to his mother and does not allege he got those rights back through any legitimate means before they were resolved. Once he assigned them, the claims belonged to Christina, and he was no longer the real party in interest.

II.

THE CLAIMS IN *BURKE II* ARE PRECLUDED BECAUSE OF THE FINAL JUDGMENT IN *BURKE I*

Griffin's claims are also precluded because Christina settled them. "'Res judicata' describes the preclusive effect of a final judgment on the merits. 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.] Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action. [¶] A clear and predictable res judicata doctrine promotes judicial economy. Under this doctrine, 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." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896–897, fn. omitted.)

"Res judicata, or claim preclusion, applies when: '(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding.' [Citation.] If those requirements are satisfied, res judicata applies not only to the issues actually litigated in the prior proceeding, but also to those issues that could have been litigated in that proceeding.

[Citation.]" (*SLPR, L.L.C. v. San Diego Unified Port Dist.* (2020) 49 Cal.App.5th 284, 298.)

This case meets all of the above requirements. *Burke II* makes claims that are either identical to those made in *Burke I* or are claims that arise out of the same nucleus of operative facts as *Burke I*. *Burke I* was settled by a section 998 offer and judgment was entered. Griffin admits in his pleading that Christina received the sum she was promised under the section 998 offer. He is a party in privity with Christina because he assigned the claims to her with the intention that she pursue them in his stead.

Griffin argues a judgment entered pursuant to a section 998 offer is not a final judgment on the merits, citing *Milicevich v. Sacramento Medical Center* (1984) 155 Cal.App.3d 997. But *Milicevich* does not support this conclusion. That case involved a medical malpractice claim against three defendants, two of whom settled by way of section 998. (*Milicevich*, at p. 1000.) The third defendant moved successfully for summary judgment based on the codefendants' settlement. (*Ibid.*) The Court of Appeal reversed because it correctly observed the judgment obtained against the settling defendants was only conclusive as to those defendants, not the third defendant. (*Id.* at p. 1004.) In this context, the court noted a section 998 judgment "is not predicated upon an adjudication of the amount of damages," or liability. (*Ibid.*) However, the court noted the judgment "is conclusive between the settling parties '*in accordance with the terms and conditions stated*' in the section 998 offer which are incorporated in the judgment. [Citation.] This makes the section 998 agreement the measure of the effect of the judgment." (*Ibid.*)

Here, defendants' section 998 offer stated it would "be inclusive of all damages, penalties, costs, attorneys' fees, interest, and any claims against

Defendants." Defendants' offer reflects they understood the payment of $5,000 would extinguish "any claims" Christina could make against them in the action. Thus, judgment on the section 998 offer was intended by the parties to be a final judgment on the merits.

Griffin also argues there was no privity between him and Christina because the assignment of his claims to her was void. He points to the fact that defendants previously made this argument in *Burke I*. Whether or not defendants argued the assignment was void, the issue is one of law and it was never actually litigated in that case.

"The circumstances recognized as creating privity have evolved over time." (*Grande v. Eisenhower Medical Center* (2022) 13 Cal.5th 313, 325.) As it currently stands, privity requires "'the sharing of "an identity or community of interest," with "adequate representation" of that interest in the first suit, and circumstances such that the nonparty "should reasonably have expected to be bound" by the first suit.' [Citation.]" (*Id.* at p. 326.) Since Griffin assigned his claims to Christina to pursue on his behalf, there can be no question they share a community of interest, and Christina was an adequate representative of that interest. Griffin should have expected to be bound by the outcome of Christina's suit after he assigned the claims to her. And we conclude he must be.

DISPOSITION

The judgment is affirmed. Respondents to recover their costs on appeal.

BANCROFT, J.*

WE CONCUR:

MOORE, ACTING P. J.

SANCHEZ, J.

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