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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF CONTRA COSTA,

Plaintiff, Cross-defendant and
Respondent,

v.

JOAN E. BRUZZONE, Individually and as
Executor, etc.,

Defendant, Cross-complainant and
Appellant.

A134369

(Contra Costa County
Super. Ct. No. C11-00044)

Appellant¹ claims a reversionary interest in certain real property in the City of Lafayette, as successor in interest to a real estate development firm which long ago conveyed the property to the Lafayette School District (School District) by way of two indentures. The School District accepted the conveyances by subsequently enacting ordinances which contained recitals that the conveyances were “ ‘for school purposes.’ ” In 1960, the School District deeded the property to respondent County of Contra Costa (County); the County maintained a library there through October 2009. Meanwhile, Bruzzone recorded notices intending to preserve a reversionary interest in the property. The County sued to quiet title, and Bruzzone cross-complained to quiet title and for other relief.

¹ Appellant is Joan E. Bruzzone, also known as Joan Marie Bruzzone, as an individual and as executor of the Estate of Russell J. Bruzzone, deceased (hereafter, Bruzzone).

Bruzzone’s claim to relief hinges on her interpretation of the operative instruments as bestowing on her a power of termination that she may enforce because the County breached a purported use restriction by failing to use the property “ ‘for school purposes.’ ” The trial court correctly quieted title to the property in favor of the County, thereby granting its motion for judgment on the pleadings and sustaining its demurrer to the amended cross-complaint without leave to amend. Accordingly, we affirm the judgment.

I. FACTUAL BACKGROUND

A. *Conveyances to School District and then County*

On December 23, 1938, the Moraga Company (Moraga) executed two indentures² granting to the School District six lots of land in the City of Lafayette (the Property). The granting language states that Moraga “has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto [School District] and to its successors and assigns forever, all that certain [described property].” The indentures were explicitly subject to two covenants and conditions that restricted the use of the property. The first purported to prohibit the School District from selling or leasing the property to persons of certain races. The second sought to prevent erection of “any residence, dwelling, hall or business building of a reasonable cost price of less than” \$2,500, without Moraga’s written consent, and further provided that no buildings for business purposes were to be erected on the land and nothing but a single family residence building could be erected without Moraga’s written consent. Finally, each indenture stated: “Upon breach of either of these conditions the said land, together with the improvements thereon, shall revert to [Moraga] and it or its agents shall thereupon become entitled to enter upon said land and take possession thereof.”

The School District accepted the two indentures by way of instruments entitled “RESOLUTION OF ACCEPTANCE OF DEED” dated September 25, 1939 and February 3, 1941, respectively. Each resolution recites that Moraga had presented to the

² As Bryan Garner explains, the word “indenture” is “essentially a synonym for *contract* or *agreement*. . . .” (Garner’s *Dictionary of Legal Usage* (3d ed. 2011) p. 446.)

School District's board of trustees "a good and sufficient deed conveying to said Lafayette School District . . . , the following described real property for school purposes. . . ." The resolutions ordered that the deeds be accepted and recorded in the office of the county recorder, and thereafter the resolutions and indentures were recorded.

In 1960, the School District granted the Property to the County pursuant to a grant deed recorded February 11, 1960. The Property was transferred subject only to "ENCUMBRANCES OF RECORD." Shortly after acquiring the property, the County began constructing a public library on the site, with construction completed in March 1962. The site was used continuously as a public library until October 2009.

B. Successors in Interest to Moraga

In 1953, Moraga conveyed by grant deed all of its property interests in the County, including all reversionary interests, to Utah Construction Company and Preston Management Company. These holdings embraced an extensive list of properties identified in an exhibit to the deed; neither the Property nor any purported reversionary interest in it was specifically referenced in the exhibit.

In July 1965, Preston Management Company executed a quitclaim deed in favor of Utah Construction & Mining Co., conveying all its rights, title, and interest in and to all real property and reversionary interests in the County to that enterprise. Again, this deed did not specifically reference any reversionary interest in the Property. Four years later, in 1969, Utah Construction & Mining Co. in turn quitclaimed all its real property interests in the County to Russell Bruzzone and Joan Bruzzone.

Years later, in December 1987, the Bruzzones recorded two notices of intent to preserve interest. The purpose of the notices was to preserve the "power of termination and/or reversionary interest" embodied in the two indentures. These notices appeared as exceptions on the preliminary title report for the Property issued to the County in June 2009.

In 1995, the County sued the City of Lafayette and its redevelopment agency seeking to invalidate the City's redevelopment plan. That litigation settled in 1996, with the County and redevelopment agency agreeing, among other things, that the two entities

would cooperate and make good faith efforts to construct at least 20 new or existing units of affordable special needs housing for persons with disabilities, and the agency further agreed to purchase the Property on or before June 30, 2011, for its then fair market value.

The County and the redevelopment agency entered into a memorandum of understanding in May 2010, in which the purchase price was set at \$1,690,000, subject to the County successfully prosecuting a quiet title action to remove exceptions from the title.

C. Litigation

The County sued Bruzzone in January 2011, seeking to quiet title; Bruzzone cross-complained, also to quiet title. Therein Bruzzone alleged she owned the Property based on an alleged reversionary interest and power of termination contained in the indentures. The County moved for entry of judgment on its complaint to quiet title, demurred to the cross-complaint, and requested that the court take judicial notice of the various deeds discussed above. The trial court granted the County's motions and allowed Bruzzone leave to amend the cross-complaint. The court held that the Moraga deeds to the School District contained two use restrictions which were either void as against public policy or invalid. The phrase " 'for school purposes' " was not a restrictive covenant; rather, it appeared in the recitals of the School District's resolutions accepting the Property. Further, assuming a valid power to terminate, the claims were barred by the statute of limitations. Utah Construction Company, Bruzzone's predecessor, had five years to challenge the breach of restrictions when the County built a library on the property in 1962.

Bruzzone submitted an amended cross-complaint for quiet title, breach of contract, cancellation of deed, and declaratory relief. Bruzzone pinned her entitlement to a reversionary interest on a purported express condition that the property be used for " 'school purposes.' " Again, the County moved for judgment on the pleadings and demurred to the amended cross-complaint,

The trial court quieted title in favor of the County, explaining that the County had a grant deed to the property subject to encumbrances of record which included the use

restrictions or conditions subsequent set out in the indentures from Moraga to the School District. These indentures did not restrict the property “ ‘for school purposes.’ ” Similarly, in sustaining the County’s demurrer, the court concluded that the breach of contract cause failed because there was no mutual assent on Moraga’s part to any condition that the property be used for “ ‘school purposes.’ ” The deeds unambiguously showed that Moraga granted property to the School District subject to restrictions that it build only single family residences of a certain value and not sell or lease the homes to persons of a certain race. Based on the clarity of the deeds, there was no need to resort to recitals in the resolutions to ascertain intent. The demurrer to the cause of action for cancellation of deed was sustained for the same reasons; the remaining causes for quiet title and declaratory relief were merely derivative of the first two.

II. DISCUSSION

A. *Standard of Review*

The trial court granted the County’s motion for judgment on the pleadings on its quiet title cause of action and sustained the County’s demurrer without leave to amend to Bruzzone’s first amended cross-complaint. We undertake de novo review of a judgment on the pleadings as well as a judgment of dismissal following the sustaining of a demurrer without leave to amend. (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 637.) We deem true all material facts properly pleaded, as well as facts that may be implied by or inferred from those expressly alleged. (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) We also consider relevant matters that are properly subject to judicial notice. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) However, we disregard allegations that are contrary to the law, to facts which may be judicially noticed, or to facts appearing in exhibits to a complaint; allegations inconsistent with an incorporated written instrument may be stricken. (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955; *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83.)

B. *The Trial Court Correctly Quieted Title in Favor of the County*

Bruzzone is adamant that she has a valid reversionary interest in the property based on the purported dedication of the property by Moraga for “ ‘school purposes,’ ” to which the District agreed. Continuing, Bruzzone reasons that as the successor in interest to Moraga, she can enforce this reversionary interest or power of termination because the County has attempted to divert the use of the Property from its dedicated purpose. Furthermore, she posits that as holder of a reversionary interest she is entitled to compensation under *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 624-625, 630.

Bruzzone bases her entire appeal on the faulty premise that the Property is subject to a restrictive covenant mandating that it be used “ ‘for school purposes.’ ” This simply is not the case.

Deeds are to be construed in the same manner as other contracts. (Civ. Code, § 1066.) The language of the deed governs its interpretation, if it is clear and explicit. (*Id.*, § 1638.) “A fee-simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.” (*Id.*, § 1105.) If the operative words of a deed are doubtful, recourse may be had to its recitals to aid construction. (*Id.*, § 1068.)

Bruzzone claims that we must accept as true the “pleaded interpretation” she gave to the resolutions and indentures, citing *Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239. It is true that *Aragon-Haas* states that when a complaint is based on a contract which the complaint sets out in full, a general demurrer admits the contents of the instrument and any pleaded meaning to which it is reasonably susceptible. (*Ibid.*) What Bruzzone forgets to mention is that *Aragon-Haas* involved an *ambiguous* contract, the court further explaining: “ ‘[W]here an ambiguous contract is the basis of an action, it is proper . . . for a plaintiff to allege its own construction of the agreement. So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff’s allegations as to the meaning of the agreement.’ ” (*Ibid.*) As

the court also made clear, whether a given contract is ambiguous is a question of law. (*Ibid.*) In addition, conclusions of fact or law are not deemed true, and we do not assume the truth of allegations contradicted by facts judicially noticed. (*Kabehie v. Zoland* (2002) 102 Cal.App.4th 513, 519.)

Here, the 1960 grant deed from the School District clearly and unambiguously conveyed the Property to the County. The deed contains a legal description of the Property and states that it is subject to encumbrances of record. Bruzzone grounds her purported reversionary interest in Moraga's conveyances of the Property to the School District, which preceded the School District's conveyance to the County. However, the all-important " 'for school purposes' " language appears not in Moraga's indentures conveying the Property to the School District, but in the recitals of the School District's separate and subsequently executed resolutions of acceptance. The law mandates clear expression of the grantor's intent, such that a provision relied upon for reversion must employ language that leaves no doubt of the intent to work a forfeiture upon the occurrence of the declared condition. (*Hawley v. Kafitz* (1905) 148 Cal. 393, 394-395; *Springmeyer v. City of South Lake Tahoe* (1982) 132 Cal.App.3d 375, 380.)

The granting clauses of the indentures do not mention " 'school purposes,' " let alone restrict the grantee to use of the Property for such purposes. (See *Severns v. Union Pacific Railroad Co.* (2002) 101 Cal.App.4th 1209, 1215; *Concord & Bay Point Land Co. v. City of Concord* (1991) 229 Cal.App.3d 289, 294.) The " 'school purposes' " language appears only in the recitals to the School District's resolution of acceptance. We resort to language in recitals to assist in construing a deed only if the operative words of the grant are doubtful. (Civ. Code, § 1068.) The granting clauses of the indentures are not doubtful. Hence, there is no reason to consult the recitals. Moreover, the resolutions, dated, respectively, months and more than a year after execution of the indentures, are not executed by Moraga. Additionally, they order and resolve only that the indentures be, and are, accepted. In short, Moraga never conditioned the dedication of its land to the School District on any covenant that the district use the property " 'for school purposes' " only.

Equally important, nothing in the resolutions or indentures provides that the property will revert to the grantor if it is not used for school purposes. In other words, nothing ties any restriction to school use to a forfeiture. *Savanna School District v. McLeod* (1955) 137 Cal.App.2d 491 is helpful. There, the grantors dedicated property to the grantee for public school purposes only. The deed further provided that ownership would revert to the grantor upon failure of the grantee “ ‘to erect and maintain a building thereon to be used exclusively for public school purposes.’ ” (*Id.* at p. 492.) The grantee built a school and maintained it and a replacement continuously as a school for 45 years, then abandoned it when the building was found to be unsafe. (*Id.* at p. 493.) The reviewing court construed the clause imposing obligations on the grantee to build and maintain a school as a covenant rather than a condition subsequent.³ (*Id.* at p. 494.) Because conditions subsequent involve a forfeiture, they must be strictly construed against the grantor under Civil Code section 1442. Language creating such a condition must be so clear as to leave no doubt of the grantor’s intent. (*Savanna* at p. 494; *Sanders v. East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 125, 130.) As well, the *Savanna* court liberally construed the reversion language as meaning that the condition was intended by the grantors to be effective only during their lifetimes (*Savanna* at p. 493), and the grantee fully performed all the terms and provisions of the deed. (*Id.* at p. 496.) Here, there was no language in the indentures or resolutions creating a power of termination, let alone unequivocal language.

Nonetheless, Bruzzone claims that a power of termination is implied from the language of the contract documents, calling our attention to *Papst v. Hamilton* (1901) 133 Cal. 631, 633.) There the grantor conveyed property to the grantees on the condition that the premises be used solely for purposes of building and maintaining a college, and for residences for the teachers and students, “ ‘and for no other purpose whatever.’ ” (*Id.* at p. 632.) The grantees performed the conditions specified in the deed for several years

³ *Savanna, supra*, 137 Cal.App.2d at p. 494 defines “conditions subsequent” as “those which in terms operate upon an estate conveyed and render it liable to be defeated for the breach of the conditions.”

and then abandoned the premises. The court held that “[t]he language used, both in its technical and popular sense, ‘*ex proprio vigore*’⁴ imports a condition, or intent of the grantor to make a conditional estate, ’ ” and therefore a reentry clause was unnecessary. (*Id.* at p. 633.) *Pabst* does not alter the reality that the language in a deed purporting to reserve a power of termination or reentry in the grantor must show the unmistakable intention of the grantor to create a condition subsequent. If the language can be construed to avoid a forfeiture, it is our duty to do so. (*Sanders v. East Bay Mun. Utility Dist.*, *supra*, 16 Cal.App.4th at p. 130.) There is no language in the indentures and resolution which by its force creates a condition subsequent such that if the Property is not used for school purposes, it reverts to the grantor.

We note finally that upon granting the Property to the School District, Moraga did impose two very clear restrictions on its use: one restricting the use to a single family residence of a certain value and another forbidding persons of certain races from living there. The latter is void as contrary to the public policy announced in *Reitman v. Mulkey* (1967) 387 U.S. 369, 378-379 and the Unruh Civil Rights Act. (Civ. Code, § 51 et seq.) The former is invalid because if enforced, it would have imposed on an agency of the state an obligation to devote land it had acquired for school purposes to a purpose it had no power to realize. (See *Sackett v. Los Angeles County School Dist.* (1931) 118 Cal.App. 254, 257-258.) In any event, Bruzzone acknowledges that these restrictive covenants “did not bind District.”

C. *The Trial Court Properly Sustained the County’s Demurrer to the Remaining Causes*

Bruzzone also assails the sustaining of the County’s demurrer without leave to amend to the remaining causes of action.

The demurrer to her breach of contract cause was properly sustained. The first amended cross-complaint alleges that a contract between Moraga and the School District was reduced to writing by virtue of the resolutions which the School District exclusively

⁴ The phrase “*ex proprio vigore*” means by its own force. (Black’s Law Dictionary (9th ed. 2009) p. 662.)

prepared, and this contract was breached when the district ceased using the Property for school purposes.

As the trial court correctly noted, there was no mutual consent that the Property would be used only for school purposes. Mutual consent is an essential element of any contract. (Civ. Code, §§ 1550, 1565.) Consent is not mutual unless the parties agree “upon the same thing in the same sense.” (*Id.*, § 1580.) The indentures, separately signed by Moraga long before the School District accepted the grant of the Property, do not mention “ ‘school purposes.’ ” To reiterate, that language appears only in the recitals of the School District’s resolutions of acceptance, to which we need not and do not resort in construing the indentures because the granting clauses are not doubtful. (*Id.*, § 1068.)

Likewise, the demurrer to the action for cancellation of deed was properly sustained. Civil Code section 3412 permits an action for cancellation of a written instrument “in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable.” Under this statute, a court can order cancellation of a deed whenever it is void or voidable, for example, when executed by a person who lacks legal capacity; or when the instrument was obtained by undue influence or for inadequate consideration, or procured by fraud. (12 Miller & Starr, Cal. Real Estate (3d ed. 2001) Judicial Remedies, § 34:113, p. 34-383.)

Bruzzone’s first amended cross-complaint stated no facts showing why the indentures are void or voidable. What Bruzzone did allege is that if the resolutions and indentures were allowed to remain outstanding, the County would convey the Property to a third party who would use it for something other than school purposes. Further, the pleading alleged that when the County ceased to operate the library on the Property, it had a duty to restore title to the property to Bruzzone but did not, and has dispossessed her of lawful possession and deprived her of the rental value of the property. These allegations do not establish that the indentures were void or voidable.

On appeal, Bruzzone maintains that the gravamen of her action to cancel the deed is fraud. However, an action for fraud requires specific allegations of misrepresentation,

knowledge of falsity, intent to defraud, justifiable reliance, and resulting damage. (*Estate of Young* (2008) 160 Cal.App.4th 62, 79.) The pleadings do not set forth such allegations, nor does Bruzzone seriously make an argument on appeal that she can establish these elements. Bruzzone has not, and cannot, allege that Moraga justifiably relied on any misrepresentation from the School District when it signed and executed the indentures. Those instruments were executed well before the School District executed resolutions accepting them, and the indentures contain clear, unambiguous language conveying title to the Property, free of any reversionary interest based on use for school purposes

Bruzzone’s declaratory relief claim is entirely derivative of the other causes of action. Because the trial court properly quieted title in favor of the County, there is nothing further to be decided or declared with respect to the Property’s title and Bruzzone was not entitled to any declaratory relief in her favor.

Finally, the trial court did not abuse its discretion in sustaining county’s demurrer to Bruzzone’s first amended cross-complaint, without leave to amend. She has failed to show any reasonable possibility that the defective pleadings can be cured by further amendment. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 12.)

III. DISPOSITION

We affirm the judgment.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.