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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

PATRICIA HEWLETT,

Plaintiff and Appellant,

v.

SHELTER CREEK CONDOMINIUM
OWNERS ASSOCIATION,

Defendant and Respondent.

A145169

(San Mateo County
Super. Ct. No. CIV528834)

Patricia Hewlett filed this action against Shelter Creek Condominium Owners Association (Shelter Creek) for quiet title. The trial court sustained Shelter Creek’s demurrer without leave to amend, finding Hewlett’s action was barred by res judicata. Hewlett, representing herself in propria persona, does not appear to dispute she previously brought a virtually identical claim against Shelter Creek, and final judgment was entered on that claim. She nevertheless argues res judicata does not apply. We disagree and affirm.

I. BACKGROUND

On November 21, 2013, Hewlett filed an action against Shelter Creek, JPMorgan Chase Bank, N.A. (JPMorgan), and California Reconveyance Company (CRC) in San Mateo County Superior Court. Hewlett asserted causes of action for wrongful foreclosure, fraud, an unspecified “intentional tort,” and negligence. The pleading is far from a model of clarity, but all of the claims generally assert the named defendants conspired to wrongfully foreclose on Hewlett’s San Bruno property. In February 2014,

the trial court sustained Shelter Creek's demurrer to the original complaint with leave to amend, finding Hewlett had failed to allege facts supporting the elements of the respective claims at issue.

Hewlett filed a first amended complaint a few days later. Shelter Creek again demurred. The demurrer to the first three causes of action was sustained without leave to amend. The court found the wrongful foreclosure claim was barred because Hewlett did not allege tender of the debt related to the trustee's sale and foreclosure, and the fraud claim was not pled with the requisite specificity. As to the third claim, Hewlett had failed to specify what tort was being alleged. The court also sustained the demurrer to the fourth cause of action for negligence, but granted Hewlett leave to amend.

Hewlett filed a second amended complaint asserting one cause of action for quiet title. Hewlett alleged that on or about November 15, 2013, the defendants advised her they had sold her home pursuant to a "lien foreclosure," and that the defendants were without any right whatever to the subject property. On May 30, 2014, the trial court sustained Shelter Creek's demurrer to the second amended complaint without leave to amend. A judgment of dismissal was subsequently entered.

On June 2, 2014, Hewlett filed the instant action, again naming Shelter Creek, JPMorgan, and CRC as defendants. Hewlett asserted one cause of action for quiet title, which is virtually identical to the quiet title claim pleaded in her second amended complaint in the prior action.

Shelter Creek demurred, and also requested the trial court take judicial notice of some of the documents filed in the prior action. The trial court granted the request for judicial notice and sustained the demurrer without leave to amend. The trial court found Hewlett's claim was barred by res judicata because it was litigated or could have been litigated in the prior action. The court also found Hewlett's claim was barred by collateral estoppel because the complaint alleged the same factual allegations as those already determined in the prior action.

Hewlett filed a motion for reconsideration. The trial court denied the motion, finding Hewlett had not raised any new facts or circumstances of law.

II. DISCUSSION

“ ‘A demurrer tests the legal sufficiency of the complaint’ [Citations.] On appeal from a dismissal after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.] We give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context. [Citations.] We deem to be true all material facts properly pled. [Citation.] We must also accept as true those facts that may be implied or inferred from those expressly alleged. [Citation.] If no liability exists as a matter of law, we must affirm that part of the judgment sustaining the demurrer. [Citation.] [¶] While the decision to sustain or overrule a demurrer is a legal ruling subject to de novo review on appeal, the granting of leave to amend involves an exercise of the trial court’s discretion. [Citations.] When the trial court sustains a demurrer without leave to amend, we must also consider whether the complaint might state a cause of action if a defect could reasonably be cured by amendment.” (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1500–1501, fn. omitted.)

Here, the trial court sustained Shelter Creek’s demurrer because it found Hewlett’s claim was barred by res judicata.¹ “ ‘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. . . . Under the doctrine of res judicata, . . . 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. ‘ ‘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, 896–897, fn. omitted.)

¹ Because we find res judicata bars Hewlett’s action, we need not and do not consider whether the action is also barred by collateral estoppel.

We agree with the trial court that res judicata bars Hewlett's claims here. Hewlett asserted a virtually identical claim against Shelter Creek in a prior action. Shelter Creek's demurrer to that claim was sustained without leave to amend and final judgment of dismissal was subsequently entered. Accordingly, Hewlett cannot try to relitigate that claim now. Contrary to Hewlett's contentions, there was nothing improper about sustaining a demurrer on res judicata grounds. (*Garcia v. Garcia* (1957) 148 Cal.App.2d 147, 152.)

Hewlett contends that "fraud" somehow bars Shelter Creek from asserting a res judicata defense. In support she cites *Allied Fire Protection v. Diede Construction, Inc.* (2005) 127 Cal.App.4th 150. In that case, a subcontractor brought a breach of contract action against a general contractor in federal court and obtained a favorable judgment. (*Id.* at pp. 152–153.) The subcontractor then brought a separate fraud action against the general contractor. (*Id.* at p. 153.) The trial court granted summary judgment in favor of the general contractor, finding the subcontractor's claims were barred by res judicata. (*Id.* at p. 154.) The Third Appellate District reversed because the subcontractor did not discover the fraud until after the judgment in the first action was rendered and there was a triable issue as to whether the alleged fraud could have been discovered earlier through the exercise of reasonable diligence. (*Id.* at p. 157.) *Allied Fire* is inapposite. There is no indication Hewlett's claims in the instant action arise out of a new set of facts. Indeed, the allegations asserted in both the instant action and the prior action are almost identical. To the extent the instant action is based on a new or different set of facts, there is no indication Hewlett was previously unaware of those of facts or that she could not have discovered those facts before. Moreover, contrary to Hewlett's suggestion, nothing in *Allied Fire* suggests the mere assertion of fraud bars the application of res judicata. In any event, Hewlett has not asserted a fraud claim in this action.

The other arguments raised by Hewlett may be quickly dismissed. She suggests the trial court abused its discretion by denying her leave to amend because she could amend her pleading to "change its legal effect." But she fails to explain how she could plead around the prior judgment or identify any new facts which would support a

cognizable claim. Hewlett argues the trial court erred in taking judicial notice of the documents filed in the prior case. She waived this argument by failing to object to the request for judicial notice below. In any event, the contention is meritless as the records of any court of this state are properly subject to judicial notice. (Evid. Code, § 452, subd. (c).) Hewlett contends the order on the demurrer was error because she sufficiently pleaded a quiet title action. However, because Hewlett's action is barred by res judicata, the adequacy of her pleading is irrelevant. Next, Hewlett asserts that, under Code of Civil Procedure section 764.010, default judgment is inappropriate in a quiet title action. Of course, default judgment was not entered in this case, so section 764.010 is inapplicable. Finally, Hewlett asserts Shelter Creek has admitted she owns the property. Setting aside that we need not consider the merits of Hewlett's claims because they are barred by res judicata, Hewlett provides no specific record citation that would support her assertion.

As Hewlett has failed to demonstrate any error, we affirm.

III. DISPOSITION

The judgment is affirmed. Shelter Creek may recover its costs on appeal.

Margulies, J.

We concur:

Humes, P.J.

Dondero, J.

A145169