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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

YUK-LAN KWAN et al.,

Plaintiffs and Appellants,

v.

WAI YEE LO LI,

Defendant and Respondent.

B237910

(Los Angeles County
Super. Ct. No. BC431722)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Yvette M. Palazuelos, Judge. Affirmed.

Law Offices of Kenneth I. Gross & Associates, Kenneth I. Gross and Thomas D.
Shambaugh for Plaintiffs and Appellants.

Law Offices of Larry Wayne, Robert S. Doble and Christopher Hyatt for
Defendant and Respondent.

Yuk-Lan Kwan and her son, Andy Wing Kong Li, appeal from the judgment entered after the trial court granted a motion for summary judgment in favor of Wai Yee Lo Li, Kwan's daughter and Andy's sister, in this action for breach of contract and to quiet title to a seven-unit apartment building in Alhambra.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Complaint and Cross-complaint

On February 16, 2010 Kwan and Andy filed a complaint against Wai alleging the parties had agreed when Andy purchased the Alhambra apartment building in 1991 that he and Kwan would have an undivided one-third beneficial interest and Wai would have a two-thirds beneficial interest in the property. The complaint further alleged the parties understood they would maintain those same beneficial interests after Andy signed a grant deed transferring the property to Wai in August 2006. In July 2009 Wai prepared a handwritten agreement to purchase Andy and Kwan's interest in the property for \$250,000, gave them a down payment of \$50,000, but, subsequently refused to pay the balance, claiming the entire property as her own and stating she intended to sell the property. The complaint alleged Wai's failure to pay Kwan and Andy the balance of the purchase price constituted a breach of the sales agreement and sought to quiet title to Andy and Kwan's purported one-third beneficial interest in the property.

In March 2010 Wai filed a cross-complaint for breach of contract and fraud alleging she was living in Hong Kong in 1991 when Andy, who was living in the United States, told her foreign nationals could not purchase property in the United States. Accordingly, the apartment building was purchased in Andy's name alone. Because Andy had represented he contributed one-third of the down payment (\$100,000), Wai believed he was entitled to one-third of the proceeds when she decided to sell the property. However, Wai subsequently learned Andy had not made any part of the down payment, and the cross-complaint alleged any equitable or beneficial interest Andy had in

¹ Because Andy Wing Kong Li and Wai Yee Lo Li share the same last name, we refer to them as Andy and Wai for convenience and clarity. (See *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1191, fn. 1.)

the property was procured by fraud. The cross-complaint was dismissed without prejudice on October 25, 2011.

2. The Motion for Summary Judgment

In July 2011 Wai moved for summary judgment on the complaint. As to the breach of contract claim, Wai argued the purchase agreement was not signed and thus did not satisfy the statute of frauds. With respect to the action to quiet title, Wai contended Andy and Kwan could not establish a legitimate interest in the property and, in any event, the cause of action was barred by the doctrine of unclean hands because Andy had transferred the property to Wai to hide his interest from potential creditors.

In support of her motion Wai filed a declaration stating she had given Andy \$256,000 of her own money to purchase the Alhambra property because Andy had told her it would solidify his financial position and help him successfully petition for Wai's immigration. Andy also told Wai there was a separate, detached unit on the property that he had purchased with his money because the owner wanted to sell the buildings together. After Wai immigrated to the United States in 2006, Andy transferred both the property she had purchased and the detached unit to Wai because Andy was involved in a lawsuit.

According to Wai, in 2009 Andy told her he needed money for a lawsuit against his employer and proposed Wai purchase his interest in the detached unit for \$450,000. Wai did not agree because the price was too high. Subsequently, she met with Andy, who asked her to prepare a purchase agreement with terms he dictated. Wai wrote the document, but did not agree to the terms or sign the agreement because she thought the \$250,000 price he was then suggesting was still too high. Wai also expressed surprise the document indicated Kwan had an interest in the property since she had not contributed any money for the purchase; Andy explained it was for tax purposes.

In late 2009 Wai decided to sell the property and to give Andy one-third of the proceeds. In January 2010 Wai loaned Andy \$50,000 for his lawsuit. Shortly thereafter, Wai spoke to a real estate agent about selling the property and learned for the first time the apartment building and the separate unit had been purchased in a single transaction

and the \$256,000 she had paid was the entire down payment. A few days later Wai confronted Andy with the information. Andy became angry and left. Within weeks he filed the instant lawsuit.

In opposition to Wai's motion for summary judgment Andy and Kwan argued their breach of contract claim was not barred by the statute of frauds because the contract was in Wai's handwriting and her January payment of \$50,000 was a deposit on the purchase price, not a loan, and thus constituted partial performance. With respect to whether they had a legitimate property interest essential to the quiet title action, Andy and Kwan contended the \$256,000 paid by Wai was in fact comprised of money from Andy and Wai's father (Kwan's husband); the parties had always agreed Kwan and Andy would have a one-third interest; Andy managed the property without compensation for 15 years; Andy paid a shortfall exceeding \$60,000 during the years the property lost money; and Andy personally paid \$80,000 toward the outstanding indebtedness on the property in order to refinance it and obtain a lower secured loan interest rate. As to the issue of unclean hands, Andy explained Wai was also concerned her interest in the property was at risk because of a potential lawsuit against Andy's wife, and she encouraged the transfer of title to the property to her. Thus, having participated in the allegedly wrongful conduct, Andy and Kwan insist, she cannot complain of it.

3. The Trial Court's Ruling in Favor of Wai

On September 27, 2011 the trial court granted Wai's motion for summary judgment. The court found the breach of contract claim was barred by the statute of frauds. The court explained, even if in Wai's writing, the contract was unsigned; and, even if Wai had paid \$50,000 toward the purchase price, there was no evidence Kwan and Andy had changed their position as a result of the payment. (See *Secrest v. Security Nat. Mortg. Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 555 [“[i]n addition to having partially performed, the party seeking to enforce the contract must have changed position in reliance on the oral contract to such an extent that application of the statute of frauds would result in an unjust or unconscionable loss, amounting in effect to a fraud”].) With respect to the quiet title cause of action, the court found it was undisputed Andy had

signed a grant deed transferring ownership of the property to Wai in August 2006. Because the holder of equitable title cannot maintain a quiet title action against the legal owner (see *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1856), Andy and Kwan's quiet title cause of action could not be maintained.

Judgment was entered on November 2, 2011.

DISCUSSION

Kwan and Andy contest only the trial court's ruling with respect to their quiet title action.² Conceding the trial court correctly stated the general rule that the holder of equitable title cannot maintain a quiet title action against a legal owner (see *G.R. Holcomb Estate Co. v. Burke* (1935) 4 Cal.2d 289, 297 ["[i]t has been repeatedly held in this state that an action to quiet title will not lie in favor of the holder of an equitable title as against the holder of a legal title"]), they contend equitable remedies may nevertheless be obtained "whenever they are required upon equitable considerations and are justified by the pleadings and proof." (*Dreher v. Rohrmoser* (1955) 134 Cal.App.2d 196, 198 (*Dreher*)). Kwan and Andy argue they submitted sufficient evidence to create a triable issue of fact whether they have an equitable interest in the Alhambra property under this exception to the general rule.

The limited exception permitting the holder of an equitable interest to maintain a quiet title action against a legal owner is quite narrow and has been recognized primarily in cases involving fraud or breach of fiduciary duty by the holder of legal title. (See, e.g., *Strong v. Strong* (1943) 22 Cal.2d 540, 545-546 [equitable rights could not be established

² Andy and Kwan's fleeting reference in their opening brief to the existence of triable issues of fact whether there was an enforceable agreement for the purchase of their interest in the property is not sufficient to present an argument on appeal regarding their breach of contract cause of action. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 ["[a]lthough our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in [appellant's] brief"]; see also *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["[t]he absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived"].) Significantly, Andy and Kwan do not respond in their reply brief to Wai's contention they have not properly raised any such argument.

in quiet title action absent finding of fraud]; *Warren v. Merrill* (2006) 143 Cal.App.4th 96, 111-112 [judgment quieting title in condominium purchaser and imposing constructive trust were proper remedies in light of real estate agent's breach of fiduciary duty to purchaser arising from agent's fraudulent procurement of title to property]; see generally, 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 667, p. 93 ["plaintiff who attacks the legal title on equitable grounds is in effect contending that the defendant obtained legal title by fraud or similar inequitable conduct, and must specifically allege the facts constituting that conduct"].) Even if we were to fully credit Kwan and Andy's version of the facts, there is no suggestion Wai engaged in fraud or breach of fiduciary duty to obtain legal title to the apartment building. All parties agreed legal title would be transferred to Wai to ensure the property would not be subject to possible collection efforts if a lawsuit against Andy's wife was filed and successfully prosecuted.

To be sure, in *Dreher, supra*, 134 Cal.App.2d 196 the holder of an equitable claim obtained judgment quieting title without proving fraud or breach of fiduciary duty. Plaintiff, a general contractor and homebuilder, purchased two lots and, with his employee's agreement, put them in the employee's name "for convenience sake, so that [employee] could get the permits and the titles and the loan[]" [a]nd thus expedite the construction of two houses on the lots." (*Id.* at p. 197.) After the property was developed, plaintiff asked the employee to execute a grant deed conveying the property to plaintiff. The employee did so, but his wife refused. At trial the employee admitted he had made no payments on the notes, made no contribution to the purchase price and had previously taken title to lots for the plaintiff and thereafter executed deeds to the new purchasers; and the trial court quieted title to the property in plaintiff's favor. On appeal, the court held the employee's admissions were sufficient to support the trial court's findings that title was placed in the employee's name solely for convenience and he never had any beneficial ownership. (*Id.* at p. 199.)

Unlike *Dreher, supra*, 134 Cal.App.2d at page 199 in which the undisputed facts clearly established the employee never had any beneficial ownership and "the naked title only was placed the name of said husband for the convenience of [plaintiff]," in the

instant case Kwan and Andy conceded Wai at all times had a significant equitable interest in the property. To allow Kwan and Andy to pursue their quiet title claim in the absence of allegations of fraud or breach of fiduciary duty under these circumstances would allow the limited exception to essentially swallow the general rule. Kwan and Andy present no cogent argument to support such a radical departure from the established principles of law.³

DISPOSITION

The judgment is affirmed. Wai Yee Lo Li is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.

³ Indeed, since it was decided 57 years ago, *Dreher* has been cited in only one published California decision, *Santoro v. Carbone* (1972) 22 Cal.App.3d 721, 731, disapproved in *Tenzer v. Superscope* (1985) 39 Cal.3d 18, 30, and then only for the unremarkable proposition that, because an action to quiet title is equitable, the relief awarded may vary according to the circumstances of the case.