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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BRUCE LOGAN,

Plaintiff and Respondent,

v.

CHICAGO TITLE INSURANCE
COMPANY et al.,

Defendants and Appellants.

B238348

(Los Angeles County
Super. Ct. No. EC050057)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Laura Matz, Judge. Affirmed.

Fidelity National Law Group, Teresa Y. Hillery, Amy J. Cooper, Mathias Maciejewski for Defendants and Appellants.

Law Offices of Michael D. Infeld, Michael D. Infeld for Plaintiff and Respondent.

Chicago Title Insurance Company, Chicago Title Company, Michael Salazar, and Elena Hernandez appeal from the judgment entered in favor of respondent Bruce Logan, after jury trial, on Logan's complaint. We affirm.

Facts

The case concerns a fraudulent real estate transaction. The sole contention on appeal is that Logan, plaintiff below, had no standing, but a summary of the facts is nonetheless required:

A man named Jimmie Lewis owned real property in Anaheim. In December 2005, a woman named Karina Ruiz filled out a loan application for purchase of his property. She also signed escrow papers. She did this because she was paid \$3,000 by an acquaintance. Escrow for this "sale" was with Inland Escrow. Lewis apparently did not know of the "sale," but had earlier given some personal identifying information to Inland Escrow, in connection with an attempt to refinance.

In connection with the transaction, Inland Escrow sent a request to Chicago Title¹ to perform title services and issue a title policy.

Chicago Title would not issue a title policy without opening a sub-escrow, which it did. A lender called Southstar Funding wired \$744,958 to Chicago Title. About \$600,000 of the money was to fund a first trust deed loan to Ruiz for the purchase of Lewis's home. The remainder, \$153,863, was to fund a second trust deed loan to Ruiz, for the remainder of the purchase.

Inland Escrow sent documents to Chicago Title, including Southstar's escrow instructions and a forged grant deed from Lewis to Ruiz which misspelled Lewis's first name.

¹ We are cited to nothing in the record which distinguishes between Chicago Title Insurance Company and Chicago Title, both named as plaintiffs in the lawsuit and as appellants here. They, appellant Salazar (the Chicago Title officer responsible for Ruiz's loans), and appellant Hernandez (the Chicago Title employee responsible for reviewing the documents for accuracy) are referred to, collectively, herein as "Chicago Title."

Lewis discovered some of these doings when he received a call from a mortgage broker he had consulted about the refinance, telling him that there was money at a local Chicago Title office. He and his adult daughter went to that office and asked to speak to the person in charge. They told him that Lewis had not signed any financing documents, that they did not understand why money would be waiting for Lewis at Chicago Title, and that "the mortgage brokers" were trying to defraud Lewis. The "sale" to Ruiz had not yet closed, but Chicago Title did not halt the transaction, but instead distributed the funds, recorded the forged grant deed, and closed the transaction.

Lewis and his daughter finally contacted the police, who went to Inland Escrow's offices only to find that they had "packed up and moved out."

Southstar sold the first trust deed to Goldman Sachs, and the second to UM Capital.

After learning about the forged grant deed, Lewis sued Goldman Sachs and Ruiz.² That case settled.

Logan bought UM Capital's note and deed of trust,³ then filed this case, bringing causes of action for, inter alia, breach of fiduciary duty, breach of contract, and negligence, alleging that Chicago Title was negligent in its role as escrow holder. He also sued Ruiz, who settled, and Inland Escrow and various individuals connected with Inland Escrow, who defaulted.

² Chicago Title has asked us to take judicial notice of the summons and complaint in that action, and documents from other actions tangentially related to this one. Since the documents do not assist us in our analysis, and were apparently not before the trial court, the request is denied.

³ Goldman Sachs had earlier foreclosed on its deed of trust. Chicago Title asserts that that foreclosure wiped out UM Capital's deed of trust. Logan asserts that it did not, and that the foreclosure sale was void, since Ruiz had no rights to grant. The issue was not presented to the trial court or the jury and is not part of this appeal. For that reason Chicago Title's request that we take judicial notice of a document relating to the foreclosure is denied.

At trial, the parties agreed that Logan was the successor-in-interest to Southstar. Thus, by agreement of the parties, the jury was instructed that "Bruce Logan was not a party to the original contract. However, he may bring a claim for breach of contract because Southstar Funding, LLC, transferred its rights under the contract to UM Capital, LLC, which transferred the rights to Bruce Logan."

In addition, the joint statement of the case read to the jury said, "Bruce Logan is the successor to UM Capital, LLC, which was the successor of Southstar Funding, LLC," and numerous jury instructions, requested by both parties, began "Bruce Logan claims that his predecessor, Southstar Funding, LLC., was harmed because" The special verdicts asked the jury to determine Southstar's damages.

Logan's evidence of negligence included evidence that, contrary to Southstar's instructions, Chicago Title's own procedures, and Chicago Title's own understanding of its duties, Chicago Title did not compare the forged grant deed with earlier trust deeds signed by Lewis, which it had in the title file; that if it had, it would have noticed that the signature on the forged deed did not match those earlier signatures and included a misspelling of Lewis's first name (Lewis spelled his name "Jimmie," the deed was signed "Jimmy"); and would have informed Southstar and halted the transaction. Logan presented evidence that Chicago Title breached its duties in this manner because it was busy and understaffed.

Logan also produced evidence that if Southstar had been informed that Lewis's name and signature were wrong on the grant deed, it would have halted the transaction and investigated the entire file, and discovered, among other things, that the forged grant deed was notarized with a stamp which had been reported stolen months earlier. Logan also presented expert evidence concerning standard of care and breach of standard of care.

Chicago Title's defense was that it did nothing outside the custom and practice of the industry, and that Southstar was negligent because it made the loan without checking the representations Ruiz made on her application, many of which were false. Chicago Title called one witness, an expert who testified concerning standard of care and breach.

On special verdicts, the jury found for Chicago Title on many of the causes of action, but also found that all the Chicago Title defendants were negligent and that Chicago Title Insurance Company and Chicago Title had breached a fiduciary duty to Southstar. The jury found that the negligence and breach of duty caused damages to Southstar, and that Southstar's total damages were \$153,863. The jury also found contributory negligence by Southstar and by Inland Escrow, attributing specified amounts of negligence to each.

Judgment was entered jointly and severally against Chicago Title and all other defendants except Ruiz in the amount of \$150,863, an amount which reflected the jury verdict and Ruiz's \$3,000 settlement; and against Salazar and Hernandez in the amount of \$104,704, an amount which reflected the jury verdict, Ruiz's settlement, and Southstar's comparative negligence.

Discussion⁴

Chicago Title phrases its sole argument as one about standing. It agrees that Southstar had standing to bring negligence and breach of fiduciary duty claims, but contends that Logan did not.

Chicago Title's argument is that "as a matter of law, an assignee of a party to the escrow is a stranger to the escrow," from which Chicago Title concludes that it owed Logan no duty, and that the lack of duty means that Logan had no standing. In legal support, it cites *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Company*

⁴ Logan complains that the notice of appeal was defective, in that it purports to appeal the order denying Chicago Title's motions for new trial and judgment notwithstanding the verdict, not notice of entry of judgment. Chicago Title agrees that the wrong box is checked on the notice of appeal, but argues that notices of appeal are to be liberally construed. We agree, and see no serious defect which would affect jurisdiction. "[A] reviewing court should construe a notice of appeal from an order denying a new trial to be an appeal from the underlying judgment when it is reasonably clear the appellant intended to appeal from the judgment and the respondent would not be misled or prejudiced." (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 22.) This is such a case.

(2002) 27 Cal.4th 705 and *Markowitz v. Fidelity Nat. Title Co.* (2006) 142 Cal.App.4th 508.

In *Summit*, a man named Furnish refinanced his real property loan. Continental Lawyers Title Company provided escrow services, and pursuant to the escrow instructions, issued a check to Talbert Financial Services, which had held a note secured by that property. However, Talbert had since assigned its rights to the note to Summit, which sued Continental for negligence, contending that the check should have been issued to it, not to Talbert. (*Summit, supra*, 27 Cal.4th at p. 708.) It was in that context that the court wrote, "The question presented by this case is whether an escrow holder owes a duty of care to a nonparty to the escrow based on an assignment to that nonparty by another nonparty to the escrow. We answer this question in the negative." (*Id.* at pp. 707-708.)

Markowitz, supra, 142 Cal.App.4th 508, also cited by Chicago Title, is similar. It held that "An escrow holder is an agent and fiduciary of the parties to the escrow," (*id.* at p. 526) and that the escrow holder in that case had no duty to the plaintiff, who had not submitted any instructions to escrow and who was not a party to the escrow. (*Id.* at p. 527.)

Here, of course, Southstar was not a stranger to the escrow, but submitted instructions to escrow and was a party to the escrow, and, as Chicago Title agreed at trial, Logan stood in its shoes. The facts of *Summit* and *Markowitz* are so different from the facts of this case that those holdings have no application here.

Chicago Title's argument is not truly about standing, it is about duty, or about the assignment. While standing may be raised for the first time on appeal, because lack of standing is a jurisdictional defect (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438) these arguments, which directly contradict Chicago Title's position at trial, cannot be.

Further, as Logan argues (and as appellants acknowledged in the trial court) he had standing as Southstar's assignee. A cause of action is assignable, and "[A]n assignee of a chose in action does not sue in his own right but stands in the shoes of the assignor.

[Citation.] A thing or chose in action would never be assignable if the assignee independently had to meet the requirements already satisfied by the assignor. If he could meet the requirements he would need no assignment; if not he could not use the assignment."⁵ (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1380.)

However, although we rule in favor of Logan, we deny his motion to dismiss the appeal and motion for sanctions, both of which are based on the argument that this appeal is so meritless, especially given Chicago Title's positions in the trial court, that it is frivolous. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) We cannot say that this appeal is frivolous and that sanctions are appropriate.

Disposition

The judgment is affirmed. Respondent to recover costs on appeal.

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ARMSTRONG, Acting P. J.

We concur:

KRIEGLER, J.

O'NEILL, J.*

⁵ Just prior to oral argument in this matter, Chicago Title lodged with this court several trial exhibits, including the assignment. Chicago Title argued that the documents establish that the chose in action was not in fact assigned. Having agreed at trial that Logan could bring his claims, "because Southstar Funding, LLC, transferred its rights under the contract to UM Capital, LLC, which transferred the rights to Bruce Logan," Chicago Title may not take another position now.

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