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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

GARY HOLT et al.,

Plaintiffs and Appellants,

v.

VALENTINE RUTHERFORD et al.,

Defendants and Respondents.

2d Civil No. B241921  
(Super. Ct. No. 56-2011-00390056)  
(Ventura County)

Plaintiffs acquired title to real property by way of a nonjudicial foreclosure.

Plaintiffs' complaint included causes of action for quiet title, to set aside an unlawful detainer judgment and damages. The trial court sustained defendants' demurrer to some, but not all, causes of action without leave to amend. Thereafter, plaintiffs dismissed their entire action without prejudice and appealed. While the appeal was pending, plaintiffs conveyed their interest in the subject real property to a third party.

We determine the judgment is final for the purposes of appeal. The conveyance of plaintiffs' interest in the subject property rendered the appeal moot concerning the causes of action relating to quiet title and unlawful detainer. Plaintiffs

raise no substantive challenges to the court's rulings on the other causes of action. We affirm.

## FACTS

### *FIRST AND SECOND AMENDED COMPLAINTS*

Valentine Rutherford (Rutherford) was the owner of a parcel of real property in Ojai. Gary Holt is the sole shareholder of U.S. Lease financing, Inc., (hereafter collectively "Holt.")<sup>1</sup>

Holt and Rutherford reached a settlement in a lawsuit. As part of the settlement agreement, Rutherford agreed to execute a note in favor of Holt by a deed of trust in which Holt is the beneficiary of Rutherford's Ojai property.

Unknown to Holt, prior to the execution of the deed of trust Rutherford conveyed the property to himself and his wife, Christine, and they both conveyed the property into a family trust.

Rutherford paid nothing on the note, and Holt foreclosed on the deed of trust. Holt prevailed at the foreclosure sale and received the trustee's deed to the Ojai property.

Holt brought an unlawful detainer action against the Rutherfords to obtain possession of the property. The Rutherfords defended the action by showing the deeds purporting to convey the property from Rutherford to himself and Christine and then into trust. This was the first Holt had heard of those deeds. Because those deeds were recorded prior to Holt's trust deed, the Rutherfords' theory was that Rutherford had no title on which Holt could foreclose. The trial court in the unlawful detainer action gave Holt judgment against Rutherford but not Christine.

Holt brought the instant case alleging, among other causes of action, an action to set aside the unlawful detainer judgment and to set aside the settlement agreement. At some point, Rutherford filed a cross-complaint against Holt and Holt

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<sup>1</sup> We refer to Holt as "he" for clarity.

apparently filed a cross-complaint against Rutherford. Neither cross-complaint appears of record.

The trial court sustained Rutherford's demurrers to some, but not all, of the causes of action alleged in Holt's first and second amended complaints and cross-complaint without leave to amend.

#### *THE DISCOVERY*

Holt moved to file a third amended complaint. His motion was based on the discovery that the deeds conveying the property from Rutherford to himself and his wife and then into the family trust did not have the same legal description as the trust deed on which he foreclosed. Instead, those deeds conveyed the neighboring parcel, also owned by Rutherford. Therefore the trust deed on which he foreclosed gave him legal title.

Nevertheless, the trial court denied Holt's request to file a third amended complaint. But it allowed Holt to file an amendment to the common allegations and to amend the remaining causes of action. The court, however, would not allow Holt to reallege causes of action for quiet title or to set aside the unlawful detainer judgment, to which it had sustained demurrers without leave to amend.

#### *DISMISSAL AND JUDGMENT*

After Holt filed amendments to the second amended complaint he dismissed his entire action without prejudice.

Rutherford moved for judgment on all the causes of action for which the trial court sustained his demurrers without leave to amend. The second trial court to rule on this matter granted the motion. The court summarized those causes of action as follows: "Judge Rebecca Riley sustained the Rutherfords' demurrers to Plaintiffs' first and second amended complaints, without leave to amend, as to causes of action 1 (fraud), 4 (quiet title), 5 (interference with prospective economic advantage), 7 (negligence) and 15 (to set aside a UD judgment). . . . Judge Riley also sustained *without leave to amend*, a demurrer to the Cross-complaint, causes of action 1 (for

breach of settlement agreement), 3 (slander of title), 4 (fraud), 5 (accounting) and 6 (unjust enrichment)."

## DISCUSSION

### I.

While this appeal was pending, Rutherford moved to dismiss the appeal as to causes of action relating to quiet title and unlawful detainer. The motion was made on the ground that Holt has transferred his interest in the subject property to a third party.

Rutherford argues that only a party who is aggrieved has standing to appeal. (Citing *Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) A party is aggrieved only if his "rights or interests are injuriously affected by the judgment." [Citation.]" (*Ibid.*) Rutherford claims that because Holt no longer has any conceivable interest in the property, his rights or interests cannot be affected by the judgment.

Holt concedes that he transferred his interest in the property. He argues, however, without citation to authority that as long as Rutherford challenges his title he will always be the real-party-in-interest.

But by conceding that he has transferred his interest in the property, Holt is conceding that he no longer has a title to challenge.

*Shimpones v. Stickney* (1934) 219 Cal. 637, 644, is instructive. There, Shimpones brought an action to quiet title to real property in herself. While the action was pending, Shimpones lost a separate action brought by a third party to quiet title to the same parcel. Our Supreme Court held that the judgment in the separate action, in which title was quieted in a third party against Shimpones, rendered the appeal moot. In any event, it would seem obvious that where plaintiff has transferred all of his interest in the property, a court cannot grant him relief to quiet title.

The same infirmity exists for Holt's appeal of the dismissal of his cause of action to set aside the unlawful detainer judgment. The purpose of an unlawful detainer action is to recover possession of property. (See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 704, p. 825.) Because Holt has transferred all of

his interest, he can no longer recover possession. Holt's appeal is moot as to the causes of action to quiet title and set aside the unlawful detainer judgment.

## II.

Holt contends the judgment is void.

Holt argues that once he dismissed his case without prejudice, the trial court lost jurisdiction to act further and any subsequent orders are void.

Holt relies on *Gherman v. Colburn* (1971) 18 Cal.App.3d 1046, 1050. There plaintiff filed a dismissal without prejudice prior to the commencement of trial. The Court of Appeal held that the trial court had no jurisdiction to grant the defendant's motion to vacate the dismissal. But granting such a motion would require a substantive determination that the motion to vacate is proper. A dismissal without prejudice becomes a dismissal with prejudice as to those causes of action for which a demurrer has been sustained without leave to amend. (See *Fisher v. Eckert* (1949) 94 Cal.App.2d 890, 893.) Entering judgment on such causes of action is merely ministerial. Holt cites no case in which such a judgment has been held void.

The real question is whether the judgment is interlocutory or final. Only a final judgment can be appealed. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 96, pp. 158-159.)

In *Don Jose's Restaurant, Inc. v. Truck Insurance Exchange* (1997) 53 Cal.App.4th 115, the trial court granted defendant's motion for summary adjudication of two of eleven causes of action. The parties stipulated to a dismissal without prejudice of the remaining causes of action with a waiver of the statute of limitations. The plaintiff appealed. The Court of Appeal dismissed on the ground that, under the one final judgment rule, an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties.

But here the parties did not stipulate to a dismissal or waive the statute of limitations. In *Abatti v. Imperial Irrigation District* (2012) 205 Cal.App.4th 650, 665, the court concluded that claims dismissed without prejudice are final for the purpose of the one final judgment rule, unless, like *Don Jose's Restaurant, Inc.*, there is a

stipulation that facilitates potential future litigation. The court reasoned that the "theoretical possibility of future litigation" is not sufficient to prevent the judgment from being considered final. (*Id.* at p. 667.)

Because Holt unilaterally dismissed his complaint without a stipulation waiving the statute of limitations, the judgment is final for the purposes of the one final judgment rule.

We have deemed the causes of action to quiet title and set aside the unlawful detainer action moot. Holt raises no substantive challenges to the other causes of action on which the trial court sustained demurrers without leave to amend. Under the circumstances, we must affirm.

The judgment is affirmed. Costs on appeal are awarded to respondents.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Barbara A. Lane, Judge  
Rebecca Riley, Judge  
Superior Court County of Ventura

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Kirk J. Grossman for Plaintiffs and Appellants.

Malcolm R. Tator for Defendants and Respondents.