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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Estate of PORFIRIO DE LA MORA,
Deceased.

B255201

(Los Angeles County
Super. Ct. No. BP143714)

TERRY MERRICK et al.,

Plaintiffs and Appellants,

v.

EAST END PROPERTIES INC. et al.,

Defendants and Respondents.

APPEAL from order of the Superior Court of the County of Los Angeles, Lesley C. Green, Judge. Dismissed.

Pavone & Fonner, Benjamin Pavone for Plaintiffs and Appellants.

Law Offices of Vicken I. Simonian, Jacqueline Pelaez for Defendants and Respondent.

Plaintiffs, Terry Merrick, James Robert Bruce and Esteban Miguel Dean, appeal from the probate court's March 25, 2014 order denying their preliminary injunction application. The probate court ruled plaintiffs were not likely to prevail on the merits because they had actual notice of the foreclosure sale. Plaintiffs' injunctive relief request sought to challenge the validity of a January 21, 2014 foreclosure sale for purposes of staying an unlawful detainer proceeding. That unlawful detainer proceeding is now completed. We dismiss the appeal as moot.

In February 2007, the decedent, Porfirio De La Mora, refinanced the subject property. The promissory note and mortgage were later sold or assigned to Wells Fargo Bank N.A. (the bank). On June 4, 2010, Mr. De La Mora passed away. Plaintiffs are Mr. De La Mora's daughter and grandsons. Plaintiffs advised the bank that Mr. De La Mora had died. Plaintiffs have lived on the property since Mr. De La Mora purchased the residence in 1995. A bank representative instructed plaintiffs to continue making mortgage payments on the property. In 2013, the adjustable rate on the mortgage caused the payments to increase and plaintiffs defaulted on the loan. On July 24, 2013, the bank recorded a default notice and election to sell under the trust deed addressed to the borrower, Mr. De La Mora. On July 30, 2013, plaintiffs filed a probate action to clear title so they could refinance the property. On October 24, 2013, the bank recorded a trustee's sale notice. On January 21, 2014, the property was sold at a foreclosure sale to defendant, East End Properties, Inc.

On February 4, 2014, defendant filed an unlawful detainer action against plaintiffs. On February 12, 2014, plaintiffs moved to stay the unlawful detainer action. On February 13, 2014, plaintiffs filed an ex parte application for a temporary restraining order in the probate court challenging the foreclosure sale. The probate court set the matter for hearing as an application for a preliminary injunction. On March 25, 2014, the probate court denied plaintiffs' preliminary injunction request because they had actual notice of the foreclosure sale. On March 25, 2014, plaintiffs filed a notice of appeal from

the probate court's denial of their injunctive relief request. On the same day, plaintiffs filed a notice of automatic stay of the unlawful detainer action based on their appeal of the probate court's denial of injunctive relief.

On March 27, 2014, Judge Jay H. Ford III denied plaintiffs' request to stay the unlawful detainer action or consolidate that matter with the probate proceedings. On April 1, 2014, plaintiffs filed a supersedeas petition with this court requesting an emergency stay of the unlawful detainer action. We denied the emergency stay request based on the inadequacy of the record. (*Merrick v. Superior Court* (Apr. 1, 2014, B255201) [nonpub. order].) Shortly after we denied the stay request, Mr. Bruce filed a bankruptcy petition in federal bankruptcy court. Subsequently, Judge Ford who was presiding over the unlawful detainer action, continued the hearing on defendant's summary judgment motion to May 2, 2014. On April 7, 2014, plaintiffs moved for reconsideration of our denial of their stay request. On April 10, 2014, we denied plaintiffs' motion for reconsideration of the emergency stay denial. We explained: "There is no showing of urgency since the next hearing petitioners seek to enjoin is not until May 2, 2014. The petition will be considered on a priority basis." (*Merrick v. Superior Court* (Apr. 10, 2014, B255201) [nonpub. order].) On April 16, 2014, the probate court denied plaintiffs' preliminary injunction request.

On April 23, 2014, we denied plaintiffs' April 1, 2014 supersedeas petition. We ruled: "Appellant fails to provide an adequate record for supersedeas review. (Cal. Rules of Ct., rule 8.112(a).) The automatic stay under Code of Civil Procedure section 916, subdivision (a) arising from appellant's appeal from the probate court's March 25, 2014 denial of injunctive relief does not deprive the unlawful detainer court of jurisdiction to consider issues on eviction. (*Old National Financial Services, Inc. v. Seibert* (1987) 194 Cal.App.3d 460, 462-467.) There is substantial evidence that East End Properties, Inc., the purchaser on foreclosure, was a bona fide purchaser, which would render the foreclosure sale invulnerable to the former owner's challenge. (*Melendrez v. D&I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1250-1260.) [¶] Appellant fails to meet

his burden of showing the appealed order was in error and his appeal has merit, or that he would suffer irreparable harm absent a stay. (*Deepwell Homeowners' Protective Assn. v. City Council* (1965) 239 Cal.App.2d 63, 67; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2013) ¶¶ 7.279, 7.281, pp. 7-57 to 7-58 (rev. # 1, 2013.))” (*Merrick v. Superior Court* (Apr. 23, 2014, B255210) [nonpub. order].) On April 29, 2014, plaintiffs filed a mandate petition in our Supreme Court, which was transferred to us on April 30, 2014. (*Merrick v. Superior Court* (Apr. 29, 2014, S218152) [nonpub. order].) On June 2, 2014, we denied plaintiffs’ mandate petition as repetitive of the prior supersedeas request. (*Merrick v. Superior Court* (June 2, 2014, B255210) [nonpub. order].)

On June 24, 2014, Judge Ford granted defendant’s summary judgment motion in the unlawful detainer action. Judge Ford found defendant was the owner because it purchased the property at the foreclosure sale. Judge Ford awarded defendant possession of the premises.

On appeal, plaintiffs challenge the probate court’s March 25, 2014 refusal to grant injunctive relief. The reasoning in our April 23, 2014 order is dispositive. The Code of Civil Procedure section 916, subdivision (a) automatic stay arising from plaintiffs’ appeal did not deprive Judge Ford of jurisdiction to consider eviction issues. (*Old National Financial Services, Inc. v. Seibert, supra*, 194 Cal.App.3d at pp. 462-467.) Subsequently on June 24, 2014, the Judge Ford granted summary judgment in favor of defendant in the unlawful detainer action. Defendant was awarded possession of the premises. Because trial of the unlawful detainer action has occurred, our review of the probate court’s refusal to grant injunctive relief is rendered moot. (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 174-175; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574-1575.) Thus, we dismiss the appeal as moot.

The appeal is dismissed. Defendant, East End Properties, Inc., shall recover its costs incurred on appeal from plaintiffs, Terry Merrick, James Robert Bruce and Esteban Miguel Dean.

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TURNER, P. J.

We concur:

MOSK, J.

GOODMAN, J.*

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