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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAN DIEGO-IMPERIAL COUNCIL, BOY
SCOUTS OF AMERICA,

Plaintiff and Respondent,

v.

FREDERICK W. BALDWIN et al.,

Defendants and Appellants.

D061296

(Super. Ct. No. 37-2011-00052267-
CU-OR-NC)

APPEAL from a judgment of the Superior Court of San Diego County, Earl H. Maas III, Judge. Affirmed.

The trial court granted a summary judgment in favor of plaintiff San Diego-Imperial Council, Boy Scouts of America (Council) in this action against Frederick W. Baldwin, Lillian M. Guidry and Clinton J. Guidry (collectively, Defendants) for ejectment. Defendants appeal, asserting the trial court erred by entering judgment because it lacked subject matter jurisdiction over the property. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This action relates to real property located in Santa Ysabel, California, that is owned by the Council, but occupied by Defendants. In 2008, the trial court entered a judgment quieting the Council's ownership of assessor's parcel No. 195-070-30. In 2010, the Council purchased adjacent parcels, including assessor's parcel No. 195-050-10. Defendants reside on portions of assessor's parcel Nos. 195-050-10 and 195-070-30 (together, the Property).

The Council filed this action to eject Defendants from the Property. The trial court granted summary judgment in favor of the Council. It found that the Council proved its ownership of the Property, that Defendants were residing on the Property, and that Defendants failed to show the existence of a triable issue of material fact regarding any valid claim to the Property.

Defendants subsequently filed this appeal and a writ of supersedeas that requested a stay of execution of the judgment. We issued a temporary stay of the judgment and requested an informal response from the Council. We later summarily denied the petition and vacated the stay.

DISCUSSION

Defendants contend the trial court erred in granting summary judgment because it lacked subject matter jurisdiction over the Property, that lack of subject matter jurisdiction can be raised at any time, and this defect rendered the judgment quieting title to the Property void. Specifically, they assert their predecessor-in-interest obtained title to the Property via a homestead grant, that the federal government retains an interest in

the Property, and jurisdiction over the Property exists in federal court. As we shall discuss, the trial court properly entered judgment in favor of the Council.

Summary judgment is properly granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Where, as here, a plaintiff moves for summary judgment, the plaintiff has the burden of showing there is no defense to a cause of action by proving each element of the cause of action. (*Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 564-565.) Once the plaintiff meets this initial burden, the burden shifts to the defendant to show a triable issue of material fact exists as to that cause of action or a defense thereto. (*Id.* at p. 564.) To satisfy this burden, the opposing party must present admissible evidence and may not rely upon the allegations or denials of its pleading. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) We review a trial court's decision on summary judgment de novo, determining independently whether the facts not subject to dispute support summary judgment. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348.) We affirm an order granting summary judgment if it was correct on any ground that the parties had an adequate opportunity to address in the trial court. (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 120.)

The essential elements of an ejectment claim are the plaintiff's ownership of some interest in real property, the defendant's possession and withholding of the property, and damage to the plaintiff, if any. (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 635, pp. 67-68.) The Council established these elements through the declaration of Armand

A. Marois, a professional land surveyor, which showed the Council's right to possession of the property, and Defendants' possession and withholding of the property.

Additionally, the declaration of Terry Trout, a scout executive, established damages based on the Council's inability to use and develop all of its land. Accordingly, the burden shifted to Defendants to present admissible evidence showing the existence of a triable issue of material fact.

In opposition to the motion, Defendants presented points and authorities signed under penalty of perjury by Clinton J. Guidry. Guidry disputed the Council's right to possession of the property, however, he presented no admissible evidence to support his assertion. Although Guidry claimed that Defendants have receipts showing the payment of taxes on the Property dating back to 1937, he presented no evidence to support this claim.

Guidry also claimed "lack of jurisdiction" over the Property, asserting that because Defendants hold federal title, the Property is governed by federal law. On appeal, Defendants claim they obtained title to the Property under a homestead grant issued in 1939 and that California state courts lack jurisdiction over the Property. Assuming, without deciding, the validity of this argument, Defendants failed to present admissible evidence showing they possess an interest in the Property.

Defendants presented a deed showing that William McKinley Baldwin, presumably the Defendants' predecessor-in-interest, obtained title to a parcel of real property by a 1939 homestead patent. The Council asserts this evidence was not presented below and is not properly before us. Aside from the fact that we cannot

consider evidence that was not presented below (Code Civ. Proc., § 437c, subd. (c)), Defendants have not shown that the real property referenced in that document is the Property at issue in this appeal. Rather, a map presented by the Council shows that Ernest Baldwin and Fredrick Baldwin own assessor's parcel No. 195-050-04 and that Ernest Baldwin and Vivian Corkfill own assessor's parcel No. 195-050-11, which are parcels of land adjacent to the Property.

Based on the evidence presented below, the trial court did not err in summarily adjudicating that the Council had a right to eject Defendants from the Property.

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to its costs on appeal.

MCINTYRE, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.