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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VIOREL I. BUCUR,

Plaintiff and Appellant,

v.

ALDI UJKAJ et al.,

Defendants and Respondents.

E060451

(Super.Ct.No. RIC1305626)

OPINION

APPEAL from the Superior Court of Riverside County. Ronald L. Taylor, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of George A. Saba and George A. Saba for Plaintiff and Appellant.
Ward & Ward, Alexandra S. Ward; Albertson & Davidson, Keith A. Davidson;
Morris Law Firm and Byron K. Husted for Defendants and Respondents.

No appearance for Respondent Rodriguez Carrier, Inc.

INTRODUCTION

The subject of this appeal involves the disputed ownership of two commercial line haul contracts with FedEx. Plaintiff and appellant Viorel Bucur¹ originally held the hauling contracts but they were assigned to Chuck Wasarhelyi, who is not a party to this action or appeal. In 2011, Wasarhelyi sued Bucur's two companies in another action (case No. RIC1106033) and obtained a judgment after a jury trial in April 2013. In May 2013, Bucur then filed the present complaint against two sets of related defendants: Aldi Ujkaj, Aldi's Trucking, Inc., and Aldex Transport, Inc. (Ujkaj); and Daver Rodriguez, Rodriguez Carrier, Inc., and Daver's Transport, Inc. (Rodriguez).² Bucur contends defendants purchased the hauling contracts from Wasarhelyi while there was ongoing litigation between Bucur and Wasarhelyi.

Bucur appeals from a judgment entered after the trial court sustained defendants' demurrers without leave to amend because the present complaint is barred by principles of res judicata and collateral estoppel. We agree the fundamental issue of who owned the hauling contracts was resolved against Bucur by the *Wasarhelyi* judgment and Bucur cannot sue Ujkaj and Rodriguez. We affirm the judgment in this case.

¹ Bucur includes the two companies owned by his wife and him, VLB Associates, Inc. and Liguari Prod. Inc.

² Rodriguez did not file a respondent's appellate brief.

II

FACTUAL AND PROCEDURAL BACKGROUND

We derive the facts from the allegations of the complaint and from matters subject to judicial notice. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

A. *Prelitigation Events*

In 2001 and 2005, Bucur entered into two hauling contracts with FedEx. The contracts had a fair market value of \$1.8 million. In 2010, FedEx was planning to terminate the contracts with Bucur because of his poor safety performance. At one point, Bucur offered to sell the FedEx contracts to Ujkaj for \$1 million and Ujkaj offered to purchase them for \$600,000, which Bucur declined. In July 2010, Bucur agreed to sell the FedEx contracts to Wasarhelyi for \$500,000. Bucur contends Wasarhelyi never paid him. In October 2011, Ujkaj purchased one hauling contract for \$200,000 and Rodriguez purchased the other contract for \$800,000 from Wasarhelyi.

B. *The Wasarhelyi Litigation*

In April 2011, Waserhelyi filed a complaint for breach of contract against Bucur and his two companies, VLB and Liguari. On January 5, 2012, VLB and Liguari filed a verified first amended cross-complaint (FACC) in the *Wasarhelyi* action against Wasarhelyi, Ujkaj, and other defendants.³ The factual allegations of the FACC were that

³ Rodriguez was apparently eventually named as a cross-defendant.

FedEx had demanded the hauling contracts be transferred from Bucur to another party and that the July 2010 transfer to Wasarhelyi was intended only to placate FedEx. Instead, Bucur and Wasarhelyi had entered into an oral agreement for Bucur to pay Wasarhelyi two cents per mile in exchange for Wasarhelyi posing as the holder of the hauling contracts to satisfy FedEx's safety concerns. In 2011, Wasarhelyi took actions to seize Bucur's trucks and the FedEx revenue. Ujkaj and Rodriguez bought the hauling contracts from Wasarhelyi even though they knew about the litigation between him and Bucur.

The FACC alleged causes of action for breach of oral contract, fraud, conversion, rescission, and declaratory relief. Bucur claimed that he was entitled to the FedEx revenue and Wasarhelyi had breached his agreement with Bucur. The FACC sought damages of \$1 million and rescission of all the agreements with Wasarhelyi and the sales to Ujkaj and Rodriguez.

In October 2012, the parties stipulated to bifurcate Bucur's cross-claims against Ujkaj because they would become moot if Wasarhelyi prevailed in the litigation with Bucur. In April 2013, Wasarhelyi received a judgment in his favor after trial, confirming his interest in the FedEx contracts.⁴ The judgment included recitations that the court had granted a nonsuit in favor of Wasarhelyi on Bucur's claims for fraud and the jury had

⁴ We grant the request for judicial notice filed July 22, 2014. (Evid. Code, §§ 452, 459.)

rendered a verdict for Wasarhelyi on Bucur's claims for breach of oral contract and conversion. On May 15, 2013, Bucur purported to dismiss the FACC without prejudice as to cross-defendants Ujkaj and Rodriguez.

C. The Present Litigation

On May 10, 2013, Bucur, acting in propria persona, filed a complaint against Ujkaj and Rodriguez, asserting five causes of action for intentional and negligent interference with contract,⁵ intentional and negligent interference with prospective economic advantage, and conversion. Bucur alleged that defendants knew about and participated in the fraud perpetrated by Wasarhelyi, involving the FedEx contracts. Although Ujkaj had asked to buy the FedEx contracts, Bucur sold them in July 2010 to Wasarhelyi but Wasarhelyi never paid the \$500,000 purchase price. Instead, Wasarhelyi sued Bucur and Bucur filed a cross-complaint and obtained a preliminary injunction prohibiting the transfer of the contracts. In October 2011, Ujkaj and Rodriguez, although they knew about the injunction, purchased the contracts for \$800,000 and \$200,000 and interfered with Bucur's business.

D. The Demurrers

Both sets of defendants demurred to the complaint on the grounds that the basis for Bucur's claims against them—his interest in the FedEx contracts—had been resolved

⁵ Bucur dismissed the nonviable cause of action for negligent interference with contract.

against him in the previous *Waserhelyi* litigation. At two different hearings, the trial court determined the complaint is barred by the collateral estoppel aspect of *res judicata*.

III

DISCUSSION

A. *Standard and Scope of Review*

“A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the sustaining of a demurrer and determine *de novo* whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We construe the pleading in a reasonable manner and read the allegations in context. (*Ibid.*) We must affirm the judgment if the sustaining of a general demurrer was proper on any of the grounds stated in the demurrer, regardless of the trial court’s stated reasons. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)” (*Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1040.)

The appellate court reviews the trial court’s determination to sustain a demurrer without leave to amend for abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Bucur had the burden to show a reasonable possibility of amendment. (*Ibid.*; *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

B. Collateral Estoppel

Defendants generally demurred to the entire complaint based on the failure to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10.) The orders ruling on the demurrers stated that the demurrers were sustained based on collateral estoppel and res judicata.

Collateral estoppel, or issue preclusion, precludes the relitigation of issues argued and decided in prior proceedings. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511.) “Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.]’ [Citation.]” (*Ibid.*) “The “identical issue” requirement addresses whether “identical factual allegations” are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same. [Citation.]’ [Citation.]” (*Hernandez*, at pp. 511-512.)

“Even if the minimal requirements for application of collateral estoppel are satisfied, courts will not apply the doctrine if considerations of policy or fairness outweigh the doctrine’s purposes as applied in a particular case ([*Lucido v. Superior Court* (1990) 51 Cal.3d 335,] 342-343), or if the party to be estopped had no full and fair

opportunity to litigate the issue in the prior proceeding. (*Bostick v. Flex Equipment Co., Inc.* (2007) 147 Cal.App.4th 80, 97; *Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 148.)’ (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.)

“An issue was ‘actually litigated’ for purposes of collateral estoppel only if it was properly raised, submitted for determination, and decided in the prior proceeding. (*Hernandez, supra*, 46 Cal.4th at p. 511.) An issue decided in a prior proceeding establishes collateral estoppel even if some factual matters or legal theories that could have been presented with respect to that issue were not presented. (*Clark v. Leshner* (1956) 46 Cal.2d 874, 880-881; *Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 401; 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 419, pp. 1064-1065.) A prior decision does not establish collateral estoppel, however, on issues that could have been raised and decided in the prior proceeding but were not. (*Murphy*, at p. 401; see Witkin, *supra*, § 419, p. 1064.) Courts have recognized that distinguishing issues from factual matters or legal theories in this regard can be difficult. (*Clark, supra*, at pp. 880-881; *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1517.)” (*Bridgeford v. Pacific Health Corp., supra*, 202 Cal.App.4th at pp. 1042-1043.)

In the FACC and the present complaint, Bucur claims he was the rightful owner of the hauling contracts. His claim was rejected by the court and the jury in the *Wasarhelyi* litigation. The record supports the operation of collateral estoppel. (*Lucido v. Superior Court, supra*, 51 Cal.3d at p. 341.)

The factual issue of the rightful ownership of the FedEx contracts is identical in both lawsuits. The FACC and the present complaint contain the same allegations about Bucur's claims to the FedEx contract. Both complaints allege that Bucur owned the FedEx contracts, which he agreed to transfer and assign to Wasarhelyi in July 2010, but that Wasarhelyi did not pay Bucur. In order to prevail against Ujkaj and Rodriguez on his claims for intentional interference with contract, intentional and negligent interference with prospective economic advantage, and conversion, Bucur would have to establish that he owned or had a recognized interest in the FedEx contracts. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148, 1152 [intentional interference with contract and prospective economic advantage]; *Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1078 [negligent interference with prospective economic advantage]; *Hartford Financial Corp. v. Burns* (1979) 96 Cal.App.3d 591, 598 [conversion].) Bucur cannot relitigate this issue because it has already been actually litigated between himself and Wasarhelyi.

Furthermore, the issue was necessarily decided in the *Wasarhelyi* case by a final decision on the merits; the *Wasarhelyi* case was litigated and decided by a court and jury in a final judgment for Wasarhelyi, not Bucur. Bucur, of course, and Ujkaj and Rodriguez (or their companies) were all parties in the *Wasarhelyi* case and the present case.

Because the court and the jury found that Bucur did not own or have an interest in the FedEx contracts, Bucur cannot assert in subsequent litigation that he owns or has an interest in the contracts. He could not prove the essential element of his claims.

Therefore, Bucur could not state a cause of action that was not barred by collateral estoppel. Nor could he show any reasonable possibility of amendment to avoid collateral estoppel based on this record.

IV

DISPOSITION

Collateral estoppel bars Bucur's complaint and no amendment can revive his claims. We affirm the judgment and order the prevailing parties to recover their costs on appeal.

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.