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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

ADA UNRUH,

Plaintiff and Appellant,

v.

INFINITY GROUP SERVICES,

Defendant and Respondent.

E064180

(Super.Ct.No. CIVDS1414816)

OPINION

APPEAL from the Superior Court of San Bernardino County. Keith D. Davis,  
Judge. Affirmed.

Ada Unruh, in pro. per., and for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Appellant, Ada Unruh, sued to quiet title to a property she purchased in 2002.<sup>1</sup> (Code Civ. Proc., § 760.010 et seq.) Unruh named as a defendant and adverse claimant respondent Infinity Group Services (Infinity) with whom she took out a 30-year mortgage for \$165,000 in 2006. She did not name as defendants HSBC Bank USA, N.A. (HSBC) or other entities which may have acquired an interest in the property according to the complaint, affidavits, and documents filed in the trial court.

Infinity did not respond to the complaint, though Unruh attempted service by mail and publication and recorded a lis pendens.<sup>2</sup> When Infinity failed to respond, the clerk of the trial court entered a default against Infinity. Unruh then applied to the trial court to enter a default judgment quieting title in her favor against all claimants known and unknown. The trial court refused to enter a default judgment, ruled Unruh had not carried her burden of establishing she was entitled to an order quieting title, and dismissed her complaint without prejudice.

Unruh contends the trial court erred by (1) refusing to enter a default judgment under Code of Civil Procedure section 585, subdivision (c) (Section 585(c)) and

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<sup>1</sup> Unruh represented herself in the trial court and represents herself on appeal.

<sup>2</sup> Infinity did not respond to notice of Unruh's appeal, and has not submitted a brief in this court.

(2) holding she had not met her burden of proving she was entitled to have title quieted in her favor.<sup>3</sup> We affirm.

## I

### FACTUAL BACKGROUND

On October 2, 2014, Unruh filed a verified complaint seeking to quiet title to a property located at 341 Vista Lane, Sugarloaf, California 92386. (Code Civ. Proc., § 760.010 et seq.) She named Infinity as a defendant and known adverse claimant, and asked for a determination of title against Infinity and all unknown persons or entities who claim any legal or equitable right, title, interest, estate, or lien adverse to her title. (Code Civ. Proc., § 761.020, subs. (d) & (e).)

To establish her title and certain adverse claims, Unruh submitted a September 24, 2014 investigative title report by First American Title, which attached certain documents recorded with the Office of the Recorder of San Bernardino County. Unruh's claim to title is based on a grant deed recorded July 25, 2002, which names her as the sole grantee. (Code Civ. Proc., § 761.020, subd. (b).) The complaint based the existence of adverse claims on a deed of trust and note benefiting Infinity, dated July 21, 2006 and executed July 23, 2006. Infinity recorded the deed of trust on July 28, 2006 as Doc # 2006-

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<sup>3</sup> We do not reach various ancillary issues Unruh raises about the trial court's ruling and procedures because they do not affect our conclusion the trial court order correctly refused to enter a default judgment and dismissed the quiet title cause of action.

0514590.<sup>4</sup> The deed of trust and note say Infinity acquired a security interest in the property in return for a 30-year loan to Unruh for \$165,000.<sup>5</sup> (Code Civ. Proc., § 761.020, subd. (b).)

Unruh contends the deed of trust and note were transferred to other parties. Her complaint alleged the deed of trust and note were transferred from Infinity to Indymac Bank, FSB (Indymac), then to Lehman Brothers Holdings, Inc., then to Structured Asset Securities Corporation, and finally to HSBC.

In affidavits and exhibits submitted to support entry of a default judgment, Unruh recounted a different series of transactions involving the deed of trust and note. First, she contended Infinity “Transferred/Sold/Assigned all its right title and interest in the Promissory Note to INDYMAC BANK, FSB.” Unruh bases that contention on a document signed by Infinity’s President and CEO entitled “Allonge to Note,” which identifies Unruh, her property, and her loan and its amount, and says, “Pay to the order of Indymac Bank, F.S.B., 155 North Lake Avenue, Pasadena, CA 91101 [¶] without

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<sup>4</sup> Unruh attached only the first page of the deed of trust to her complaint, but submitted the full deed of trust, as recorded, and the note with requests for judicial notice filed in the trial court.

<sup>5</sup> Unruh identified a second deed of trust benefiting Washington Mutual Bank, F.A., recorded on December 4, 2006 as Doc # 2006-0835456, but did not attach a copy. She did attach a Substitution of Trustee and Full Reconveyance recorded on behalf of JPMorgan Chase Bank, N.A. on August 7, 2014. That document identifies the second deed of trust and indicates Unruh has not paid the related debt. We do not discuss this adverse claim because Unruh did not develop the record in the trial court and it is not necessary to resolve these issues on appeal.

recourse on July 21, 2006.” The allonge appears in both the trial court and appellate record as a standalone, single-page document. It is not attached to the deed of trust or the note, which Unruh attached as separate exhibits, nor is there any indication it was recorded.

Second, Unruh contended Infinity later transferred the deed of trust and note to Mortgage Electronic Registration Systems, Inc. (MERS). Infinity recorded a corporation assignment of deed of trust form on April 20, 2007, which says, “For value received, Infinity Group Services its successors and assigns, hereby assigns and transfers to Mortgage Electronic Registration Systems, Inc., its successors and assigns . . . all its right, title and interest in and to a certain deed of trust executed by Ada Unruh, an unmarried woman to Infinity Group Services and bearing the date of July 21, 2006 and recorded as Instrument No. 06-514590 on 7/28/06.”

Third, Unruh contended MERS assigned the deed of trust and note to HSBC. MERS recorded a California assignment of deed of trust form on January 4, 2013, which says, “For value received, the undersigned [MERS] . . . hereby grants, assigns and transfers to HSBC Bank USA, NA, as trustee for the LMT 2006-6 Trust Fund, . . . all beneficial interest under that certain Deed of Trust dated July 21, 2006, executed by Ada Unruh . . . to beneficiary noted on Deed of Trust, Mortgage Electronic Registration Systems, Inc., (MERS) solely as nominee for Infinity Group Services, in the amount of \$165,000, and recorded on July 28, 2006, . . . together with the Note therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.”

Unruh attempted to serve her quiet title complaint on Infinity. It is unclear whether Infinity received actual notice, though Unruh submitted a copy of a certified mail receipt which shows someone signed for delivery of a package mailed to one of Infinity's addresses. Though Unruh's complaint and other filings in the trial court identify other adverse claimants, she did not name them as defendants and did not attempt to serve them with the complaint.

The trial court, on Unruh's application, entered an order for service of summons on Infinity "by publication . . . in [the] Orange County Reporter." Unruh published notice of the lawsuit on October 27, 2014 and November 3, 10, and 17, 2014, and filed proof of publication with the trial court. She also served a notice of the lis pendens on Infinity by mail, and recorded the lis pendens.

Unruh then submitted a request for entry of default with the trial court. In an accompanying affidavit, she recounted her attempts to serve Infinity and represented "[a]s to the other alleged potential Defendant(s), service cannot be made due to the fact that these Defendant(s) are unknown at this time." On December 18, 2014, the clerk of the trial court entered a default, as requested.

On January 15, 2015, Unruh filed an affidavit in support of her request for the trial court to enter default judgment, quieting title against Infinity and all other adverse claimants. Unruh filed a memorandum of points and authorities with exhibits purporting to show (i) she provided notice by publication, (ii) she recorded a lis pendens, (iii) Infinity transferred its interest to Indymac, and (iv) Infinity transferred its interest to

MERS and MERS then transferred its interest to HSBC on behalf of the LMT 2006-6 Trust Fund.

At a hearing on June 5, 2015, the trial court declined to enter a default judgment, ruled Unruh had not established entitlement to an order quieting title, and dismissed her cause of action without prejudice. There is no transcript of the hearing in the appellate record. The trial court noted in a minute order only that it had determined Unruh “has not met her burden.” The trial court dismissed Unruh’s cause of action without prejudice.

## II

### DISCUSSION

#### A. *Availability of Default Judgment in Quiet Title Action*

Unruh contends the trial court erred when it failed in the face of Infinity’s default to treat her allegations as true and enter a default judgment quieting title in the property in her favor. We disagree.

This appeal requires us to construe sections of the Code of Civil Procedure, an inquiry we undertake de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) Code of Civil Procedure, section 760.010 et seq. set out the process for quieting title in property. The statute that concerns us here, Code of Civil Procedure section 764.010 (Section 764.010), provides, “The court shall examine into and determine the plaintiff’s title against the claims of all the defendants. The court *shall not enter judgment by default* but shall in all cases require evidence of plaintiff’s title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The

court shall render judgment in accordance with the evidence and the law.” (Italics added.)

“The Legislature has not left anything to the imagination about whether a trial court can enter a default judgment in a quiet title action. ‘The court shall not enter judgment by default’ is unequivocal. Moreover, unlike the ordinary default prove-up, in which a defendant has no right to participate [citation], before entering *any* judgment on a quiet title cause of action the court must ‘in all cases’ ‘hear such evidence as may be offered respecting the claims of any of the defendants.’” (*Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1501-1502 (*Harbour Vista*).

It follows Unruh’s contention the trial court erred by failing to enter a default judgment against Infinity is without merit. It is true where service of summons is by publication, if defendant fails to respond, Section 585(c) permits a plaintiff to “apply to the court for the relief demanded in the complaint,” and requires the court to “hear the evidence offered by the plaintiff, and . . . render judgment in the plaintiff’s favor for that relief . . . as appears by the evidence to be just.” However, Section 764.010 specifically takes actions to quiet title out of the ambit of Section 585(c). “[T]he unambiguous language of section 764.010 precludes a traditional prove-up in quiet title actions and imposes an absolute ban on a ‘judgment by default’ in such actions.” (*Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 947; see also *Harbour Vista, supra*, 201 Cal.App.4th at p. 1500.) “[N]otwithstanding a defendant’s default in a quiet title action, the plaintiff is not automatically entitled to judgment in its favor but must prove its case in an

evidentiary hearing with live witnesses and any other admissible evidence.” (*Nickell v. Matlock, supra*, at p. 947.)

The trial court was therefore correct as a matter of law in refusing to enter a default judgment quieting title in Unruh’s behalf.

B. *Failure to Show Payment of Indebtedness*

Instead, the trial court was required to hold a hearing to resolve Unruh’s request for a default judgment quieting title and “render judgment in accordance with the evidence and the law.” (§ 764.010.) The trial court held a hearing, but Unruh’s evidence did not establish she was entitled to quiet title in the property.<sup>6</sup>

At bottom, Unruh was required to establish the recorded assignment from MERS to HSBC did not give HSBC a legitimate claim to a security interest in the property.<sup>7</sup> Otherwise, she would not be entitled to quiet title against HSBC without showing she had discharged her debt. (*Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477-478.)

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<sup>6</sup> Unruh complains the trial court erred by refusing to allow her to testify at the hearing. However, there is no transcript of the hearing and Unruh does not indicate what she proposed to testify. It would be within the trial court’s discretion, for example, to bar testimony as cumulative of the documentary evidence. (E.g., *Sheridan v. Sheridan* (1936) 15 Cal.App.2d 200, 201 [trial court has inherent discretionary power to bar cumulative testimony].) Consequently, we conclude Unruh has not carried her burden of showing the court abused its discretion in refusing to allow her to testify. (*The Otay Ranch, L.P. v. County of San Diego* (2014) 230 Cal.App.4th 60, 68.)

<sup>7</sup> We do not comment on whether a borrower has standing to sue to quiet title based on an allegedly void assignment to which the borrower was not a party.

Unruh contends the purported assignment to HSBC was void because (1) Infinity had transferred its interest to Indymac before it purported to assign the deed of trust to MERS and (2) the assignment to MERS did not transfer an ownership interest, so MERS could not transfer an ownership interest to HSBC. We conclude the evidence does not establish the HSBC assignment was void.

In the first place, the documents Unruh submitted were not, on their own, sufficient to establish Infinity transferred its interest in the property to Indymac. To support her contention that a transfer occurred, Unruh submitted a document she claims is an allonge (or addendum) to her note. But the allonge says only that \$165,000 should be paid “to the order of Indymac Bank, F.S.B., 155 North Lake Avenue, Pasadena, CA 91101 [¶] without recourse on July 21, 2006.”<sup>8</sup> It does not say on its face it constitutes a transfer of a security interest. In addition, Unruh presented the document to the trial court as a single-page exhibit that contains no indication it was recorded. Nor is it attached to the recorded deed of trust or the note, which Unruh submitted to the trial court as separate exhibits. Thus, even if the allonge did have the legal effect of transferring interest in the property to Indymac, Unruh did not provide the trial court with evidence sufficient to determine that fact. Absent proof Infinity affected a transfer to Indymac, there is no support for her contention Infinity had no interest to assign in the transfer to

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<sup>8</sup> Unruh complains the allonge is dated July 21, 2006, whereas she executed the note and deed of trust on July 23, 2006. However, the July 21, 2006 date is preprinted on the deed of trust and the allonge. If the allonge were an attachment to the note, as Unruh contends, the pre-printed date would not affect its validity.

MERS. On the contrary, the evidence Unruh submitted is consistent with the proposition that Infinity retained the right to transfer the property and the assignment to MERS was valid.

Unruh also fails to establish MERS could not affect a valid assignment to HSBC. As our Supreme Court recently explained, “MERS was formed by a consortium of residential mortgage lenders and investors to streamline the transfer of mortgage loans and thereby facilitate their securitization. A member lender may name MERS as mortgagee on a loan the member originates or owns; MERS acts solely as the lender’s ‘nominee,’ having legal title but no beneficial interest in the loan. When a loan is assigned to another MERS member, MERS can execute the transfer by amending its electronic database. When the loan is assigned to a nonmember, MERS executes the assignment and ends its involvement.” (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 931, fn.7.) Unruh contends such assignments are invalid because the holder of the deed of trust is not the holder of a beneficial interest in the loan. We disagree. “[T]here is no reason to doubt the legitimacy of the common arrangement whereby MERS holds bare legal title as mortgagee of record and the noteholder alone enjoys the beneficial interest in the loan.” (*Culhane v. Aurora Loan Services of Nebraska* (2013) 708 F.3d 282, 291.) We therefore conclude Unruh has provided no reason to

doubt the assignment from MERS to HSBC was valid.<sup>9</sup>

The HSBC assignment indicates HSBC acquired “all beneficial interest” under the deed of trust “together with the Note therein described or referred to, [and] the money due and to *become due* thereon with interest.” (Italics added.) Thus the evidence Unruh submitted tends to show she has not paid off her debt on the property. A property owner may not “quiet title without discharging [the owner’s] debt. The cloud upon [the] title persists until the debt is paid. [Citation.] [The property owner] is entitled to remain in possession, but cannot clear his title without satisfying [the] debt.” (*Aguilar v. Bocci, supra*, 39 Cal.App.3d at pp. 477-478.) “The burden of proving payment, once the uncanceled note, which had not been returned to the payor, and the deed of trust were proved (and plaintiff himself introduced the evidence of his debt), was upon the plaintiff. [Citations.]” (*Hagen v. Silva* (1956) 139 Cal.App.2d 199, 203.)

Here, Unruh failed to carry her burden of establishing she had discharged her debt on the property. On the contrary, she submitted a deed of trust and note showing she took out a 30-year mortgage for \$165,000 with Infinity in 2006 and an assignment indicating the debt remains outstanding. Moreover, she points us to no evidence to show she has paid the debt, which alone is ground for rejecting her appeal. (*Dietz v.*

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<sup>9</sup> Unruh contends the assignment to HSBC as trustee for the LMT 2006-6 Trust Fund “is a legal fiction” because she could not locate a trust under that name in a publication of the Internal Revenue Service identifying Real Estate Mortgage Investment Conduits or on a database maintained by the Securities and Exchange Commission. Unruh has not provided any reason to conclude those sources are exhaustive, and therefore has not carried her burden of establishing the trust fund does not exist.

*Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799-800; see Cal. Rules of Court, rule 8.204(a)(1)(C).) We therefore conclude the trial court correctly determined Unruh did not carry her burden of establishing she was entitled to quiet title.

C. *Failure to Name Adverse Claimants*

It appears from the record Unruh's failure of proof may stem from her decision not to name as defendants entities she knew may assert adverse claims. She contends documents she submitted to the trial court show the deed of trust was transferred to Indymac, MERS, and HSBC. We do not decide whether those claims are valid, but the way to determine whether they are is to name the adverse claimants as defendants and serve them with the complaint. Unruh's failure to do so likely precluded HSBC, the most recent entity to record an interest in the property that traces to the Infinity deed of trust, from asserting its rights.

Her failure to name those entities also would have precluded Unruh from enforcing a quiet title judgment against them. The quiet title statute directs "the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property." (Code Civ. Proc., § 762.060, subd. (b).) If the plaintiff does not name a claimant and obtains a quiet title judgment, "the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if . . . [¶] (a) The claim was of record at the time the lis pendens was filed . . . [¶] (b) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property at the time the lis pendens was filed." (Code Civ. Proc., § 764.045; see also *Deutsche Bank National*

*Trust Co. v. McGurk* (2012) 206 Cal.App.4th 201 [deed of trust of record is not subject to a judgment of quiet title where the holder of the deed of trust was previously dismissed from the action].) As a result, even if the trial court had entered a judgment quieting title in her favor, it would not have been enforceable against HSBC, which had a recorded claim when Unruh filed the lis pendens. Nor would it have been enforceable against any unnamed claimant if Unruh knew of the claim when she filed the lis pendens.<sup>10</sup>

**III**  
**DISPOSITION**

We affirm the judgment.

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SLOUGH  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.

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<sup>10</sup> Unruh’s motion for expedited appeal asking us to “direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court” (Code of Civ. Proc., § 170.1, subd. (c)) is moot because we affirm the judgment in its entirety.