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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YAN SUI et al.,

Plaintiffs and Appellants,

v.

STEPHEN D. PRICE et al.,

Defendants and Respondents.

G047311

(Super. Ct. No. 30-2010-00395852)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andrew P. Banks, Judge. Appeal dismissed as to plaintiff Yan Sui. Judgment affirmed as to plaintiff Pei-Yu Yang.

Kanzl Law Offices and Ken Liang for Plaintiff and Appellant Pei-Yu Yang.

Yan Sui in pro. per., for Plaintiff and Appellant .

Bonne, Bridges, Mueller, O’Keefe & Nichols, Margaret M. Holm, Robert A. Zermeno, Jr., Allyson S. Ascher, and Kyle C. Worrell for Defendants and Respondents.

Plaintiffs Yan Sui and Pei-Yu Yang appeal from the judgment in this slander of title action after the court granted the Code of Civil Procedure section 631.8 motion for judgment in favor of defendants Stephen D. Price, 2176 Pacific Homeowners Association, and Michelle J. Matteau.¹ We dismiss Yan Sui's appeal. We affirm the judgment as to Pei-Yu Yang.

FACTUAL AND PROCEDURAL HISTORY

Following a series of hearings on demurrers and motions to strike, this matter went to trial on Monday, May 7, 2012, on a single cause of action for slander of title. Originally, the complaint had been filed in 2010 jointly by Sui and Yang as co-plaintiffs, representing themselves in propria persona. More than a year before filing the slander of title action, Sui and Yang, as joint tenants, recorded a quitclaim deed transferring the subject property to Yang as her sole and separate property. There is no evidence in the record that Sui ever came back into legal title after the recordation of the quitclaim deed.

Nearly a year before trial, in July 2011, Sui had filed a petition for bankruptcy relief under chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.). On May 4, 2012, the Friday before trial, Sui's bankruptcy trustee, Richard A. Marschack, entered into a settlement agreement with defendants resolving Sui's four pending lawsuits against defendants. The four lawsuits, including this slander of title action, had been filed prior to Sui's bankruptcy petition. The settlement agreement resolved *all* of Sui's pre-petition claims against defendants, in exchange for defendants' payment of \$5,000 to the trustee. The settlement was subsequently approved by the bankruptcy court, and the trustee filed a request for dismissal with prejudice of Sui's slander of title

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

action in the superior court. Because of the settlement, the trustee did not participate in the trial.

Yang proceeded to trial and represented herself in the two-day bench trial. During Yang's lengthy opening statement, the court explained to her that her lawsuit was limited to a slander of title claim and that she needed to show the court "the facts that prove what the law says is a slandering of title." After Yang finished her opening statement, defendants moved for nonsuit. The court denied defendants' motion.

Yang called Sui as a witness. During Sui's testimony, Yang moved for judgment under section 631.8, but the court advised her that the timing of the motion was inappropriate. When Yang asked the court when was the appropriate time, the court replied it could not help her to the detriment of defendants. After Yang finished calling her witnesses, she again brought a section 631.8 motion. The court again advised her it was not the proper time for the motion, explaining, "We are in the evidence presentation part of your case where all of the burden is on you to bring forth all of your evidence." The court then granted Yang a 10-minute break to look for her evidence.

Yang then sought to have her exhibits 1 through 54 admitted into evidence. Defense counsel objected on grounds the documents lacked authentication and foundation and contained hearsay. The court sustained the objections of lack of authentication and foundation. The court explained to Yang that she had not taken "the necessary steps to lay a foundation and authenticate these documents, let alone address what may be a valid hearsay objection." The court noted it had encouraged Yang and Sui to get a lawyer because they would be held "to the same standards and rules and requirements as a lawyer. And the law is clear that I cannot let you be held to a lesser standard That would be unfair to the lawyer's client."

Yang then asked to recall Sui as a witness. When the court asked Yang whether she knew what questions to ask to overcome defense counsel's objections, Yang replied she did. The court then agreed to "do a test run." Defense counsel objected. The

court stated, “In the interests of justice, I’m going to see whether there is any basis for the claim that the plaintiff knows what to do but simply neglected [to do it]. And if I’m convinced that this is not true, then we won’t endure it through 54 different exhibits that appear to the court from this distance to encompass over four inches thick of documents.”

After some unproductive questioning of Sui by Yang, the court stated, “The purpose of this witness being on the stand, Ms. Yang, is for you to show me that indeed you can lay the necessary foundation for any of your exhibits. You’re not doing any of that. You are limited only to those types of questions, and you should pick the exhibit you think you have the best and strongest chance of being able to get into evidence because this process . . . is in part a test run.” The court twice admonished the witness, Sui, to close the exhibit book. The court advised Yang, “Do not make statements. If you start with some exhibit[,] you want to try to lay a foundation for and authenticate and overcome any potential hearsay objections as to [it]. So ask the witness the questions you need to ask him to try to get it into evidence. Do not make statements to me about prior testimony or anything else.” The court stated, “I can’t help you. If I help you, I’m harming the defendants.” Yang requested a five-minute recess to consult her attorney about how to formulate a question. The court denied the request: “No. Time has been taken. And I have to be fair to both sides. You are the lawyer for yourself.” Yang then resumed questioning Sui. The court noted Sui had now been on the witness stand for 30 minutes. Yang stated she felt she could not do this, she was totally restricted, and she needed two minutes.

The court excluded the exhibits from evidence. The court then asked whether Yang had any other witnesses to call or any further evidence to offer. Yang stated she did not.

After the close of plaintiff’s case, defendants moved for judgment under section 631.8 on grounds plaintiff presented no evidence of damages or malice — essential elements of a slander of title cause of action. The court gave Yang an

opportunity to respond and allowed her to discuss case law, even though the court had already told her it was irrelevant to the motion. Finally, the court granted defendants' motion for judgment.

DISCUSSION

Sui's Appeal Must be Dismissed

Sui's appeal must be dismissed for a number of reasons.

First, Sui purports to appeal from the judgment entered on June 22, 2012. That judgment does not adjudicate any of his claims or affect any of his interests in any way. The judgment simply decrees that "plaintiff Pei-Yu Yang take nothing by her Complaint from Defendants," and awards costs against "plaintiff." The judgment recites that plaintiff Pei-Yu Yang appeared for trial, not plaintiff Yan Sui. On the face of the judgment, Sui is not an aggrieved party. "[O]nly an 'aggrieved party' has a right to appeal." A "*party aggrieved is one who has an interest recognized by law in the subject matter of the judgment and whose interest is injuriously affected by the judgment* [citations]." (*Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 754; see § 902 ["Any party aggrieved may appeal"].)

Second, it was not possible for Sui to be an "aggrieved party" because his cause of action belonged to his bankruptcy estate. "A bankruptcy trustee is the representative of the bankrupt estate, and has the capacity to sue and be sued. [Citation.] Among the trustee's duties is the obligation to 'collect and reduce to money the property of the estate.' [Citation.] The 'property of the estate' includes 'all legal or equitable interests of the debtor in property as of the commencement of the case,' [citation], including the debtor's 'causes of action.'" (*Smith v. Arthur Andersen LLP* (9th Cir. 2005) 421 F.3d 989, 1002; see 11 U.S.C. § 541(a)(1).) Here, the bankruptcy trustee controlled Sui's bankruptcy estate and properly negotiated a settlement of Sui's claim, obtained the

bankruptcy court's approval of the settlement, and, pursuant to the settlement, dismissed Sui's slander of title action with prejudice. The bankruptcy court's order approved the settlement of "all of the claims made by [Sui]" in, inter alia, this slander of title case. Sui's argument concerning the validity of the Chapter 7 trustee's settlement of his pre-bankruptcy petition lawsuits falls outside this court's jurisdiction, and, for that matter, outside the jurisdiction of the trial court. Jurisdiction to hear appeals from final judgments, orders, or decrees in a bankruptcy case lies with the United States District Court, or, if the parties consent, with the bankruptcy appellate panel established by the judicial council of a circuit. (28 U.S.C. § 158(a)(1), (b)(1).) A bankruptcy court's approval of a settlement agreement is considered a final order. (*In re W.R. Grace & Co.* (Bankr. D. Del. 2012) 475 B.R. 34, 74, fn. 27). Thus, Sui's arguments must be made either to the bankruptcy appellate panel or the United States District Court. Indeed, Sui advises us in his reply brief that the bankruptcy appellate panel dismissed his appeal from the bankruptcy court's order approving the trustee's compromise settlement and that Sui has appealed to the Ninth Circuit Court of Appeals.

Finally, even if we construe Sui's notice of appeal as being from the subsequent voluntary dismissal of Sui's complaint with prejudice (which we do not), "[i]t is well established that a voluntary dismissal under Code of Civil Procedure section 581 is not appealable. 'The entry [of a request for dismissal] is a ministerial, not a judicial, act, and no appeal lies therefrom.'" (*Gutkin v. University of Southern California* (2002) 101 Cal.App.4th 967, 975, fn. omitted.)

So we have counted at least three reasons (with some overlap) why Sui's appeal must be dismissed. And we have not even counted the potential lack of standing in the trial court, even absent the bankruptcy, to assert a slander of title action based on a

lien recorded against the subject property approximately one year *after* Sui conveyed his interest in the property to Yang. Sui's appeal is totally without merit.²

The Court Properly Excluded Yang's Exhibits

We review the court's evidentiary ruling for an abuse of discretion.

(*People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 639.)

"The burden of establishing trial court error and particularly an abuse of discretion falls squarely on the appellant." (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 89.)

²

We deny Sui's April 30, 2013 request for judicial notice of eight documents because none of the submitted documents are relevant to the reasons we dismiss his appeal. Here are the irrelevant documents: (1) Defendants' application for an extension of time to file a brief in this appeal; (2) Defendants' application for extension of time to file a brief in the appellate division of superior court in connection with an appeal in a *separate limited civil case* between the same parties; (3) A notice of ruling on a demurrer in still another separate case apparently pending in the superior court between the same parties; (4) Still another notice of ruling on demurrer in the same separate case apparently pending in the superior court between the same parties; (5) A notice of appeal of the bankruptcy appellate panel's dismissal of Sui's appeal from the bankruptcy court's order approving the trustee's settlement and a copy of that order; (6) The bankruptcy trustee's opening brief in Sui's appeal of the same bankruptcy court's order; (7) [omitted by Sui]; (8) A copy of the Superior Court docket in this case; (9) A copy of defendants' brief in the appellate division of the superior court on Sui's separate limited civil case referenced in (2) above. In addition, all of these documents are dated many months after the trial court judgment in this matter, and accordingly were not before the trial court at the time of trial and judgment.

On the day of oral argument, Sui requested we take judicial notice of *Giesbrecht v. Fitzgerald* (Bankr. 9th Cir. 2010) 429 B.R. 682, which addressed the question whether a debtor in bankruptcy has an "absolute right to pay an unimpaired claim directly to the creditor" (*id.* at pp. 685-686, fn. omitted) in a Chapter 13 case "if the plan is otherwise confirmable" (*id.* at p. 686). We grant the request, but conclude it is inapt. As noted above, we lack jurisdiction to determine issues that may be relevant to the bankruptcy court's order approving the settlement.

Yang argues the court abused its discretion by denying her request for time to consult an attorney and contends the court decided the case on a technicality (her inability to authenticate exhibits), rather than on the merits. She relies, however, on cases that do not support her argument. In *Lombardi v. Citizens Nat. Trust etc.* (1955) 137 Cal.App.2d 206, 208, the plaintiff contended “that the trial judge failed to lend him any assistance in the presentation of his evidence and as a consequence he was unable to get his evidence before the court.” The Court of Appeal rejected the argument, explaining, “A litigant has a right to act as his own attorney [citation] ‘but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts; otherwise, ignorance is unjustly rewarded.’” (*Id.* at pp. 208-209; see also *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) “The fact that a layman elects to represent himself ‘certainly does not excuse him from a failure of proof’ of his cause of action.” (*Lombardi*, at p. 209.)

Next, Yang points to our denial of defendants’ motion to strike her appellant’s appendix (which may consist of the exhibits she proffered below, although the record falls short of establishing even that). She argues that defendants’ failure to subsequently move to strike individual exhibits “proves retroactively that these exhibits are authenticated, relevant and not hearsays” and therefore the lower court’s exclusion of them was improper. Yang misapprehends the burden of proof on appeal. It is her burden, not defendants’ burden, to prove she properly authenticated and laid a foundation for the exhibits below and that the court abused its discretion by excluding them. Furthermore, the cases she cites do not support her position. For example, *Cristler v. Express Messenger Systems, Inc.*, *supra*, 171 Cal.App.4th at page 88 held that the appellant failed to carry its burden of demonstrating reversible evidentiary error. *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746-747 deals with judicial admissions.

In her reply brief, Yang mentions for the first time *City of Vista v. Sutro & Co.* (1997) 52 Cal.App.4th 401, 412, which recites Evidence Code section 1414, subdivision (b). That subdivision provides, “A writing may be authenticated by evidence that:” “The writing has been acted upon as authentic by the party against whom it is offered.” We do not consider points raised in the reply brief. (*Kahn v. Wilson* (1898) 120 Cal. 643, 644.) More to her unmeritorious point, Yang did not present evidence below that defendants authenticated by their actions any of her proffered exhibits.

The Court Properly Granted Defendants’ Motion for Judgment

Yang contends the court improperly granted defendants’ section 631.8 motion for judgment, arguing she proved all the elements of slander of title. She asserts she presented evidence of her damages. But to support her contention, she cites exhibits which were not admitted into evidence. This deficiency alone sufficiently supports the court’s ruling.

Even if it did not, Yang failed to prove malice. She incorrectly asserts the court *deemed* the defendants to have acted maliciously. The court simply stated, when it denied defendants’ nonsuit motion following opening statements, that it was possible Yang *might* be able to show malice with respect to the homeowners association’s special assessment for house painting. Ultimately, Yang’s exhibits were not admitted into evidence nor did any of her witness’ testimony provide evidence of defendants’ malice.

Other Asserted Errors Are either Meaningless or Non-appealable

Yang's appellate briefs are a collection of rambling, unfocused, sometimes unintelligible arguments, asserting many interlocutory issues that are either (1) issues that did not affect the trial, (2) argue an interpretation of the applicable CC&Rs unsupported by the evidence at trial, or (3) are simply non-appealable. As one example, Yang complains about a judgment entered in favor of another defendant, Nathan McIntyre, entered more than 180 days before plaintiffs' filed their notice of appeal. That judgment finally adjudicated all claims against McIntyre. The appeal of the McIntyre judgment is therefore untimely (see Cal. Rules of Court, rule 8.104(a)(1)(C)), and not even specified in Yang's notice of appeal. Further, Yang's appellant's appendix violates, at a minimum, California Rules of Court, rule 8.124(b)(3)(A), (B), making this appeal more difficult to process. Yang has failed to present a reasoned argument as to why any of her other asserted errors mandates reversal. Any error is thereby waived.

The Court Was Patient and Courteous

Finally, we would be remiss if we did not praise the trial judge for the extreme patience and courtesy accorded plaintiff in providing her every opportunity to present her case. Plaintiff, as a self-represented litigant, lacked the necessary knowledge, perspective, and skill to try her case. Yet, in what must have been an exceptionally frustrating trial, the judge consistently demonstrated the patience and courtesy that well-serves the judicial branch of government.

DISPOSITION

The appeal is dismissed as to Sui. As to Yang, the judgment is affirmed.
Defendants shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.