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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LUIS PADILLA et al.,

Plaintiffs, Cross-defendants and
Appellants,

v.

BALTAZAR G. CALDERON,

Defendant, Cross-complainant and
Respondent.

G049428

(Super. Ct. No. CIVDS911190)

O P I N I O N

Appeal from a judgment of the Superior Court of San Bernardino County,
Pamela P. King, Judge. Affirmed.

Aviles & Associates and Moises A. Aviles for Plaintiffs, Cross-defendants
and Appellants.

No appearance for Defendant, Cross-complainant and Respondent.

* * *

In a dispute over the ownership of a *carniceria*, the court determined that the business was owned by defendant, cross-complainant and respondent Baltazar Calderon, not plaintiffs, cross-defendants and appellants Luis and Maria Padilla. The Padillas argue Calderon's business ownership claim was barred by the doctrine of *res judicata*, as having been litigated in an unlawful detainer action that was resolved by default. They are in error. The unlawful detainer action did not adjudicate the ownership of the *carniceria*. We affirm.

I

FACTS

On August 5, 2009, plaintiffs Luis and Maria Padilla filed a complaint for damages against Calderon and another defendant (*Padilla et al. v. Aceves et al.* (Super. Ct. San Bernardino, 2013, No. CIVDS 911190)) (Business Ownership Action). They asserted causes of action for, *inter alia*, interference with economic advantage, intentional infliction of emotional distress, conversion and wrongful eviction.

Luis and Maria Padilla alleged that, in 2007, they purchased a business from Leovardo Padilla for \$40,000. The business was known as the *Carniceria Y Taqueria San Miguel*, and was located on Valley Boulevard in Fontana. They stated that from 2007 until May 2009, they were in possession of the business and were paying rent for the premises to Quick Market, the landlord. However, around May 10, 2009, Calderon "barged into the 'Carniceria' ordered [them] and their employees out . . . , changed the locks . . . , took over the credit card machine and assumed operations . . . , without legal authority or process." Attached to their complaint was a copy of a proof of sale dated and notarized on June 15, 2009, signed only by Leovardo Padilla. The proof of sale stated Leovardo Padilla, as seller, "[*would*] deliver to [Jose Luis Padilla Cardenas as] Buyer upon the closing of the sale on January 1, 2008, a bill of sale" (Italics added.) Copies of rent checks payable to Quick Food Market were also attached to their complaint.

Calderon filed a cross-complaint against Leovardo, Luis, and Maria Padilla, for breach of written and oral contract, intentional misrepresentation, conversion, interference with prospective economic advantage, and declaratory relief. Calderon alleged that, on January 2, 2008, he and Leovardo Padilla entered into a written agreement whereby he purchased the carniceria from Leovardo for \$40,000. After he purchased the business, Calderon entered into an oral agreement with Luis and Maria Padilla for them to manage the business on Calderon's behalf. However, in May 2009, Calderon removed them as business managers because they had failed to pay the bills of the business, had not accounted to him, and had not turned over any profits of the business.

Calderon alleged that if Leovardo Padilla had sold the business to Luis and Maria Padilla in 2007, then he had misrepresented his continuing ownership of the business in 2008 and had breached his written contract to sell the business to Calderon. Furthermore, if Leovardo Padilla had already sold the business to Luis and Maria Padilla, then Luis and Maria had participated in the fraud against Calderon. In addition, Calderon alleged that Luis and Maria Padilla had breached their oral agreement with him to manage the business, pay the bills and turn over the profits. Attached to the cross-complaint was a copy of a January 2, 2008 contract, signed by both Leovardo Padilla and Calderon, for the sale of the business to Calderon for \$40,000.

On December 10, 2009, Luis and Maria Padilla filed an unlawful detainer action (*Padilla et al. v. Aceves et al.* (Super. Ct. San Bernardino, 2009, No. UDFS 903545)) (Unlawful Detainer Action). They alleged that they owned the property on Valley Boulevard in Fontana. They further alleged that Calderon "forcibly entered the subject property and took possession thereof without the expressed and/implied consent of Plaintiff[s]." A default judgment as to possession only was entered in favor of Luis and Maria Padilla in the Unlawful Detainer Action.

Trial thereafter went forward in the Business Ownership Action. The court found that Calderon was the owner of the carniceria. It observed that Calderon's purchase contract was first in time. It also noted additional evidence favorable to Calderon, including a fictitious business name statement, State Board of Equalization documents, San Bernardino County Department of Public Health permits, Department of the Treasury documentation, sales and use tax returns, and a commercial sublease. The judgment decreed that Calderon was the owner of the carniceria.

Luis and Maria Padilla appeal.

II

DISCUSSION

Luis and Maria Padilla raise one argument on appeal. They assert that the court erred in ruling in favor of Calderon inasmuch as his cross-complaint in the Business Ownership Action was barred by the doctrine of res judicata, given the judgment in the Unlawful Detainer Action.

They cite *Ely v. Gray* (1990) 224 Cal.App.3d 1257 (criticized on another point in *Cassel v. Sullivan, Roche & Johnson* (1999) 76 Cal.App.4th 1157), which states that "a default judgment is res judicata as to all issues tendered in the complaint [citation]" (*Ely v. Gray, supra*, 224 Cal.App.3d at p. 1262, fn. 3.) True enough, but the issue of the ownership of the business was neither raised nor determined in the complaint in the Unlawful Detainer Action.

The complaint in the Unlawful Detainer Action, as we have seen, alleged that Calderon "forcibly entered the subject property and took possession thereof without the expressed and/implicit consent of Plaintiff[s]." The issue tendered in the complaint then, was whether Calderon forcibly took possession of the premises without the consent of Luis and Maria Padilla. That is the only issue determined by default. The complaint did not frame the issue of the ownership of the carniceria. It did not even allege that Luis and Maria Padilla were in possession of the premises as owners and/or operators of the

carniceria. To the contrary, Luis and Maria Padilla alleged that they owned the real property on Valley Boulevard.¹

As the appellate court in *Estate of Redfield* (2011) 193 Cal.App.4th 1526 observed: “Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties” (*Id.* at p. 1534.) It further stated: “Application of the doctrine of res judicata requires an affirmative answer to the following three questions: (1) Was there a final judgment on the merits? (2) Was the issue decided in the prior adjudication identical with the one presented in the subsequent litigation? (3) Was the party against whom the principle is involved a party . . . to the prior adjudication? [Citation.]” (*Ibid.*) Here, we answer the second question in the negative. The issue of the ownership of the carniceria was not decided in the Unlawful Detainer Action. Consequently, the judgment in that action does not control the outcome in the Business Ownership Action before us.

Neither *Turem v. Texaco, Inc.* (1965) 236 Cal.App.2d 758 nor *Glade v. Glade* (1995) 38 Cal.App.4th 1441, also cited by Luis and Maria Padilla, indicates otherwise. In *Turem*, the possession issues litigated in the unlawful detainer action were the same as the issues to be litigated in the damages action. (*Turem v. Texaco, Inc.*, *supra*, 236 Cal.App.2d at pp. 762, 764-767.) However, as we have said, that is not the case here. In *Glade*, the issue was whether one department of the superior court was bound by an order previously issued in another department. (*Glade v. Glade, supra*, 38 Cal.App.4th at pp. 1447-1450.) Again, that is not the question here.

¹ As an aside, we observe that this allegation is in direct contradiction to the allegation in their complaint in the Business Ownership Action to the effect that they occupied the business premises as tenants.

III

DISPOSITION

The judgment is affirmed. Calderon shall recover his costs on appeal, if any.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.