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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ERNESTO DANIEL GYUREC,

Plaintiff and Appellant,

v.

THE BANK OF NEW YORK TRUST
CO., N.A., as Trustee, etc.,

Defendant and Respondent.

G050083

(Super. Ct. No. RIC1211745)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County,
Daniel A. Ottolia, Judge. Affirmed.

Counsel Care Law Group and Stephen F. Lopez for Plaintiff and Appellant.
Law Offices of Mary Jean Pedneau, Mary Jean Pedneau, William R. Larr
and Susan S. Vignale for Defendant and Respondent.

* * *

INTRODUCTION

Plaintiff and appellant Daniel Ernesto Gyurec sued defendant and respondent The Bank of New York Trust Co., N.A. (BONY),¹ to quiet title to real property. Gyurec alleged a deed of trust held and foreclosed on by BONY was invalid due to two mistakes in the legal description of the property. The trial court sustained without leave to amend BONY's demurrer to the quiet title action and dismissed the complaint.

We affirm. We conclude the deed of trust was valid, notwithstanding mistakes in the legal description of the secured real property, because it correctly identified the secured real property by street address. We also conclude that if, as Gyurec contends, an unlawful detainer court adjudicated title in his favor in an action for possession, then that court exceeded its jurisdiction. In addition, as an independent ground for affirmance, Gyurec's cause of action to quiet title is barred under principles of res judicata because, in his chapter 11 bankruptcy proceeding, the bankruptcy court dismissed with prejudice Gyurec's adversary complaint in which he could have argued the mistakes in the property's legal description rendered the deed of trust invalid. Finally, Gyurec has not shown he could amend his complaint.

ALLEGATIONS OF THE COMPLAINT AND PROCEDURAL HISTORY

I.

Allegations

In August 2012, Gyurec filed a verified complaint (the Complaint), asserting a single cause of action against BONY, to quiet title to real property. The Complaint alleged the following facts.

¹ The full name and capacity in which BONY was sued was "The Bank of New York Trust Co[.], N.A[.], as Trustee for the Registered Holders of Ace Securities Corp. Home Equity Loan Trust, Series 2003-HEI, Asset Backed Pass-Through Certificates."

Gyurec owned real property located at 18520 State Street, Corona, California 92881 (the Subject Property), and sought to quiet title to the Subject Property.

The exhibits attached to and incorporated into the Complaint show that in January 2003, Gyurec obtained a \$425,000 loan from Encore Credit Corporation (Encore), secured by a deed of trust (the Deed of Trust) on the Subject Property. The legal description of the property in the Deed of Trust has two mistakes. First, the legal description omits reference to an easement. Second, the legal description describes the Subject Property as located in “Township 4 North” instead of “Township 4 South.” (Some capitalization omitted.) By using the term “Township 4 North,” the legal description describes real property located 48 miles away from the Subject Property. The Deed of Trust also describes the Subject Property by this street address: 18520 State Street, Corona, California 92881.

The incorrect legal description of the Subject Property is attached as exhibit No. 1 to the Complaint and is incorporated into it. The correct legal description of the Subject Property is attached as exhibit No. 2 to the Complaint and is incorporated into it.

In 2009, BONY filed a proof of claim in Gyurec’s chapter 11 bankruptcy case by which BONY “claimed it was in the chain of title” of the Subject Property. BONY “purportedly took title” to the Subject Property by a trustee’s deed upon sale.

In March 2011, BONY filed a complaint for unlawful detainer against Gyurec. The unlawful detainer action was tried in June 2011, and Gyurec prevailed on the grounds that (1) “service of process was not proper,” and (2) “neither the [D]eed of [T]rust nor the trustee’s deed upon sale properly described the [Subject] Property.”

In August 2011, BONY recorded a “Corrective Trustee’s Deed Upon Sale” (the corrective trustee’s deed), which was attached to and incorporated into the Complaint. On its face, the corrective trustee’s deed refers to the Subject Property as being in “Township 4 North” but includes, as exhibit A, a complete legal description that refers to the Subject Property as being in “Township 4 South,” which is the description

used in exhibit No. 2 to the Complaint, the correct legal description. The Complaint alleged, however, that the corrective trustee's deed was defective because "it does not correctly describe the [Subject] Property." Further, the Complaint alleged, "[e]ven if the [corrective trustee's deed] correctly described the [Subject] Property, it would still not convey any interest to [BONY] because the Deed of Trust which [the corrective trustee's deed] purportedly is foreclosing describes a completely different property located 48 miles north, in San Bernardino County."

In April 2012, BONY filed a second unlawful detainer complaint against Gyurec, based on the corrective trustee's deed. Trial on the second unlawful detainer complaint had not been held at the time the Complaint was filed.

II.

The Demurrer and Judgment of Dismissal

BONY demurred to the Complaint and requested judicial notice of various documents. The documents attached to the request for judicial notice establish that Encore assigned its interest in the Deed of Trust to BONY in 2008, and a notice of default and election to sell under the Deed of Trust was recorded in November 2008.

In March 2009, Gyurec filed a chapter 11 bankruptcy petition. The petition triggered an automatic stay which prohibited BONY from foreclosing the Deed of Trust. BONY obtained an order granting relief from the automatic stay and conducted a nonjudicial foreclosure of the Deed of Trust in December 2010. BONY obtained title to the Subject Property by a trustee's deed upon sale. BONY recorded the trustee's deed upon sale in December 2010 and the corrective trustee's deed in August 2011.

The trial court sustained the demurrer without leave to amend on the grounds of res judicata, failure to allege tender, the conclusive presumption the trustee's sale was valid, and Gyurec held only equitable title to the Subject Property. A judgment of dismissal was entered in favor of BONY from which Gyurec timely appealed.

DISCUSSION

I.

Standards of Review

We apply two standards of review on appeal from a judgment of dismissal after a demurrer has been sustained without leave to amend. (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 595.) First, “we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose.” (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) In doing so, we may consider “facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken.” (*Entezampour v. North Orange County Community College Dist.* (2010) 190 Cal.App.4th 832, 837.)

Second, we apply the abuse of discretion standard to the trial court’s decision to deny leave to amend. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) If there was a reasonable probability the plaintiff could cure the defect in the complaint by an amendment, then the trial court abused its discretion. (*Ibid.*)

II.

Gyurec Cannot State a Claim to Quiet Title.

A.

BONY’s Claim to Title in the Subject Property Was Not Wrongful.

To state a claim to quiet title to real property, a complaint must (1) describe the property that is the subject of the action, (2) show the plaintiff’s title to the property and the basis for title, (3) describe the adverse claims to the plaintiff’s title, (4) allege the

date as of which determination is sought, and (5) include a prayer for relief. (Code. Civ. Proc., § 761.020.)

There is no dispute that Gyurec pleaded elements (1), (2), (4), and (5): The only issue here is element (3)—adverse claim to title. In *Lucas v. Sweet* (1956) 47 Cal.2d 20, 22, the California Supreme Court clarified the third element requires the plaintiff to demonstrate the adverse claim to title is wrongful. Gyurec argues BONY's claim to title to the Subject Property was wrongful due to the mistakes in the legal description in the Deed of Trust. We disagree.

“A deed is not void for uncertainty because of errors or inconsistency in some of the particulars of the description. Generally speaking, a deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed. It is not essential to the validity of a deed . . . that the description should be by boundaries, courses, or distances, or by reference to monuments. If the description is general, the particular subject-matter to which the description applies may be ascertained by parol evidence. Nor will the deed be void for uncertainty from the fact that the description in part is false or incorrect, if there are sufficient particulars given to enable the premises intended to be conveyed to be identified.” (*Leonard v. Osburn* (1915) 169 Cal. 157, 160.)

In *Stanley v. Green* (1859) 12 Cal. 148, 160, the description in a deed referred to a piece of property as “more or less, one square mile of land, in the place known as the Rincon de los Cameros, commencing at the wagon road and ending at the point of the hill on the east.” From this language, it was not possible to determine the boundaries and precise quantity of the land conveyed. (*Id.* at pp. 160-161.) The California Supreme Court concluded, nonetheless, the deed was valid. The court concluded: “A designation of the tract by a particular name or number is sufficient; and if it can be rendered certain by extrinsic evidence, this is as good a description as one by metes and bounds. It is undoubtedly essential to the validity of a conveyance, that the

thing conveyed must be described so as to be capable of identification, but it is not essential that the conveyance should itself contain such a description as to enable the identification to be made without the aid of extrinsic evidence.” (*Id.* at pp. 165-166.)

Code of Civil Procedure section 2077, subdivision One sets forth a similar rule. It states: “Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false, does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.” (Code Civ. Proc., § 2077, subd. One.)

The Deed of Trust was attached as an exhibit to the Complaint and was incorporated into it by reference. The Deed of Trust includes both the legal description of the Subject Property and its street address. Although Gyurec alleged the legal description was inaccurate, the Deed of Trust unmistakably identified the Subject Property by street address. In the Complaint, Gyurec alleged the street address of the Subject Property is 18520 State Street, Corona, California 92881, which is the same address by which the Subject Property is identified in the Deed of Trust. By verifying the Complaint, Gyurec made an oath that each allegation is true, except for matters alleged on information and belief. (Code Civ. Proc., § 446.) He did not allege the street address of the Subject Property on information and belief and is therefore estopped from asserting the street address in the Deed of Trust is inaccurate.² (*Knoell v. Petrovich* (1999) 76 Cal.App.4th 164, 168; *Chromy v. Lawrance* (1991) 233 Cal.App.3d 1521, 1527.)

² On page 5, footnote 1, of the appellant’s reply brief, Gyurec contends the street address in the Deed of Trust does not describe the Subject Property because it is not located on State Street and because he owns multiple properties on that street. This argument has no merit because it is contrary to the Complaint. Moreover, Gyurec forfeited this argument in four ways: He failed to raise the argument to the trial court, he first raised it in his appellant’s reply brief, he raised it only in a footnote, and he did not provide a record citation in support. (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 427-428; Cal. Rules of Court, rule 8.204(a)(1)(C).)

The Deed of Trust correctly describes the Subject Property by street address and is therefore valid notwithstanding inaccuracies in the legal description. As a consequence, BONY's claim to title is not wrongful, and Gyurec cannot state a claim to quiet title.

B.

Interpretation of the Deed of Trust Is a Question Of Law.

Gyurec argues we may not determine whether the Deed of Trust accurately describes the Subject Property because doing so would require us to weigh facts. In support of this argument, Gyurec relies on *Twain Harte Homeowners Assn. v. Patterson* (1987) 193 Cal.App.3d 184 for the proposition it is a question of fact whether a legal description in a deed of trust accurately describes property. In *Twain*, an easement was described as pertaining to the "Twain Harte Tract." (*Id.* at p. 188.) The court held that it was a question of fact whether the "Twain Harte Tract" actually existed in the county's records. (*Ibid.*) The court did not hold it was a question of fact whether the term "Twain Harte Tract" accurately described the subject property.

In this case, there is no question the Subject Property actually exists. The question is whether the Deed of Trust is invalid due to its two mistakes in the legal description of the Subject Property. That question can be decided as a matter of law based on the allegations and exhibits to the Complaint, among which is the Deed of Trust.

III.

The Unlawful Detainer Actions Did Not Result in an Adjudication of the Validity of the Deed of Trust.

Gyurec contends BONY's title to the Subject Property was previously litigated and resolved against BONY in two unlawful detainer actions. "[A] judgment in unlawful detainer usually has very limited res judicata effect and will not prevent one

who is dispossessed from bringing a subsequent action to resolve questions of title [citations], or to adjudicate other legal and equitable claims between the parties [citations].” (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255 (*Vella*)). “Ordinarily, issues respecting the title to the property cannot be adjudicated in an unlawful detainer action.” (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385.)

Under Code of Civil Procedure section 1161a, subdivision (b)(3), title may be adjudicated in an unlawful detainer action to determine if a purchaser of property at a trustee’s sale properly obtained and duly perfected title. (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159.) “Section 1161a provides for a narrow and sharply focused examination of title. To establish that he is a proper plaintiff, one who has purchased property at a trustee’s sale and seeks to evict the occupant in possession must show that he acquired the property at a regularly conducted sale and thereafter ‘duly perfected’ his title.” (*Vella, supra*, 20 Cal.3d at p. 255; see *Evans v. Superior Court* (1977) 67 Cal.App.3d 162, 169 [in an action pursuant to section 1161a, subdivision (b)(3), “title is in issue to the extent that the plaintiff must prove that a sale was held in compliance with section 2924 of the Civil Code, and that title under such sale was duly perfected”].) Only “to this limited extent, as provided by the statute, . . . title may be litigated in such a proceeding.” (*Vella, supra*, at p. 255.) “Matters affecting the validity of the trust deed or primary obligation itself, or other basic defects in the plaintiff’s title, are neither properly raised in this summary proceeding for possession, nor are they concluded by the judgment.” (*Cheney v. Trauzettel, supra*, at p. 160.)

In the first unlawful detainer action, the court found in Gyurec’s favor and found, “there is a defect in the legal description of the property in the deed of trust that must be cure[d] before [BONY] can proceed in this matter.” In the second unlawful detainer action, the court granted an unopposed oral motion by Gyurec for judgment on

the pleadings.³ Gyurec has supplied us with no other information about the unlawful detainer court's ruling. To the extent the court in either unlawful detainer action adjudicated the validity of the Deed of Trust, the court exceeded its jurisdiction. The unlawful detainer court did not have the authority to rule on "[m]atters affecting the validity of the trust deed or primary obligation itself, or other basic defects in the plaintiff's title" (*Cheney v. Trauzettel, supra*, 9 Cal.2d at p. 160), and the court's power to adjudicate title was limited to matters directly related to the trustee's sale (*Vella, supra*, 20 Cal.3d at p. 255). "The [unlawful detainer] court, in [BONY's] unlawful detainer action, was empowered to examine the conduct of the trustee's sale (if its validity had been challenged), and properly could consider whatever equitable defenses [Gyurec] might have raised insofar as they pertained directly to the right of possession. The court had no jurisdiction, however, to adjudicate title to property worth considerably more than its . . . jurisdictional limit [citation] . . ." (*Id.* at p. 257.)

Thus, to the extent the unlawful detainer court adjudicated the validity of the Deed of Trust itself, the court exceeded its statutory authority under Code of Civil Procedure section 1161a, subdivision (b)(3) and its judgment is voidable. (*Vella, supra*, 20 Cal.3d at pp. 255-256; see *In re Marriage of Goddard* (2004) 33 Cal.4th 49, 55.)

IV.

Gyurec's Quiet Title Cause of Action Is Barred by Res Judicata.

BONY argues Gyurec's cause of action to quiet title is barred by res judicata because the bankruptcy court dismissed the quiet title cause of action in the adversary complaint filed by Gyurec in his chapter 11 bankruptcy case proceeding. We agree. Res judicata serves as a separate and independent basis for affirming the judgment

³ Gyurec requested the trial court to take judicial notice of the unlawful detainer court's order on the motion for judgment on the pleadings.

of dismissal. In support of its demurrer, BONY filed a request for judicial notice of various pleadings, orders, claims, the docket, and the transcript of a hearing from Gyurec's chapter 11 bankruptcy case. We take judicial notice of those documents under Evidence Code section 452, subdivision (d), as records of a federal court.

In the chapter 11 bankruptcy case, Gyurec brought an adversary complaint against BONY, which included causes of action for avoidance of deeds of trust and to quiet title to the Subject Property. In the quiet title cause of action, Gyurec alleged BONY had "no right, title, or interest in and to the subject real property" and "[Gyurec] is entitled to a judicial declaration quieting title in [Gyurec] as to the Property." The bankruptcy court granted BONY's motion to dismiss the adversary complaint with leave to amend. Gyurec filed an amended adversary complaint that omitted the causes of action for avoidance of deeds of trust and to quiet title. The amended adversary complaint included a declaratory relief cause of action seeking a determination "as to the rights of Defendants to foreclose."

The bankruptcy court granted BONY's motion to dismiss the amended adversary complaint and dismissed that complaint with prejudice. Judgment on the amended adversary complaint was entered in favor of BONY.

The doctrine of res judicata gives a prior judgment conclusive effect in subsequent litigation involving the same controversy. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) The requirements for applying res judicata are (1) a claim or issue raised in the present action that is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom res judicata is being asserted was a party or in privity with a party to the prior proceeding. (*Ibid.*) For purposes of res judicata, "[a] federal judgment 'has the same effect in the courts of this state as it would have in a federal court.'" (*Younger v. Jensen* (1980) 26 Cal.3d 397, 411.)

The requirements for res judicata under state and federal law are met in this case. The adversary proceeding in the bankruptcy court resulted in a final judgment when the amended adversary complaint was dismissed with prejudice. (Fed. Rules Bankr.Proc., rule 7041, 11 U.S.C.) An order in a bankruptcy case which disposes of a discrete dispute within the larger case constitutes a final judgment or order for purposes of res judicata. (*Nathanson v. Hecker* (2002) 99 Cal.App.4th 1158, 1165, citing *In re Yermakov* (9th Cir. 1983) 718 F.2d 1465, 1469; see *In re Saco Local Development Corp.* (1st Cir. 1983) 711 F.2d 441, 444.) California courts give final orders from bankruptcy courts preclusive effect. (*Levy v. Cohen* (1977) 19 Cal.3d 165, 172-173.) Although Gyurec filed an appeal from the judgment on the adversary complaint, under federal law, “a final judgment retains its collateral estoppel effect, if any, while pending appeal.”⁴ (*Collins v. D.R. Horton, Inc.* (9th Cir. 2007) 505 F.3d 874, 882.)

Gyurec included, in his adversary complaint, causes of action both for avoidance of deeds of trust and to quiet title to the Subject Property. In his amended adversary complaint, he sought a determination of BONY’s right to foreclose. Although Gyurec did not allege the Deed of Trust was invalid based on the mistakes in the legal description of the Subject Property, the decisive point under federal law for res judicata purposes is that he could have done so. “In the federal jurisdiction, the doctrine of res judicata prevents the readjudication of all matters . . . which were, or *might have been*, litigated in a prior proceeding between the same parties.” (*Levy v. Cohen, supra*, 19 Cal.3d at p. 173, italics added.) “[R]es judicata bars all grounds for recovery that *could have been asserted*, whether they were or not, in a prior suit between the same parties on the same cause of action.” [Citation.] [Citation.] That applies to matters decided in bankruptcy.” (*Siegel v. Federal Home Loan Mortg. Corp.* (9th Cir. 1998) 143 F.3d 525, 528-529.)

⁴ The appellate record does not disclose the outcome of the appeal.

Gyurec had full and fair opportunity in his bankruptcy proceeding to adjudicate the validity of the Deed of Trust, BONY's right to foreclose, and the validity of the trustee's sale. Because Gyurec could have asserted in his adversary complaint that the mistakes in the legal description of the Subject Property rendered the Deed of Trust invalid, the identical claim or issue requirement for res judicata has been satisfied.

Finally, there is no question Gyurec was a party to the adversary proceeding in bankruptcy court. Thus, we conclude, the quiet title cause of action in this case is barred by res judicata.

V.

Gyurec Cannot Amend the Complaint to State a Cause of Action.

The trial court did not abuse its discretion by denying leave to amend because there was no reasonable probability Gyurec could allege BONY's interest in the Subject Property was wrongful. Gyurec alleged in the Complaint the street address of the Subject Property was the same as the street address used to identify the property in the Deed of Trust. He verified the Complaint and therefore would be estopped from amending to allege a contradictory allegation. (*Knoell v. Petrovich, supra*, 76 Cal.App.4th at p. 168; *Chromy v. Lawrance, supra*, 233 Cal.App.3d at p. 1527.) The Deed of Trust correctly identified the Subject Property by street address and, therefore, was valid despite the mistakes in the legal description. Gyurec has not shown how he would amend the Complaint to otherwise establish the Deed of Trust was invalid or to overcome the adverse decision in bankruptcy court.

DISPOSITION

The judgment is affirmed. Respondent shall recover costs incurred on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.