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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

HAYDEE C. JAVIER,

Plaintiff and Appellant,

v.

DENNIS MILTON TAYLOR et al.,

Defendants and Respondents.

H038210

(Santa Clara County

Super. Ct. No. CV208559)

I. INTRODUCTION

In 2010, appellant Haydee C. Javier filed an quiet title action alleging that she had an ownership interest in residential real property that respondents Dennis Milton Taylor and Laura Jeanne Taylor (hereafter, the Taylors) purchased in 1986. The Taylors demurred on the grounds that Haydee's¹ claims were barred by the applicable statutes of limitation and the doctrine of res judicata, since her claim to an ownership interest in the property now owned by the Taylors was previously rejected by the trial court in prior actions in 1985 and 1990. On February 29, 2012, the trial court sustained the Taylors' demurrer without leave to amend, finding that the action was time-barred under Code of

¹ We will refer to former spouses Haydee C. Javier and Noe Martinez Javier by their first names for purposes of clarity and meaning no disrespect.

Civil Procedure section 338, subdivision (d),² the three-year statute of limitations applicable to a quiet title action based on fraud.

On appeal from the judgment of dismissal, we understand Haydee, a self-represented litigant, to challenge the trial court's order sustaining the demurrer without leave to amend and to request that she be granted leave to amend the complaint. For reasons that we will explain, we conclude that the trial court did not err in determining that Haydee's action is time-barred and denying leave to amend the complaint. We will therefore affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The 1985 Trial Court Order

Haydee filed a complaint captioned "Action to quiet title; fraud; equitable lien" on July 25, 1984 in *Javier v. Javier* (Super. Ct. Santa Clara County, 1984, No. 554186). According to the allegations in the complaint, Haydee was married to defendant Noe Martinez Javier from 1949 until an interlocutory judgment of dissolution of marriage was entered in 1982. The 1982 final judgment in the marital dissolution action awarded Haydee "a one-half interest" in certain real property in San Jose described in part as "Parcel 4" and "known as Assessor's Parcel Number 654-13-8."

The complaint further alleged that in 1975, Noe and co-defendant J. Schiedeck Tindel (Tindel) acquired title to the Parcel 4 property by using community funds from the marriage of Noe and Haydee. Noe and Tindel allegedly "took title falsely as husband and wife using the alias names of Macicampo at said time when defendants and each of them knew that defendant [Noe] was lawfully married to [Haydee]." Thereafter, allegedly without Haydee's consent, Noe and Tindel delivered a grant deed to Tindel as an

² All statutory references hereafter are to the Code of Civil Procedure unless otherwise indicated.

individual that “purported to convey the entire estate of the subject property to defendant Tindel.”

Additionally, the complaint alleged that the final judgment of dissolution had also awarded Haydee a one-half interest in real property located at 2789 Gumdrop Drive in San Jose. The Gumdrop Drive property is not at issue in the present appeal. As to Parcel 4, the complaint sought cancellation of the deed for Parcel 4 and a ruling that the property was the community property of Noe and Haydee and that Tindel had no title or interest in the property adverse to Haydee.

Tindel demurred to the complaint and on January 10, 1985, the trial court issued its “Order After Notice of Motion” dismissing the complaint in *Javier v. Javier, supra*, case No. 554186 with prejudice. The order states in part: “The complaint . . . is hereby dismissed with prejudice and that neither Plaintiff, Haydee C. Javier, nor any agent, representative or successor in interest therefore has any right, title or interest in or to that certain parcel of real property more particularly described in Exhibit ‘A’ attached hereto and incorporated herein, notwithstanding that certain Final Judgment of Dissolution” Exhibit “A” was not included in the record on appeal. Haydee’s 1990 motion to set aside the dismissal was denied on January 25, 1991.

B. The 1990 Trial Court Order

On April 10, 1990, Haydee filed a complaint captioned “Post Dissolution Complaint for Partition of Real Property” in a new action entitled *Javier v. Javier* (Super. Ct. Santa Clara County, 1990, No. 699882). The complaint alleged that the judgment of dissolution of Haydee’s marriage to Noe had awarded her a one-half interest in the property “known as Parcel 4 . . . now commonly known as 3887 Canyon Court, San Jose.” The complaint further alleged that unknown to Haydee, at the time of dissolution the title to Parcel 4 had been recorded in Tindel’s name as her separate property. Haydee’s prior action to quiet title in Parcel 4 was dismissed, according to Haydee, because her attorney had failed to timely amend the complaint after Tindel’s demurrer

was sustained with leave to amend. She also asserted that Tindel's attorney had falsely altered the 1985 order dismissing the prior action by adding the language to the order stating that she had no interest in Parcel 4.

According to the complaint, Parcel 4 was sold by defendant Joyce Gomez (who had acquired title under the name Tindel) to defendants Dennis and Laura Taylor (the Taylors) in 1986. Haydee sought the partition and sale of Parcel 4 and distribution of one-half the sales proceeds to her and one-half to the Taylors.

The Taylors demurred to the complaint and on August 30, 1990, the trial court entered its order sustaining the demurrer without leave to amend "on the grounds of failure to state facts sufficient to constitute a cause of action." The order of dismissal in *Javier v. Javier, supra*, case No. 699882 was entered on August 30, 1990. Haydee's motion to set aside and reconsider the dismissal was denied on February 19, 1991. Her appeal of the order of dismissal was dismissed by this court in June 1991 because her notice of appeal was untimely.

C. The 2012 Trial Court Order

Haydee commenced the instant action in 2010 and filed an amended complaint on September 2, 2011, naming Tindel³ and the Taylors as defendants. According to the complaint, Haydee acquired a one-half interest in Parcel 4 in 1975, the Taylors' 1986 grant deed for Parcel 4 was a " 'Wild Deed,' " and she had told the Taylors to leave the property and move their house to another parcel. Haydee sought cancellation of the 1986 deed, a ruling that Parcel 4 was her community property, and a ruling neither Tindel nor the Taylors had any interest in the property.

The Taylors demurred to the complaint on the grounds that the action was barred under the doctrine of res judicata and the applicable statutes of limitations. The demurrer was accompanied by a request for judicial notice of the complaints, orders, and related

³ Tindel is not a party to this appeal.

documents filed in the prior actions, *Javier v. Javier, supra*, case No. 554186 and *Javier v. Javier, supra*, case No. 699882. In their memorandum of points and authorities in support of the demurrer, the Taylors argued that res judicata barred the action because Haydee's "claim to quiet title to the property is identical to the same claim she brought and lost in the prior proceedings in 1985 and in 1990."

The action was also time-barred, according to the Taylors, under either the four-year limitations period provided by section 343 for an action to cancel a deed or the three-year limitations period provided by section 338, subdivision (d) for an action for the recovery of real property when the gravamen of the action is fraud. The Taylors noted that the amended complaint "appears to contend that the Taylors obtained title by way of a fraudulent deed in 1986." Although the Taylors acknowledged that the amended complaint did not plead any facts showing when Haydee first learned of the allegedly fraudulent deed, they argued that it was a judicially noticeable fact that Haydee became aware of it no later than April 10, 1990, when she filed suit against them seeking partition of the property. Since her present action was not filed until 2010, the Taylors asserted that the action was untimely filed under either section 343 or section 338, subdivision (d).

The trial court sustained the demurrer without leave to amend in its February 29, 2012 order. The order states: "There is no specific statute of limitations for an action to quiet title instead, the applicable period is based on the theory of relief underlying the action. [Citation.] Plaintiff's theory of relief is predicated on a finding of fraud, and therefore the applicable statute of limitations is three years as provided by [section] 338, subdivision (d). This period of time began to run when Plaintiff discovered the facts constituting the alleged fraud. [Citation.] Facts contained in the judicially noticeable documents supplied by Defendants demonstrate that Plaintiff learned of the fraud no later than April 10, 1990, when she filed suit against Defendants and other[s] seeking to quiet title to the subject property. The instant action was not filed until December 28, 2010,

more than seventeen years after the three-year limitations period had expired.

Accordingly, Plaintiff's claim is time-barred."

The order dismissing the action with prejudice was entered on February 29, 2012. Haydee subsequently filed a timely notice of appeal.

III. DISCUSSION

On appeal, we understand Haydee to challenge the trial court's order sustaining the demurrer without leave to amend and to request that she be granted leave to amend the complaint. We will therefore begin our evaluation with the applicable standard of review.

A. *Standard of Review*

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, the reviewing court assumes the truth of all facts properly pleaded by the plaintiff. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6 (*Evans*)). "We also accept as true all facts that may be implied or reasonably inferred from those expressly alleged. [Citation.]" (*Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 320-321.) Further, "we give the complaint a reasonable interpretation, and read it in context." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*)). But we do not assume the truth of " "contentions, deductions or conclusions of fact or law." ' ' ' (*Evans, supra*, 38 Cal.4th at p. 6.)

We also consider matters that may be judicially noticed and the complaint's exhibits. (§ 430.30, subd. (a); *Schifando, supra*, 31 Cal.4th at p. 1081.) Evidence Code section 452, subdivision (d) authorizes judicial notice of court records. " "The court may in its discretion take judicial notice of any court record in the United States. [Citation.] This includes any orders, findings of facts and conclusions of law, and judgments within court records. [Citations.] However, while courts are free to take judicial notice of the *existence* of each document in a court file, including the truth of results reached, they

may not take judicial notice of the truth of hearsay statements in decisions and court files.’ [Citation.]” (*In re Vicks* (2013) 56 Cal.4th 274, 314.)

Where, as here, the defendant demurs on the primary ground that the action is time-barred under the affirmative defense of the statute of limitations, we apply the following standard: “ ‘ “A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar . . . to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint [and matters subject to judicial notice]; it is not enough that the complaint shows that the action may be barred. [Citation.]” [Citation.]’ [Citation.]” (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; accord, § 430.30, subd. (a).)

B. Analysis

In the present case, Haydee’s largely unintelligible opening and reply briefs do not address the trial court’s ruling that her action is time-barred. In their respondents’ brief, the Taylors argue that the trial court properly sustained their demurrer without leave to amend on the ground the complaint was untimely filed after expiration of the three-year statute of limitations provided by section 338, subdivision (d). They also reiterate their argument below that the action is barred under the doctrine of res judicata because Haydee seeks to relitigate a claim she has already litigated and lost. Finally, the Taylors maintain that the trial court did not abuse its discretion in denying leave to amend, since the defects in the complaint cannot be cured by amendment.

At the outset, we find that Haydee has not met her burden as an appellant. The general rule is that the trial court’s judgment or order is presumed correct and on appeal, error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant therefore has the burden of raising claims of “reversible error or other defect” and to “ ‘present argument and authority on each point made’ [citations].” (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Where the appellant fails to do so, “he [or

she] may, in the court’s discretion, be deemed to have abandoned his [or her] appeal. [Citation.] In that event, it may order dismissal. [Citation.]” (*Ibid.*)

Since Haydee has not even attempted to affirmatively show reversible error in the trial court’s orders sustaining the Taylors’ demurrer without leave to amend and dismissing the action with prejudice, her appeal is subject to dismissal. We acknowledge that Haydee is a self-represented litigant, but she is not exempt from compliance with the rule that an appellant must affirmatively show reversible error because she is representing herself on appeal. The California Supreme Court has instructed that “[e]xcept when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. [Citation.]” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, a self-represented litigant “ ‘is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

Although as the reviewing court we are “ ‘not required to discuss or consider points which are not argued’ ” (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979), instead of dismissing Haydee’s appeal we will briefly explain that the trial court did not err in ruling that her action was time-barred under the three-year limitations period provided by section 338, subdivision (d).

Haydee has generally styled her claim for an ownership interest in the Taylors’ property as a quiet title action. We observe that “as a general matter an action to quiet title cannot be maintained by the owner of equitable title as against the holder of legal title.” (*Warren v. Merrill* (2006) 143 Cal.App.4th 96, 113, fn. omitted.) However, “when legal title has been acquired through fraud any number of remedies are available and appropriate. These remedies include quieting title in the defrauded equitable title holder’s name and making the legal title holder the constructive trustee of the property for the benefit of the defrauded equitable titleholder. . . . ‘And appropriate remedies,

such as cancellation, reconveyance, or decrees quieting title, or establishing or enforcing trusts, . . . may be had, as between proper parties under our system [Citations.]’ ” (*Id.* at p. 114, fns. omitted.)

“To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the ‘gravamen’ of the cause of action. [Citations.] ‘[T]he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code.’ [Citation.]” (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23.) Therefore, “[s]ince there is no statute of limitations governing quiet title actions as such, it is ordinarily necessary to refer to the underlying theory of relief to determine which statute applies. [Citations.]” (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.)

Where the gravamen of a quiet title action is fraud, the applicable statute of limitations is section 338, subdivision (d).⁴ (*Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615.) “A cause of action subject to section 338, subdivision (d), does not accrue ‘until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.’ [Citations.]” (*Id.* at p. 615.)

Having independently reviewed the court records subject to judicial notice (Evid. Code, § 452, subd. (d)(1)) including the complaints in *Javier v. Javier, supra*, case No. 554186 and *Javier v. Javier, supra*, case No. 699882, we agree with the trial court that the gravamen of Haydee’s claim is fraud. In the complaint filed in 1990 in case No. 699882, Haydee alleged that “[o]n September 30, 1985, Noe Javier signed a sworn statement indicating that he used a fictitious name and [Haydee’s] money to purchase Parcel 4 with intent to deprive [Haydee] of her community property interest. . . . [¶] On

⁴ Section 338, subdivision (d) provides: “Within three years: [¶] . . . [¶] (d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.”

July 21, 1986 Joyce Gomez, who acquired title as J. Schiedeck Tindel, a married woman as her sole and separate property transferred Parcel 4 to Dennis and Laura Taylor as husband and wife as Joint Tenants.” These allegations show that no later than 1990, Haydee had discovered the facts constituting the fraud by which Noe allegedly acquired the title to Parcel 4 despite Haydee’s community property interest, including the subsequent transfer of title to Tindel, and, in turn, to the Taylors. (See, e.g., *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 214 [action where the plaintiff sought to quiet title on the ground that the defendant’s title was secured from the plaintiff by fraud].)

In the present case, therefore, the three-year limitations period provided by section 338, subdivision (d) for a quiet title action where the gravamen of the action is fraud expired in 1993, three years after Haydee discovered in 1990 the facts constituting the fraud in connection with the transfer of Parcel 4’s title to the Taylors. Since the complaint was not filed until December 28, 2010, we conclude that the action is time-barred under section 338, subdivision (d).

Finally, we note that in her reply brief Haydee requests that she be allowed to amend her complaint because she intends to “present new facts . . . with an Attorney.” If the trial court has denied leave to amend the complaint following the sustaining of a demurrer, we review the court’s determination that no amendment could cure the defect in the complaint for abuse of discretion. (*Schifando, supra*, 31 Cal.4th at p. 1081.) “ ‘The plaintiff bears the burden of proving there is a reasonable possibility of amendment.’ [Citation.] To satisfy that burden, the plaintiff ‘ ‘must show in what manner he [or she] can amend his [or her] complaint and how that amendment will change the legal effect of his pleading.’ [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation].’ ” (*Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 458.)

Here, Haydee has not met her burden to show that the trial court abused its discretion in denying leave to amend, since she has not shown the manner in which she

would amend the complaint to avoid the three-year statute of limitations set forth in section 338, subdivision (d). We therefore determine that the trial court did not err in sustaining the Taylors' demurrer without leave to amend.

Having concluded that the trial court properly sustained the Taylors' demurrer without leave to amend on statute of limitations grounds, we will affirm the order dismissing the action with prejudice.

IV. DISPOSITION

The order dismissing the action with prejudice is affirmed. Costs on appeal are awarded to respondents.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.