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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DOUGLAS GILLIES,

Plaintiff and Appellant,

v.

CALIFORNIA RECONVEYANCE CO.,

Defendant and Respondent.

2d Civil No. B237562
(Super. Ct. No. 1381828)
(Santa Barbara County)

COURT OF APPEAL - SECOND DIST

F I L E D

SEP 6 2012

JOSEPH A. LANE, Clerk

This is the second action brought by Douglas Gillies in an attempt to prevent foreclosure of a trust deed on his home. The trial court concluded the present action is barred by the doctrine of res judicata. We affirm.

FACTS

Gillies I

In his first action, Gillies complained that the notice of default did not contain a sufficient declaration that the mortgagee, beneficiary or authorized agent contacted the borrower 30 days prior to filing the notice, as required by Civil Code section 2923.5, subdivision (b). Gillies also complained that the lender violated former Civil Code section 2923.52 by prematurely giving notice of sale.

The trial court sustained California Reconveyance Company's demurrer without leave to amend. Gillies appealed and we affirmed. (*Gillies v. California Reconveyance Co. et al.* (Apr. 11, 2011) B224995 [nonpub. opn.]; hereafter *Gillies I.*) In affirming, we considered additional issues raised in Gillies's brief, including that the notice of default misspelled his first name.

Gillies II

In the instant action, Gillies again complains that his first name was spelled on foreclosure documents with an "e" instead of an "a," thus preventing proper indexing by the County Recorder.

He also reiterates his contention that the notice of default does not comply with Civil Code section 2923.5. This time he adds that he was never contacted by anyone to assess his financial situation and explore options to avoid foreclosure.

California Reconveyance Company moved to strike the complaint as barred under the doctrine of res judicata. It requested that the court take judicial notice of *Gillies I.* The trial court was unsure whether a motion to strike or demurrer is the proper procedure. It granted the motion to strike stating that to the extent the issues are more properly addressed by demurrer, the motion is deemed a demurrer.

DISCUSSION

I

In reviewing the sustaining of a demurrer, we accept as true all of the complaint's allegations of material facts. (*Al Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, 1312.) But we do not accept as true contentions, deductions or conclusions of fact or law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) We also read the complaint as though it included matters of which the trial court has properly taken judicial notice. (Code

Civ. Proc., § 430.30, subd. (a).) If it appears the plaintiff is entitled to any relief, the complaint will be held good. (*Chase Chemical Co. v. Hartford Acc. & Indemn. Co.* (1984) 159 Cal.App.3d 229, 242.)

Our task in reviewing the grant of a motion to strike is the same. We review the face of the complaint and matters of which the court took judicial notice to determine whether the complaint is drawn in conformity with the law. (Code Civ. Proc., §§ 436, 437.)

II

The doctrine of res judicata gives conclusive effect to a former judgment in subsequent litigation involving the same controversy. (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 938.) In order for the doctrine to apply, the prior judgment must be final and rendered on the merits. (*Goddard v. Security Title Ins. & Guar. Co.* (1939) 14 Cal.2d 47, 51.) Our opinion in *Gillies I* was filed on April 11, 2011, and has long since become final.

Gillies points out that the judgment in *Gillies I* arose from the sustaining of a demurrer. He argues that the doctrine does not apply where the prior judgment arose from a demurrer. But the doctrine applies where a general demurrer was sustained on the merits of the prior action. (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 383-384.) Here the demurrer in *Gillies I* was a general demurrer sustained on the merits.

Gillies argues the instant action is not barred by *Gillies I* because the instant action alleges different issues. He claims the instant action alleges a different violation of Civil Code section 2923.5 and that the trust deed and notice of default were not indexed properly. But res judicata bars re-litigation of not only claims that were determined in the prior action, but claims that could have been raised in the prior action. (*Ojavan Investors, Inc. v. California Coastal Com.*,

supra, 54 Cal.App.4th at p. 384.) Here there is no reason why Gillies could not have raised the new issues in *Gillies I*.

The judgment is affirmed. Costs are awarded to respondent.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.