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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MALIBU-ENCINAL HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff and Appellant,

v.

LECHUZA VILLAS WEST et al.,

Defendants and Respondents.

B150612

(Super. Ct. No. SC063754)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Letteau, Judge. Affirmed.

Law Offices of Terence M. Sternberg and Terence M. Sternberg; Vittal and Sternberg for Plaintiff and Appellant.

The Law Offices of Jay W. Smith and Jay W. Smith; Gaines & Stacey, Fred Gaines and Lisa A. Weinberg, for Defendants and Respondents Lechuza Villas West L.P. and LLC, Star Sapphire, Inc., Sofen Enterprises, Inc. and Jay Smith.

Jeffer, Mangels, Butler & Marmaro, Benjamin M. Reznik and Pamela S. Schmidt for Defendants and Respondents Benjamin M. Reznik and Janice Kamenir-Reznik, as trustees of the Benjamin and Janice Kamenir-Reznik Family Trust.

Richards, Watson & Gershon, Steven H. Kaufmann and Kelly A. Casillas for Mountains Recreation and Conservation Authority as Amicus Curiae on behalf of Defendants and Respondents.

The Malibu-Encinal Home Owners Association (MEHOA) appeals from a judgment of dismissal entered after the trial court sustained without leave to amend demurrers to MEHOA's first amended complaint seeking a declaration of rights under the covenants, conditions and restrictions (the CC&R's) and other documents allegedly affecting defendants' properties. The trial court held that MEHOA's entire action was barred by the doctrine of res judicata. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit is part of the continuing saga of certain unimproved beachfront property in Malibu that was originally part of the historic Rancho Topanga Malibu Sequit. (See, e.g., *Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 222, 223, fn. 1; *Gagnon v. Adamson* (1953) 122 Cal.App.2d 253, 254-255.)

The Malibu Encinal Development is a common interest development in Malibu located three miles west of Zuma Beach in the Encinal Bluffs area between old Pacific Coast Highway, now Broad Beach Road, and the Pacific Ocean. The property, formally identified as Tract No. 10630, was originally subdivided and sold in 1932 by the Marblehead Land Company, which recorded the CC&R's for the tract in that year and created MEHOA to "provide for the upkeep, maintenance and purchase of all streets, walks, easements, reservations, community beach and/or community park areas" within the tract. All lot owners in the tract are members of MEHOA.¹

¹ The interior lot owners significantly outnumber the beachfront lot owners within MEHOA and apparently control the association.

1. *MEHOA I and the Related California Coastal Commission Mandate Proceeding*

In November 1990, while respondent Lechuza Villas West, a California limited partnership (Lechuza), was in the final stages of purchasing 17 contiguous beachfront lots with the intention of developing them, MEHOA filed a quiet title action (*MEHOA I*) against The Adamson Companies, which owned the lots, and Lechuza's principal, seeking "to establish title in and to a prescriptive easement over substantially all of the level portions of [the beachfront lots (lots 141-156)] for pedestrian travel and ingress and egress to other portions of the Tract; sunbathing, picnicking and recreational purposes and all purposes incidental thereto including but not limited to landing, launching and tethering boats; the maintenance of stairways and stairway access from the top of the bluffs which run along the northerly portion of said lots down to the level beach front area of said lots; the maintenance of locked gates to control access to said lots; and the installation of drinking fountains and outdoor showers." In effect, MEHOA sought to preclude Lechuza's proposed development of the beachfront properties by establishing its right to control access to and use of the beachfront lots. MEHOA based its claim "upon prescriptive easement rights acquired by reason of its and its members' actual, open, notorious, hostile and adverse possession of [the beachfront lots and the pedestrian access ways to those lots]."

While *MEHOA I* was pending, Lechuza sought state approval for several different development proposals for the beachfront property. The California Coastal Commission (Coastal Commission) denied Lechuza's permit applications, finding the proposed residences could have a severe impact on coastal resources. After a rehearing the Coastal Commission again denied Lechuza's permit requests, in part because of uncertainty regarding location of the mean high tide line. Lechuza then filed a petition for a writ of mandate and complaint for declaratory relief and damages against the Coastal Commission. In an amended complaint filed in August 1995 Lechuza substituted MEHOA in place of one of the Doe defendants in the action. Pursuant to a stipulation by

the parties, the trial court coordinated this action against the Coastal Commission with *MEHOA I*.

MEHOA filed a cross-complaint in Lechuza's action against the Coastal Commission seeking, as in the present case, a declaration of its rights to interpret and enforce the CC&R's against Lechuza's lots. Ultimately, MEHOA was allowed to voluntarily dismiss its cross-complaint without prejudice. (*Lechuza Villas West v. California Coastal Com.*, *supra*, 60 Cal.App.4th at p. 246.)

On January 16, 1997, more than six years after *MEHOA I* was filed, the trial court entered judgment against MEHOA. The trial court found MEHOA (and the other joined homeowner plaintiffs) "shall have no prescriptive easement over any portion of [the beachfront lots (lots 141-156)] for any purpose, including pedestrian travel and ingress and egress to other portions of [the tract], sunbathing, picnicking and recreational purposes and all purposes incidental thereto" MEHOA did not appeal, and the judgment became final.

2. *MEHOA II: Public Access to the Beachfront Properties*

Apparently convinced that its protracted battle with the Coastal Commission would not ultimately be successful, Lechuza abandoned its development plans and in 1999 opened negotiations with the California Coastal Conservancy (Coastal Conservancy) to sell certain of the properties to the Mountains Recreation and Conservation Authority (MRCA). MRCA's purchase would ensure the beachfront lots would be permanently used as public beaches.

On September 13, 2000 the president of MEHOA wrote the Coastal Conservancy expressing "serious concerns over whether the Conservancy is buying a beach which it can actually make available for public use." The letter asserted that "the easements and the CC&R's which cover all of the lots under consideration prohibit public use and the development of parking or any other public facilities anywhere in the Tract."

Notwithstanding MEHOA's opposition, the Coastal Conservancy staff recommended authorization of up to \$10 million to acquire the beachfront property. On October 25, 2000, the day before a rescheduled hearing on the allocation of public funds for the acquisition, MEHOA filed its complaint in the current action against Lechuza and several other defendants for declaratory relief and to quiet title (hereinafter referred to as *MEHOA II*).² MEHOA also recorded a lis pendens on defendants' properties in conjunction with the present action. In the lis pendens notice MEHOA asserts its action "concerns the right to possession of real property and the right to the use of easements"

On November 15, 2000, prior to any defendant's first appearance, MEHOA filed a first amended complaint for declaratory relief and to quiet title. The first amended complaint seeks a judicial determination of MEHOA's and Lechuza's respective rights and duties in relation to the CC&R's and the easement rights held by MEHOA's members over the lots at issue. MEHOA also seeks a judicial determination of the rights allegedly conveyed to Lechuza by the properties' former owner, The Adamson Companies, as evidenced in the quitclaim deed recorded on January 10, 1991. In particular, MEHOA contends the CC&R's are binding on Lechuza's lots and prohibit the right to construct structures and engage in activities purportedly conveyed to Lechuza through the 1991 quitclaim deed. MEHOA further contends under the CC&R's Lechuza

² The properties at issue are lots 76, 140 through 156, A, B, I, T and U of Tract No. 10630. MEHOA alleges defendant Lechuza Villas West L.P. owns lots 76, T and U; defendant Lechuza Villas West, LLC owns lots 149 through 154, the east half of lot 155, and lots A, B, and I; defendant Curci-Turner Company owns lots 140 and 142 through 148; defendant Benjamin M. Reznik and Janice Reznik Family Trust owns lot 141; defendant Star Sapphire, Inc. owns the west half of lot 155; defendant PACCAP 1, LLC owns lot 156; defendant Sofen Enterprises, Inc. is a beneficiary under a deed of trust recorded against lot A, lots 149 through 154 and the east half of lot 155; and defendant Jay Smith is a beneficiary under a deed of trust recorded against lots 149 through 154 and the east half of lot 155. Except where otherwise required to avoid confusion, all of the named defendants and respondents are referred to collectively as Lechuza.

has no right to open its lots to the general public or to install, modify or remove any of the improvements to the lettered lots without the express approval of MEHOA's architectural committee.

3. *Proceedings in the Trial Court in MEHOA II*

Lechuza demurred to the complaint on January 19, 2001, arguing the doctrines of res judicata, collateral estoppel and waiver barred *MEHOA II*. At Lechuza's request the trial court took judicial notice of the complaint and judgment in *MEHOA I*.³ On January 26, 2001 defendants Benjamin M. Reznik and Janice Kamenir-Reznik as Trustees of the Benjamin M. Reznik and Janice Kamenir-Reznik Family Trust also filed a demurrer, joining in the Lechuza demurrer and asserting several additional grounds for dismissal of the lawsuit, as well.

On March 5, 2001 the trial court sustained Lechuza's demurrer without leave to amend. The court ruled "[r]es judicata bars plaintiff's claim. Moving party is correct on other points as well (collateral estoppel, splitting causes of action, etc.)." Because several named defendants had not been served and thus had not yet appeared in the action, the trial court entered a separate order dismissing the entire action on April 19, 2001. MEHOA thereafter filed a timely notice of appeal.

CONTENTIONS

MEHOA contends the primary rights asserted in *MEHOA I* and *MEHOA II* are distinct and the trial court therefore erred in concluding res judicata barred *MEHOA II*.

DISCUSSION

³ We similarly take judicial notice of those matters properly noticed by the trial court. (Evid. Code, §§ 452, 459.)

1. *Standard of Review*

In reviewing an order sustaining a demurrer, we independently review the complaint to determine whether the facts alleged state a cause of action under any possible legal theory. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We must give the complaint a reasonable interpretation, “treat[ing] the demurrer as admitting all material facts properly pleaded.” (*Ibid.*) If the plaintiff demonstrates a reasonable possibility the complaint can be cured by amendment, it is an abuse of discretion for the trial court to sustain the demurrer without leave to amend. (*Ibid.*)

2. *The Doctrine of Res Judicata Bars a Second Lawsuit Seeking Vindication of the Same Primary Right at Issue in a Prior Action*

Under the res judicata doctrine a valid, final judgment on the merits precludes parties or their privies from relitigating the same “cause of action” in a subsequent suit. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896; *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.)

“‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. . . . Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action. [¶] A clear and predictable res judicata doctrine promotes judicial economy. Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. “‘Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief.’” [Citation.]” (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at pp. 896-897.)

California law defines a “cause of action” for purposes of the res judicata doctrine by analyzing the primary right at stake: “[A] ‘cause of action’ is comprised of a ‘primary

right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.] A pleading that states the violation of one primary right in two causes of action contravenes the rule against 'splitting' a cause of action. [Citation.]" (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681.)

“[I]f two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery. [Citations.]” (*Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154, 160.) “. . . If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. . . . The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable. [Citations.]’ [Citation.]” (*Ibid.*)

The relevant question, therefore, reduces to a determination whether the causes of action *resolved* in *MEHOA I* and those matters as to which *MEHOA* then had an *opportunity* to litigate, embrace the claims sought to be asserted in *MEHOA II*. (*Weikel v. TCW Realty Fund II Holding Co.* (1997) 55 Cal.App.4th 1234, 1245-1246; *Tensor Group v. City of Glendale, supra*, 14 Cal.App.4th at p. 160.) “Although the causes of action in a first lawsuit may differ from those in a second lawsuit, “. . . the prior determination of an issue in the first lawsuit becomes conclusive in the subsequent lawsuit between the same parties with respect to that issue and also with respect to every matter which might have been urged to sustain or defeat its determination. . . .” [Citations.]” (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 384.)

3. *MEHOA II, Like MEHOA I, Seeks Vindication of MEHOA's Claimed Right to Control Access to and Use of the Beachfront Properties*

MEHOA's complaint in *MEHOA II* alleges, in part, the CC&R's and express easements applicable to Lechuza's properties prohibit opening the beach, private road and pedestrian walkways to public access; constructing or maintaining piers or wharfs on the lots; and erecting any building, dwelling house or other structure unless approved by MEHOA's architectural committee. MEHOA also alleges the CC&R's prohibit installation or removal of any improvements to the private road and pedestrian walkways (for example, gates, sidewalks or curbs) without MEHOA's approval. MEHOA thus asserts a right, on behalf of its members, to make specific use of and control over the beachfront lots, the community beach, the private road and the pedestrian walkways to the beach.

The distinctions between *MEHOA I* and *MEHOA II* relate only to factual detail and the legal theory selected by MEHOA to assert its purported right to control use of the beachfront properties. *MEHOA I* involved the beachfront lots; *MEHOA II* involves the beachfront lots, the community beach, the private road and the pedestrian walkways to the beach. The threatened harm in *MEHOA I* came from proposed private development of the property; in *MEHOA II* it comes from a proposed sale to the public leading to public access and enjoyment of the beachfront. In *MEHOA I* MEHOA sought to enforce its right to control development by prescriptive easement; in *MEHOA II* by the CC&R's and express easement. In both cases, however, the threatened harm is interference with MEHOA's and its members' private enjoyment of the beach should Lechuza's plans go forward. The conclusion is inescapable that the "cause of action" in the two cases is identical: MEHOA's attempt to enforce its alleged right to control use of and access to the beachfront lots. (*Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 340-341 ["[T]he "cause of action" is based upon the harm suffered, as opposed to the particular theory asserted by the litigant. [Citation.]".])

A similar set of lawsuits was analyzed by the Court of Appeal in *Weikel v. TCW Realty Fund II Holding Co.*, *supra*, 55 Cal.App.4th 1234, which involved the plaintiff's unsuccessful plan to expand a shopping center on a small wedge of land the defendant had agreed to sell provided the proposed construction did not interfere with a shop occupied by one of the defendant's tenants. The first case (*Weikel I*) involved multiple claims including breach of contract, breach of the implied covenant of good faith and fair dealing and fraud, all relating to the defendant's alleged failure to honor its promise to convey the property needed for the construction. (*Id.* at pp. 1240-1241.) The second case (*Weikel II*), filed shortly after the appellate court had affirmed the trial court's decision against the plaintiff in *Weikel I*, concerned the same disputed property, seeking to quiet title, to recover damages for trespass, to abate a nuisance and for breach of warranty and implied covenant and to obtain declaratory relief for various rights against the defendant and its tenant. The defendants demurred on the ground of res judicata, and the trial court sustained the demurrer without leave to amend. (*Id.* at pp. 1242-1243.)

Affirming that decision, the appellate court identified the primary right in both actions as the plaintiff's "interest in constructing a building on a portion of the 'wedge.'" The "'corresponding primary duty'" owed to the plaintiff by the defendant was "no more than the duty not to unreasonably interfere with [the plaintiff's] rights." The breach of that duty, the "harm suffered," was the defendant's refusal "to damage its own tenant, the Clarks, for the benefit of [the plaintiff,]" the same "harm suffered" in both actions. Examining the legal theories invoked by the plaintiff, the court noted the "breach of covenant" and "fraud" claims from *Weikel I* were essentially the same as the "breach of warranty" and "breach of covenant" claims in *Weikel II*. Further, the injunctive relief sought by the plaintiff in *Weikel I* was identical to the claim in *Weikel II* to "abate a nuisance." (*Weikel v. TCW Realty Fund II Holding Co.*, *supra*, 55 Cal.App.4th at p. 1248.) Holding the other claims in *Weikel II* all arose from the same primary right asserted in *Weikel I*, the court stated, "[t]his case is a clear instance of a single 'primary right' which is sought to be asserted, after an adverse judgment in a first lawsuit, in a

second proceeding, albeit somewhat ‘based on a different theory . . . or seek[ing] a different remedy. . . .’ [A]n attempted reassertion of the same ‘primary right’ is properly subject to the bar of res judicata.” (*Id.* at p. 1250, fns. omitted.)

The court further explained, “the central question is whether *Weikel II* was, or was not, an attempt at ‘relitigation of the same cause of action on a different legal theory.’ For purposes of this analysis, it is of no moment whether the identical causes of action were *in fact* litigated in *Weikel I*; all that is required is that Weikel have had the *opportunity* to litigate them in *Weikel I*.” (*Weikel v. TCW Realty Fund II Holding Co.*, *supra*, 55 Cal.App.4th at p. 1245.) Here, too, it is of no moment that the identical legal theories were not in fact litigated in *MEHOA I* as were asserted in *MEHOA II*. MEHOA plainly could have litigated its claims under the CC&R’s and for an express easement in the earlier lawsuit when it asserted its right to control access to and use of the beachfront properties by way of prescriptive easement. Indeed, MEHOA made that very claim in the cross-complaint it filed, and then voluntarily dismissed, in the coordinated action between Lechuza and the Coastal Commission. (See *Wulfjen v. Dolton* (1944) 24 Cal.2d 891, 896 [“[P]laintiff has had her day in court against said individual defendants and the opportunity to present then fully and fairly her case so as to have a complete adjudication of the controversy between them in a single action. . . . The theory of relief urged in the *present action* against said defendants was open to plaintiff within the legitimate scope of her pleading in the *prior action*.”].)

MEHOA’s reliance on cases such as *Branson v. Sun-Diamond Growers*, *supra*, 24 Cal.App.4th 327 and *Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.* (1994) 29 Cal.App.4th 1828 is misplaced. In *Branson* the court reaffirmed the established rule that the “cause of action” for purposes of the doctrine of res judicata is based on the harm suffered as opposed to the particular legal theory asserted by the litigant (*Branson*, at p. 340), but held the limited right to seek indemnity under Corporations Code section 317 does not involve the same primary right as a cause of action for breach of contract for indemnity. Moreover, because *Branson*’s contractual claims could not be asserted in the

earlier action in which, as a defendant, he had sought indemnity by way of motion under Corporations Code section 317, the judgment in the earlier action could not act as a bar to his contract claim in any event. (*Branson*, at p. 344.)

In *Brenelli* the plaintiff prevailed in the first action on various contract theories, but the defendant filed for bankruptcy before execution of the judgment. The plaintiff then brought a second action, alleging fraudulent conveyance and fraud. The Court of Appeal reversed the trial court's order sustaining a demurrer on the ground of res judicata, holding the plaintiff's two actions involved separate primary rights: In the first action the plaintiff enforced its right to have certain contractual obligations performed. In the second the plaintiff asserted its right to be free from the defendant's "tortious conduct which unfairly deprived it of the value of its judgment." (*Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.*, *supra*, 29 Cal.App.4th at p. 1837.)

In contrast to those two cases, MEHOA alleges the same fundamental harm in both actions: Lechuza's interference with MEHOA's asserted right to control access to and use of the beachfront lots. The ultimate goal of both *MEHOA I* and *MEHOA II* was to protect that right. That goal, not the legal theory advanced or the nature of the suit as one in contract, tort or equity, determines the primary right involved and the proper application of the res judicata doctrine.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

PERLUSS, J.

We concur:

WOODS, Acting P. J.

MUNOZ (AURELIO), J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.