COURT OF APPEAL, FOURTH DISTRICT, DIVISION 1, CALIFORNIA

Asuncion v. Superior Court, 166 Cal.Rptr. 306

Asuncion v. Superior Court, 166 Cal.Rptr. 306, 108 Cal.App.3d 141 (Cal. App. 1980) · No. Civ. 22722

SUMMARY

Unlawful detainer – Affirmative defenses – Due process – Fraud – Jurisdiction. The court held that homeowners facing eviction in an unlawful detainer action must be permitted to raise affirmative defenses of fraud and related claims, as due process requires allowing them to present evidence that would maintain their possession and ownership. Because the fraud allegations placed title to the property in issue, the action exceeded the municipal court's jurisdiction and could not be tried there. The court directed the superior court to retain jurisdiction and suggested procedural tools such as preliminary injunctions or consolidation to accommodate the eviction with the homeowners' separate fraud action.

CASE DETAILS

COURT	Court of Appeal, Fourth District, Division 1, California
WRITING FOR THE COURT	Gerald Brown; Cologne; Staniforth
JURISDICTION	California
DOCKET	Civ. 22722
DISPOSITION	other
PROCEDURAL POSTURE	Writ of mandate from order retransferring unlawful detainer action to municipal court
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	Peter T. and Teresa A. Asuncion v. Superior Court of the County of San Diego

TOPICS

civil procedure · subject matter jurisdiction · affirmative defenses · landlord tenant · fraud · real estate · due process

PRACTICE AREAS

Civil Procedure · Real Property · Constitutional Law

QUESTIONS PRESENTED

1. Whether homeowners in an unlawful detainer action may raise affirmative defenses of fraud and related claims that would affect title
2. Whether such defenses require the action to be heard in superior court rather than municipal court because title is in issue
3. Whether due process requires permitting such defenses in residential eviction proceedings

HOLDINGS

1. Homeowners cannot be evicted, consistent with due process guaranties, without being permitted to raise the affirmative defenses which if proved would maintain their possession and ownership.
2. The action necessarily exceeds the jurisdiction of the municipal court and cannot be tried there because title to the property is inevitably in issue when affirmative defenses affecting ownership are raised.

KEY QUOTATIONS

> *"We are prepared to hold homeowners cannot be evicted, consistent with due process guaranties, without being permitted to raise the affirmative defenses which if proved would maintain their possession and ownership."* (108 Cal.App.3d 146)

> *"We hold only, the Asuncions are entitled to defend this eviction action based on the claims of fraud and related causes which they have asserted, and accordingly the action necessarily exceeds the jurisdiction of the municipal court and cannot be tried there."* (108 Cal.App.3d 147)

FACTUAL BACKGROUND

The Asuncions owned a home since 1971 with equity exceeding $20,000. W. C. Financial, Inc. engaged in a scheme to locate homeowners in default, induce them to sign papers that granted Financial legal title, and then evict them. Financial filed an unlawful detainer action against the Asuncions after they defaulted on a new loan. The Asuncions alleged fraud, usury, unfair business practices, and other claims in a separate superior court action, and sought to quiet title.

PROCEDURAL HISTORY

Financial filed unlawful detainer in municipal court. Asuncions moved to transfer to superior court on ground title to property worth >$15,000 was in issue. Transfer granted. Asuncions also filed separate fraud action in superior court. Financial obtained order retransferring eviction to municipal court. Asuncions petitioned for writ of mandate.

DISPOSITION

other

REMAND INSTRUCTIONS

Let a writ of mandate issue, directing the superior court to vacate its order transferring this action to the municipal court, and to retain jurisdiction over the matter so long as substantive issues of ownership remain to be litigated.

CASES CITED

- Mobil Oil Corp. v. Handley, 76 Cal.App.3d 956, 143 Cal.Rptr. 321
- Schweiger v. Superior Court, 3 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97
- Vargas v. Municipal Court, 22 Cal.3d 902, 150 Cal.Rptr. 918, 587 P.2d 714
- Aweeka v. Bonds, 20 Cal.App.3d 278, 97 Cal.Rptr. 650
- Continental Baking Co. v. Katz, 68 Cal.2d 512, 67 Cal.Rptr. 761, 439 P.2d 889
- Conover v. Hall, 11 Cal.3d 842, 114 Cal.Rptr. 642, 523 P.2d 682
- Weingand v. Atlantic Sav. & Loan Assn., 1 Cal.3d 806, 83 Cal.Rptr. 650, 464 P.2d 106
- Walters v. Marler, 83 Cal.App.3d 1, 147 Cal.Rptr. 655
- Mobil Oil Corp. v. Superior Court, 79 Cal.App.3d 486, 145 Cal.Rptr. 17

CITED IN

- Asuncion v. Superior Court, 166 Cal.Rptr. 306, Asuncion v. Superior Court, 108 Cal.App.3d 141 (1980)

OPINION

Asuncion v. Superior Court, 166 Cal.Rptr. 306, 108 Cal.App.3d 141 (Cal. App. 1980) Page 306 166 Cal.Rptr. 306 108 Cal.App.3d 141 Peter T. and Teresa A. ASUNCION, Petitioners, v. SUPERIOR COURT OF the COUNTY OF SAN DIEGO, Respondent, W. C. FINANCIAL, INC., Real Party in Interest. Civ. 22722. Court of Appeal, Fourth District, Division 1, California. July 14, 1980.

[108 Cal.App.3d 142] Page 307 Dennis E. Holz, Gregory A. Veach and Joyce A. Wharton, San Diego, for petitioners. No counsel for respondent. Carmine J. Bua and John C. Lessel, San Diego, for real party in interest. GERALD BROWN, Presiding Justice. Action in unlawful detainer, filed in Municipal Court on October 15, 1979, by real party, W. C. Financial, Inc. (Financial) under Code of Civil Procedure section 1161a, subdivision (4), claiming lawful sale to Financial of the real property located at 4404 Logan Avenue, City of San Diego.

Defendants Peter and Teresa Asuncion successfully moved in the municipal court for a transfer of the action to superior court on the ground title to real property worth more [108 Cal.App.3d 143] than $15,000 was in issue, a subject not within the jurisdiction of the municipal court. Also, the Asuncions on October 24, 1979, filed a complaint against Financial in the superior court alleging fraud, usury, unfair business practices, truth in lending violations, undue influence, and other causes, and requesting title to the property be quieted in their favor, rescission or cancellation of deed, and actual and punitive damages.

After transfer of the eviction action to superior court, Financial obtained an order of the superior court retransferring the action to the municipal court. The Asuncions have petitioned this court for a writ of mandate, contending at this stage of the proceedings neither the superior nor the municipal court appears willing to take jurisdiction of the eviction, and further, to permit the eviction action to proceed summarily in the lower court will deprive the Asuncions of their legitimate defenses based on fraud and will irreparably damage them by causing their eviction from their home before their action in the superior court can be resolved.

They have owned the subject real property since 1971, and by mid-1979 had an equity in the property exceeding $20,000. The Asuncions' complaint in the superior court alleges: Financial regularly engages in unlawful, unfair and fraudulent business practices; it locates persons with substantial equity in encumbered residential real property who are in default on their home loans; represents to these homeowners Financial will offer them advice and assistance, and further states the homeowners must act at once to prevent foreclosure, despite the fact homeowners have 90 days Page 308 to cure a default; offers to loan the homeowners funds to pay off the defaults, with the real property to be security for the loan; and then induces the homeowners to sign the legal papers which they do not understand and which obligate the homeowners to repay sums greatly in excess of their present undertakings, charge usurious rates of interest, and, unbeknownst to the homeowners, grant Financial legal title to the property.

Since the assumed new obligation is always more burdensome than the existing loans, which the homeowner could not meet, there is a further default on the new agreement, and Financial then evicts the homeowners and converts the equity to its own use. fastease --- Page Break --- [] --- Page Break --- Asuncion v. Superior Court, 166 Cal.Rptr. 306, 108 Cal.App.3d 141 (Cal.

App. 1980) commercial evictions should be treated differently than residential evictions, permitting affirmative defenses more liberally in the latter situation. (See comment in Mobil Oil Corp. v. Handley, supra, 76 Cal.App.3d 956, 966, 143 Cal.Rptr. 321.)

The affirmative defenses of retaliatory eviction and violation of the Agricultural Labor Relations Act have been permitted in unlawful detainer actions (Schweiger v. Superior Court, 3 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97; Vargas v. Municipal Court, 22 Cal.3d 902, 150 Cal.Rptr. 918, 587 P.2d 714). Likewise, the defendant may defend by showing use of rent money to make repairs as authorized by statute.

(See Aweeka v. Bonds, 20 Cal.App.3d 278, 282, 97 Cal.Rptr. 650.) In Vargas, supra, the court held, to exclude from an eviction action the defense of retaliatory eviction for exercising protected rights under the ALRA, denied the tenant/farmworkers due process, by undermining the essential fairness and basic integrity of that judicial proceeding (Vargas v. Municipal Court, supra, 22 Cal.3d 902, 915, 150 Cal.Rptr.

918, 587 P.2d 714). However, the court left to the municipal court discretion to determine whether and for how long to postpone the eviction proceeding while awaiting the outcome of pending proceedings before the ALRB. There is some inconsistency between the language of Vella v. Hudgins, supra, clearly limiting the scope of issues in eviction proceedings [108 Cal.App.3d 146] to the narrowest formalities of conveyance of title, and the statement in Vargas, supra, "(T)he essential fairness and basic integrity required of a judicial proceeding by due process is clearly violated if only one party to the controversy is permitted to present evidence relating to the matters at issue."

(22 Cal.3d at p. 915, 150 Cal.Rptr. at p. 926, 587 P.2d at p. 722.) We note, however, the court in Vella was not directly faced with the issue of accommodating summary procedures and affirmative defenses, for there the issue was the res judicata effect of an eviction already consummated, in a later action based on fraud. Vargas, however, directly faced the issue in the context of a retaliatory eviction for protected exercise of collective bargaining rights, and that court's language applies here as well.

We are prepared to hold homeowners cannot be evicted, consistent with due process guaranties, without being permitted to raise the affirmative defenses which if proved would maintain their possession and ownership. Such a procedure would be as unfair as the situation forbidden in Vargas.

Accordingly, title to the property is inevitably in issue in this unlawful detainer action, and the action is not within the jurisdiction of the municipal court. As we see it, after the eviction is transferred to the superior court, a number of procedural devices exist to facilitate accommodating the eviction action with the fraud action which the Asuncions separately filed.

A possibility, which we understand is frequently utilized in other counties, is for the superior court to stay the eviction proceedings until trial of the fraud action, based on the authority of Code of Civil Procedure section 526 which permits a preliminary injunction to preserve the status quo on such grounds as irreparable injury, multiplicity of legal actions, or unconscionable relative hardship.

1 (See, e. g., Continental [108 Cal.App.3d 147] Baking Page 310 Co. v. Katz, 68 Cal.2d 512, 528, 67 Cal.Rptr. 761, 439 P.2d 889 and see gen. discussion of subject in 2 Witkin, Cal. Procedure (2d ed. 1970) Provisional Remedies, § 47, p. 1496; § 73, pp. 1511-1512.) Bond would be required to obtain such an injunction (Code Civ.Proc., § 529), which could be waived for an indigent litigant (Conover v. Hall, 11 Cal.3d 842, 851, 853, 114 Cal.Rptr.

642, 523 P.2d 682). It has been held where foreclosure of a trust deed would moot a claim of right under a deed, and the deed is attacked as a fraudulent conveyance, a preliminary injunction is permitted to prevent foreclosure pending trial (Weingand v. Atlantic Sav. & Loan Assn., 1 Cal.3d 806, 83 Cal.Rptr. 650, 464 P.2d 106). Staying the eviction here is analogous.

An alternate possibility might be consolidation of the actions. fastease --- Page Break --- Asuncion v. Superior Court, 166 Cal.Rptr. 306, 108 Cal.App.3d 141 (Cal. App. 1980) Since this court is not a suitable forum to determine the need for a preliminary injunction nor its terms and conditions, we leave such matters for determination in the trial court.

We hold only, the Asuncions are entitled to defend this eviction action based on the claims of fraud and related causes which they have asserted, and accordingly the action necessarily exceeds the jurisdiction of the municipal court and cannot be tried there. Let a writ of mandate issue, directing the superior court to vacate its order transferring this action to the municipal court, and to retain jurisdiction over the matter so long as substantive issues of ownership remain to be litigated.

Petitioners shall have costs in this proceeding. Attorneys' fees incurred in this proceeding may form part of the Asuncions' damages if they prevail in their claim of fraud. (See Civ.Code, § 3333; Walters v. Marler, 83 Cal.App.3d 1, 30, 147 Cal.Rptr. 655.) COLOGNE and STANIFORTH, JJ., concur. 1 But see, Mobil Oil Corp. v. Superior Court, 79 Cal.App.3d 486, 145 Cal.Rptr.

17. There a service station lessee filed a Los Angeles Superior Court action seeking declaratory relief and affirmative remedies for wrongful termination of franchise. The gist of the relief sought was to maintain the lessee in possession. Then in a different district of that same court, Mobil Oil filed unlawful detainer against the lessee.

The lessee obtained from the superior court a stay of the unlawful detainer, which the appellate court vacated on writ of mandate. The court stated the stay was an abuse of discretion because there were no facts presented to the trial court which would justify the granting of a stay. (Id. at p. 495, 145 Cal.Rptr. 17.) It is unclear why the court reached this conclusion, but it appears to have relied on a combination of preserving the summary nature of unlawful detainer, and the fact the lessee did not seek a preliminary injunction in his lawsuit against Mobil.

(Id. at p. 495, 145 Cal.Rptr. 17.) The court also noted the lessee was bringing a lengthy and complex representative action, imposing a heavy burden on the evicting franchisor by delaying his action. Although it would be premature for us to determine the effect of this case on the Asuncions' right to a stay, we note Mobil Oil Corp. involves a commercial, rather than a residential, eviction.

Insofar as the preliminary injunction question is concerned, the Asuncions have not yet had the opportunity to present facts in the trial court warranting either such an injunction or a stay, whereas in Mobil Oil Corp., supra, the stay had already been issued on a record the appellate court perceived as inadequate. fastease