COURT OF APPEAL, FOURTH DISTRICT, DIVISION 1, CALIFORNIA

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

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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