Case No. B 261337

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

ALTA STANDARD ONE, LLC,
Plaintiff and Respondent,

v.

JAIME DeJESUS GONZALEZ and LINDA MANSDORF,
Defendants and Appellants.

Transfer from the Appellate Division of the Superior Court of Los Angeles County; Appellate Division Case No. BV 030652;
Appeal from the Superior Court of Los Angeles County; Limited Jurisdiction; The Honorable H. Jay Ford, Judge
Superior Court Case No. 13R00769/13U00769

RESPONDENT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION One	Court of Appeal Case Number: B261337
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	FOR COURT USE ONLY
APPELLANT/PETITIONER: Jaime DeJesus Gonzalez and Linda Mansdorf RESPONDENT/REAL PARTY IN INTEREST: Alta Standard One, LLC	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Alta Standard One, LLC

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☑ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Mr. Marc Bohbot	Mr. Marc Bohbot has an ownership interest of 10% or more
(2)	in Respondent Alta Standard One, LLC
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 17, 2015

Stephen E. Foster
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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I. INTRODUCTION

In the action for unlawful detainer that underlies this appeal, Defendants / Appellants, Jaime DeJesus Gonzalez ("Gonzalez") and Linda Mansdorf (collectively, "Appellants"), sought to avoid an unfavorable ruling by simultaneously claiming that: (1) despite paying several million dollars, Plaintiff / Respondent Alta Standard One, LLC's ("Respondent") did not acquire title to the property at issue at a public auction conducted by the Los Angeles County Sheriff's Department (the "Sheriff's Sale") and that instead, Gonzalez held valid title to the property; and (2) the trial court did not have jurisdiction to determine whether Respondent or Gonzalez held valid title and therefore could not award possession to Respondent.

If Appellants' arguments were successful, the statutory summary procedure for unlawful detainer actions would be rendered partially obsolete. Every unlawful detainer action arising from a sale of property could be stymied solely by virtue of the defendant in such an action alleging that the plaintiff did not hold, purchase, or perfect valid title, a question which, according to Appellants, the trial court could not adjudicate. Recognizing that the legislature could not have intended that such cases be stuck in legal limbo, and following the California Supreme Court's ruling in Cheney v. Trauzettel, the trial court found that, pursuant to Code of Civil Procedure Section 1161a, it was entitled to adjudicate title, once the issue had been raised by Appellants, solely to determine if Respondent acquired title at the Sheriff's Sale and was therefore entitled to possession. "Under such unlawful detainer statutes it has been held that title, to the extent required by section 1161a, not only may, but must, be tried in such actions if the provisions of the statutes *extending the remedy beyond the cases where the conventional relation of landlord and tenant exists* are not to be judicially nullified." Seidell v. Anglo-Cal. Trust Co.

(1942) 55 Cal.App.2d 913, 920-21 (citations and quotation marks omitted, emphasis in original).

As noted by the Appellate Division of the Superior Court (the "Appellate Division"), "a court in an unlawful detainer action [can conduct] a narrow inquiry regarding title to the extent needed to determine whether the purchaser at a sale acquired the property at a regularly conducted sale and thereafter 'duly perfected' the title." Opinion issued by the Appellate Division on December 8, 2014 (the "Opinion") at 4 citing Code Civ. Proc. § 1161a, subd. (b)(1); Vella v. Hudgins (1977) 20 Cal.3d 251, 255. The Appellate Division found that the trial court conducted the narrow inquiry prescribed by law regarding title, *i.e.*, the trial court "analyzed the history of the litigation involving the property and found it revealed who owned the property." Opinion at 5.

Contrary to Appellants' statements, the Appellate Division did not find that the trial court exceeded its jurisdiction, nor did the Appellate Division "determin[e] any jurisdictional error was 'non-prejudicial.'" Appellants' Brief at 12. Indeed, the Appellate Division held the trial court "had jurisdiction to conduct an inquiry with respect to title insofar as it impacted [Respondent's] right to possession." Opinion at 5. In addition, the Appellate Division found that the ruling of the trial court on the cross-motions for summary judgment could and should be upheld on additional grounds. Opinion at 5.

Finally, with regard to the allegations that the Appellate Division included incorrect material facts, omitted other material facts, and omitted material arguments of Appellants, such allegations are wholly without merit. An appellate opinion need not address each and every fact and argument made by the parties, but instead solely needs to set forth the decision and the facts and law upon which such decision was based.

Neither the trial court nor the Appellate Division acted improperly in this case. As such, Respondent respectfully requests that this Court either vacate its January 28, 2015 Order transferring this case or affirm the rulings of the trial court and the Appellate Division.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND.

A. McClanahan v. Mansdorf.

On January 23, 2008, in McClanahan v. Mansdorf, *et al.*, Los Angeles Superior Court Case No. BC 363659 (the "McClanahan Case"), Janice M. McClanahan ("McClanahan") obtained a judgment against Harold Mansdorf ("Mansdorf") and Mildred Mansdorf, jointly and severally, in the amount of $12,000,000. 2 CT 278.

On April 18, 2008, McClanahan recorded an Abstract of Judgment, placing a lien on Mansdorf's residence, a parcel of real property located at 811 N. Alta Drive, Beverly Hills, CA 90210 (the "Property"). 2 CT 280-85.

On or about February 9, 2012, the Court issued a Writ of Execution for the Property. See 1 CT 13.

On April 9, 2012, McClanahan filed an Application for Order to Sell Residential Real Property ("Application for Order to Sell"). 2 CT 287-92. In the Application for Order to Sell, McClanahan specifically prayed for an order to sell the right, title, and interest of Mansdorf in and to the Property. 2 CT 287-88. McClanahan noted in the Application for Order to Sell that the Property was titled in the name of "Harold Mansdorf as Trustee of the Mansdorf Family Trust." 2 CT 288. McClanahan requested that the Court set a time and place for hearing and order Mansdorf to show cause why an order to sell the Property should not be granted. 2 CT 291.

On April 12, 2012, McClanahan's request was granted and the Notice of Hearing on Order to Show Cause Why Order for Sale of Dwelling Should Not Issue was filed and served. 2 CT 311-12.

On May 10, 2012, Mansdorf filed an Objection and Response to the Order to Show Cause Regarding the Sale of the Property ("Mansdorf's Objection to Sale"). 2 CT 316-17. The primary argument in Mansdorf's Objection to Sale was that the Property was not owned by Mansdorf individually, but instead by the Mansdorf Family Trust. See 2 CT 316-19. Significantly, at no point in the McClanahan Case did Mansdorf allege that Gonzalez had any interest in the Property, nor was there any mention of a joint tenancy deed (allegedly executed by Mansdorf in 2008 and purporting to give Gonzalez an interest in the Property), which deed would contradict Mansdorf's claim that the Property was owned by the Mansdorf Family Trust in 2012. See e.g., 2 CT 316-17.

On August 6, 2012, after considering all of the pleadings filed and the oral argument of the interested parties, the Court ordered the Property sold. 2 CT 328-29. The Order for Sale of Dwelling House was issued on August 10, 2012 and specifically states "IT IS ORDERED that the dwelling house located at 811 North Alta Drive, Beverly Hills, California 90210, be sold[.]" (the "Order for Sale"). 2 CT 331-36.

The Order for Sale was never appealed and is final.

B. The Sheriff's Sale of Real Property; *Ex Parte* Application to Stay Denied.

On October 1, 2012, the Sheriff issued a Notice of Sheriff's Sale pursuant to Code of Civil Procedure Section 701.540, providing public notice that the Sheriff intended to sell, at public auction, to the highest bidder, Mansdorf's interest in the Property (the "Notice of Sale"). 2 CT 338. The sale date listed in the Notice of Sale was October 31, 2012. 2 CT 338.

On October 30, 2012, a day before the sale was to take place, Appellant Gonzalez, filed an application, *ex parte*, to stay the sale of the Property ("Gonzalez's Application").[1] 2 CT 340-47. According to Gonzalez's Application, the stay was necessary because the Property "at all times was in the sole ownership and possession of the Mansdorf Family Revocable Trust[.]" 2 CT 341. There was no mention by Gonzalez in Gonzalez's Application of any interest he held in the Property due to a purported joint tenancy deed. See 2 CT 340-47. Instead Gonzalez argued in the Application that the Property was owned, not by him, but by the Mansdorf Family Trust: "the [Property] is in the Mansdorf Family Trust, an irrevocable trust." 2 CT 345. In fact, Gonzalez denied that Mansdorf, as an individual, ever had an interest in the Property: "During [Mansdorf's] life, the Trust was the only entity with legal possession of the [Property] as shown by the recorded deeds." Id.

Gonzalez's Application was denied by the Court on October 30, 2012. 2 CT 385-86.

On October 31, 2012, pursuant to the Writ of Execution, the Sheriff conducted the Sheriff's Sale, selling the Property to Respondent for four million five hundred, eighty one thousand, five hundred dollars ($4,581,500). 1 CT 12-14. A Sherriff's Deed of Sale of Real Property was duly prepared and executed on October 31, 2012 ("Sheriff's Deed"). 1 CT 13. The Sheriff's Deed was notarized on December 6, 2012, and recorded on December 7, 2012. 1 CT 12-14.

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[1] According to Gonzalez's Application, Mansdorf died on August 27, 2012 and Gonzalez was one of the Executors of Mansdorf's Estate. 2 CT 345.

C. The Termination Notice.

On or about December 14, 2012, Respondent properly served a Sixty Day Notice to Quit (the "Notice"). 1 CT 212-13; see also 2 CT 261.

D. The Unlawful Detainer Action.

Appellants did not vacate the Property as required by the Notice. 2 CT 261. Accordingly, on February 22, 2013, Respondent filed the unlawful detainer action (the "UD Action"). 1 CT 9.

Appellants filed an Answer on April 9, 2013. 1 CT 184-87. According to Appellants' Answer, Mansdorf executed a grant deed on July 3, 2008, which grant deed transferred title from the Mansdorf Family Trust to Mansdorf and Gonzalez as joint tenants (the "Joint Tenancy Deed"). 1 CT 184. Although the Joint Tenancy Deed was not recorded until after the Sheriff's Sale, and indeed, regardless of the fact that the very existence of the Joint Tenancy Deed contradicts statements made in Mansdorf's and Gonzalez's filings in the McClanahan Case, Appellants alleged that as a result of the Joint Tenancy Deed and Mansdorf's death in August 2012, Gonzalez was the sole owner of the Property. 1 CT 184-86.

On April 19, 2013, Respondent filed a motion for summary judgment. 1 CT 214-21. Respondent's motion argued that Respondent had met all elements of the unlawful detainer cause of action, and that the Joint Tenancy Deed was junior to McClanahan's lien and therefore had no effect upon the Sheriff's Sale or Respondent's title. Id.

On April 23, 2013, Appellants filed their Opposition to Respondent's summary judgment motion. 2 CT 229-33. According to Appellants' Opposition:

- Mansdorf did not own the Property at the time McClanahan recorded the Abstract of Judgment, instead, the Property was owned by the Mansdorf Family Trust;

- By way of the unrecorded Joint Tenancy Deed, Mansdorf transferred title in the Property from the Trust to himself and Gonzalez as joint tenants;

- Mansdorf died on August 27, 2012, prior to the Sheriff's Sale. On that date, Gonzalez succeeded to Mansdorf's interest in the Property; and

- At the time of the Sheriff's Sale, title to the Property was held by Gonzalez and Respondent paid over four million dollars for a nonexistent interest in real property.

2 CT 229-32.

Because Appellants attempted, *via* their opposition, to litigate the issue of title, the trial court requested further briefing from Respondent with regard to the propriety of adjudicating title in an unlawful detainer proceeding. See RT 11-13. Respondent filed its Reply to Opposition to Motion for Summary Judgment on April 29, 2013. 2 CT 264-73. Respondent's Reply noted that the issue of title was settled in the McClanahan Case and did not have to be re-litigated. See 2 CT 264-66.

On May 3, 2013, Appellants filed a competing motion for summary judgment, arguing that title to the Property was vested in Gonzalez. 2 CT 412-22. Contrary to Gonzalez's Application filed in the McClanahan Case, Appellants' motion for summary judgment stated: "[t]itle to the [Property] was at one time held in the Mansdorf Family Trust, but in 2008 was transferred to [] Mansdorf and [Appellant] Gonzalez in Joint Tenancy. The

title held by [] Mansdorf extinguished upon the death of []Mansdorf due to the fact that title was held in Joint Tenancy." 2 CT 414.

Respondent opposed Appellants' summary judgment motion on several grounds, including that: (1) the motion was untimely; (2) the issue of title that Gonzalez sought to litigate had already been decided in the McClanahan Case; and (3) the Joint Tenancy Deed was not recorded until November 13, 2012, after the Sheriff's Sale had already taken place. 3 CT 520-30.

On May 10, 2013, the trial court heard the cross-motions for summary judgment. See RT. After considering the papers, evidence submitted, and the arguments of counsel, the Court granted summary judgment in favor of Respondent. 4 CT 773.

The Order Granting Summary Judgment and Statement of Reasons contained several findings, among them that: (1) "[a]n execution sale of real property is absolute;" (2) McClanahan's "abstract of judgment in the [the McClanahan Case] is senior to the joint tenancy grant deed to Gonzalez" and "Gonzalez took, if at all, subject to the judgment lien;" (3) "[a]ll issues of the propriety of the judgment lien/[S]heriff's [S]ale of the [Property] were adjudicated in the [McClanahan Case;]" and (4) "[t]he order in the [McClanahan Case] is *res judicata* on the issue of ownership of the [Property.]" 4 CT 777.

On June 14, 2013, judgment was entered in favor of Respondent and against Appellants. 4 CT 773.

Notice of appeal of the judgment was filed June 21, 2013. 4 CT 798.

E. The Proceedings in the Appellate Division.

On August 8, 2014, Appellants filed their Opening Brief in the Appellate Division (the "AOB"). For the first time, Appellants argued in the AOB that, at the time McClanahan recorded the Abstract of Judgment,

title to the Property was not held by the Mansdorf Family Trust but instead had by that time been stolen "by an individual named Michele Giacomazza." AOB at 2. According to the AOB, title to the Property was not returned to the Trust until January 6, 2010, when Mansdorf obtained a judgment against Giacomazza. Id.[2] When the Property was purportedly returned to the Trust, according to the AOB, both the Joint Tenancy Deed and the Abstract of Judgment attached to the Property simultaneously. Thus, according to Appellants' latest argument, it was error for the Court to find that the Joint Tenancy Deed was junior to McClanahan's lien. AOB at 11-14.

This argument, raised for the first time on appeal, contradicts multiple statements Appellants made in the trial court that title to the Property was held by the Mansdorf Family Trust in 2008. See, e.g., Appellants Motion for Summary Judgment, 2 CT 415 ("Title was held by the Mansdorf Family Trust from 1968 to 2008"); 2 CT 416 ("Previous to July 3, 2008, the Property was held in the Mansdorf Family Trust of 1967"); Appellants' Objection to the Proposed Statement of Decision after Motion for Summary Judgment, 4 CT 681 ("Title was held in the Mansdorf Family Trust from 1968 to July 3, 2008. The Mansdorf Family Trust then transferred Title to the [Property] in Joint Tenancy with the Right of Survivorship to Harry Mansdorf and Jaime Gonzalez"); 4 CT 689 ("In 2008, title to the [Property] was held in Mansdorf Family Trust[.]"); Defendants' *Ex Parte* Application to Stay Execution of Writ of Possession Pursuant to CCP §§ 918, 918.5, 1176, 4 CT 790 ("At the time the

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[2] To be clear, the court that adjudicated the case against Giacomazza found that the deed in question "must be rescinded." 3 CT 455. Rescission effectively extinguishes the contract *ab initio* as though it never came into existence. Little v. Pullman (2013) 219 Cal.App.4th 558, 568.

[McClanahan] judgment was entered [on January 23, 2008], title [to the Property] was held by the [Mansdorf Family Trust]").

The allegation that title was held by Giacomazza until January 6, 2010 is also contradicted by Appellants' statements in the trial court that "[t]itle was transferred from Harry Mansdorf to Harry Mansdorf and Jaime DeJesus Gonzalez in Joint Tenancy with the Right of Survivorship on July 3, 2008 by means of a Grant Deed." 2 CT 419. See also Declaration of Jaime De Jesus Gonzalez in Support of Defendants' *Ex Parte* Application to Stay Execution of Writ of Possession Pursuant to CCP §§ 918, 918.5, 1176, 4 CT 780 ("I obtained title to the [Property] on July 3, 2008 pursuant to a Deed from the Mansdorf Family Trust to Harry Mansdorf and myself as Joint Tenants[.]"); Defendants' *Ex Parte* Application to Stay Execution of Writ of Possession Pursuant to CCP §§ 918, 918.5, 1176, 4 CT 789 ("On July 3, 2008, the [Property] was conveyed from the Trust to Harold Mansdorf and Jaime Gonzalez as Joint Tenants with Right of Survivorship").[3]

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[3] This change in Appellants' allegations regarding who held title to the Property during the time in question is a recurring pattern. As noted above, throughout the McClanahan matter, both Mansdorf and Gonzalez argued that the Property was held by the Mansdorf Family Trust, not Mansdorf, and therefore was not subject to the judgment rendered against Mansdorf. Neither Gonzalez nor Mansdorf made mention of the Joint Tenancy Deed during that litigation, even though the purported Joint Tenancy Deed allegedly transferred title out of the Mansdorf Family Trust in 2008 to Mansdorf, individually, and Gonzalez.

Initially in this litigation, Appellants argued that title to the Property was transferred pursuant to the Joint Tenancy Deed to Mansdorf and Gonzalez as joint tenants in 2008, and that, therefore, Gonzalez succeeded to the Property before McClanahan executed on her lien. Because the trial court held the transfer to Gonzalez was subject, and junior to, McClanahan's lien, Appellants' allegations have changed yet again. Now, Appellants allege that the Property was held by Giacomazza until 2010, such that

(...continued)

Respondent filed its Opening Brief on September 8, 2014, and filed its Reply Brief on September 29, 2014.

Oral argument took place in the Appellate Division on November 20, 2014, and the Appellate Division issued its Opinion on December 8, 2014. The Opinion affirmed the ruling of the trial court.

Thereafter, Appellants filed a Petition for Rehearing and an Application for Certification for Transfer.

On January 5, 2015, the Appellate Division issued an Order modifying the opinion and denying Appellants' Petition for Rehearing and Application for Transfer.

On January 15, 2015, Appellants filed the Petition to Transfer to Court of Appeal After Denial of Certification. Appellants' Petition was granted by this Court on January 28, 2015.

F. The Quiet Title Actions.

1. Gonzalez v. McClanahan, *et al.*

On February 5, 2013, Gonzalez filed a Verified Complaint for Quiet Title, Declaratory Relief and Cancelation of Instrument; Los Angeles Superior Court Case SC 119964 (the "First Quiet Title Action"). 1 CT 85.

Respondent filed a Demurrer on March 25, 2013. RT 7-8. Before the Demurrer was heard, the First Quiet Title Action was voluntarily dismissed by Appellant Gonzalez. RT 7-8.

(...continued)
McClanahan's lien could not have attached to the Property before the Property was transferred pursuant to the Joint Tenancy Deed.

2. Gonzalez v. Alta Standard One, LLC.

On April 23, 2013, Gonzalez filed a Verified Complaint for Defamation of Title and Declaratory Relief; Los Angeles Superior Court Case BC 506777 (the "Second Quiet Title Action"). 4 CT 840-44.

On May 23, 2013, Respondent filed a Demurrer to Gonzalez's Complaint. 4 CT 869. The Demurrer noted that the issue of title had previously been adjudicated, on several different occasions. 4 CT 876-82.

On November 22, 2013, the Court sustained the Demurrer without leave to amend and, on July 3, 2014, judgment in the Second Quiet Title Action was granted in favor of Respondent.

A Notice of Appeal was filed on July 23, 2014. That appeal is currently pending before Division Five of this Court, Case No. B 257876.[4]

Pursuant to California Rule of Court 8.1012(a)(2), Respondent adopts by reference the entirety of its brief filed in this Court in related Case No. B 257876.[5]

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[4] Notably, the appellate record of the Second Quiet Title Action reveals that Gonzalez likewise asserted in that case that title was held by the Mansdorf Family Trust until 2008 when it was transferred to Mansdorf and Gonzalez as joint tenants. See Opposition to Demurrer; 3 CT (Court of Appeal Case No. B 257876) 559 ("Title to the Alta House was transferred into the Mansdorf Family Trust in 1968.... From that point forward, title was continuously held in the Mansdorf Family Trust for 20 years, until July 3, 2008").

[5] Respondent submits that, if this Court affirms judgment for the Respondent in the Second Quiet Title Action, settling the question of whether Appellants have any interest in the Property, the instant case should be deemed moot.

III. ARGUMENT.

A. Respondent Met Its Burden To Prove Its *Prima Facie* Case.

As set forth in the Opinion, the trial court's ruling, and in Respondent's statement of undisputed facts, Respondent submitted the evidence required to establish its *prima facie* case: (1) Respondent was the third party purchaser at the Sheriff's Sale of the Property, which Property was sold pursuant to a writ of sale; (2) Appellants continued to occupy the Property after Respondent duly recorded transfer of title; (3) Respondent properly served a Notice to Quit upon Appellants; and (4) Appellants failed to surrender possession of the Property within the notice period.

B. Appellants Failed To Raise A Triable Issue Of Material Fact Refuting Respondent's *Prima Facie* Showing.

In order to defeat summary judgment, Appellants must demonstrate, through credible and admissible evidence, that there is a triable issue of material fact. Code Civ. Proc. § 437c(p)(1).

In their Brief, Appellants attempt to manufacture a factual dispute. Appellants contend that the trial court made a finding of fact in that it "expressly assumed and inferred [that the court in the McClanahan Case] reached into the [Mansdorf Family] trust to order the sale [of the Property]." Appellants' Brief at 17.

In fact, the trial court simply took judicial notice of the records of the courts of this State, including the Order for Sale, Mansdorf's Objection to Sale, and Gonzalez's Application. The issue raised by Appellants, that McClanahan's lien did not attach to the Property because it was held in the Mansdorf Family Trust, was squarely before the court in the McClanahan Case. The Order for Sale did not order a sale of Mansdorf's interest in the Property, rather, after considering the argument of Mansdorf (and

Gonzalez) regarding how title to the Property was held, the Order for Sale specifically states "IT IS ORDERED that the dwelling house located at 811 North Alta Drive, Beverly Hills, California 90210, be sold[.]" 2 CT 331-36.

In reviewing the Order for Sale, the trial court noted that the Order for Sale was "highly contested" and "thoroughly litigated," and that the court "made a pretty detailed order for sale of this specific property[.]" RT 22. In addressing Appellants' argument regarding the ownership of the Property, the court noted it was "looking at this order where it was fully litigated that this sale proceed.... If in fact the property is only held by Harry Mansdorf as Trustee, there is a court order that says notwithstanding that, this [property] may be used to satisfy a judgment in favor of the McClanehahn [sic]." RT 24. In short, the trial court did not make a factual finding about what the court in the McClanahan Case did; the trial court simply respected the validity of the Order for Sale and presumed that any facts in favor of its validity existed.[6]

C. The Trial Court Did Not Act In Excess of its Jurisdiction.

Appellants' primary argument is that the trial court acted in excess of its jurisdiction when it chose to determine whether Respondent held "good and duly perfected title" to the Property. It bears noting that the only defense raised by Appellants to the motion for summary judgment was that

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[6] Appellants were, and are, trying to mount a collateral attack on the Order for Sale by disputing its clear and unequivocal language regarding the sale of the Property. "[A]gainst such attack every presumption is to be indulged in respecting the validity of such order[.]" Whitney v. Super. Ct. of Fresno Cnty. (1926) 199 Cal. 569, 574. See also Wood v. Roach (1932) 125 Cal.App.3d 631, 639 ("it will be presumed on collateral attack that any facts consistent with the validity of [the superior court's] judgment existed").

title was not properly held by Respondent. As such, in order to make any ruling on the motion for summary judgment, the trial court had to first find that Respondent held title. The trial court's findings with regard to title had several different bases. Certain of the findings made by the trial court involved issues related to title to the Property, *i.e.*, the finding that "the abstract of judgment in the [McClanahan Case] is senior to the [Joint Tenancy Deed]," while other findings by the trial court did not adjudicate title, but instead found that title could not properly be disputed by Appellants in the unlawful detainer proceeding, *i.e.*, the finding that "[a]n execution sale of real property is absolute" and "the order in the McClanahan Case is *res judicata* on the issue of ownership of the [Property]." 4 CT 777.

1. The Trial Court Correctly Ruled that an Execution Sale of Real Property is Absolute and Cannot be Set Aside.

It is undisputed that Respondent acquired an interest in the Property on October 31, 2012, pursuant to the Sheriff's Sale. See RT 9-10.

Notice of the Sheriff's Sale was duly given pursuant to Code of Civil Procedure Section 701.540. 2 CT 338.

Code of Civil Procedure Section 701.680 expressly provides: "a sale of property pursuant to this article is ***absolute and may not be set aside for any reason***." Code Civ. Proc. § 701.680(a) (emphasis added).

The sole and exclusive basis for undoing a Sheriff's sale is by an action brought by the judgment debtor (or its successor in interest) where the purchaser is the judgment creditor. Code Civ. Proc. § 701.680(c)(1). Respondent was not, and is not alleged to be, the judgment creditor. In all

other cases, the statute states that the sole remedy is an action for damages against the judgment creditor. Code Civ. Proc. § 701.680(c)(2).[7]

Appellants' sole response appears to be that the Sheriff's Sale was meaningless; the Sheriff sold only Mansdorf's interest in the Property and Mansdorf's interest in the Property was extinguished by his death pursuant to the Joint Tenancy Deed. This argument ignores the clear language of the Order for Sale. The Order for Sale does not order the sale of Mansdorf's interest in the Property; the Order for Sale orders the sale of the Property. As such, the Appellate Division did not err in stating that the Property had been sold at the Sheriff's Sale – it was simply a statement of fact based upon the clear language of the Order for Sale.

Similarly, the finding that the Sheriff's Sale was absolute was not an adjudication of title by the trial court; rather, it is a statement of black letter law. The Appellate Division concurred with the trial court: "section 701.680, subdivision (a)... bars, with exception of a challenge inapplicable here, setting aside a sheriff's sale 'for any reason.'" Opinion at 7.

2. The Trial Court Did Not Have to Determine Title; Title Had Previously Been Adjudicated in the McClanahan Case.

The chronology set forth in the factual recitation above makes the following clear:

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[7] See also Miller & Starr, CALIFORNIA REAL ESTATE, § 32:79 ("Since 1982, an execution sale is considered absolute, and may not be set aside for any reason except that if the purchaser at the execution sale was the judgment creditor, the judgment debtor or that person's successor may commence an action ... to set aside the sale base upon impropriety in the proceedings."); Code Civ. Proc. § 701.680, West's Annotated California Codes, Legislative Committee Comments to the 1982 Addition ("Section 701.680 does not permit the sale to be set aside unless the sale was made to the judgment creditor[.]").

- McClanahan's Abstract of Judgment was recorded prior to the creation or recordation of the Joint Tenancy Deed. In fact, at the time of the Sheriff's Sale, the purported Joint Tenancy Deed had not been recorded.

- Both Mansdorf and Gonzalez were aware, prior to the Sheriff's Sale, that the Court in the McClanahan Case ordered "that the dwelling house located at 811 North Alta Drive, Beverly Hills, California 90210, be sold[.]" 2 CT 331-333.

- Both Mansdorf and Gonzalez had an opportunity to appeal the Order for Sale, but failed to do so.

- Both Mansdorf and Gonzalez had the opportunity to litigate the validity of the Joint Tenancy Deed before the court in the McClanahan Case, but failed to do so.[8]

- Respondent, a bona fide third party purchaser, purchased the Property at the Sheriff's Sale and, thereafter, the Sheriff's Deed was recorded.

The court in the McClanahan Case considered all of the facts and argument before it, including the argument that title was held in the Mansdorf Family Trust, and ordered that the Property be sold. Mansdorf and Gonzalez (Mansdorf's claimed successor in interest) had an opportunity to refute the ownership of the Property, and in fact attempted to

[8] Notably, the failure to record the Joint Tenancy Deed until after Mansdorf's death calls into question whether it was intended to be operative when executed. Blackburn v. Drake (1963) 211 Cal.App.2d 806, 814.

do so during the McClanahan Case; the rulings made therein are binding upon them in this action due to the doctrines of *res judicata* and collateral estoppel.

"The doctrine of *res judicata* is applicable where the identical issue was decided in a prior case by a final judgment on the merits and the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication." French v. Rishell (1953) 40 Cal.2d 477, 479.

To the extent that Gonzalez attempts to argue that the issue of the Joint Tenancy Deed was not raised and therefore not determined in the McClanahan Case, collateral estoppel applies. Because the Joint Tenancy Deed was allegedly executed in 2008 (see 2 CT 389), there is no question that Gonzalez (and Mansdorf) could have raised it in the McClanahan Case in 2012.

"The collateral estoppel aspect of *res judicata* will apply as to all issues which were involved in the prior case even though some factual matters or legal arguments which could have been presented in the prior case in support of such issues were not presented. Thus, where two lawsuits are brought and they arise out of the same alleged factual situation, and although the causes of action or forms of relief may be different, 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." Frommhagen v. Bd. of Supervisors (1987) 197 Cal.App.3d 1292, 1301.

Because the relevant issues regarding ownership of the Property were, or could have been, litigated in the McClanahan Case, the Order for Sale issued in that matter is binding upon Mansdorf, any successor in interest to Mansdorf, and upon Gonzalez.

3. The Trial Court Correctly Ruled that the Lien Created by the Abstract of Judgment is Senior to the Purported Joint Tenancy Deed.

Appellants' claims are also barred because the purported conveyance of the joint tenancy interest occurred after McClanahan's judgment lien attached to the Property. McClanahan recorded her Abstract of Judgment on April 18, 2008. 2 CT 280-85. The recordation of the Abstract of Judgment created a lien on Mansdorf's real property interests. Code Civ. Proc. § 697.310(a). That lien attaches to "all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable)...." Code Civ. Proc. § 697.340(a). Accordingly, on April 28, 2008, a lien attached to Mansdorf's interest in the Property, whether that interest was present or future, vested or contingent, legal or equitable.

Once the lien attached, Mansdorf was disabled from undermining the lien by conveying interests in the Property. The provisions of the Enforcement of Judgments Law ("EJL"), enacted in 1982, expressly provide that such a transfer does not affect a judgment lien created through the filing of an abstract of judgment: "If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying or extinguishing the lien: (a) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered." Code Civ. Proc. § 697.390.

Further, the 1982 EJL provides that such a post-lien transfer does not impair the right to enforce the judgment against the property. Code Civ. Proc. § 695.070(a). Moreover, the enforcement right continues even if the judgment debtor dies before execution: "If the judgment debtor dies after the transfer of property that remains subject to a lien created under this

subdivision, the money judgment may be enforced against the property as provided in subdivision (a)." Code Civ. Proc. § 695.070(b); see also Dieden v. Schmidt (2002) 104 Cal.App.4th 645, 650-652 (transferee of property encumbered by an abstract of judgment takes title subject to the lien, and the lienholder "may enforce his judgment in the same manner and *to the same extent as if the property had never been transferred.*") (emphasis in original).[9]

Here, Gonzalez alleges that Mansdorf conveyed a joint tenancy interest in the Property to him on July 3, 2008 – after the Abstract of Judgment had been recorded and McClanahan's lien attached to the Property. Accordingly, any joint tenancy interest purportedly conveyed to Gonzalez remained subject to the judgment lien (Code Civ. Proc. § 697.390), and McClanahan remained free to enforce the judgment despite the alleged subsequent transfer to Gonzalez (Code Civ. Proc. § 695.070(a)), and notwithstanding the fact that Mansdorf died before the Sheriff's Sale (Code Civ. Proc. § 695.070(b)).

Gonzalez cannot claim that he was unfairly harmed because his purported interest in the Property was "wiped out" as a result of the trial court's decision. Appellants' Brief at 6. As noted by the California Supreme Court, "[a] judgment lien has always been regarded as the highest form of security to a creditor." Kinney v. Vallentyne (1975) 15 Cal.3d 475,

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[9] Further, Probate Code Section 9303 provides: "If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law... to satisfy the judgment." See also Heywood v. Mun. Ct., (1988) 198 Cal.App.3d 1438, 1446 ("A writ of execution may therefore be properly levied upon the assets of the Trust which were the subject of the general power of appointment of Decedent at the time of his death and upon the assets of the Trust that were subject to Decedent's power of revocation at the time of his death.").

478. If a debtor transfers his title to the property to another after the lien attaches, "the transferee takes with constructive notice of both the original amount of the judgment and the remaining life of the lien." Id. at 479.[10] As the Abstract of Judgment was duly recorded prior to the execution of the Joint Tenancy Deed, Gonzalez knew that the lien existed and took his alleged interest in the Property subject to the lien.

To support his claim of ownership Appellant Gonzalez refers this Court to Zeigler v. Bonnell (1942) 52 Cal.App.2d 217 and Grothe v. Cortlandt Corp. (1992) 11 Cal.App.4th 1313. Zeigler was decided 40 years before the controlling provisions of the EJL were enacted and is plainly inapposite. Moreover, in both Zeigler and Grothe, the judgment lien attached to an ***existing*** joint tenancy interest created ***before*** the abstract of judgment was recorded. There was no transfer of property, as here, after the abstract was recorded. Cf. Dieden v. Schmidt (2002) 104 Cal.App.4th 645, 652 (distinguishing Zeigler on grounds that "the judgment lien in Zeigler attached to an existing joint tenancy interest.).

Contrary to Appellants' argument, the trial court did not ignore "established joint tenancy law." Appellants' Brief at 1. Rather, the trial court took into consideration other relevant statutes and precedent when determining what effect, if any, the Joint Tenancy Deed had on the Sheriff's Sale. After due consideration, the trial court correctly found that the Abstract of Judgment was senior to the Joint Tenancy Deed.

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[10] It bears noting that the California Supreme Court noted in Kinney that even where a transfer took place before the lien attached, "[i]f the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee[.]" 15 Cal.3d at 479, fn. 6. As such, even if Gonzalez's after-acquired title and simultaneous attachment arguments had merit, the purported ownership of Gonzalez can still be attacked; after all, it is clear that the Abstract of Judgment was rendered before the Joint Tenancy Deed was executed.

4. The Trial Court Can Adjudicate Title In Certain Occasions.

Appellants' Opposition to Respondent's summary judgment motion made only one argument: Respondent did not have title to the Property. Because Appellant focused solely on the issue of title, in order to rule in favor of Respondent, the trial court was forced to determine whether Respondent held title to the Property.

In Cheney v. Trauzettel, the sole defense raised by defendants to the unlawful detainer action was that plaintiffs, who obtained title pursuant to a trustee's sale, did not acquire valid title. 9 Cal.2d 158, 159. The California Supreme Court stated that "where the purchaser at a trustee's sale proceeds under section 1161a of the Code of Civil Procedure he must prove his acquisition of title by purchase at the sale." Id. at 159; see also Vella v. Hudgins (1977) 20 Cal.3d 251, 255 ("A qualified exception to the rule that title cannot be tried in unlawful detainer is contained in Code of Civil Procedure section 1161a, which extends the summary eviction remedy beyond the conventional landlord-tenant relationship to include certain purchasers of property .... Section 1161a provides for a narrow and sharply focused examination of title.").

Appellant argues that Cheney only applies in cases where title is obtained from a sale under Code of Civil Procedure Section 2924 ("Section 2924"). Appellant's Brief at 10. This interpretation of Cheney is illogical. Section 1161a(b) lists five types of sales: (1) sales pursuant to a writ of execution; (2) sales pursuant to a writ of sale related to foreclosure proceedings; (3) sales pursuant to Section 2924; (4) sales by the person in possession of the property; and (5) sales pursuant to Health and Safety Code Section 18037.5. According to Appellant, in only one of these instances, sales pursuant to Section 2924, can a trial court determine if the plaintiff in an unlawful detainer matter has "prove[d] his acquisition of title

by purchase at the sale[.]" Cheney, 9 Cal.2d at 159. In short, Appellant argues sales pursuant to Section 2924 should be treated differently from all others listed in Section 1161a. No such limitation is set forth in either Cheney, in the cases following Cheney, or in Section 1161a. See, e.g., Wood v. Herson (1974) 39 Cal.App.3d 737, 743 ("Since Cheney, the cases have held that in an unlawful detainer proceeding, the court must make a limited inquiry into the basis of the plaintiff's title when acquired through proceedings described in Code of Civil Procedure section 1161a.").

D. The Appellate Division Considered All of the Relevant Law and Facts.

Appellants claim that the both the trial court and Appellate Division included incorrect material facts, omitted material facts and law, and omitted material arguments made by Appellants. Appellant's Brief at 12. This is inaccurate.

As noted by the California Supreme Court, "an opinion is not a brief in reply to counsel's arguments. In order to state the reasons, grounds, or principles upon which a decision is based, the court need not discuss every case or fact raised by counsel in support of the parties' positions." Lewis v. Super. Ct. (1999) 19 Cal.4th 1232, 1263 (internal citations omitted). The Lewis Court goes on to explain that while the California Constitution requires courts to issue written decisions, "[t]he constitutional requirement is satisfied as long as the opinion sets forth those reasons upon which the decision is based; that requirement does not compel the court to discuss all its reasons for rejecting the various arguments of counsel." Id. at 1264.

In short, while the Opinion may fail to state every fact and dispute every argument set forth by Appellants, the Opinion clearly sets forth the ruling of the Appellate Division and the factual and legal basis for that ruling. Nothing more is required.

In addition, neither the trial court nor the Appellate Division "failed to recognize the after-acquired title and simultaneous attachment facts." See Appellant's Brief at 1. Instead, both the trial court and the Appellate Division decided the case based upon the facts presented. Appellants did not argue in the trial court that the Property was owned by Giacomazza until 2010. Instead, and as demonstrated above, Appellants repeatedly stated that the Property was owned by the Mansdorf Family Trust. Indeed, Appellant Gonzalez's declaration filed in support of Appellant's motion for summary judgment states "I obtained title to the [Property] on July 3, 2008 pursuant to a Deed from the Mansdorf Family Trust to Harry Mansdorf and myself as Joint Tenants[.]" 2 CT 410. Appellant Gonzalez also declares, under penalty of perjury, that "the Mansdorf Family Trust has continuously held title to the [Property] from 1968 through July 3, 2008, except for a few instances when the former trustee Lee Mansdorf held title so that he could obtain a loan[.]" 2 CT 411.

It is ironic that while accusing Respondent of perjury (Appellant's Brief at 7), Appellants ignore the fact that the Brief they have submitted to this Court contradicts statements Appellant Gonzalez made under penalty of perjury. Appellant Gonzalez's statements are judicial admissions and should be binding. "A pleader cannot blow hot and cold as to facts positively stated." St. Paul Mercury Ins. Co. v. Frontier Pac. Ins. Co. (2003) 111 Cal.App.4th 1234, 1248.

Furthermore, because the Joint Tenancy Deed was unrecorded at the time of the Sheriff's Sale, the unrecorded Joint Tenancy Deed could not have attached simultaneously with the Abstract of Judgment. See First Fid. Thrift & Loan Ass'n v. Alliance Bank (1998) 60 Cal.App.4th 1433, 1440-41 ("A good faith encumbrancer for value who first records takes its interest in the real property free and clear of unrecorded interests").

IV. CONCLUSION

For all of the foregoing reasons, Respondent respectfully submits that this Court should affirm the judgment of the trial court and the Appellate Division.

DATED: March 17, 2015

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CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.1012(d) of the California Rules of Court, the enclosed Respondent's Opening Brief is produced using 13-point Times New Roman type including footnotes and contains approximately 7,114 words. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: March 17, 2015

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles , State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683, and my business email address is mec@msk.com.

On March 17, 2015, I served a copy of the foregoing document(s) described as **RESPONDENTS' OPENING BRIEF** on the interested parties in this action at their last known address as set forth below by taking the action described on the attached Service List:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 17, 2015, at Los Angeles, California.

Maureen Costa