

Ordered Not Published

Previously published at: 112 Cal.App.4th 315

(Cal. Rules of Court, Rules 976, 977, 979)

(Cite as: 4 Cal.Rptr.3d 874)



Court of Appeal, Third District, California.
MARCHBROOK BUILDING COMPANY, Plaintiff and Appellant,
v.
Joanne R. SOUCHEK, Individually and as Trustee, etc., Defendant and Respondent.
No. C041912.

Sept. 29, 2003.

Review Denied Jan. 28, 2004. [FN*]

FN* In denying review, the Supreme Court ordered that the opinion be not officially published. (See California Rules of Court - Rules 976 and 977).

Background: Purchaser filed action against vendor seeking declaration that it was entitled to return of deposit after vendor had obtained quiet title judgment to property on noncompletion of sale. The Superior Court of San Joaquin County, No. CV015921, Carter P. Holly, J., sustained vendor's demurrer and entered judgment in her favor. Purchaser appealed.

Holdings: The Court of Appeal, Robie, J., held that:

(1) action was not barred by compulsory cross-complaint rule, and

(2) complaint stated cause of action for declaratory relief.

Reversed and remanded.

***876** Rehon & Roberts, Peter M. Rehon and Tyler J. Olson, San Jose, for Plaintiff and Appellant.

Parish & Small and William H. Parish, Stockton, for Defendant and Respondent.

ROBIE, J.

Plaintiff Marchbrook Building Company agreed to buy some land from defendant Joanne R. Soucek and paid her a \$500,000 deposit toward the purchase. When a dispute arose over the closing of the first phase of the sale, Soucek sued Marchbrook, claiming Marchbrook had breached the contract. Soucek sought a declaration that she was entitled to keep the \$500,000 deposit as liquidated damages under the contract and also sought to quiet title to the property against Marchbrook's asserted right to purchase it. Alleging it was Soucek who had breached the agreement, Marchbrook cross-complained, seeking restitution of its deposit and damages. (We will occasionally refer to this action as the prior action.)

After the quiet title cause of action was summarily adjudicated in Soucek's favor, Marchbrook inexplicably dismissed its cross-complaint without prejudice as "redundant and unnecessary." Soucek responded by dismissing the remaining cause of action for declaratory relief, and the court entered judgment in the action quieting Soucek's title to the property. This left Soucek with the \$500,000 and Marchbrook with no pending action seeking its return.

When Marchbrook filed the present action seeking a declaration that it was entitled to the return of its \$500,000 deposit, Soucek demurred. Soucek claimed Marchbrook's new action was barred by the compulsory cross-complaint rule in subdivision (a) of Code of Civil Procedure section 426.30 [FN1] and that, in any event, Marchbrook had failed to state a cause of action for declaratory relief. The trial court agreed with Soucek on the former ground and sustained the demurrer without leave to amend. In essence, the trial court concluded Marchbrook had to pursue the return of its \$500,000 deposit in a compulsory cross-complaint in the prior action, and its failure to litigate the matter to conclusion in that action barred any further pursuit of the issue by Marchbrook.

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FN1. All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

On Marchbrook's appeal from the judgment in favor of Soucek, we conclude the compulsory cross-complaint rule does not apply here because section 426.60, subdivision (c) (hereafter section 426.60(c)) exempts from the rule any action that seeks only declaratory relief. We agree with Marchbrook that Soucek's complaint in the prior action sought only declaratory relief. Although Soucek sought to quiet title to her property, an action to quiet title is the equivalent of an action for declaratory relief for the purposes of section 426.60(c). Thus, the compulsory cross-complaint rule does not apply.

We further conclude Marchbrook's complaint states a cause of action for declaratory relief. Accordingly, the trial court erred in sustaining Soucek's demurrer, and we will reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We take the facts from the complaint and from the matters of which Soucek asked the trial court to take judicial notice. *877 (See *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 653, 117 Cal.Rptr.2d 269, 41 P.3d 87.)

In 1998, Soucek and Marchbrook signed a written agreement under which Soucek agreed to sell Marchbrook land she owned in San Joaquin County. Marchbrook paid Soucek a \$500,000 deposit toward the purchase price.

In November 1999, Marchbrook recorded a memorandum of agreement Soucek executed with the sales agreement. The memorandum stated that Soucek had granted Marchbrook the exclusive right to purchase the property on the terms and conditions described in the sales agreement.

In October 2000, Soucek filed a complaint for declaratory relief and to quiet title against Marchbrook. Soucek complained that Marchbrook breached the sales agreement by refusing to close escrow on the first phase of the sale, and she sought a declaration that she was entitled to keep the \$500,000 deposit as liquidated damages. She also sought to quiet her title to the property against Marchbrook's asserted right to purchase the property, as evidenced by the memorandum of agreement Marchbrook recorded.

Marchbrook answered and filed a cross-complaint against Soucek. In its cross-complaint, Marchbrook alleged it was *Soucek* who breached the sales agreement by refusing to create a 15-acre parcel for the first phase of the sale. Marchbrook further alleged that Soucek's breach justified rescission of the agreement and entitled Marchbrook to the return of its \$500,000 deposit as well as damages. [FN2]

FN2. Marchbrook's cross-complaint purported to allege two causes of action against Soucek, one for rescission and one for breach of contract. In actuality, Marchbrook's cross-complaint stated a single cause of action for breach of contract and sought two different remedies for Soucek's alleged breach--(1) rescission and restitution, and (2) damages. (See 1 Witkin, *Summary of Cal. Law* (9th ed. 1987) *Contracts*, § 797, pp. 719-721 [identifying available remedies for breach of contract].)

The trial court granted summary adjudication in favor of Soucek on her quiet title cause of action in May 2001, leaving Soucek's declaratory relief cause of action and Marchbrook's breach of contract cause of action for trial. On November 14, 2001, Marchbrook voluntarily dismissed its cross-complaint without prejudice, based on the belief that the cross-complaint was "redundant and unnecessary to the resolution of the dispute." The following day, Soucek dismissed her declaratory relief cause of action without prejudice. A week later, the court entered judgment in favor of Soucek on the only cause of action that had not been voluntarily dismissed--her quiet title cause of action. The judgment expunged the memorandum of agreement Marchbrook recorded against the property and terminated the action.

On November 30, 2001, Marchbrook commenced the present action by filing a complaint for declaratory relief against Soucek, seeking "a judicial determination of its rights and duties under the [sales agreement], and a

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declaration as to [its] right to the restoration of its \$500,000 deposit." Like Marchbrook's cross-complaint in the prior action, the present action is based on Soucek's alleged refusal to create a 15-acre parcel for the first phase of the sale.

Soucek demurred to Marchbrook's complaint on the grounds that the complaint failed "to state a cause of action for declaratory relief because it seeks solely adjudication of past acts" and that "any cause of action related to the agreement allegedly entered into between these parties is barred by ... section 426.30." The *878 trial court sustained the demurrer without leave to amend on the ground that Marchbrook's complaint was barred by the compulsory cross-complaint rule of section 426.30. The court entered judgment against Marchbrook on June 17, 2002, from which Marchbrook appeals.

DISCUSSION

I

The Compulsory Cross-complaint Rule does not Apply to Declaratory Relief Actions

Marchbrook contends the trial court erred in sustaining Soucek's demurrer based on the compulsory cross-complaint rule because "that rule does not apply to the facts of this case." We agree.

The compulsory cross-complaint rule is set forth in subdivision (a) of section 426.30, which provides: "Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded." A "related cause of action" is "a cause of action which arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint." (§ 426.10, subd. (c).)

[1][2] When a defendant has failed to allege a related cause of action in a cross-complaint in a prior action, the bar of the compulsory cross-complaint rule can be raised by demurrer in the subsequent action. (See, e.g., AL Holding Co. v. O'Brien & Hicks, Inc. (1999) 75 Cal.App.4th 1310, 89 Cal.Rptr.2d 918.) The compulsory cross-complaint rule also can be raised as a bar to a subsequent action when the same claim was alleged in a cross-complaint in a prior action but was voluntarily dismissed before it was adjudicated. (See Hill v. City of Clovis (1998) 63 Cal.App.4th 434, 445, 73 Cal.Rptr.2d 638; Carroll v. Import Motors, Inc. (1995) 33 Cal.App.4th 1429, 1436, 39 Cal.Rptr.2d 791.)

Under section 426.60(c), however, declaratory relief actions are exempt from the compulsory cross-complaint rule. That statute provides: "This article [governing compulsory cross-complaints] does not apply where the only relief sought is a declaration of the rights and duties of the respective parties in an action for declaratory relief under Chapter 8 (commencing with Section 1060) of Title 14 of this part."

II

No Distinction can be Drawn Between Declaratory Relief and Quiet Title Actions

[3] Marchbrook contends the exemption of section 426.60(c) applies here because all of the relief Soucek sought in the prior action, including the relief she sought in her cause of action to quiet title, "was declaratory in nature." Soucek contends "[a]n action for declaratory relief is distinguishable, and thereby distinct, from an action to quiet title." We conclude that for purposes of section 426.60(c), no valid distinction can be drawn between a quiet title action and a declaratory relief action.

"As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language *879 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the statute ... in order to determine the scope and purpose of the provision.... [Citation.]' [Citation.] That is, we construe the words in question 'in context, keeping in mind the nature and obvious purpose of the statute....' " (People v. Murphy (2001) 25 Cal.4th 136, 142, 105 Cal.Rptr.2d 387, 19 P.3d 1129.)

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The purpose for exempting declaratory relief actions from the compulsory cross-complaint rule lies in the nature of such actions. As our Supreme Court recently explained in *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 123 Cal.Rptr.2d 432, 51 P.3d 297: "A declaratory judgment action provides litigants with a quick, efficient means of resolving a disputed issue.... [¶] Unlike coercive relief (such as damages, specific performance, or an injunction) in which a party is ordered by the court to do or to refrain from doing something, a declaratory judgment merely declares the legal relationship between the parties. Under the provisions of the [declaratory judgment] Act, a declaratory judgment action may be brought to establish rights once a conflict has arisen, or a party may request declaratory relief as a prophylactic measure before a breach occurs. To further the purpose of providing a rapid means of resolving a dispute or a potential dispute, declaratory actions are given precedence in setting trial dates." (*Id.* at pp. 897-898, 123 Cal.Rptr.2d 432, 51 P.3d 297.)

Exempting declaratory relief actions from the compulsory cross-complaint rule facilitates their use as a quick and efficient means of obtaining a judicial determination of the legal relationship between the parties. Since the defendant is not required to file a cross-complaint alleging any related causes of action he or she may have against the plaintiff, the parties may obtain a prompt adjudication of their legal rights and duties, unencumbered by the litigation of other, related disputes between the parties.

Like an action for declaratory relief, the purpose of an action to quiet title is to determine the legal relationship between the parties--albeit, with reference to a particular piece of property. "The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to." (*Peterson v. Gibbs* (1905) 147 Cal. 1, 5, 81 P. 121.) An action to quiet title is a statutory action, the purpose of which is "to afford a remedy similar in character to that of the old bill of peace." (*Thomson v. Thomson* (1936) 7 Cal.2d 671, 675-678, 62 P.2d 358.) Actions to quiet title are presently provided for in section 760.010 et seq. It has been recognized, however, that a variety of "[o]ther proceedings ... may be available to clear title to property," including declaratory relief actions under section 1060 et seq. [FN3] (Legis. Com. com., 17A West's Ann.Code Civ. Proc., § 760.030 (2003 supp.) p. 45.) Indeed, one commentator has noted that an action to quiet title "is really an action for a particular type of declaratory relief." (Recent Decisions, *Declaratory Judgments: Right to a Jury Trial Where Declaratory Relief Depends on Determination of Disputed Issues of Fact* (1940) 28 Cal.L.Rev. 638, 640.)

FN3. Section 760.030, subdivision (a), expressly provides: "The remedy provided in this chapter is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property."

[4] We acknowledge that section 426.60(c) expressly refers to cases "where the only relief sought is a declaration of *880 the rights and duties of the respective parties in an action for declaratory relief under ... [s]ection 1060." (Italics added.) However, we do not read this final clause of the statute as limiting its application to actions where the plaintiff expressly invokes the provisions of section 1060 et seq. If we were to do so, the plaintiff in a quiet title action could control whether the compulsory cross-complaint rule applies by choosing to label his action either as one under section 760.010 et seq. (in which case the rule would apply) or as one under section 1060 et seq. (in which case it would not). This would unnecessarily exalt form over substance.

Rather than look to the label placed on a cause of action in construing section 426.60(c), we look to its substance. (See *Standard Brands of California v. Bryce* (1934) 1 Cal.2d 718, 721, 37 P.2d 446 ["The subject matter of an action and the issues involved are determinable from the facts pleaded, rather than from the title or prayer for relief".]) The substance of Souchek's quiet title cause of action in the prior action was a request for a judicial determination that she was the owner of the property which was the subject of the sales agreement and that Marchbrook had no interest in that property. This request can reasonably be construed as one made under section 1060, which provides that "[a]ny person ... who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the

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premises, ..."

Although Soucek labeled the second cause of action in her complaint a cause of action to quiet title, she just as easily could have labeled it a cause of action for declaratory relief under section 1060. That she chose the former rather than the latter makes no difference. Because the only relief Soucek sought was "a declaration of the rights ... of the respective parties," her complaint was exempted from the compulsory cross-complaint rule by section 426.60(c).

Though case law applying section 426.060(c) is scarce, we find support for our decision in *Russo v. Scrambler Motorcycles* (1976) 56 Cal.App.3d 112, 127 Cal.Rptr. 913. In *Russo*, individuals named Proulx had filed a five-count complaint against several defendants, including Russo. (*Id.* at p. 115, 127 Cal.Rptr. 913.) The third cause of action, which was nominally one for declaratory relief, was the only one that expressly named Russo as a defendant. (*Ibid.*) Russo answered the complaint without filing a cross-complaint, then later filed his own separate complaint against Proulx and Scrambler Motorcycles for damages and other monetary relief. (*Id.* at p. 115-116, 127 Cal.Rptr. 913.) Proulx and Scrambler Motorcycles successfully moved for summary judgment based on the compulsory cross-complaint rule. (*Id.* at p. 116, 127 Cal.Rptr. 913.)

The appellate court concluded the trial court erred in granting summary judgment because the only cause of action to which Russo was a defendant in the prior action was "based upon averments of declaratory relief." (*Russo v. Scrambler Motorcycles, supra*, 56 Cal.App.3d at pp. 116-117, 127 Cal.Rptr. 913.) Those averments alleged that "an actual controversy ha[d] risen ... between all of the plaintiffs and the defendants herein concerning their respective rights, duties and responsibilities with reference to the creation of [a] partnership, the partnership agreement, the nature and extent of the partnership property acquired since July of 1966" and *881 further alleged that Russo "claim[ed] an interest in the partnership property and building and assets which [was] adverse to the said partnership and to the plaintiffs" and that Russo did "not have an interest in the said partnership property, real or personal and that the said partnership wishe[d] to quiet title to the property and assets aforementioned as against these claims." (*Id.* at p. 115, fn. 1, 127 Cal.Rptr. 913.) Based on these allegations, the appellate court concluded section 426.60(c) applied because " 'the only remedy' sought by [Proulx] against [Russo] was a declaration of the rights and duties of the parties." (*Id.* at p. 117, 127 Cal.Rptr. 913.)

Like the present case, *Russo* involved a cause of action seeking to quiet title to certain property. Thus, *Russo* supports our conclusion that section 426.60(c) applies here. The only relief Soucek sought in the prior action was a declaration of the rights and duties of the parties--specifically, her right to keep Marchbrook's \$500,000 deposit as liquidated damages for Marchbrook's breach of the sales agreement and her right to ownership of the property free and clear of any adverse claim by Marchbrook. Under these circumstances, Marchbrook was not required by section 426.30 to file a cross-complaint alleging any related causes of action it had against Soucek. [FN4]

FN4. Soucek's reliance on *Snidow v. Hill* (1950) 100 Cal.App.2d 31, 222 P.2d 958, both in its brief and at oral argument, is misplaced. It is true the Hills were precluded from pursuing an action to recover monies from the Snidows because the Hills failed to seek that relief by way of a counterclaim or cross-complaint in a prior quiet title action brought against them by the Snidows. (*Id.* at pp. 38-39, 222 P.2d 958.) The *Snidow* case, however, was decided more than 20 years before section 426.60(c) was enacted. (See Stats.1971, ch. 244, § 23.) Thus, *Snidow* has no bearing on whether an action to quiet title is the equivalent of an action for declaratory relief for the purposes that statute. (See *In re Chavez* (2003) 30 Cal.4th 643, 656, 134 Cal.Rptr.2d 54, 68 P.3d 347 ["a case is authority only for a proposition actually considered and decided therein"].)

That Marchbrook did, in fact, file a cross-complaint against Soucek alleging a cause of action for breach of contract that arose out of the same sales agreement as Soucek's complaint is of no import. If Marchbrook had prosecuted its cross-complaint to judgment, Marchbrook likely would have been precluded by the doctrine of res judicata from pursuing any subsequent action based on the same alleged breach of the sales agreement by Soucek. (See *Mycogen Corp. v. Monsanto Co., supra*, 28 Cal.4th at p. 905, 123 Cal.Rptr.2d 432, 51 P.3d 297 ["It is well established that a judgment in an action for breach of contract bars a subsequent action for additional relief based on the same breach"].) Because Marchbrook dismissed its cross-complaint without prejudice, however, res judicata--like the compulsory

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cross-complaint rule--does not apply. (See *Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 879, 128 Cal.Rptr.2d 808 ["a voluntary dismissal without prejudice is not a final judgment on the merits"].)

III

Marchbrook's Complaint States a Cause of Action for Declaratory Relief

[5] Soucek contends "Marchbrook's complaint fails to state a cause of action for declaratory relief because only past wrongs are claimed." We disagree.

Section 1060 provides: "Any person interested under a ... contract ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his rights and duties in the premises, including a determination of any *882 question of construction ... arising under such ... contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time."

[6] "A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court." (*Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 728, 146 P.2d 673.) Here, Marchbrook alleged that an actual controversy exists between itself and Soucek concerning the parties' rights and duties under the sales agreement and asked for a declaration of its "right to restoration of its \$500,000 deposit" based on Soucek's refusal to create a 15-acre parcel for Marchbrook's purchase, which Marchbrook claims is a breach of the sales agreement. By these allegations, Marchbrook alleged all that is required by the declaratory relief statute.

Soucek cites *Orloff v. Metropolitan Trust Co.* (1941) 17 Cal.2d 484, 110 P.2d 396 and *Travers v. Loudon* (1967) 254 Cal.App.2d 926, 62 Cal.Rptr. 654 in support of her assertion that Marchbrook's complaint does not state a cause of action for declaratory relief. In neither of those cases, however, did the court conclude the plaintiff had failed to state a cause of action for declaratory relief. Instead, those cases involved the exercise of the court's discretionary power to *refuse* to grant declaratory relief pursuant to section 1061, which provides: "The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." (*Orloff v. Metropolitan Trust Co.*, *supra*, 17 Cal.2d at p. 489, 110 P.2d 396; *Travers v. Loudon*, *supra*, 254 Cal.App.2d at p. 932, 62 Cal.Rptr. 654.)

[7] Under section 1061, "the court may under proper circumstances deny [declaratory] relief where other remedies will serve as well or better." (*Ermolieff v. R.K.O. Radio Pictures* (1942) 19 Cal.2d 543, 549, 122 P.2d 3.) However, "the mere fact that the contract has already been breached and a cause of action therefor (one of the traditional remedies) has accrued, does not necessarily deprive the court of the power to grant declaratory relief under the law. Neither the fact that a party has another remedy nor that a breach has occurred prior to the commencement of his action compels the court to deny relief. Ordinarily, the alternative remedy, such as damages, injunctive relief and the like would be more harsh, and if he chooses the milder remedy, declaratory relief, the court is not required for that reason to compel him to seek a more stringent one." (*Id.* at p. 547, 122 P.2d 3.)

Here, a judicial determination of the rights of the parties under the sales agreement with respect to the \$500,000 deposit would be neither unnecessary nor improper. Indeed, Soucek herself sought such a determination in the prior action. And while an order for restitution compelling Soucek to return the deposit might serve Marchbrook better than a simple declaration of its right to return of the money, Marchbrook's failure to expressly seek restitution at this time does not entitle Soucek to judgment in her favor.

In summary, we conclude Marchbrook's complaint states a cause of action for declaratory relief that is not barred by the compulsory cross-complaint rule.

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***883 DISPOSITION**

The judgment is reversed. The matter is remanded with instructions to vacate the order sustaining the demurrer without leave to amend and to enter a new order overruling the demurrer. Marchbrook shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a).)

We concur: MORRISON, Acting P.J., and HULL, J.

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