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APPENDIX A

Court of Appeal, Fourth District, Division One
No. D080926

S281304
IN THE SUPREME COURT OF CALIFORNIA
En Banc

JEFFREY MYERS et al.,
Plaintiffs and Respondents

v.

EDITH LITTLEFIELD SUNDBY, as Trustee, etc.
Defendant and Appellant

The petition for review is denied.
Corrigan, J., was absent and did not participate.

GUERRERO

Chief Justice

3a

APPENDIX B

Filed 6/30/23

**NOT TO BE PUBLISHED IN
OFFICIAL REPORTS**

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT,
DIVISION ONE
STATE OF CALIFORNIA

JEFFREY MYERS, et al.,

Plaintiffs and Respondents,

v.

EDITH LITTLEFIELD SUNDBY, as Trustee, etc.

Defendant and Appellant

D080926

(Super. Ct. No. 37-2021-00055006-CU-UD-CTL)

APPEAL from orders of the Superior Court of San Diego County, Joel R. Wohlfeil, Judge. Affirmed.

Edith Littlefield Sundby, in pro. per., for
Defendant and Appellant.

Lewis R. Landau for Plaintiffs and Respondents.

This appeal arises out of an unlawful detainer action filed by Jeffrey Myers and Kathleen Myers against Edith Littlefield Sundby and Dale Sundby.¹¹ This is the fourth appeal arising out of this unlawful detainer action. Edith appeals an order dated August 26, 2022² denying her third party claim to right to possession under Code of Civil Procedure section 1174.3.³ In her capacity as a cotrustee of the Sundby Declaration of Trust, Trust No. 1989-1, Dated January 26, 1989 (the Sundby Trust), Edith also appeals an order dated September 1, striking a claim of right to possession and notice of hearing in advance of the statutorily mandated hearing to determine the validity of the claim. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The Sundbys, as trustees of the Sundby Trust, are the former owners of two parcels of real estate located in La Jolla, California (the property). The Sundby Trust defaulted in the payment of a promissory note secured by a deed of trust on the property. The owner and holder of the promissory note and deed of trust recorded a notice of default, held a foreclosure sale, and sold the property to the Myerses. On September 16, 2021, the Myerses served a written three-day notice to quit due to foreclosure and a ninety-day

¹ We refer to Edith Littlefield Sundby and Dale Sundby by their first names for clarity.

² Undesignated date references are to 2022.

³ Undesignated statutory references are to the Code of Civil Procedure.

notice to quit due to foreclosure, demanding possession of the property within three days after service on the Sundbys.

The Myerses filed a verified unlawful detainer complaint against the Sundbys, in their capacity as cotrustees of the Sundby Trust, after the Sundbys refused to deliver possession of the property. The trial court entered default judgments against Edith and Dale. It subsequently entered writs of possession as against Edith in her capacity as a trustee of the Sundby Trust and against Dale. In prior consolidated appeals, we affirmed the trial court's denial of Edith's and Dale's respective motions to vacate their defaults. (*Myers v. Sundby* (Jan. 25, 2023, D080011, D080348, D080687) [nonpub. opn.] (*Myers I*).)⁴ In *Myers I*, we affirmed the trial court's March 21 order denying Edith's prior third party claim to right to possession. We also affirmed the denial of two motions filed by Edith and Dale, in their capacities as cotrustees of the Sundby Trust, on the ground they were engaged in the unauthorized practice of law by filing their appellate briefs in propria persona on behalf of the Sundby Trust.

While the prior appeals were pending, the Sundbys continued to litigate the matter. On August 10, Edith delivered another claim to right to possession to the San Diego County Sheriff. The same day, the Sheriff delivered the claim to the Superior Court. On August 12 at 4:58 p.m., Edith re-filed a

⁴ On our own motion, we take judicial notice of the record in the prior consolidated appeals, *Myers I*, *supra*, D080011, D080348, D080687. (Evid. Code §§ 459, subd. (a), 452, subd. (d)(1).)

conformed copy of her August 10 claim as an electronic filing. On August 26, the trial court issued an order denying Edith's claim because she failed to timely pay her filing fee as required by subdivision (c) of section 1174.3. It also found Edith was, at most, a mere invitee or guest in possession of the property and denied her August 10 claim on those grounds under subdivision (d) of section 1174.3. Edith appealed the August 26 order denying her August 10 claim.

On August 30, Edith filed another claim of right to possession in propria persona as trustee of the Sundby Trust. The Myerses moved ex parte to strike or, alternatively, advance and deny the August 30 claim. The trial court considered the ex parte application on September 1 and entered orders striking and denying Edith's August 30 claim. It found Edith engaged in the unauthorized practice of law and filed the August 30 claim for the improper purpose of delaying enforcement of the court's writ of possession. The court also ordered the San Diego County Sheriff, as the levying officer, to proceed with enforcement of the original writ of possession as deemed amended to include the claim. Edith appealed the September 1 order denying the August 30 claim.

DISCUSSION

A. The Trial Court Properly Denied Edith's August 10 Claim

Edith contends the trial court improperly denied her August 10 claim because (1) she timely paid the filing fee on Friday, August 12 but the court clerk did not process her payment until Monday, August 15 and (2) it erroneously determined she failed to

demonstrate a valid right to possession. The Myerses argue, among other things, that the August 26 order should be affirmed because Edith's claim lacked substantive merit. They assert *Myers I* determined the validity of Edith's entitlement to possession and Edith, in her personal capacity, has no valid claim to possession because the denial of her March 16 claim resulted in her being added to the default judgment for possession, which she cannot collaterally attack by asserting yet another third party claim. We conclude Edith, in her individual capacity, failed to demonstrate a valid right to possession and the trial court properly denied her August 10 claim on this ground. Accordingly, we need not address whether Edith timely paid the filing fee and deny her request for judicial notice of the trial court's electronic filing requirements as moot.

We review the result of an order, not its reasoning and thus may affirm an order on any proper legal ground regardless of the trial court's rationale. (*Goles v. Sawhney* (2016) 5 Cal.App.5th 1014, 1021; *Green v. Superior Court* (1985) 40 Cal.3d 126, 138 [It is a "settled principle of appellate review that a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasoning."].) As noted in *Myers I*, in its March 21 order, the trial court denied Edith's claim, awarded possession to the Myerses, ordered the original writ of possession amended to include Edith as an individual, and ordered the levying officer to enforce the original writ of possession. Based on the March 21 order, *Edith as an individual*, is now named in the writ of possession as well as Edith in her capacity as trustee for the Sundby Trust. In *Myers I*, we affirmed the trial court's

March 21 order denying Edith's March 16 third party claim to right to possession under section 1174.3. (*Myers I, supra*, D080348.) Thus, Edith directly attacked the March 21 order adding her to the writ of possession and lost. (*Estate of Buckley* (1982) 132 Cal.App.3d 434, 446, fn. 2 ["A direct attack is an attack on a judgment in the action in which it was rendered"].)

By filing another third party claim to right to possession under section 1174.3 on August 10, Edith is attempting to avoid the effect of the March 21 order made in Superior Court case No. 37-2021-00041147-CU-UD-CTL. This is called a collateral attack. (*F.E.V. v. City of Anaheim* (2017) 15 Cal.App.5th 462, 471 ["'A collateral attack is an attempt to avoid the effect of a judgment or order made in some other proceeding.'"].) A judgment or order is subject to collateral attack if the judgment or order is void on the face of the record or was the product of extrinsic fraud. (*Ibid.*) Edith has not shown that the March 21 order is void or was the product of extrinsic fraud, therefore, it is not subject to collateral attack. Accordingly, the trial court did not abuse its discretion when denying Edith's August 10 third party claim to right to possession on the ground it lacked substantive merit. (*Crescent Capital Holdings, LLC v. Motiv8 Investments, LLC* (2022) 75 Cal.App.5th Supp. 1, 9 [ruling on a claim of right to possession reviewed for abuse of discretion].)

B. The Trial Court Properly Denied the August 30 Claim

Edith asserts we should vacate the September 1 order denying the August 30 claim she filed in her capacity as a trustee of the Sundby Trust.

The Myerses contend the trial court properly struck and denied this claim based on her unauthorized practice of law on behalf of the Sundby Trust. As we explained in *Myers I*, Edith is not licensed to practice law in California and cannot represent the Sundby Trust on appeal in propria persona. (*Myers I*, *supra*, D080011.) *Myers I* constitutes the law of the case with respect to Edith's ability to represent the Sundby Trust on appeal.⁵ Thus, the trial court properly struck and denied the August 30 claim.

DISPOSITION

The August 26, 2022, and September 1, 2022 orders are affirmed. Respondents are entitled to their costs on appeal.

O'ROURKE, J

WE CONCUR: HUFFMAN, Acting P. J.

DATO, J.

⁵ "The doctrine of "law of the case" deals with the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491.)

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BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

06/30/2023

BRANDON L. HENSON, CLERK

By */s/ Lita Rodriguez*

Deputy Clerk

APPENDIX C

COURT OF APPEAL,
FOURTH APPELLATE DISTRICT,
DIVISION ONE
STATE OF CALIFORNIA

JEFFREY MYERS, et al.,

Plaintiffs and Respondents,

v.

EDITH LITTLEFIELD SUNDBY, as Trustee, etc.

Defendant and Appellant

D080926

(Super. Ct. No. 37-2021-00055006-CU-UD-CTL)

ORDER DENYING REHEARING

The petition for rehearing is denied.

HUFFMAN, Acting P. J.

Copies to: All parties

APPENDIX H

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Additional material
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