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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SWEETWYNE P. BARROW, Plaintiff and Respondent, v. RHONDA HOLMES, Defendant and Appellant.

A169131

(Alameda County
Super. Ct. No. RG08412344)

Plaintiff Sweetwyne P. Barrow obtained a money judgment against defendant Martin Calvin Holmes. After Martin died, Rhonda Holmes, his surviving spouse, initiated proceedings to administer the probate of his estate.¹ Barrow did not submit a creditor claim in the probate administration. When Martin's estate was distributed his real property transferred to Rhonda. Subsequently, in this lawsuit, Rhonda filed a motion to vacate the judgment or the renewed judgment, which the trial court denied. On appeal, Rhonda argues Barrow's failure to file a claim in the probate proceeding bars any action to enforce the judgment.² We affirm.

¹ Because Martin and Rhonda share a last name, we refer to them by their first names.

² It appears that after Martin died a personal representative was not substituted as defendant in this lawsuit. In her declaration, Rhonda stated she was specially appearing to file the motion to vacate the judgment and

I. BACKGROUND

In 2009, Barrow filed an amended complaint against Martin alleging causes of action for negligence, intentional tort, and fraud. Martin answered in February 2009. In 2011, the trial court struck Martin's answer and entered his default. On October 13, 2011, the court entered judgment against Martin in the amount of \$1,948,370 plus attorney fees. Martin and Rhonda married in 2012. In June 2015, Barrow recorded an abstract of the judgment in Alameda County.

During the trial court proceedings, Martin, who represented himself, listed an address on Rusting Avenue in Oakland. The Rusting Avenue residence was his grandmother's and mother's property. After both his grandmother and mother died, the Rusting Avenue property transferred to Martin in 2017.

Martin died in September 2020 and Rhonda initiated a probate proceeding. She provided notice via publication that a petition for probate had been filed seeking to administer Martin's estate which notified creditors they had to file a claim with the court. In November 2020, the probate court

was Martin's successor in interest under Code of Civil Procedure section 377.11. We conclude that Rhonda has standing to appeal. While Barrow does not challenge appellate standing, standing to appeal is jurisdictional. (*Doe v. Regents of University of California* (2022) 80 Cal.App.5th 282, 293.) Rhonda has standing to appeal as the person who brought the motion to vacate and who, as a beneficiary of Martin's estate to whom his real property transferred, is aggrieved by the trial court's order denying the motion. (See *ibid.* [a nonparty that is aggrieved by an order may become a party and obtain a right to appeal by moving to vacate the judgment].) We refer to the moving party and appellant as Rhonda, not the estate. (See *Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391 [a probate estate has no capacity to sue or to defend an action; any litigation must be maintained by, or against, the executor or personal representative of the estate].)

appointed Rhonda as executor of Martin's will and authorized the independent administration of the estate. Martin's estate was distributed in December 2021. The Rusting Avenue property was not sold; it was transferred to Rhonda by a life estate and to two of Martin's sons as remaindermen. In January 2022, the probate court issued an order discharging Rhonda as executor.³

Meanwhile in this action, on December 21, 2020, Barrow filed an application for a renewal of judgment, identifying the total renewed judgment as \$3,741,518.72 (the judgment plus interest and a filing fee). It appears that Barrow did not serve Martin's last known address or his personal representative with the application and renewal. Barrow did not record the renewed judgment at that time.

At some point in 2022, Rhonda learned of this lawsuit. In February 2023, she filed a motion to vacate the 2011 judgment or, alternatively, to vacate the 2020 renewed judgment. Rhonda argued the judgment was void on multiple grounds, including that Barrow did not file a creditor claim with Martin's estate and the statute of limitations for such claim had expired. Alternatively, Rhonda moved to vacate the renewed judgment on the ground that the original judgment was void. Rhonda submitted a declaration stating, as relevant here, that at no time during the probate process of Martin's mother's estate did any lien, claim, or information regarding this lawsuit appear. After Martin died, she initiated probate proceedings and published notice of the petition of his estate. Neither she nor the estate's

³ In her opening brief, Rhonda includes citations to a "Related Case Court Transcript," presumably documents from the probate court proceeding. (Boldface omitted.) That transcript is not part of this record. We only recite facts from the probate proceeding which are obtained from documents in the record before us.

attorney were served with any judgment, application for renewal of judgment, or any other document from this lawsuit. Barrow opposed the motion. In May 2023, during the initial hearing on the motion, the trial court granted Rhonda's request to submit supplemental briefing regarding probate issues.

In her supplemental brief, Rhonda argued the judgment was void and barred from enforcement for Barrow's failure to follow the requirements under Code of Civil Procedure⁴ section 686.020 and Probate Code section 9300 et seq. Rhonda asserted that after Martin died, Barrow was required to enforce the judgment by filing a creditor claim in the probate administration proceeding. Her failure to do so, Rhonda contended, forever barred Barrow from recovering against Martin's property. As to any potential lien, Rhonda argued there was no judgment lien against Martin's estate because Barrow did not record an amended abstract of judgment upon renewing the judgment before Martin died. Rhonda also argued that the December 2020 renewed judgment was invalid because Barrow did not record it under section 683.180.

Barrow argued that when she recorded the abstract of judgment in 2015, she created a valid judgment lien against Martin's property, including later-acquired property. She further argued that she renewed the judgment in 2020 and thereafter recorded the renewal. Regarding the Probate Code, Barrow argued that she was not required to file a creditor claim to enforce her lien. Citing Probate Code section 9391, Barrow asserted that the holder of a judgment lien on property in the decedent's estate may commence an action to enforce the lien without first filing a claim if the lienholder expressly waives all recourse against other property in the estate. Thus, she

⁴ Undesignated statutory references are to the Code of Civil Procedure.

argued filing a creditor claim was not required and was not the only way to enforce her judgment lien. According to Barrow, there was no statute of limitations under Probate Code section 9391 so she could seek to enforce the judgment lien at any time during the lien's existence.

In June 2023, during the supplemental briefing period, Barrow recorded the December 2020 renewed judgment in Alameda County.

After conducting a hearing, the trial court issued an order denying the motion in October 2023. The bulk of the order considered the “non-probate issues” on which Rhonda had filed the motion and denied the motion on those grounds. They are not at issue on appeal. As relevant here, the court then discussed the “[p]robate issues.” (Underscoring omitted.) The court stated:

“The parties have now briefed multiple probate issues concerning the interplay of an abstract of judgment on probate proceedings and whether under Probate Code § 9050, more than published notice was required because ‘the personal representative shall give notice of administration of the estate to the known or reasonably ascertainable creditors of the decedent.’ Having recorded an abstract of judgment, [Barrow] claims that she is a ‘reasonably ascertainable creditor’ and should not be precluded from executing on the real estate that has now been transferred to [Martin’s] heirs.

“[Barrow] has not established that the holder of a recorded abstract of judgment can short circuit probate proceedings and execute on property that has been inherited by someone other than the Defendant. In particular, [Barrow’s] argument appears to be that under Probate Code § 9391, she can utilize her judgment lien against the decedent against his former property that has been inherited from a closed estate. In any event, although this theory was discussed in argument the briefing is not adequate for the court to

reach a determination and, in any event, no levy has occurred to the court's knowledge on which this court can rule.

“Another course of conduct could be for [Barrow] to seek to reopen the estate on the basis that she did not receive proper notice under Probate Code § 9050. [¶] In any event, this court declines to void the 2011 judgment.”

II. DISCUSSION

Rhonda challenges the trial court's denial of the motion to vacate only as to the renewed judgment, not the original judgment. She contends that Barrow was required to enforce the judgment by filing a creditor claim in the probate estate administration and that her failure to do so bars any action on the judgment.

A. *General Legal Principles and Standard of Review*

The appeal raises issues involving two statutory schemes: the Enforcement of Judgments Law (§ 680.010 et seq.) and various provisions of the Probate Code.

1. The Enforcement of Judgments Law

A money judgment is enforceable for 10 years from the date of its entry. (§ 683.020.) A “judgment creditor has two distinct methods by which to continue to pursue collection of a judgment as it nears expiration of the 10-year period of enforceability: the renewal of judgment provisions set forth in section 683.110 et seq., or an independent action on the judgment. Although the two methods are distinct, the defenses available to the judgment debtor in the statutory procedure are the same as in an independent action on the judgment.” (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 260–261; see also §§ 683.110, subd. (a), 683.120, 683.130, subd. (a).) Filing an application for renewal of the judgment extends the judgment's enforceability period for

10 years from the date the application is filed. (§ 683.120, subds. (a), (b).)

Once a judgment expires, it may not be enforced. (§ 683.020, subd. (a).)

A judgment lien on real property is created under a money judgment by recording an abstract of the judgment with the county recorder. (§ 697.310, subd. (a).) When an abstract of judgment is recorded, a judgment lien attaches to property owned by the judgment debtor, as well as any after-acquired property of the judgment debtor, in the county where the lien is created. (§ 697.340, subd. (a).) If a judgment debtor acquires interest in real property after the judgment lien was created, the judgment lien attaches to such interest at the time the property is acquired. (§ 697.340, subd. (b).) A judgment lien makes the lienholder a secured creditor and, by statute, may be extinguished only by the recording of an acknowledgment of satisfaction of the underlying judgment or by the judgment creditor's release of the lien. (*Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070; see § 697.400, subds. (a), (c).)

A judgment lien continues until 10 years from the date of entry of the judgment and may be extended for 10 years if renewed. (§§ 683.180, subd. (a), 697.310, subds. (a), (b).) To renew a judgment lien, a certified copy of the application for renewal of judgment must be recorded in the county where the property is located before expiration of the judgment lien period. (§ 683.180, subd. (a); see also *Beneficial Financial, Inc. v. Durkee* (1988) 206 Cal.App.3d 912, 916–917 [while the judgment was renewed, the judgment lien expired because a certified copy of the renewal application was not recorded while the lien was still in effect].) Unless a judgment has been timely renewed, on expiration of the 10-year enforcement period any judgment liens based on the judgment are automatically extinguished.

(§ 683.020; see *Starcevic v. Pentech Financial Services, Inc.* (2021)

66 Cal.App.5th 365, 381 (*Starcevic*).)

2. Probate Code

Section 686.020 of the Enforcement of Judgments Law states, “After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor’s estate is governed by the Probate Code, and not by [the Enforcement of Judgments Law].” Similarly, section 9300 of the Probate Code states, “[A]fter the death of the decedent all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Law.” (*Id.*, subd. (a).)

The Probate Code establishes a series of requirements for the filing of a claim as a creditor of the decedent’s estate when probate proceedings have been initiated. A “‘Claim’” means a demand for payment for, among other things, liability of the decedent. (Prob. Code, § 9000, subd. (a)(1).) Subject to limited exceptions, claims covered by the creditor claims rules must be timely and properly filed or they are “barred.” (*Id.*, § 9002; see *Dobler v. Arluk Medical Center Industrial Group, Inc.* (2001) 89 Cal.App.4th 530, 536 [“A timely filed claim is a condition precedent to filing an action against a decedent’s estate.”].)

Probate Code section 9391, part of the creditor claims statutes, sets forth a lien enforcement exception to the claim filing requirement. The statute states, in pertinent part, “[T]he holder of a mortgage or other lien on property in the decedent’s estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in

the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 366.2 of the Code of Civil Procedure [(one-year statute of limitations)] does not apply to an action under this section.” (Prob. Code, § 9391.)

3. Vacating Renewal of Judgment

The trial court may vacate a renewal of a judgment “on any ground that would be a defense to an action on the judgment.” (§ 683.170, subd. (a); see *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 339 (*Altizer*)). Common defenses to an action on the judgment include the judgment is not enforceable and suit on the judgment is barred by the statute of limitations. (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 202–203.) The party seeking to vacate the renewed judgment has the burden of proof by a preponderance of the evidence. (*Id.* at p. 199.)

We review the trial court’s decision for abuse of discretion, viewing the evidence in the light most favorable to the decision and deferring to the court’s resolution of factual conflicts. (*American Contractors Indemnity Co. v. Hernandez* (2022) 73 Cal.App.5th 845, 848.) We review questions of law de novo. (*Ibid.*) We affirm the order if it is correct on any theory, regardless of the trial court’s reasoning. (*Young v. Fish & Game Com.* (2018) 24 Cal.App.5th 1178, 1192–1193.) On appeal, the trial court’s ruling is presumed to be correct and it is the appellant’s burden to demonstrate error. (*Starcevic, supra*, 66 Cal.App.5th at p. 374.)

B. Effective Renewed Judgment

We first address Rhonda’s contention that the trial court “erroneously stated” in its order that Barrow had renewed the judgment. Rhonda argues that Barrow did not renew the judgment and, therefore, the judgment expired in 2021, serving as a basis to grant the motion.

We reject Rhonda’s argument. Barrow did, in fact, renew the judgment. The trial court entered judgment on October 13, 2011. On December 21, 2020—within the 10-year enforceability period—Barrow filed an application for a renewal of judgment.⁵ Filing the renewal application automatically renewed the judgment and extended the enforceability period for 10 years from the application date, that is, through December 21, 2030. (See §§ 683.120, subd. (b), 683.150, subd. (a); *Altizer, supra*, 52 Cal.App.5th at p. 338.) That Barrow apparently did not serve notice of the renewal on Martin’s estate or personal representative did not render the renewal ineffective. (See § 683.160, subd. (b); *Altizer*, at p. 339 [there is no statutory requirement that notice of renewal be served on the judgment debtor for the renewal to be effective].) It merely meant that until the proof of service was filed, no writ could be issued nor could any proceeding be commenced to enforce the judgment. (See § 683.160, subd. (b); *Altizer*, at p. 339.) Whether a judgment lien was created pursuant to the judgment and, if so, whether the lien was extended are distinct issues. (See § 683.180.)

C. Probate Estate Administration

Rhonda primarily contends that the trial court failed to apply and analyze section 686.020 and Probate Code sections 9300 through 9304 to determine whether the judgment was valid after Martin died. She argues that after Martin died, Barrow was required to enforce the judgment by filing a creditor claim in the probate estate administration and her failure to do so bars any action on the judgment, serving as a legal basis to vacate the judgment.

⁵ In her opening brief, Rhonda does not acknowledge the December 21, 2020 filing. She only mentions Barrow’s prior attempt to file an application for renewal of judgment earlier in December 2020, which the trial court rejected because it was missing an attachment.

Probate of Martin’s estate was initiated in 2020. The estate was distributed in December 2021 and the probate court discharged Rhonda as executor in January 2022. Barrow does not dispute that she did not file a creditor claim against Martin’s estate during probate administration. She argues, though, that filing a creditor claim was not her exclusive remedy because she holds a judgment lien on property which belonged to Martin—which lien she asserts was not extinguished—and could bring an equitable action to foreclose the lien pursuant to Probate Code section 9391.

Legal authority supports Barrow’s position. There are limited exceptions to the creditor claim filing requirement, including for the holder of a judgment lien. A “lien creditor may, without filing a claim in probate, bring an equitable action to foreclose the judgment lien, but he has no right to a deficiency.” (*County Line Holdings, LLC v. McClanahan* (2018) 22 Cal.App.5th 1067, 1072–1073 (*County Line Holdings*), citing *Corporation of America v. Marks* (1937) 10 Cal.2d 218, 221 (*Corporation of America*).) “The creditor may bring the action at any time during the statutory duration of the judgment lien.” (*County Line Holdings*, at p. 1073.) Probate Code section 9391 provides that “the holder of a mortgage or other lien on property in the decedent’s estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate.”

Barrow relies on Probate Code section 9391 and *Corporation of America, supra*, 10 Cal.2d 218. “In *Corporation of America* . . . [citation], creditor obtained judgment liens against debtor’s property while debtor was alive. When debtor died, creditor failed to file a claim in debtor’s estate

because it did not know that debtor had died. After the period for filing a claim in debtor's estate had passed, creditor filed an action to foreclose the judgment liens. The trial court sustained the debtor's demurrer on the ground that creditor failed to file a timely claim in the debtor's estate. Our Supreme Court reversed the resulting judgment.

“Our Supreme Court stated that, while the debtor is still alive, the usual and ordinary method of enforcement of a judgment lien is by execution sale. [Citation.] On death of the debtor, however, Probate Code former section 732, now section 9300, terminates the right of the creditor to enforce the judgment lien by execution and sale. [Citation.] ‘But the death of the debtor does not terminate the judgment lien.’ [Citation.] The lien continues for its statutory duration unless sooner terminated by satisfaction or discharge. [Citation.] ‘The judgment lien creditor . . . may file a claim, and in such event the priority of his [or her] lien will be protected in the administration proceeding . . . and he [or she] will have a claim for any deficiency against the general estate of the decedent.’” (*County Line Holdings, supra*, 22 Cal.App.5th at p. 1072, fn. omitted.)

In *Corporation of America*, our “Supreme Court expressly rejected the debtor's contention that enforcement of the judgment lien in the course of estate administration is the exclusive remedy of the judgment lien creditor on the death of the debtor prior to levy of execution. [Citation.] The court stated heirs and distributees take subject to the lien. [Citation.] ‘“A judgment lien has always been regarded as the highest form of security.”’ [Citation.] A judgment lien creditor may, without filing a claim in probate, bring an equitable action to foreclose the judgment lien, but he has no right to a deficiency. [Citation.] The creditor may bring the action at any time during

the statutory duration of the judgment lien.” (*County Line Holdings, supra*, 22 Cal.App.5th at pp. 1072–1073.)

“Thus, under *Corporation of America*, the judgment creditor has an option: file a timely claim in the estate probate proceeding and seek a deficiency; or, without filing a claim, bring an action to foreclose the lien during its statutory duration, waiving any right to a deficiency.” (*County Line Holdings, supra*, 22 Cal.App.5th at p. 1073.)

Rhonda’s challenge fails because, under Probate Code section 9391 and *Corporation of America*, there is a lien exception to the requirement of filing a claim during probate estate administration. Rhonda argues that Barrow failed to file a creditor claim and, now that the estate has been distributed, such claim is barred and the judgment is void. Even assuming that proper notice was provided to Martin’s creditors (see Prob. Code, §§ 8120, 9001), Rhonda did not demonstrate that Barrow has no remedy. That is, if there is a secured lien in effect on the Rusting Avenue property (or any other property Martin owned in Alameda County), then Barrow could bring an action to foreclose the lien during its statutory duration and waive any right to a deficiency. (*County Line Holdings, supra*, 22 Cal.App.5th at p. 1073.) Rhonda did not demonstrate that there is a defense to such an action. (See § 683.170, subd. (a).)

While Barrow relied on Probate Code section 9391 in the trial court, in her appellate opening brief Rhonda does not address the statute or refute the argument Barrow made below. In her reply brief, Rhonda makes a cursory effort to address Probate Code section 9391, arguing that it is inapplicable because Barrow never actually filed an action to enforce the judgment. Rhonda suggests, without citing legal authority, that Probate Code section 9391 may only be utilized before a decedent’s estate is distributed.

Not so. Enforcement of a “judgment lien *in the course of estate administration*” is not the exclusive remedy of the judgment creditor. (*County Line Holdings, supra*, 22 Cal.App.5th at p. 1072, italics added.) Rather, to the extent a judgment lien attached to Martin’s property, his heirs or transferees took the property subject to the lien. (See *ibid.*; *Federal Deposit Ins. Corp. v. Charlton, supra*, 17 Cal.App.4th at p. 1069 [same].) A creditor is allowed to bring an action to foreclose a judgment lien at any time during the statutory duration of the lien. (*County Line Holdings*, at p. 1073.) Therefore, even if Barrow did not file an action during the probate administration period, Rhonda has not demonstrated that she would be barred from doing so in the future.

Rhonda also misplaces reliance on authority governing a judgment creditor’s attempt to create a judgment lien after the judgment debtor’s death. It is settled that if no judgment lien has been executed prior to the judgment debtor’s death, then a judgment creditor seeking to satisfy its money judgment with the decedent’s property must file a timely creditor claim. (See *Embree v. Embree* (2004) 125 Cal.App.4th 487, 493 [*“Except with respect to liens that have already been executed, any judgment creditor seeking to satisfy its money judgment with property of the decedent must file a timely claim in the probate proceeding”* (italics added)]; *Estate of Casserley* (2018) 22 Cal.App.5th 824, 832 [filing of an abstract of judgment after judgment debtor’s death does not create a lien on estate property].) Here, by contrast, a judgment lien on Martin’s interest in real property was created before he died when Barrow recorded the abstract of judgment in June 2015 and attached to the Rusting Avenue property when Martin acquired it in 2017. (See §§ 697.310, subd. (a), 697.340.)

In sum, Rhonda argues that Barrow’s failure to file a creditor claim during the administration of Martin’s estate bars any action to enforce the judgment and, therefore, the judgment should be vacated. We are not persuaded. Therefore, Rhonda failed to demonstrate that the trial court erred in refusing to vacate the renewal of judgment. (See *Starcevic, supra*, 66 Cal.App.5th at p. 374.) To be clear, we express no opinion whether there would be a defense if Barrow filed an action to foreclose a lien under Probate Code section 9391. That issue is beyond the scope of the grounds Rhonda raises on appeal. (See *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [“We will not develop the appellants’ arguments for them,” refusing to consider a “passing reference” in the briefs to issues without argument or citation to authority]; Cal. Rules of Court, rule 8.204(a)(1)(B) [brief must state each point under a separate heading and support each point by argument and authority].) We merely conclude that the trial court’s order must be affirmed because Rhonda did not meet her burden of demonstrating that there would be a defense to *any* action on the judgment. (See § 683.170, subd. (a).)

III. DISPOSITION

The order denying the motion to vacate the judgment or, alternatively, to vacate the renewed judgment is affirmed. Barrow is entitled to her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

LANGHORNE WILSON, J.

WE CONCUR:

BANKE, Acting P. J.

SMILEY, J.

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