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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STEVEN STAUFF et al., Cross-Complainants and Appellants, v. PERLA HARTMAN et al., Cross-Defendants and Respondents.	B266777 (Los Angeles County Super. Ct. No. 12CS3852)

APPEAL from an order awarding attorneys' fees after judgment of the Superior Court of Los Angeles County, Norman P. Tarle, Judge. Appeal transferred to the Appellate Division of the Los Angeles County Superior Court.

Russell L. Davis for Cross-Complainants and Appellants.

Law Offices of Andrew J. Stern and Andrew J. Stern for Cross-Defendant and Respondent Robert Hirsh.

Robert W. Hirsh & Associates and Robert W. Hirsh for Cross-Defendant and Respondent Perla Hartman.

INTRODUCTION

In 2011 Steven and Carlene Stauff filed an action in small claims court against their landlord, Perla Hartman, for return of their security deposit and rent paid. Hartman, represented by her husband, attorney Robert Hirsh, responded by filing a limited civil action against the Stauffs for damage to the premises. The Stauffs further escalated the litigation by filing a cross-complaint against Hartman and Hirsh, which caused the court to reclassify the action as an unlimited civil case. When the litigation dust settled, the court had reclassified the action as a limited civil case, and neither side had recovered anything on their various claims.

Along the way, however, Hartman and Hirsh had obtained an award of almost $95,000 in attorneys' fees because they had prevailed on one of the causes of action in the Stauffs' cross-complaint against them on a special motion to strike under Code of Civil Procedure section 425.16.[1] The Stauffs have appealed the order awarding these attorneys' fees. Because this is an appeal from an order in a limited civil case, however, we lack jurisdiction to hear the appeal. Therefore, we transfer the appeal to the Appellate Division of the Superior Court.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Stauffs File a Small Claims Action, and Hartman Files a Limited Civil Case*

The Stauffs leased an apartment from Hartman in a building she owned and Hirsh managed. The landlord-tenant relationship deteriorated when the Stauffs objected to a rent increase. The Stauffs claimed Hirsh retaliated against them by improperly charging them for repairs and threatening to evict them because they had a dog in the apartment, which violated the terms of the lease. The Stauffs alleged Hirsh told them they could keep the dog in the apartment. After the Stauffs notified Hirsh of their intention to move, Hartman refused to return a large portion of their security deposit, claiming the Stauffs had damaged the premises.

On April 11, 2011 the Stauffs filed a small claims action seeking to recover $6,711.07, consisting of a $5,768 security deposit and some prorated rent. When Hirsh appeared for Hartman at the small claims trial, the court told Hirsh that, as an attorney, he could not appear for Hartman. The small claims court continued the trial.

On July 6, 2011 Hartman, represented by Hirsh, filed a limited civil action against the Stauffs, seeking to recover for damage to the apartment and alleging causes of action for interpleader, declaratory relief, waste, and breach of written contract. Hartman indicated on the caption page of the

complaint that the case was a limited civil case involving less than $10,000.[2]

On July 15, 2011 Hartman asked the small claims court to transfer the Stauffs' small claim case to the Beverly Hills Courthouse, where Hartman had filed her limited civil case, and to consolidate the two cases. The small claims court granted Hartman's request and consolidated the cases.

B. *The Stauffs File a Cross-complaint, the Court Reclassifies the Action as an Unlimited Civil Case, and Hartman and Hirsh File a Special Motion To Strike*

The Stauffs filed an answer to Hartman's complaint, a cross-complaint against both Hartman and Hirsh for intentional infliction of emotional distress, and, before Hartman and Hirsh answered, an amended cross-complaint for fraudulent misrepresentation, intentional infliction of emotional distress, and breach of contract. The Stauffs alleged that Hirsh told them they could have a dog in their apartment, threatened to evict

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[2] Since the voters amended the California Constitution in 1998 to allow unification of the municipal and superior courts into a single superior court, civil cases formerly within the jurisdiction of the municipal courts are now classified as "limited" civil cases, while matters formerly within the jurisdiction of the superior courts are classified as "unlimited" civil cases. (See *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1012; *AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 506.) In general, a civil case demanding $25,000 or less, exclusive of attorneys' fees, interest, and costs, is a limited civil action. (§§ 85, subd. (a), 86, subd. (a)(1).)

them when they would not vacate the apartment for termite fumigation when Hirsh wanted them to and at their expense, and refused to return their security deposit. The Stauffs alleged that Hirsh's actions were particularly distressing because Carlene Stauff was pregnant at the time. The Stauffs indicated on the caption page of their cross-complaint that the case was an unlimited civil case involving more than $25,000.

On September 14, 2011 Hirsh, as attorney for Hartman, and Andrew Stern, representing Hirsh, filed in the Beverly Hills Courthouse separate special motions to strike the second cause of action of the cross-complaint for intentional infliction of emotional distress under section 425.16. On September 15, 2011 the court notified the parties that the case had been sent from the Beverly Hills Courthouse to the Santa Monica Courthouse as an unlimited action. On September 27, 2011 the court notified the parties that the consolidated small claims action had also been transferred to the Santa Monica Courthouse.

Meanwhile, after Carlene Stauff delivered a healthy baby, the Stauffs decided to dismiss their cross-complaint. On September 19, 2011 counsel for the Stauffs informed the court clerk of the Stauffs' intention to dismiss the cross-complaint, and requested that the case remain in Beverly Hills Courthouse as a limited civil case. The court, however, had already transferred the case to the Santa Monica Courthouse as an unlimited action.

Counsel for the Stauffs subsequently informed Hirsh that the Stauffs intended to dismiss the cross-complaint and wanted to settle the case. The parties discussed but did not reach a settlement. On September 27, 2011 the Stauffs filed, and the court entered, a request for dismissal with prejudice of the cross-complaint. A few days later, Hirsh nevertheless filed an

amended notice of hearing, rescheduling his special motion to strike for January 9, 2012 in the Santa Monica Courthouse.

C. *The Court Reclassifies the Action as a Limited Civil Case, Hartman and Hirsh File Motions for Attorneys' Fees, and the Appellate Division Hears Two Appeals*

On October 6, 2011 Judge Norman Tarle reclassified the case as a limited civil case because the Stauffs had dismissed their cross-complaint and "the amount in question regarding the complaint [was again] below the jurisdictional amount for unlimited jurisdiction." Judge Tarle transferred the case back to a limited civil department in the Beverly Hills Courthouse. The court also ordered parties with any motions on calendar to notice the motions again for hearing in the limited civil department in the Beverly Hills Courthouse.

On October 11, 2011 Hirsh filed a motion for attorneys' fees in the amount of $47,475, arguing he was the prevailing party on the special motion to strike. Hirsh set the motion for hearing on December 9, 2011 in the Beverly Hills Courthouse. The Stauffs did not file an opposition. On December 9, 2011 the parties informed the clerk that they had settled the case. Judge Bobbi Tillmon, the judge hearing limited civil cases in the Beverly Hills Courthouse, did not rule on Hirsh's motion for attorneys' fees.

On January 10, 2012 Judge Tillmon issued an order entitled "minute order and clerk's notice of ruling and/or appealable order." The order stated: "On 12/9/[11] the parties advised the court that the case had settled and the pending motion under submission was withdrawn. The court therefore found that the matter under submission was no longer submitted and ordered a notice of settlement to be filed on or before 1/3/12.

The parties did not file the notice of settlement by 1/3/12. The court on its own motion sets an order to show cause re dismissal due to settlement on 2/10/12. . . . Since the court did not continue the [attorneys' fees] motion which was originally set for 12/9/1[1], the court has no jurisdiction to rule on the cross-defendant's request for judgment lodged 1/4/12."

On February 22, 2012 Hirsh refiled his motion for attorneys' fees, this time seeking $55,215, and set the motion for a hearing on May 2, 2012 in the Beverly Hills Courthouse. The Stauffs opposed the motion. On May 2, 2012 Judge Tillmon denied the motion for attorneys' fees, ruling that a fee of $55,215 for a single special motion to strike one cause of action was unreasonable. The court stated, "As cross-defendant knows, an order granting or denying a special motion to strike is appealable under [section] 904.1." The court did not find that Hirsh was the prevailing party. To the contrary, the court stated that Hirsh's motion for attorneys' fees "merely assumes that Hirsh is entitled to fees under [section 425.16], i.e., that the cross-complaint's second cause of action was a SLAPP claim simply because the Stauffs dismissed their cross-complaint," an "assumption [that] is both unreasonable and contrary to well-known case law." Hirsh nevertheless prepared a proposed judgment stating that "[t]]he court finds that Hirsh is the prevailing party," which Judge Tillmon signed on June 27, 2012.

On June 28, 2012 Hirsh filed a notice of appeal to the Appellate Division of the Superior Court from Judge Tillmon's order denying his motion for attorneys' fees (the first appeal). The Stauffs apparently filed a respondents' brief (because Hirsh filed a reply brief; the Stauffs' respondents' brief is not in the

record), but the Stauffs never contended that the Appellate Division did not have jurisdiction to hear the first appeal.

Meanwhile, Hartman's limited civil complaint against the Stauffs proceeded to trial before Judge Tarle in the Santa Monica Courthouse.[3] Judge Tarle ruled the Stauffs were liable for $2,039.82 in rent and cleaning fees, which the court indicated it would set off against their $5,768 security deposit. Judge Tarle also ruled the small claims action had been "subsumed" in the Stauffs' cross-complaint and, because the Stauffs had dismissed the cross-complaint, "neither the small claims case nor the [cross-complaint] currently exist," and therefore "[r]ecovery of the balance of the security deposit is barred as a matter of law." The court ruled that Hartman therefore was not entitled to recover anything from the Stauffs, and the court entered judgment in favor of the Stauffs and against Hartman. On July 19, 2013, after the court had entered judgment, Hartman filed a motion for attorneys' fees in the amount of $16,790, arguing she had prevailed on a special motion to strike the second cause of action of the Stauffs' amended cross-complaint.

On August 20, 2013 the Appellate Division issued its opinion in the first appeal. The court concluded that Hirsh was entitled to a ruling on the merits of his special motion to strike for the purpose of determining whether he was a prevailing party

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[3] When Judge Tarle reclassified the case as a limited civil case, he transferred the case back to the Beverly Hills Courthouse. Nevertheless, the case returned to Judge Tarle in Santa Monica Courthouse. Although the record does not indicate why the court returned Hartman's case to the Santa Monica Courthouse, we note that Los Angeles Superior Court officials announced the closing of the Beverly Hills Courthouse in November 2012.

and therefore entitled to attorneys' fees. The Appellate Division remanded the matter to the trial court to make such a ruling.

On December 6, 2013 Hirsh and Hartman filed motions asking the court to find they were the prevailing parties on their special motions to strike. Judge Tarle noted: "There is no explicit instruction in the remittitur on which 'trial court' should conduct the further proceedings. On August 29, 2013, [Hirsh] filed a 'Petition for Rehearing for Clarification of Opinion Concerning Which Bench Officer Should Act Upon this Court's 8/20/13 Opinion.' The Appellate Division denied the petition on September 5, 2013.[4] Absent contrary direction, the Court finds that the matter is properly considered here." The court denied the motion and ruled that the Stauffs were the prevailing parties on the special motions to strike.

On December 18, 2013 Hirsh and Hartman filed a notice of appeal to the Appellate Division, challenging the trial court's ruling that the Stauffs were the prevailing parties (the second appeal). Again, there is no indication in the record that the Stauffs objected to the Appellate Division's jurisdiction to hear the second appeal.

On October 16, 2014 the Appellate Division again reversed the trial court, concluding that Hirsh and Hartman were the prevailing parties because the Stauffs' intentional infliction of emotional distress claim was "based on an act in furtherance of the right to petition—Hirsh's prelitigation 'threats' to recover possession" of the apartment "based on the no-pet clause" in their lease. The Appellate Division further held that the Stauffs failed

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4 Neither Hirsh's petition nor the Appellate Division's order denying the petition is in the record.

to establish a probability of prevailing on their claim against Hartman and Hirsh because Hirsh's threats to evict them were protected by the litigation privilege.

D. *The Stauffs Challenge the Appellate Division's Ruling*

On February 11, 2015 the Stauffs filed motions in the Appellate Division for orders vacating and setting aside the Appellate Division's October 16, 2014 rulings as facially void "judgments." The Stauffs argued that pursuant to section 473, subdivision (d), the "judgments" were void on their face because the Appellate Division lacked subject matter jurisdiction to hear appeals from orders in an unlimited civil case. The Stauffs asserted that, because the special motions to strike were directed to a cause of action in a cross-complaint that had caused the case to be reclassified as an unlimited civil case, Hirsh and Hartman should have appealed the trial court's ruling denying their motions for attorneys' fees to the Court of Appeal.

On March 2, 2015 the Appellate Division denied the Stauffs' motions to vacate and set aside the judgments. On April 2, 2015 the Stauffs filed a petition for writ of mandate, which this court denied, challenging the Appellate Division's October 16, 2014 rulings. On April 23, 2015 the Stauffs brought a similar motion before Judge Tarle, who denied it.

On July 13, 2015 Judge Tarle ruled on the motions by Hirsh and Hartman for attorneys' fees. Judge Tarle awarded Hirsch $62,610 in attorneys' fees and Hartman $31,800 in attorneys' fees.

On September 1, 2015 the Stauffs filed a notice of appeal to this court, asserting that the trial court's order awarding attorneys' fees was void because the court lacked subject matter

jurisdiction. The Stauffs asserted in their notice of appeal: "As the order entered by the Appellate Division that sent the case back to the trial court was void on its face, the ensuing order entered by the trial court that awarded attorney fees was also void."

On August 24, 2016 we requested supplemental briefing on whether this court has jurisdiction to hear an appeal from an order in a limited civil case. Both sides submitted supplemental letter briefs. We now conclude we do not have jurisdiction to hear this appeal, and we transfer the appeal to the Appellate Division.

DISCUSSION

A. *The Right To Appeal Is Statutory*

"'"There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control."'" (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1432; see *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696 ["[a] trial court's order is appealable when it is made so by statute"].) Section 904.1, subdivision (a), provides that "[a]n appeal, *other than in a limited civil case*, is to the court of appeal." (§ 904.1, subd. (a), italics added.) Appeals in limited civil cases are to the appellate division of the superior court. (§§ 77, subd. (e), 904.2.)

Thus, "[a] litigant in a case originating in the municipal court [now a limited civil case] may not appeal as a matter of right to the Court of Appeal." (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 762.) Nor does any statute authorize the Court of Appeal to hear appeals from the

Appellate Division of the Superior Court. (See *Anchor Marine Repair Co. v. Magnan* (2001) 93 Cal.App.4th 525, 528.)

B. *This Court Lacks Jurisdiction Because the Trial Court Reclassified the Case as a Limited Civil Case Before the Court Ruled on the Motions for Attorneys' Fees*

Section 403.030 provides: "If a party in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case . . . the clerk shall promptly reclassify the case." The court, on its own motion, may also reclassify a case as an unlimited or limited civil case at any time. (See § 403.040.) If a party objects to the reclassification, that party may file a petition in the Court of Appeal for a writ of mandate requiring proper classification of the action. (§ 403.080; see *Garau v. Torrance Unified School Dist.* (2006) 137 Cal.App.4th 192, 198-199.) Reclassification of a limited civil case as an unlimited civil case has several effects, including shifting appellate review of orders from the Appellate Division of the Superior Court to the Court of Appeal. (See §§ 904.2, 904.1.)

The Stauffs argue that this court has jurisdiction to hear their appeal from the trial court's July 13, 2015 order granting the motions by Hirsh and Hartman for attorneys' fees because, when the Stauffs dismissed their cross-complaint, the court reclassified only Hartman's unadjudicated complaint as a limited case, while retaining jurisdiction to hear the motions for attorneys' fees as an unlimited civil case. The record, however, does not support the Stauffs' argument. In fact, by the time the

court heard the motions for attorneys' fees, the court had reclassified the entire case as a limited civil case.

The Stauffs filed their cross-complaint on August 29, 2011, designating it an unlimited civil case. On September 15, 2011 and September 27, 2011 the court notified the parties that the case had been reclassified as an unlimited civil case. On October 6, 2011, after the Stauffs had dismissed their cross-complaint on September 27, 2011, the court reclassified the case as a limited case. Although Hirsh filed his special motion to strike on September 14, 2011 (while the case was classified as an unlimited civil case), the court did not hear the motions until May 3, 2012, long after the court had reclassified the case as a limited civil case. Because the Stauffs' appeal is from an order issued in a limited civil case, this court does not have jurisdiction to hear the appeal. (See § 904.2; *Anchor Marine Repair Co., supra,* 93 Cal.App.4th at p. 528 ["the general statute conferring jurisdiction on the Court of Appeal expressly excludes appeals in limited civil cases"]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶¶ 16.1, 16.1.1 ["after a superior court action filed as an unlimited civil case . . . is *reclassified as a limited civil case* on jurisdictional classification grounds, any appeal in the case presumably must be taken to the superior court appellate division"].)

Of course, had the Stauffs believed the October 6, 2011 order was erroneous and the court should not have reclassified the case at that time, they could have filed a petition for writ of mandate challenging the reclassification. (See § 403.080 [when the superior court reclassifies an action, the aggrieved party may, within 20 days after service of written notice of the order, petition the Court of Appeal for a writ of mandate requiring proper

classification of the action]; *Garau, supra,* 137 Cal.App.4th at pp. 198-199 [an order reclassifying a case is not appealable, but is reviewable by a timely petition for writ of mandate pursuant to section 403.080].) The Stauffs, however, did not challenge the reclassification as a limited civil case.[5] Having failed to challenge the reclassification order, the Stauffs have forfeited any contention of error in that ruling. (See *Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1136, fn. 13 ["[b]ecause [defendant] has not challenged the trial court's reclassification of the action as a limited civil case, it has forfeited any contention of error regarding the ruling"].)

The Stauffs cite *Food Safety Net Services v. Eco Safe Systems USA, Inc.*, *supra*, 209 Cal.App.4th 1118 and *Keenan v. Dean* (1955) 134 Cal.App.2d 189, disapproved on another point in *Wexler v. Goldstein* (1956) 146 Cal.App.2d 410, 414, and argue that, because a complaint and a cross-complaint are "discrete" actions, "an appeal involving the unlimited amended cross-complaint must necessarily be to the court of appeal." Both cases, however, are distinguishable. They involved exceptions to the one final judgment rule the courts in those cases found were necessary in order to preserve a right to appellate review that otherwise would have been lost.

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[5] The Stauffs also did not object in the trial court when the court ruled in May 2012 on the motions for attorneys' fees, or when the court ruled in December 2013 on the motion to determine whether Hirsh and Hartman were prevailing parties. Nor did the Stauffs challenge the Appellate Division's jurisdiction to review the trial court's orders in either of Hirsh's two appeals. (See, e.g., *Citibank, N.A. v. Tabalon* (2012) 209 Cal.App.4th Supp.16, 21 [dismissing an appeal because Appellate Division determined it lacked jurisdiction].)

In *Food Safety Net Services*, Food Safety sued Eco Safe to recover a fee, and Eco Safe filed a cross-complaint against Food Safety for breach of contract and various torts. (*Food Safety Net Services, supra,* 209 Cal.App.4th at p. 1121.) The trial court granted Food Safety's motion for summary judgment on Eco Safe's cross-complaint and granted Food Safety's motion for attorneys' fees under a prevailing party attorneys' fees provision in the contract. (*Id.* at pp. 1123, 1135.) The court entered judgment on the cross-complaint and then reclassified the case as a limited civil case. (*Id.* at p. 1135.) Eco Safe appealed from the judgment on the cross-complaint and the award of attorneys' fees. (*Ibid.*)

The Court of Appeal held that "the judgment [on Eco Safe's cross-complaint] following summary judgment is appealable notwithstanding the 'one final judgment' rule, which ordinarily bars an appeal from a judgment resolving a cross-complaint while leaving the complaint unadjudicated." (*Food Safety Net Services, supra,* 209 Cal.App.4th at pp. 1135-1136.) The court explained that the Appellate Division of the Superior Court had jurisdiction to hear any appeal from the limited civil complaint that was still pending in the trial court: "In entering judgment on the cross-complaint, the trial court reclassified the action as a limited civil case. Because the claims in Food Safety's complaint must be resolved in a limited civil case, any judgment regarding those claims is appealable as a matter of right only to the Superior Court Appellate Division. [Citations.] Under these circumstances, the judgment on Eco Safe's cross-complaint is 'necessarily a final judgment and therefore appealable.'" (*Id.* at p. 1135, fn. omitted.)

The issue in *Food Safety Net Services* was significantly different from the issue in this case. In *Food Safety Net Services* the court awarded attorneys' fees while the case was classified as an unlimited civil case, and then reclassified the case. (*Food Safety Net Services, supra*, 209 Cal.App.4th at p. 1123.) Here, the court awarded attorneys' fees after the case had been reclassified as a limited civil case. Thus, *Food Safety Net Services* did not involve the issue whether the Court of Appeal had jurisdiction to hear an appeal from a judgment or order in a limited civil case.[6] Instead, the issue in *Food Safety Net Services* was whether, because the Appellate Division could not hear Eco Safe's appeal and the one final judgment rule ordinarily would preclude an appeal from a judgment on a cross-complaint while the complaint was unadjudicated, Eco Safe would be able to obtain *any* appellate review of the judgment on the cross-complaint. Here, there is no question the Stauffs can obtain appellate review of the trial court's orders granting the motions for attorneys' fees; the only question is which appellate court will conduct that review.

Keenan, supra, 134 Cal.App.2d 189 involved a similar exception to the one final judgment rule. In that case the

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[6] *Food Safety Net Services* also did not involve a direct challenge to the Court of Appeal's jurisdiction. The issue was whether Food Safety was entitled to attorneys' fees as a prevailing party under Civil Code section 1717, which authorized an "award [of] attorney fees 'to a party obtaining an appealable order or judgment in a discrete legal proceeding even though the underlying litigation on the merits [is] not final.'" (*Food Safety Net Services, supra,* 209 Cal.App.4th at p. 1135.) Eco Safe's argument, which the court rejected, was that the award was "improper because Food Safety has not 'prevail[ed] on the contract,' for purposes of" Civil Code section 1717. (*Ibid.*)

plaintiff landlord filed an unlawful detainer action against the defendant tenant in the former municipal court. (*Id.* at p. 190.) When the defendant filed a cross-complaint for libel, the court transferred the case to the superior court because the amount in controversy exceeded the municipal court's jurisdiction. (*Ibid.*) When the superior court granted the plaintiff's motion to strike the cross-complaint, the defendant appealed to the Court of Appeal. (*Id.* at p. 191.)

In determining whether the order dismissing the cross-complaint was appealable, the court explained the general rule: "In the normal situation where the complaint and the cross-complaint are both filed in the superior court an order striking a cross-complaint is a non-appealable order" because such an order is "interlocutory in nature and, as such, reviewable only on the appeal from the final judgment." (*Keenan, supra*, 134 Cal.App.2d at p. 191.) The court further explained, however, that the specific facts of the case required the court to apply an exception to the general rule. After the dismissal of the cross-complaint, the superior court would have to transfer the case back to the municipal court. If the defendant waited to appeal until final judgment in the municipal court case, he would appeal to the superior court, which would not have appellate jurisdiction to review the ruling of the superior court that struck the cross-complaint. (*Id.* at p. 192.) "Thus, in a very real sense the order striking the cross-complaint was a final order or judgment. . . . Unless the propriety of that order can be reviewed on this appeal its propriety cannot be reviewed at all. . . . Since the propriety of such judgment cannot otherwise be reviewed it is necessarily a final judgment and therefore appealable." (*Ibid.*)

Thus, had the Court of Appeal in *Keenan* determined that it lacked jurisdiction under the one final judgment rule to hear the defendant's appeal from the order striking his cross-complaint, the defendant would not have been able to obtain any appellate review of that order. In contrast, if this court does not have jurisdiction to hear the Stauffs' appeal from the order awarding attorneys' fees, the Stauffs still have the right to appellate review of the order in the Appellate Division. Indeed, Hirsh twice exercised that right and obtained appellate review of orders in this limited civil case.

The Stauffs also argue that, "[w]hen there is a voluntary dismissal of an action after a special motion to strike, the court retains limited jurisdiction to hear a request for attorney fees." True enough. The cases on which the Stauffs rely, however, merely state the general rule that, although a voluntary dismissal usually terminates the trial court's jurisdiction, where the plaintiff dismisses an action after the defendant has filed a special motion to strike under section 425.16, the court retains jurisdiction for the limited purpose of ruling on a motion for attorneys' fees and costs. (See *Law Offices of Andrew L. Ellis v. Yang* (2009) 178 Cal.App.4th 869, 876; *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 215; *Liu v. Moore* (1999) 69 Cal.App.4th 745, 751.) Although the Stauffs suggest that the court in the unlimited civil case did retain, or could have retained, the case to rule on the motions by Hirsh and Hartman for attorneys' fees instead of or before reclassifying the case as a limited civil case, that is not what happened. The court retained jurisdiction to hear the motions for attorneys' fees, despite the dismissal of the cross-complaint, but did so in a limited civil case.

C. *This Appeal Is Transferred to the Appellate Division*

Government Code section 68915 provides: "No appeal taken to the Supreme Court or to a court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein, as if regularly appealed thereto." (Gov. Code, § 68915.) "While this section does not specifically state a Court of Appeal may transfer an appeal to the appellate division of the superior court, . . . our inherent authority coupled with this statutory directive empowers us to order transfer." (*People v. Nickerson* (2005) 128 Cal.App.4th 33, 40.) Therefore, we transfer this appeal to the Appellate Division of the Los Angeles Superior Court. (See, e.g., *Martin v. Riverside County Dept. of Code Enforcement* (2008) 166 Cal.App.4th 1406, 1408 [because the Court of Appeal "did not have jurisdiction to hear the appeal of a limited civil case," the court "transferred the case to the appellate division of the superior court"].)

DISPOSITION

The Stauffs' appeal is transferred to the Appellate Division of the Los Angeles County Superior Court. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.