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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

DAVID K. MURPHY, Plaintiff, Cross-defendant, and Respondent, v. JOAN F. HANSEN et al., Defendants, Cross-complainants, and Respondents.	B281452 (Los Angeles County Super. Ct. No. SC077244 c/w SC079138)
MALIBU BUSINESS TRUST, Plaintiff, Cross-defendant, and Appellant, v. JOAN F. HANSEN et al., Defendants, Cross-complainants, and Respondents.	

APPEAL from orders of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Brannan Law Offices and G. Bryan Brannan for Plaintiff, Cross-defendant, and Appellant Malibu Business Trust.

Hymes, Schreiber & Knox, Douglas K. Schreiber; Greines, Martin, Stein & Richland, and Marc J. Poster for Plaintiff, Cross-defendant, and Respondent David K. Murphy.

Lawrence D. Slavett for Defendant, Cross-complainant, and Respondent Joan F. Hansen.

No appearance for Defendant, Cross-complainant, and Respondent David Hansen.

The trial court entered judgment pursuant to a settlement of litigation among Daniel K. Murphy, Joan and David Hansen, and Malibu Business Trust (MBT). The judgment established an escrow through which Murphy would transfer title to certain property known as "Lot 171" to MBT in exchange for MBT's payment of $100,000 and a grant of an easement across MBT's property to Murphy's property. The court retained jurisdiction to enforce the judgment. After MBT failed to deposit the required funds and comply with orders to do so, the court issued an order extinguishing MBT's right to Lot 171 and directing the court clerk to execute a deed transferring to Murphy the easement across MBT's property. MBT appealed.

MBT contends: (1) A prior appeal stayed the trial court proceedings and deprived the court of jurisdiction to make the challenged order; (2) If proceedings were not stayed, the court exceeded its jurisdiction in making the challenged order; (3) The order violated MBT's right to due process; and (4) Instead of extinguishing MBT's right to Lot 171, the court should have

modified the judgment to require MBT to pay damages to Murphy. We reject these arguments and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

In 2000, the Hansens sold to Murphy two parcels of real property near, but not adjacent to, Westlake Boulevard. The parties refer to the lots as Lot 161 and Lot 171. The Hansens also purported to grant Murphy an easement across MBT's property to access Lot 161 and Lot 171 from Westlake Boulevard. Murphy paid for the property in part with a promissory note to the Hansens secured by a deed of trust against the two lots.

MBT asserted that the easement across its property did not exist and litigation on the issue ensued. In July 2005, Murphy, the Hansens, MBT, and Murphy's title insurer—Chicago Title Insurance Company (Chicago Title)—participated in a mediation, which resulted in a "Memo of Understanding" (MOU) purporting to settle the litigation. The MOU called for the opening of an escrow account to accomplish specified fund transfers, MBT's grant of an easement across its property to Lot 161 (the Murphy Access Easement), Murphy's transfer of Lot 171 to MBT, and Murphy's grant of an easement to MBT across Lot 161 to provide access to Lot 171.

The parties did not take the actions called for in the MOU.

In 2008, the trial court granted Murphy's motion for entry of judgment on the MOU pursuant to Code of Civil Procedure section 664.6.

Murphy appealed and challenged the court's description of the easement he was required to grant in favor of Lot 171. We agreed and, in an unpublished decision, reversed the judgment on the ground that there was no evidence supporting

the court's determination of the size and location of the easement. (*Murphy v. Hansen* (Aug. 27, 2009, B206751) [nonpub. opn.].)

In April 2014, after remand and an evidentiary hearing, the trial court entered a judgment that further defined the easements. The judgment also directed Chicago Title to open an escrow account into which: (1) MBT shall deposit $100,000 (to be delivered to Murphy) and a grant of the Murphy Access Easement; (2) Chicago Title shall deposit $90,000 (to be delivered to Murphy); (3) Murphy shall deposit a deed for Lot 171 to MBT and an access easement across Lot 161 to Lot 171 and deposit $80,000 (to be credited against the balance owing on his note to the Hansens); (4) the Hansens shall forgive the remaining balance on Murphy's promissory note and deposit a full reconveyance of Murphy's deed of trust against Lots 161 and 171; and (5) Murphy shall receive the balance of funds in the escrow account. These events were to take place within the "Initial Phase" of the escrow, which was to close 35 days after the judgment became final. A subsequent, "Final Phase," encompassing work related to sewer and water well easements, was to close 1 year 35 days after the judgment became final.

The judgment recites that the Court: "retains jurisdiction for the purpose of making such orders as may become necessary to enforce the terms of this [j]udgment," and "retains jurisdiction over the opening, closing, and performance of the . . . escrow." The court also expressly retained jurisdiction to modify the easements described in the judgment.

After Murphy appealed, we affirmed the judgment in an unpublished decision in July 2015. (*Murphy v. Hansen* (July 1, 2015, B256441) [nonpub. opn.].)

On December 17, 2015, in response to an ex parte application filed by MBT, the trial court held a hearing, attended by MBT's counsel, and issued an order directing that escrow be opened forthwith and that "all moneys and documents are to be delivered to escrow by [January 15, 2016]."

MBT did not comply with the December 17, 2015 order.

On February 22, 2016, the court held a hearing on an ex parte application by Murphy and issued an order (as corrected nunc pro tunc on March 4, 2016) directing MBT "to put the money in escrow by [February 29, 2016]."

On February 29, 2016, MBT filed a notice of appeal from the February 22, 2016 order, commencing appellate case No. B270916, and this court subsequently dismissed the appeal due to MBT's failure to procure the record. (*Murphy v. Hansen*, order dismissing appeal June 10, 2016, B270916; see Cal. Rules of Court, rule 8.140(b).)

In July 2016, the trial court set a hearing for August 8, 2016, on an order to show cause regarding contempt based upon MBT's failure to abide by the court's orders. At the hearing, the court declined to hold MBT in contempt, but issued an order directing MBT "to deposit the sum of $100,000 and sign all documents in escrow by [August 24, 2016]" and setting a hearing to be held on August 30, 2016 "to discuss further remedies."

MBT did not deposit any funds into escrow or sign the referenced documents.

On August 29, 2016, MBT filed a notice of appeal from the August 8, 2016 order, initiating appellate case No. B278070. MBT did not file an undertaking or deposit the required documents with the trial court. In March 2017, the appeal was dismissed due to MBT's failure to procure the record. (*Murphy v.*

Hansen, order dismissing appeal Mar. 7, 2017, B278070 (case No. B278070).)

Meanwhile, on August 30, 2016 and September 14, 2016, the court held the hearing it had set in its August 8, 2016 order. The record does not include a transcript of the hearing.

On November 21, 2016, the court issued its findings and rulings in a document titled: "Further Orders on the Judgment" ("Further Orders"). In the Further Orders, the court stated (among other findings and orders): (1) MBT failed to deposit $100,000 as required by the judgment and "thereby defaulted and its rights under the Judgment to acquire Lot 171, and it[s] rights or claims to [the easements established by the judgment] are hereby extinguished"; and (2) MBT failed to execute documents to grant the Murphy Access Easement, and the court directed the court clerk to execute a grant of easement pursuant to the judgment on MBT's behalf.

MBT timely appealed from the Further Orders.

DISCUSSION

I.

MBT contends that its prior, unprosecuted appeal from the August 8, 2016 order (case No. B278070) stayed proceedings in the trial court and deprived the court of jurisdiction to conduct the hearings that resulted in the Further Orders. We disagree.

The August 8, 2016 order directed MBT to: (1) deposit $100,000 into the existing escrow, and (2) sign all documents by a certain date.

Under Code of Civil Procedure section 916, an appeal generally "stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein

or affected thereby." (Code Civ. Proc., § 916, subd. (a).) This general rule is subject to numerous exceptions, two of which are relevant here. Under Code of Civil Procedure section 917.1, enforcement of a judgment or order for "[m]oney or the payment of money" is not stayed by an appeal "[u]less an undertaking is given." (Code Civ. Proc., § 917.1, subd. (a)(1).) Under Code of Civil Procedure section 917.3, an appeal from a judgment or order that "directs the execution of one or more instruments" does not stay enforcement of the judgment or order "unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered." (*Id.*, § 917.3)

The order to deposit $100,000 into escrow is an order for the payment of money to an escrow agent charged with disbursing the funds to Murphy upon the close of the escrow. The fact that MBT is directed to pay money to the escrow agent and not directly to Murphy is immaterial. (Cf. *Smith v. Smith* (1941) 18 Cal.2d 462, 467 [order to pay trustee for benefit of children is an order for payment of money].) Thus, the order for such payment would be stayed only if an undertaking was given. (Code Civ. Proc., § 917.1, subd. (a)(1).) Our record does not reveal that MBT gave such an undertaking, and MBT does not contend that it did. Further proceedings with respect to that order, therefore, were not stayed.

The court's order to sign documents would have stayed further proceedings if MBT signed and deposited the documents in the superior court. (See Code Civ. Proc., § 917.3.) Again, there is no evidence or contention that it did so.

Because MBT failed to fulfill the statutory requirements for a stay of the August 8 order to deposit money and sign

documents, further proceedings in the trial court were not stayed by its appeal from those orders.

II.

MBT contends that the court's Further Orders exceeded the jurisdiction the court retained for itself in the judgment. We disagree.

In the judgment, the court retained "jurisdiction for the purpose of making such orders as may become necessary to enforce the terms of this [j]udgment" and "jurisdiction over the opening, closing, and performance of the . . . escrow." In addition to these express statements of retained jurisdiction, courts have jurisdiction "to compel obedience to its judgments, orders, and process." (Code Civ. Proc., § 128, subd. (a)(4).) In cases involving equitable claims and relief, the court's jurisdiction " 'to enforce its decrees is coextensive with its jurisdiction to determine the rights of the parties, and it has power to . . . mold its decrees to suit the exigencies of the case[, and to make] the final adjustment of all differences between the parties arising from the causes of action alleged.' " (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 912–913, quoting *Klinker v. Klinker* (1955) 132 Cal.App.2d 687, 694; accord, *Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1161.)

Here, the judgment provided for the creation of the Murphy Access Easement across MBT's property to Murphy's Lot 161. When MBT failed to execute and deposit into escrow the document granting that easement, the court had the power to direct the clerk to execute the grant of easement on MBT's behalf. (See *Blueberry Properties, LLC v. Chow* (2014) 230 Cal.App.4th 1017, 1021; *Rayan v. Dykeman* (1990) 224 Cal.App.3d 1629, 1635.) It did not err in exercising that power.

The court also had the power to declare that MBT's right to acquire Lot 171 had been extinguished. That right was conditioned upon MBT's deposit of $100,000 into escrow. (See *Los Angeles High School Dist. v. Quinn* (1925) 195 Cal. 377, 383.) Because MBT failed to satisfy that condition—despite no fewer than three orders to do so over the course of eight months—it lost the right to acquire the property and the court, having reserved jurisdiction over the performance of the escrow, had the power to declare that loss.

The challenged orders are also within the court's equitable powers to "mold" postjudgment orders " 'to suit the exigencies of the case.' " (*Day v. Sharp*, *supra*, 50 Cal.App.3d at p. 912.) MBT's noncompliance with the court's orders prevented the closing of the initial phase of the escrow, thereby depriving the other parties of the benefits of their settlement and delaying the judgment's finality. In particular, so long as the escrow remained open, Murphy was denied the benefit of the Murphy Access Easement connecting Westlake Boulevard and Lot 161. By directing the clerk to execute the Murphy Access Easement and declaring that MBT's right to Lot 171 was extinguished, the court brought this 12-year-old litigation closer to resolution and acted well within its power "to do full and final justice between [the parties]."

III.

MBT contends that the court's Further Orders deprived it of its property without due process. We disagree.

The state may not deprive a person of his or her property without due process. (U.S. Const., 14th Amend., § 1; Cal. Const., art. I, § 7.) In general, due process requires notice of a proceeding and an opportunity to present objections. (*Mullane v. Central*

Hanover Tr. Co. (1950) 339 U.S. 306, 314.) Whether a person has a property interest subject to constitutional protection is a matter of state law. (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577; *Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 707.)

MBT asserts that the only notice it received prior to the challenged order was the court's August 8, 2016 order stating that the court will "discuss further remedies" at the August 30 hearing. The notice did not, MBT further contends, inform it of the "possibility that all of its rights would be forfeited." Moreover, according to MBT, "there was never an opportunity to prepare and call witnesses to testify as to the value of the rights subject to the forfeiture," and that the court "simply ordered a forfeiture at the conclusion of the hearing, sua sponte." (Italics omitted.)

We reject MBT's argument for two reasons. First, to the extent that MBT ever had any protectable property interest in acquiring Lot 171, that interest was subject to the condition that MBT timely deposit $100,000. As discussed above, when MBT failed to fulfill this condition, MBT lost its right to acquire Lot 171. (Cf. 2 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 6.25, p. 6-115 [party to escrow who has not performed in a timely fashion is not entitled to the other party's performance].) MBT, therefore, not the state, caused the loss of whatever interest it may have had in Lot 171.

Second, even if we assume that MBT had a protectable property interest in acquiring Lot 171 after it failed to deposit its funds into escrow and that the court's notice that it would "discuss further remedies" was inadequate by itself to satisfy due process, MBT has failed to provide a sufficient record to

review its due process claim. Specifically, MBT has not provided us with a transcript of the hearing, which was held over two days separated by two weeks, where the court addressed the issue. "Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment." (*Randall* v. *Mousseau* (2016) 2 Cal.App.5th 929, 935.) To the extent that due process required more or different notice than what was set forth in the August 8, 2016 notice of the hearing, we must presume that such notice was provided at the hearing and that MBT had adequate time to fully address the issue. Without a transcript or settled statement rebutting that presumption, we must reject MBT's due process claim. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.)

IV.

MBT contends that the court should have awarded Murphy damages as a remedy for MBT's failure to deposit $100,000 into escrow. Damages, it contends, are a sufficient remedy for its breach and would have avoided the "forfeiture" of its interest in Lot 171. Although the argument is not fully developed, MBT appears to suggest that the court should have modified the judgment to delete the requirement that MBT deposit $100,000 into escrow and replace it with a new requirement that MBT pay Murphy $100,000 outside of escrow; the escrow could then close with MBT acquiring title to Lot 171, and Murphy would be left to pursue its judgment debt against MBT.

Initially, we observe that replacing the cash deposit requirement with a judgment debt would not, as MBT asserts, "have made the parties whole." A judgment for money is not money. Indeed, a judgment against MBT for $100,000 would appear to have dubious value in light of MBT's repeated failures

to obey court orders to deliver that amount into escrow. Even if we assume the court had jurisdiction to consider the modification MBT suggests, it is plainly inadequate under the circumstances in this case.[1]

Moreover, the court's ruling did not cause a forfeiture of MBT's right to Lot 171 because, as explained above, that right was subject to a condition that MBT failed to satisfy. MBT lost its right to acquire Lot 171 because of *its* conduct; the court's declaration of that loss did not constitute a forfeiture.

V.

MBT's brief includes a heading stating, "Offset of Attorney's Fees Against Amount Owing." Under the heading is a single sentence that fails to make a cogent point or a connection to the facts in this case.[2] Accordingly, we decline to address it.

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[1] During oral argument, MBT's counsel stated that Murphy could retain title to Lot 171 until MBT satisfies the $100,000 judgment; only if and when the judgment is satisfied would title to the lot be transferred to MBT. Our record does not disclose that this solution was proposed to the trial court. Even if it was, however, the court was not required to accept it. It would not only delay the finality of the judgment, but also cloud Murphy's title to Lot 171 indefinitely and, because of the uncertainty as to whether MBT would ever pay the judgment, effectively prevent him from improving or selling it. The court could have reasonably rejected this possibility in favor of the result it reached.

[2] The sentence is: "The California Court of Appeal[] explained this legal option, 'California has multiple statutory setoff provisions, including, and in addition to . . . Government Code [s]ection 12419.5 and . . . Code of Civil Procedure

(*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

MBT further contends that the Further Orders "impermissibly modif[y]" a requirement in the judgment "that all money put into escrow be first paid to David Murphy and then Murphy is required to make certain payments to other parties." MBT does not cite to the record for this requirement and our review of the judgment does not reveal it. Indeed, contrary to MBT's statement, it appears from the judgment that funds are to be paid into escrow by MBT and Chicago Title and, upon the conclusion of the initial phase of the escrow, funds are to be disbursed to the Hansens and Murphy.

Lastly, MBT argues that the court erred by ordering that a $10,000 sum remaining in escrow be divided between MBT and the Hansens for the payment of attorney fees owed by Murphy. The "net effect" of this order, MBT asserts, is to deprive MBT of the opportunity to levy the escrow funds to satisfy Murphy's "obligation for his previous failed appeal." Again, this argument is devoid of record citations, legal authority, or an intelligible explanation. We therefore consider the argument waived. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

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[s]ection 431.70 which authorizes the setoff of cross-demands for money and . . . Code of Civil Procedure [s]ection 666, which requires a setoff where a cross-complainant's recovery exceeds that of the plaintiff.' [Citation.]" (Italics omitted.)

DISPOSITION

The November 21, 2016 order is affirmed.

Murphy and Joan Hansen shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

CURREY, 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.