Filed 2/9/16 Levine v. Burns CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

B.R. LEVINE et al., Plaintiffs and Appellants, v. DON CAMERON BURNS et al., Defendants and Respondents.	B265106 (Los Angeles County Super. Ct. No. SC121889)

APPEAL from an order of the Superior Court of Los Angeles County, Richard Stone, Judge. Dismissed.

Gotfredson & Associates and E. Jay Gotfredson for Plaintiffs and Appellants.

MacCabe Law Office and Scott MacCabe for Defendants and Respondents.

Plaintiff, B. R. Levine, and cross-defendant, Godfredson & Associates, purport to appeal from an April 24, 2015 order expunging a charging lien. We recognized such an order may not be appealable under the circumstances of this case. We have a duty to raise issues concerning our own jurisdiction on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) Thus, we issued an order to show cause concerning possible dismissal of the appeal and allowed the parties to orally argue the dismissal issue.

Here, the complaint contains causes of action for contract breach and quantum meruit. There is no demand in the complaint for a charging lien. The first amended cross-complaint contains a fraud cause of action which seeks compensatory and punitive damages. There is no demand in the first amended cross-complaint for a charging lien. None of the claims in the complaint or the first amended cross-complaint have been litigated.

We agree with defendant and cross-complainant, Don Cameron Burns, the appeal must be dismissed as it is not from a final appealable judgment. An appeal may only be taken from a final judgment or order. (Code Civ. Proc., § 904.1, subd. (a)(1); *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697; *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304.) Our Supreme Court has explained: "'[A]n appeal cannot be taken from a judgment that fails to complete the disposition of all causes of action between the parties even if the causes of action disposed of by judgment have been ordered tried separately, or may be characterized as "separate and independent" from those remaining.'" (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 [(*Morehart*)].)" (*Griset v. Fair Political Practices Com., supra,* 25 Cal.4th at p. 697.) Later in 2013, our Supreme Court discussed the importance of the final judgment rule: "In *Morehart,* we explained that the rule codified in this provision, known as the one final judgment rule, precludes an appeal from a judgment disposing of fewer than all the causes of action extant between the parties, even if the remaining causes of action have been severed for trial from those decided by the judgment. 'A judgment that disposes of *fewer* than all of the causes of action framed by the pleadings, however, is necessarily

'interlocutory' (Code Civ. Proc., § 904.1, subd. (a)), and not yet final, as to any parties between whom another cause of action remains pending." (*Morehart, supra,* 7 Cal.4th at p. 741.) The theory of the rule is that '"piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 58, p. 113 [citations].)' (*Griset v. Fair Political Practices Com.*[*, supra,*] 25 Cal.4th [at p.] 697.)" (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1101.)

No doubt, many decisions hold under circumstances different from those before us that an order concerning a lien is appealable. However, all of those cases involve scenarios different from that present in our case where the two sets of litigants have unresolved claims between them. The typical case involves a third-party to a lawsuit seeking to impose a lien and a subsequent appeal from an order relating to a lien issue. (E.g., *Takehara v. H. C. Muddox Co.* (1972) 8 Cal.3d 168, 169-171; *McClearen v. Superior Court* (1955) 45 Cal.2d 852, 854-855; *Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1171; *Lovett v. Carrasco* (1998) 63 Cal.App.4th 48, 51-52 & fn. 1; *Trimble v. Steinfeldt* (1986) 178 Cal.App.3d 646, 750; *Bandy v. Mt. Diablo Unified Sch. Dist.* (1976) 56 Cal.App.3d 230, 232-233 & fn. 2; *Spencer v. Spencer* (1967) 252 Cal.App.2d 683, 690-691; *Hersch v. Boston Inc. Co.* (1953) 175 Cal.App.2d 751, 753.) Because the challenged order here concerning the charging lien does not adjudicate any of the causes of action between the parties, we are required to dismiss the appeal. (*Kurwa v. Kislinger, supra,* 57 Cal.4th at pp. 1001-1108; *Greenfield v. Mather* (1939) 14 Cal.2d 228, 233.)

The appeal is dismissed. Defendant, Don Cameron Burns, is to recover his costs incurred on appeal from plaintiff, B. R. Levine, and cross-defendant, Godfredson & Associates.

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.