Filed 11/21/19 In re 7250 Franklin Ave. etc. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re: 7250 Franklin Avenue, No. 207 Los Angeles, California 90046 G. GREGORY WILLIAMS, Cross-Complainant and Appellant, vs. ELI LEVI and LEVI ESTATES, Cross-Defendants and Respondents.	B291124 (Los Angeles County Super. Ct. No. BS084615)

APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.

G. Gregory Williams and Plernpit Polpantu, in pro. per., for Appellants.

Christie Gaumer for Respondents.

INTRODUCTION

This appeal presents nearly the identical issue as a previous appeal in this litigation: whether the trial court erred in dismissing appellant G. Gregory Williams's cross-complaint for failure to complete service within the required time. We previously affirmed the trial court's dismissal of the cross-complaint against Andrew Ritholz and Law Offices of Andrew Ritholz, Inc. (collectively, Ritholz) on the ground that substantial evidence supported the trial court's determination that Williams failed to serve Ritholz within the time period required by Code of Civil Procedure section 583.210.[1] (*Williams et al. v. Levi* (June 4, 2019, B289174) [nonpub. opn.].) In this appeal, we similarly conclude substantial evidence supports the trial court's determination that Williams also failed to serve respondents Levi Estates LLC and Eli Levi (collectively, Levi) within the required time period. We therefore affirm.[2]

FACTUAL AND PROCEDURAL BACKGROUND

A. Background

This appeal is the latest installment in a 16-year saga of federal and state litigation, all arising from the non-judicial foreclosure sale of a single condominium unit in 2003. Our most

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[1] All further statutory references are to the Civil Procedure Code.

[2] Because both appeals present the same issue, our recitation of the factual background and our analysis borrow heavily from our previous opinion. (*Williams et al. v. Levi* (June 4, 2019, B289174) [nonpub. opn.].)

recent opinion was filed on October 2, 2019. (*Williams et al. v. Levi* (Oct. 2, 2019, B287098) [nonpub. opn.]) As best we can, we will limit our discussion of legal issues to topics relevant to this narrow appeal. As we have done in our previous opinions, however, we begin with an overview of the litigation in order to put this appeal in context and introduce the parties. The summary is excerpted from one of our previous opinions. (*Williams et al. v. Levi* (April 3, 2017, B266574) [nonpub. opn.].)

"'Williams, who purchased the condominium in 1995, transferred title to his fiancée, P. Toi Polpantu, by a deed recorded on April 21, 1999. However, by a quitclaim deed that was also dated April 21, 1999, but was not recorded, Polpantu transferred title back to Williams.

"'Williams and Polpantu were living in the condominium when the condominium association served notice of an April 3, 2003 foreclosure sale for Polpantu's nonpayment of approximately $11,000 in association fees. Two days before the foreclosure sale, Williams filed his April 1, 2003 bankruptcy petition, but the petition did not disclose his interest in the condominium. When the April 3, 2003 foreclosure sale was held, Polpantu, not Williams, was the owner of record title. [Eli] Levi purchased the condominium at the foreclosure sale for $215,000. One day after the foreclosure sale, Williams recorded the previously unrecorded April 21, 1999 quitclaim deed from Polpantu.'

"Williams's April 2003 bankruptcy petition was dismissed in August 2003. It was followed by another bankruptcy petition, filed in October 2003 and dismissed in February 2004. In December 2003, the bankruptcy court 'retroactively annulled the automatic stay to the date of Williams's . . . April 1, 2003

bankruptcy petition, thereby precluding Williams from attacking the April 3, 2003 foreclosure sale on the ground that the sale was conducted in violation of the automatic stay' [citation]. The annulment of the automatic stay was affirmed on appeal and is now final. [citations]

"Levi was granted a writ of possession in an unlawful detainer action, and [Williams and Polpantu] were evicted in late February 2004, 10 months after the foreclosure sale. In 2008, after many procedural complications, Levi obtained a default judgment, in which [title was quieted in his favor, the quitclaim deed from Polpantu to Williams was voided, record title to the property was perfected in favor of Levi, Levi obtained a $256,639.12 damages award against Polpantu and Williams, and Levi obtained additional relief.]

"Meanwhile, in July 2003, the foreclosure trustee, R.E.F.S., Inc., commenced this proceeding by filing a form 'Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds' from the trustee's sale in the amount of $198,600.62. (Civ. Code § 2924j.) [In our April 3, 2017 decision, we reversed orders awarding the surplus to Levi, and remanded for further proceedings to determine how the funds should be paid.]" (*Williams et al. v. Levi* (April 3, 2017, B266574) [nonpub. opn.].)

"After the case was remanded, on July 13, 2017, Williams filed a motion for an order distributing the surplus funds to Williams and Polpantu, but failed to serve the motion on Levi. Unaware that Levi had not been served, on September 13, 2017, the court granted the motion.

"On November 20, 2017, however, after being informed about Williams's and Polpantu's failure to serve their July 13,

2017 motion on Levi, the trial court revoked its September 13, 2017 order distributing the surplus funds to Polpantu without prejudice, ordered Levi to return the funds to the court, set a hearing on how the funds should be disbursed, and set a briefing schedule for claims to be submitted for the funds. On December 18, 2017, Williams filed a notice of appeal, purporting to appeal from the November 20, 2017 order and '[a]ll subsequent [o]rders and/or judgments.'

"Levi later filed motions seeking to demonstrate he was entitled to the surplus funds. On July 23, 2018, the court granted Levi's motions, directing payment 'to be made to Eli Levi as lien holder.' On August 13, 2018, Williams filed a notice of appeal from the July 23, 2018 order (Case No. B292011). That appeal was dismissed, however, for failure to timely file an opening brief." (*Williams et al. v. Levi* (Oct. 2, 2019, B287098) [nonpub. opn.].)

B. The Cross-Complaint and Notice of Appeal

On July 10, 2014, Williams filed a cross-complaint against several cross-defendants, including Ritholz and Levi.

On February 22, 2018, Levi filed a motion "for mandatory dismissal of the cross-complaint" pursuant to section 583.250 because Williams failed to serve his cross-complaint and summons on Levi within three years of its filing. Levi concurrently filed a request for judicial notice, which included the summons for the cross-complaint – dated September 21, 2017 – and a blank proof of service of summons.

Williams did not oppose Levi's motion to dismiss or the request for judicial notice. Nor did Williams appear at the

hearing. The court granted Levi's motion on June 7, 2018, finding Williams did not meet his burden of proving proper service of the cross-complaint.

Williams timely filed a notice of appeal, stating he was appealing from "the judgment and final appealable orders of the Superior Court, including but not limited to: (1) denying Appellant's requests for entry of default; (2) dismissing [Williams's] cross-complaint as to Levi Estates LLC and Eli Levi entered on or about June 7, 2018; (3) Judgment of Dismissal After Order Granting Cross-defendants Levi Estates LLC and Eli Levi's Motion for Mandatory Dismissal Of the Cross-Complaint; and (4) all prior and subsequent orders and/or judgments."

DISCUSSION

We first address the threshold question of which issues are properly before us on appeal. Williams purports to appeal from the order dismissing his cross-complaint, the judgment of dismissal entered after the order dismissing his cross-complaint, the order denying Williams's request for entry of default,[3] "and all subsequent orders and/or judgments." As we explained in our June 4, 2019 opinion, "[u]nspecified 'subsequent' orders and judgments, which have yet to be entered, are not appealable. (*See* § 904.1.) Similarly, to the extent Williams seeks to challenge prior orders not specified in the notice of appeal, we lack jurisdiction to review them (even assuming they are appealable). (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073 ["'Our jurisdiction on appeal is limited in

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[3] Williams states the decision denying his request for entry of default "became incorporated into the order dismissing [his] cross-complaint as to [Levi] entered on or about June 7, 2018."

scope to the notice of appeal and the judgment or order appealed from" [citation.]'].)" (*Williams et al. v. Levi* (June 4, 2019, B289174) [nonpub. opn.].)

Accordingly, the only issue on appeal is whether the court erred in dismissing the cross-complaint for failure to serve it within three years as required by Code of Civil Procedure section 583.210.[4] It did not.

"Section 583.210, subdivision (a), provides that a summons and complaint 'shall' be served upon a defendant within three years after the action is commenced. Section 583.250, in turn, provides that the action 'shall' be dismissed if service is not made within the statutorily prescribed time and that the foregoing requirements 'are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.' [Citation.]" (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748.) The three-year service limitation applies to cross-complaints as well as complaints. (*Inversiones Papaluchi S.A.S v. Superior Court* (2018) 20 Cal.App.5th 1055, 1061.) It is the cross-complainant's burden to prove service of the summons and cross-complaint within the required time period. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1441.)

Williams's argument, frankly, is difficult to decipher because much of his opening brief focuses on issues irrelevant to this appeal, with only a few passing remarks about the cross-complaint. As best we can tell, Williams's only substantive

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[4] For this reason, we do not address the myriad other issues touched upon in Williams's opening brief. We also note Polpantu was not a party to the cross-complaint. Therefore, she is not a proper party to this appeal. (*Niles v. City of San Rafael* (1974) 42 Cal.App.3d 230, 244 ["A party who is not aggrieved by an order or judgment has no standing to attack it on appeal"].)

contention as it relates to the cross-complaint is that his appeal filed on December 18, 2017 in case No. B287098 automatically stayed all proceedings in the trial court, divesting the trial court of jurisdiction at the time it dismissed the cross-complaint. (§ 916, subd. (a) [perfecting appeal stays proceedings in trial court upon order appealed from].) We previously rejected this argument, however, in *Williams et al. v. Levi* (April 3, 2017, B266574) [nonpub. opn.] ("the rules governing application of stays and undertakings on appeal in a civil action do not apply in a special proceeding.")

In his statement of facts, Williams also contends he served Levi with the cross-complaint and summons by mail on July 13, 2014 (only three days after filing the cross-complaint). Williams forfeited this argument by failing to raise it in the trial court. (*Blankenship v. Allstate Ins. Co.* (2010) 186 Cal.App.4th 87, 105.) In any event, Williams fails to cite to any evidence in the record demonstrating he served the cross-complaint on Levi. Nor does Williams explain how he could have served a summons on July 13, 2014, when the summons was not issued until September 21, 2017. Accordingly, substantial evidence supports the trial court's order dismissing the cross-complaint as against Levi. (*Graf v. Gaslight* (1990) 225 Cal.App.3d 291, 295, disapproved on another ground in *Watts v. Crawford* (1995) 10 Cal.4th 743, 758, fn. 13.)[5]

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[5] Williams also contends the clerk erred in declining to enter default against Levi based on Williams's request for entry of default and attached proof of service because section 585, subdivision (a) mandates "the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default . . . ." But Williams's proof of service attached to his request for entry of default is for service of the request for entry

DISPOSITION

The order dismissing Williams's cross-complaint as against Levi is affirmed. Levi is awarded his costs on appeal.

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CURREY, J.

WE CONCUR:

WILLHITE, acting P. J.

COLLINS, J.

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of default itself, not the proof of service of summons. We therefore reject this argument.