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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

R.E.F.S., INC., Plaintiff, v. G. GREGORY WILLIAMS et al., Defendants and Appellants, ELI LEVI, Defendant and Respondent.	B266574 (Los Angeles County Super. Ct. No. BS084615)

APPEAL from orders of the Superior Court of Los Angeles County, Mark A. Borenstein and Mary H. Strobel, Judges. Reversed and remanded.

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

Andrew Ritholz for Respondent.

This is the second appeal in a special proceeding for distribution of surplus proceeds of the 2003 trustee's sale of a condominium. The foreclosure trustee, R.E.F.S., Inc., deposited the proceeds with the superior court under Civil Code section 2924j.[1] At the time of the trustee's sale, appellants G. Gregory Williams and Plernpit Polpantu lived in the condominium and claimed to own it. Respondent Eli Levi, who bought the property at the trustee's sale, later obtained a money judgment against appellants and sought release of the surplus funds in the section 2924j proceeding. Appellants challenge two orders — dated April 29, 2014 and September 2, 2015 — that released the funds to Levi.

We conclude that while Levi may have other remedies against appellants based on his 2008 money judgment, he is not entitled to the surplus funds in the section 2924j proceeding, as that proceeding is intended to provide a speedy remedy to holders of junior liens on the property that were in existence at the time of the foreclosure sale. Because release of the funds to Levi under section 2924j was unauthorized, we reverse the April 29, 2014 and September 2, 2015 orders. On remand, Levi shall be directed to return the funds to the superior court.

FACTUAL AND PROCEDURAL SUMMARY

We borrow the relevant background history of the parties' long-lasting dispute from our opinion in *Levi v. Williams* (June 25, 2009, No. B207734 [nonpub. opn.]):

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[1] Subsequent undesignated statutory references are to the Civil Code.

"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. 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." (*Levi v. Williams*, *supra,* B207734.) The annulment of the automatic stay was affirmed on appeal and is now final. (See *In re Williams* (Bankr. 9th Cir. 2005) 323 B.R. 691, 699–702, abrogated on another ground in *In re Perl* (9th Cir. 2016) 811 F.3d 1120, 1125; *In re Williams* (9th Cir. 2006) 204 Fed.Appx. 582, 584.)

Levi was granted a writ of possession in an unlawful detainer action, and appellants 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 "(1) title to the condominium was quieted in favor of Levi and against Polpantu and Williams; (2) the quitclaim deed from Polpantu to Williams was cancelled and removed from the real property records; (3) the lis pendens recorded by Williams against the property was expunged; (4) record title to the property was perfected in favor of Levi; (5) Levi was awarded $256,639.12 in damages against Polpantu and Williams, jointly and severally, consisting of $30,550 in lost rents, $44,400.91 for waste, and $181,688.21 in lost profits; and (6) Levi was awarded costs and postjudgment interest." The judgment was affirmed in *Levi v. Williams*.

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.) The trustee declared that it had received claims to the surplus funds from both appellants and Levi's objection to any distribution to Polpantu. The trustee requested that the court resolve the conflicting claims. Notice was given to appellants at the condominium address, and to Williams separately at an address in Beverly Hills.

In August 2003, Levi filed a court claim to the surplus funds. He claimed that, if the foreclosure sale was deemed valid, he was entitled to the amount still owed to a senior lienholder, and that, if the foreclosure sale was deemed void, he was entitled

to the entire surplus, as part of the return of his purchase price. No other claim was filed with the court and no action to release the funds was taken until 2014, when Levi moved for their release. He now claimed to be an "interested party" under section 2924j, subdivision (c) based on his 2008 default judgment against appellants.

On March 26, 2014, Judge Mark A. Borenstein, to whom the case was assigned, ordered Levi to serve the moving papers on appellants at the addresses listed in the trustee's petition, or at any more recent addresses known to his counsel, and issued an order to show cause (OSC) why the deposited funds should not be released to Levi. The OSC was set to be heard on April 29, 2014. A proof of service filed on April 3, 2014 indicated that notice was served by mail at the two addresses listed in the trustee's petition: the condominium, where appellants had not lived for 10 years, and the Beverly Hills address.

Appellants did not appear at the April 29, 2014 hearing, and Judge Borenstein ordered the surplus funds paid to Levi by way of a check to be mailed to his counsel. The court ordered counsel to give notice of the order to appellants after making a "diligent effort" to locate their current address and to file a declaration describing his efforts within two weeks. On May 8, 2014, counsel filed a declaration and a proof of service showing appellants had been served at their current address, which was different from the addresses listed in the trustee's petition.

On the same date, appellants applied ex-parte to vacate the distribution order under Code of Civil Procedure section 473, or in the alternative to stay its enforcement and set a noticed motion to vacate it on shortened time. Appellants declared that they had received no notice of the April 29, 2014 hearing. In

addition, Williams argued that the lack of service at their current address was deliberate as that address appeared on numerous court filings in federal and state cases arising from the parties' dispute over the foreclosure sale. Appellants also argued that Levi was not a proper claimant under section 2924j because he had no recorded interest in the condominium before the foreclosure sale, and that Polpantu was the rightful claimant of the surplus proceeds. In their declarations, both appellants stated they had "viable meritorious" claims, but only Polpantu declared she was the record owner of the condominium at the time of the trustee's sale.

On May 8, 2014, Judge Borenstein granted appellants' ex-parte application in part, staying the April 29, 2014 order "pending further order of the court" and setting a hearing on their motion to vacate the order for July 18, 2014. The May 8, 2014 order was later corrected *nunc pro tunc* to require that the funds transferred to the client trust account of Levi's counsel remain there until further court order. Appellants filed a notice of appeal from the April 29, 2014 and May 8, 2014 orders on May 12, 2014 in case No. B256426. On May 14, 2014, Judge Borenstein accepted the peremptory challenge Williams had filed against him on May 8, 2014. (Code Civ. Proc., § 170.6.) The case was reassigned to Judge Mary H. Strobel. The July 18, 2014 hearing was advanced and vacated and was to be "reserved and re-noticed for the new designated court by the moving party."

In October 2014, Levi applied ex-parte for a court order directing release of the surplus proceeds held in his attorney's trust account. He argued that the April 29, 2014 order had been stayed pending a hearing on appellants' motion to vacate that order, but appellants had not renoticed the motion, and there was

no automatic stay of the distribution order pending appeal. Judge Strobel denied the ex-parte application but set the matter for a noticed hearing. At the February 4, 2015 hearing, Judge Strobel declined to order the funds released, staying the matter on the court's own motion "pending resolution of the [a]ppeal" in case No. B256426.[2]

In July 2015, we dismissed the appeal from the April 29, 2014 and May 8, 2014 orders for lack of jurisdiction since the orders were neither final nor appealable in light of the proceedings pending in the superior court when the notice of appeal was filed. (*R.E.F.S., Inc. v. Williams* (July 15, 2015, No. B256426 [nonpub. opn.]).) On July 17, 2015, two days after our opinion was filed, Judge Joseph H. Kalin, sitting for Judge Strobel, heard Levi's renewed motion for an order authorizing release of the funds. Judge Kalin acknowledged the dismissal of the appeal in case No. B256426, but noted that a remittitur had not yet issued. He denied the motion without prejudice, directed Levi to refile and renotice it, invited appellants to file their own motion "if they so desire," and reserved September 2, 2015 as a hearing date for both motions.

On August 26, 2015, the California Supreme Court denied appellants' petition for review of our dismissal of the appeal in case No. B256426. On September 2, 2015, Judge Strobel heard Levi's renewed motion for an order authorizing release of the funds. At the hearing, appellants explained they had not yet filed a motion to vacate the April 26, 2014 order because they

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[2] Appellants' successive requests for writs of supersedeas in October 2014 and January 2015 were summarily denied in case Nos. B259736 and B256426.

believed the superior court lacked jurisdiction until a remittitur in case No. B256426 issued[3] and until the court lifted the stay it had issued on its own motion. Judge Strobel disagreed that lower court proceedings had been automatically stayed by the appeal. She found that Judge Borenstein's stay of the April 29, 2014 order had expired, and she interpreted Judge Kalin's July 17, 2015 order as lifting the discretionary stay issued on the court's own motion in February 2015. Absent a motion to vacate the April 29, 2014 order, Judge Strobel declined to consider its validity and ordered that it go into effect. This appeal followed.[4]

DISCUSSION

The parties raise many issues—some procedural, other substantive. We conclude that this appeal turns on issues of law, which we review de novo. (*Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.) Specifically, it requires that we interpret and apply the provisions of section 2942j, which authorize the underlying proceeding. "The interpretation and application of a statute presents a question of law subject to de novo review. [Citation.] 'And "every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." [Citation.]' [Citation.]" (*Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc.* (2009) 180 Cal.App.4th 1090, 1096 (*Banc of*

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[3] The remittitur in case No. B256426 issued on September 14, 2015.

[4] The superior court denied appellants' requests for a stay. In January 2016, the court denied appellants' motion to set aside orders encompassed in this appeal.

America).) We begin by summarizing the relevant statutory provisions, then address the parties' various procedural and substantive arguments in light of those provisions.

I

A. *The Statutory Scheme*

"'"[S]ections 2924 through 2924k provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust." [Citations.]' [Citation.]" (*Banc of America*, *supra*, 180 Cal.App.4th at p. 1096.) As relevant here, section 2924k directs the foreclosure trustee to apply proceeds from such a sale in the following order of priority: (1) to the trustee's fees, costs, and expenses relating to the sale; (2) to the debt subject to the sale; (3) to junior liens or encumbrances "the order of their priority"; and (4) to the trustor or the trustor's successor in interest; specifically where the property has been sold or transferred, "to the vested owner of record at the time of the trustee's sale." (§ 2924k, subd. (a); see also *Whitman v. Transtate Title Co.* (1985) 165 Cal.App.3d 312, 321 [recognizing that "in many foreclosures the original trustor no longer owns the property"].)

If there are funds remaining after payment of the trustee's own expenses and the debt that brought about the sale, section 2924j provides for an expedited resolution of any claims to the surplus proceeds. Within 30 days after completion of the sale, the trustee must send written notice "to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice" under section 2924b, subdivisions (b) and (c). (§ 2924j, subd. (a).) That includes junior lien holders who have requested notice under

section 2924b, subdivision (a). (*Banc of America*, *supra*, 180 Cal.App.4th at p. 1096.)

The noticed persons may submit written claims to the trustee within 30 days of the date of notice. (§ 2924j, subd. (a)(4)(C).) The trustee is given an additional period of 90 days in which to determine the priority of written claims it receives; if by the end of that period, the trustee has not determined claim priority, or if there is a conflict among claimants, the trustee must either deposit the surplus proceeds with the superior court within 10 days, or file an interpleader action. (§ 2924j, subd. (b).) If the trustee chooses to deposit the undistributed surplus proceeds with the superior court, it must file a declaration of unresolved claims after giving notice to all persons entitled to notice under section 2924j, subdivision (a) that they have 30 days to file their claims with the court. (§ 2924j, subds. (c)-(d).) The court clerk must deposit the surplus proceeds either with the county treasurer or in a trust account, "subject to order of the court upon the application of any interested party." (§ 2924j, subd. (c).)

The court is expected to schedule a hearing within 90 days after the funds are deposited with the clerk, and "the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein." (§ 2924j, subd. (d).) The court "shall consider all claims filed at least 15 days before" the date of the hearing and "shall distribute the deposited funds to any and all claimants entitled thereto." (*Ibid*.)

The statute does not preclude the trustee from filing an interpleader action, nor does it preclude "any person from

pursuing other remedies or claims as to surplus proceeds." (§ 2924j, subd. (b) & (e).)

B. *The Nature of the Section 2924j Proceeding*

There is some confusion about the nature of the section 2924j proceeding that affects the parties' arguments on issues as far ranging as notice, jurisdiction, default, and stay. Levi assumes this proceeding is a regular civil action within the general jurisdiction of the trial court and subject to the procedural rules applicable to such actions. Appellants understand the limited nature of the proceeding under section 2924j; yet, they, too, attempt to engraft upon it procedural requirements from outside the statutory scheme.

A clarification of the difference between civil actions and special proceedings created by statute is in order. "'An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.' (Code Civ. Proc., § 22.) [¶] A 'special proceeding' is '[e]very other remedy. . . .' (Code Civ.Proc., § 23.)" (*Agricultural Labor Bd. v. Superior Court* (1983) 149 Cal.App.3d 709, 714.)

In other words, a special proceeding is "'the type of case which was not, under the common law or equity practice, either an action at law or a suit in equity. [Citations.]' [Citation.] Special proceedings instead are established by statute. [Citations.] The term 'special proceeding' applies only to a proceeding that is distinct from, and not a mere part of, any underlying litigation. [Citation.] The term 'has reference only to such proceedings as may be commenced independently of a pending action by petition or motion upon notice in order to

obtain special relief. [Citations.]' [Citation.]" (*People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 725.)

"As special proceedings are created and authorized by statute, the jurisdiction over any special proceeding is limited by the terms and conditions of the statute under which it was authorized [citation] . . . ." (*Kwok v. Bergren* (1982) 130 Cal.App.3d 596, 599 [unlawful detainer].) Such proceedings are not subject to the provisions of the Code of Civil Procedure relating to the trial of civil actions unless those provisions are specifically made applicable. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 707.)

The proceeding in this case was initiated by the foreclosure trustee under section 2924j. It arose out of a nonjudicial foreclosure, rather than as part of an already pending litigation. It is, therefore, a special proceeding, limited by the terms and conditions of the statute by which it was authorized.

With that clarification, we turn to the parties' procedural arguments.

II

A. *Mootness*

Levi argues the appeal is moot because the surplus proceeds no longer are held in his attorney's trust account, and the court cannot grant effective relief. *Estate of Reiss* (1945) 68 Cal.App.2d 128, 130, a probate case on which Levi principally relies, held that the probate court lost jurisdiction over a fund distributed under an order that had not been appealed and had become final. Levi does not address the issue whether the jurisdiction of the superior court under section 2924j is in rem, as in probate cases. (See *Estate of Kampen* (2011) 201 Cal.App.4th 971, 1003.) Assuming that it is, an *in rem* order of distribution of

property is conclusive as to the rights of all interested persons only when it becomes final. (See *id.*) That is not the case here since the order releasing the surplus funds is itself on appeal.

Levi's reliance on cases in which injunctive relief has been rendered moot also is misplaced. Appellants seek a reversal of the distribution orders and a return of the funds to the court, or a payout to Polpantu. It is not at all clear that an order to return the funds to the court would be in the nature of a mandatory injunction, but even assuming it would be, the order will be directed at Levi, the person to whom the funds were distributed. That they are no longer in the attorney's trust account does not mean the funds are not in Levi's possession, or that Levi may not be ordered to return them to the court. The appeal is not moot.

B. *Standing*

Levi challenges Williams's standing on appeal, arguing that Williams is not entitled to the surplus proceeds and therefore cannot be aggrieved by the distribution order since he was not the record owner of the condominium at the time of foreclosure. Appellants have not addressed this challenge. Generally, standing is a threshold issue to be resolved before the merits are reached. (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.) A standing challenge may be brought for the first time on appeal. (See *Steadman v. Osborne* (2009) 178 Cal.App.4th 950, 954–955.) Standing to assert a statutory right is determined "from the statutory language, as well as the underlying legislative intent and the purpose of the statute. [Citation.]" (*Surrey v. TrueBeginnings, LLC* (2008) 168 Cal.App.4th 414, 417–418.)

As we have explained, section 2924j, subdivision (d) requires that the superior court hold a hearing on court-filed

claims to deposited surplus proceeds from a trustee's sale. All claimants identified in the trustee's declaration are entitled to notice of the hearing, after which the court is to distribute the deposited surplus proceeds to "any and all claimants entitled thereto." (§ 2924j, subd. (d).) Whether or not he is ultimately entitled to distribution of the funds, Williams was entitled to notice of the hearing because he was a claimant identified in the trustee's declaration. We decline to dismiss him for lack of standing.

C. *Jurisdiction*

Appellants argue the trustee's deposit of the surplus proceeds with the superior court was a void act because it violated the bankruptcy stay, depriving the court of jurisdiction over this proceeding. Appellants' argument is precluded by the final order of the bankruptcy court, which annulled that stay retroactively to April 1, 2003. (See *Lumpkin v. Jordan* (1996) 49 Cal.App.4th 1223, 1230 [final federal court order has preclusive effect in state court case].)

Appellants' additional challenges to the trustee's decision to deposit the surplus funds with the superior court do not implicate that court's jurisdiction, as section 2924j, subdivision (c) authorizes such a deposit if, "after due diligence," the trustee determines "there is a conflict between potential claimants" to the proceeds. Appellants filed competing claims with the trustee, creating an apparent conflict that the trustee chose to submit to the court. Their complaints about the fees and costs the trustee withheld and the payment to the homeowner's association are not properly before us, as those actions preceded the deposit of the remaining funds with the court and are not the subject of the distribution orders under review.

Appellants also argue that the April 29, 2014 and September 2, 2015 orders are void for lack of jurisdiction. They contend that since notice of Judge Borenstein's OSC was not personally served on them at their current address, the court lacked personal jurisdiction. However, the only statutory notice required for a hearing on a claim to surplus proceeds is a notice by first-class mail at the addresses specified in the trustee's declaration. (§ 2924j, subd. (d).) Judge Borenstein's discretionary decision to issue an OSC regarding release of the surplus proceeds and order service on appellants at a more recent address did not fundamentally change the nature of the statutory proceeding under section 2924j. Appellants' attempt to analogize this case to a contempt proceeding, where an OSC may require personal service, is flawed. (Cf., e.g., *Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1286 [contempt proceeding begins with OSC which acts as summons and must be personally served; otherwise court lacks jurisdiction to proceed].)[5]

Appellants also challenge Judge Strobel's September 2, 2015 order to release the funds to Levi as issued without or in excess of jurisdiction. Appellants believe that their appeal in case No. B256426 automatically stayed lower court proceedings and deprived that court of jurisdiction until issuance of the remittitur. (Code Civ. Proc., § 916 [perfecting appeal stays proceedings in trial court upon order appealed from].) There are two problems with this argument. First, the rules governing the

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[5] In any event, appellants have made a general appearance by seeking affirmative relief and opposing the distribution order on the merits. (See *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1029.)

application of stays and undertakings on appeal in a civil action do not apply in a special proceeding. (*Veyna v. Orange County Nursery, Inc.* (2009) 170 Cal.App.4th 146, 154–155.) Second, even if they did, the orders from which the appeal in case No. B256426 was taken were nonappealable, as we explained in our previous opinion dismissing that appeal. Hence, "the appeal was never perfected and the trial court retained jurisdiction" over the proceedings. (*Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 666.)

The parties disagree whether Judge Strobel was authorized to issue a discretionary stay without requiring appellants to post a bond, and whether she incorrectly concluded that her stay had been lifted by Judge Kalin. Levi repeatedly objected that the proceeding could not be stayed without a bond. (See Code Civ. Proc., § 918 [limiting court's discretion to stay enforcement of order requiring undertaking without adverse party's consent].) But as we have explained, appellants were not required to post an undertaking, and Judge Strobel did not exceed her power in staying the case without requiring one. (See *Veyna v. Orange County Nursery, Inc*., *supra*, 170 Cal.App.4th at p. 155.)

Appellants argue Judge Strobel's conclusion that Judge Kalin had lifted her stay in July 2015 unfairly prevented them from filing a motion to vacate the April 29, 2014 order, and she erred in declining to consider the validity of Judge Borenstein's April 29, 2014 order absent such a motion. Judge Kalin's order makes no mention of a discretionary stay, and invites the parties to file motions and reserves a hearing date for the motions. The parties advance competing interpretations of what happened at the July 17, 2015 hearing before Judge Kalin. Since there is no reporter's transcript or settled statement of the hearing, we

cannot resolve factual differences. (See *Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 575–576.)

Regardless, since the superior court did not lose jurisdiction over the proceeding during the pendency of the prior appeal, any discretionary error by Judge Strobel — in not allowing appellants time to vacate the April 29, 2014 distribution order or in declining to consider its validity — is not reversible per se, but only if it resulted in a "miscarriage of justice," i.e. if "'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 799.)

We, therefore, turn to the crux of this appeal—whether Levi is entitled to distribution of the surplus funds in a section 2924j proceeding.

III

Levi argues that, as an "interested party," he may apply for release of funds deposited with the county treasurer or in a court trust account. (§2924j, subd. (c).) While that may be so, nothing in the statutory scheme suggests that the court may order the funds released to him in this proceeding simply because he applied.

Foreclosure on a senior lien extinguishes "'[a] junior lien . . . unless the successful bidder purchases at a price sufficiently high to pay off both the senior lien and the junior lien. [Citation.]' [Citation.]" (*Banc of America*, *supra*, 180 Cal.App.4th at p. 1101.) That is why, under section 2924k, subdivision (a)(3), obligations secured by junior liens are entitled to surplus proceeds in the order of their priority after the foreclosed lien has been satisfied. Section 2924j, subdivision (a) limits the persons

entitled to notice of a surplus to "all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale." Of those, existing judgment lien creditors are entitled to notice only if they recorded a request under section 2924b, subdivion (a). (See *Banc of America*, *supra*, 180 Cal.App.4th at p. 1096.) Since judgment creditors have other available remedies, their right to distribution of surplus funds under section 2924j is far from absolute. (See *id*. at p. 1106.)

Neither section 2924j nor section 2924k entitles a subsequent unsecured judgment creditor to distribution of surplus funds from an earlier foreclosure sale. Rather, section 2924j requires a recorded interest in the property before the foreclosure sale, while section 2924k allows distribution to satisfy "secured obligations." (*Cal-Western Reconveyance Corp. v. Reed* (2007) 152 Cal.App.4th 1308, 1317 (*Cal-Western*).)

In reviewing the distribution of surplus funds in a section 2924j proceeding following a May 2004 foreclosure sale, the court in *Cal-Western* considered three types of claims: (1) an abstract of a child support judgment recorded in 1998 by Los Angeles County Department of Child Support Services; (2) an unrecorded 1996 judgment of dissolution providing for equalization payments and attorney fees to the debtor's former wife; and (3) a lien filed by the debtor's former attorney in the pending section 2924j case. (*Cal-Western*, *supra*, 152 Cal.App.4th at pp. 1312–1313.) The court concluded that the county's abstract of judgment was "effective as a lien for the collection of child support and spousal support arrearages," and the county was entitled to distribution from the surplus proceeds. (*Id*. at p. 1316.) The former wife's "right to her equalization payment and attorney fees," although reduced to judgment, was not "secured by any other lien or

encumbrance that would justify distributing surplus proceeds to her." (*Id*. at p. 1317.) While the attorney had "a lien on [the debtor's] recovery of surplus proceeds, . . . the trial court did not have jurisdiction to hear [the attorney's] lien claims" as those claims "must be enforced in a separate action." (*Id*. at p. 1321.)

Levi's attempt to distinguish *Cal-Western* on the ground that it precluded only attorney claims and claims under the Family Code is unavailing. The court in *Cal-Western* rejected the former wife's claims for equalization payments and attorney fees based on a pre-existing judgment because that judgment had not been recorded as a lien against the real property before the foreclosure sale. (*Cal-Western*, *supra*, 152 Cal.App.4th at p. 1318, citing Code Civ. Proc., §§ 697.320 [filing abstracts of support judgments] & 674 [filing abstracts of money judgments].) The court also rejected the attorney's claim that since the section 2924j proceeding was an action in interpleader, his claim to the surplus funds could be resolved within it. The court reasoned: "This was not an interpleader action, but was filed in accordance with procedures established in Civil Code section 2924j. [The attorney] was not and could not have been a claimant in [the trustee's] action, as he was not among those persons 'with recorded interests in the real property as of the date immediately prior to the trustee's sale. . . .' (See Civ. Code, § 2924j, subd. (a).) Indeed, his claim had not yet arisen when [the trustee] filed its petition." (*Cal-Western*, at pp. 1322–1323.)

Levi's reliance on the general jurisdiction of the court in civil actions is misguided since section 2924j authorizes a special proceeding. The superior court's jurisdiction over such a proceeding "is limited by the terms and conditions of the statute under which it was authorized . . . ." (*Kwok v. Bergren*, *supra*,

130 Cal.App.3d at p. 599.) California courts generally have interpreted the comprehensive procedures of section 2924j as offering a narrow and speedy remedy, unlike the more costly and time consuming action in interpleader. (See *Banc of America*, *supra*, 180 Cal.App.4th at p. 1095.) Federal courts have deemed a section 2924j proceeding to be "functionally equivalent to an action in interpleader," but they, too, recognize that "'priority of claims to the res in an interpleader action must normally be determined at the time the action is initiated, and cannot be altered by events after the interpleader fund becomes viable.' [Citation.]" (*Quality Loan Service Corp. v. 24702 Pallas Way* (9th Cir. 2011) 635 F.3d 1128, 1134.)

Levi had no recorded interest in the real property before the trustee's sale. His 2003 claim to the surplus funds was based on his status as a purchaser at the foreclosure sale and on the continued existence of a senior lien on the property. Neither circumstance entitled him to the surplus proceeds under sections 2924j and 2924k, and Levi no longer relied on them when he reapplied for the proceeds in 2014. The latter claim was based on the 2008 judgment against appellants, but since that judgment did not exist at the time of the foreclosure sale, it did not entitle him to the surplus proceeds under sections 2924j and 2924k either.[6]

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[6] To the extent Levi may have rights to the funds under the Enforcement of Judgments Law (Code Civ. Proc., § 680.010 et seq.), the record before us does not show he has pursued any of the available avenues for enforcing a money judgment. (See generally 8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment, § 53 et seq.) It is therefore beyond the scope of this appeal to address appellants' additional arguments that funds deposited with the court cannot be attached, or that a homestead

Since Levi is not entitled to the surplus funds in the section 2924j proceeding, distribution to him was unauthorized. The April 29, 2014 and September 2, 2015 distribution orders must, therefore, be reversed.

Reversing the orders necessarily raises the question what to do with the surplus proceeds already distributed to Levi. Appellants ask that we direct the superior court to order a payout to Polpantu, or in the alternative, that Levi be ordered to return the funds to the court for further proceedings. Considering the case's procedural posture, we decline to direct an outright payout to Polpantu. Although appellants submitted competing claims to the trustee, for 11 years Levi was the only claimant in the court proceeding. Appellants' declarations that they had meritorious claims were filed only in relation to their ex-parte application to vacate the April 29, 2014 order, which no longer is pending in the superior court. At the time, only Polpantu declared she was the record owner at the time of foreclosure. Appellants' position on appeal is consistent with Polpantu's declaration, but inconsistent with the claim Williams submitted to the trustee. Deciding whether the surplus funds should be paid to Polpantu would require that we conclude in the first instance that she is entitled to the funds as a matter of both fact and law. But section 2924j, subdivision (d) requires that claims to the surplus proceeds be filed with the superior court, which must decide how to distribute the funds in the first instance.

We remand the case for an order directing Levi to return the surplus proceeds to the court. What further action the parties or the court may choose to take with regards to the funds

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exemption precludes enforcement of a money judgment against surplus proceeds.

in this or other proceedings is not a matter properly before us, and we express no view on it.

DISPOSITION

The April 29, 2014 and September 2, 2015 orders are reversed. The matter is remanded to the superior court with directions to order that the surplus proceeds distributed to Levi be returned to the court.

The parties shall bear their own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.