Filed 10/16/17 Pico/Flower, LLC v. City of Los Angeles CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PICO/FLOWER, LLC, Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Respondent.	B267635 (Los Angeles County Super. Ct. No. BS150604)

APPEAL from an order of the Superior Court of Los Angeles County, Robert O'Brien, Judge. Dismissed.

Law Offices of Thomas A. Nitti and Thomas A. Nitti for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Wendy Shapero, Deputy City Attorney, for Defendant and Respondent.

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This appeal from an order denying a petition for writ of mandate must be dismissed because no final judgment was entered. The denial of a petition for writ of mandate may not be challenged on appeal when, as here, other causes of action remain pending between the parties. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697 (*Griset*).) In the words of our Supreme Court: "A trial court's order is appealable when it is made so by statute. [Citations.] There is no statute that makes an order denying a writ of administrative mandate petition separately appealable when, as here, the petition has been joined with other causes of action that remain unresolved." (*Id.* at pp. 696-697.) "In addition, allowing an appeal in that situation would be contrary to the 'one final judgment' rule, a fundamental principle of appellate practice that prohibits review of intermediate rulings by appeal until final resolution of the case." (*Id.* at p. 697.)

Appellant Pico/Flower, LLC (Pico), correctly points out that an exception to the foregoing general rule may exist if one cause of action "effectively disposes of the entire case." (*Canandaigua Wine Co., Inc. v. County of Madera* (2009) 177 Cal.App.4th 298, 303; see *Griset, supra*, 25 Cal.4th at p. 700.) That exception does not apply to this case because the denial of the writ of mandate did not dispose of the entire case. We dismiss the appeal from a nonappealable order.

BACKGROUND

Pico owns rental property (referred to as the Property) in Los Angeles (referred to as the City). In May 2013, an investigator for the City issued an order citing violations and requiring Pico make repairs to the Property. In August 2013, the investigator determined that the violations remained unresolved.

In April 2014, the City placed the Property into its "Rent Escrow Account Program." (L.A. Mun. Code, § 162.00 et seq.; also referred to as REAP.) The REAP's purpose is to "encourage compliance by property owners/landlords with respect to the maintenance and repair of residential buildings, structures, premises and portions of those buildings, structures and premises." (L.A. Mun. Code, § 162.01A.)

In its pleading, Pico alleged that it did not receive notice of a general manager's hearing that the Property was placed in REAP until a few days prior to a hearing. The notice is dated April 17, 2014. The notice provided that "landlord is further advised that if a REAP Appeal Hearing is scheduled and it is determined that the landlord was in compliance with the Order before the rent reduction effective date, the General Manager or an authorized representative will reverse the decision of the Department regarding REAP and the Rent Reduction Determination." At that hearing, it was determined that Pico had fixed all violations. The decision from the general manager dated June 16, 2014, indicated that the general manager's decision may be appealed and explained the appellate process. Pico claimed that the City improperly failed to immediately remove the Property from REAP and that as a result Pico suffered damages.

In August 2014, the City issued a "closure request," providing as follows: "All violations have been corrected. Unapproved roof drains have been removed and the roof has been repaired. Case is closed." In August 2014, the City adopted a resolution terminating Pico's rent escrow account.

On September 12, 2014, after the Property had been removed from REAP, Pico filed a petition alleging four causes of

action: (1) a writ of mandate "to compel the Los Angeles City Council to hear Petitioner's case at the next Council meeting"; (2) inverse condemnation; (3) violation of title 42 United States Code section 1983; and (4) declaratory relief. The City demurrered to the petition.

In a July 2015 hearing, the trial court indicated that the petition for writ of mandate would be severed from the other causes of action. At the hearing counsel for Pico acknowledged that he understood "the causes of action that are inverse condemnation, 42 USC 1983, and the declaratory relief are not part of these proceedings." Pico's counsel further acknowledged that Pico had "been out of REAP for sometime." The court stated that Pico could prove any claimed damages by litigating the remaining causes of action even if the petition for writ of mandate were denied.

With respect to the petition for writ of mandate—the only cause of action the trial court considered—the court sustained the demurrer with leave to amend. The court found that Pico failed to exhaust its administrative remedies and the petition was moot. Pico did not amend its petition, and the court dismissed Pico's petition for writ of mandate.

DISCUSSION

On appeal, the threshold issue is whether the dismissal of the writ of mandate is appealable when other causes of action remain pending between the parties. Pico argues that the denial of the petition for writ of mandate is reviewable because it resolved an issue essential to all of the causes of action and effectively disposed of the entire case. Pico does not identify the purported issue essential to all causes of action. Nor does Pico explain how the denial of the writ disposed of the entire case,

especially given that its counsel acknowledged the other causes of action would proceed.

At the hearing on the City's demurrer, Pico's counsel acknowledged that the "inverse condemnation, 42 USC 1983, and the declaratory relief are not part of these proceedings." Counsel further acknowledged that Pico was no longer in REAP and that basically Pico was seeking damages for "money lost" while placed in REAP. The court indicated that a "declaratory judgment that putting [Pico in] REAP was improper" was part of the remaining causes of action, not part of the writ of mandate and Pico's counsel was unable to identify an order that could be subject to a writ of mandate.

There is no support (and no citation to the record) for Pico's assertion that "when the trial court sustained the City's demurrer to the writ of mandate, it effectively ruled there was no inverse condemnation, no violation of equal protection, and no controversy for a judicial declaration regarding REAP." On appeal, Pico also states without citation to the record, argument, or support that "[a]ll other causes of action were only viable if relief were granted on the writ cause of action."

The record directly contradicts Pico's argument. The order requested in Pico's petition for writ of mandate—for the Los Angeles City Council to consider its continued placement in REAP—was not central to any other cause of action and Pico's counsel was unable to frame any other relief that could be requested through the mandate petition. In contrast to the petition for writ of mandate, Pico's other causes of action require proving the elements of claims unrelated to the conduct of the Los Angeles City Council or its resolution removing the Property from REAP. Thus, Pico fails to show that the denial of its

petition for writ of mandate effectively disposed of the entire case. In short, the order challenged on appeal was not appealable, and the purported appeal therefore must be dismissed.[1] (*Canandaigua Wine Co., Inc. v. County of Madera, supra*, 177 Cal.App.4th at p. 302 ["The existence of an appealable order or judgment is a jurisdictional prerequisite to an appeal."].)

DISPOSITION

The appeal is dismissed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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[1] The trial court referred to the denial of Pico's petition for writ of mandate as both an order and a judgment but the label is not dispositive. To be a judgment it must satisfy the criteria for a judgment. (*Baker v. Castaldi* (2015) 235 Cal.App.4th 218, 224.) Pico wisely does not argue otherwise.