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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

TED TRIANTOS, Plaintiff and Appellant, v. FILIPPO MARCHINO et al., Defendants and Appellants; STOLL, NUSSBAUM & POLAKOV, APC et al., Defendants and Respondents.	B271777 (Los Angeles County Super. Ct. No. BC530272)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marc Marmaro, Judge. Dismissed.

Baker, Keener & Nahra, Robert C. Baker, Phillip A. Baker; Esner, Chang & Boyer, Stuart B. Esner; Horvitz & Levy, David S.

Ettinger and Steven S. Fleischman, for Defendants and Appellants.

The Ehrlich Law Firm, Jeffrey I. Ehrlich; Keathley & Keathley, H. James Keathley and Katherine D. Keathley, for Defendants and Respondents.

Filippo Marchino, the Law Offices of Filippo Marchino, The X-Law Group (collectively, Marchino), and Eagan Avenatti, Avenatti & Associates, and Michael J. Avenatti (collectively, Avenatti) appeal from an amended judgment entered on their Code of Civil Procedure section 664.6 motion to enforce a settlement agreement.[1]

Stoll, Nussbaum & Polakov (the Stoll firm) and Robert J. Stoll, Jr. (collectively, Stoll) moved to dismiss the appeal, contending neither Marchino nor Avenatti has appellate standing. Arguing the appeal was filed solely to delay trial in another action, Stoll also requested sanctions against Marchino and Avenatti. Because Marchino and Avenatti lack standing to appeal the amended judgment, we dismiss the appeal. Stoll's application for leave to file the motion for sanctions is granted, but the motion for sanctions is denied.

BACKGROUND

A. Factual Background

On December 29, 2009, Stoll filed suit for Ted Triantos against Aaron Brown for injuries sustained in an October 26, 2009 incident (San Bernardino Super. Ct. No. CIVRS914112). The case settled for $100,000 in February 2013. Marchino filed a notice of lien against the settlement proceeds, claiming he was

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[1] All statutory references are to the Code of Civil Procedure unless otherwise noted.

entitled to 40 percent of the recovery. Marchino demanded that his name be on the settlement check, but then refused to endorse the check. On December 12, 2013, Triantos filed an interpleader complaint against Stoll and Marchino—the suit from which this appeal arises—to resolve the fee dispute. With other lawyers, Michael Avenatti represented Marchino in the fee dispute.

Marchino and Stoll settled the fee sharing dispute in February 2016. The agreement settling the fee dispute contained the following language: "**General Release.** The Parties, and each of them, on behalf of themselves and on behalf of their agents, firms, attorneys, partners, employees, representatives, successors and assigns, hereby forever release and discharge each of the other Parties to this Agreement, and each of those Party's current and former agents, partners, employees, representatives, counsel, law firms, joint venturers, officers, directors, insurers, attorneys, and parent, subsidiary and affiliated companies and entities, from any and all present, future, liquidated, unliquidated, matured, un-matured, related, un-related, filed, unfiled, known, unknown, contingent and non-contingent claims, lawsuits, demands, debts, liabilities, accounts, obligations, contracts, costs, expenses, liens, actions, causes of action (at law, in equity, or otherwise), rights, rights of action, rights of indemnity (legal or equitable), rights to subrogation, rights to contribution and remedies of any nature whatsoever (except for those arising as a result of the duties imposed by this Agreement and/or a breach of any provision of this Agreement). For the avoidance of all doubt, it is the express intention of the Parties that this release and discharge be given the absolute broadest scope, construction, interpretation, and application, and that any and all disputes relating to the scope of this release and

discharge be decided in favor of inclusion. It specifically includes, but is not limited to, a full release of all parties, including their employees and attorneys, of any and all claims for malicious prosecution, abuse of process and any and all causes of action."

On February 3, 2016, the trial court entered an order approving the parties' stipulated dismissal that included a retention of jurisdiction under section 664.6.

B. Procedural Background

Marchino and Avenatti filed a motion under section 664.6 to enforce the *Triantos* fee dispute settlement agreement on February 23, 2016. The motion alleged Stoll had released Marchino and Avenatti in unrelated litigation. The motion requested the trial court to enter an order (1) requiring the Stoll firm to "dismiss all claims and lawsuits against the Marchino Defendants" in *Jacobs & Jacobs, LLP v. Stoll* (L.A. Super. Ct. No. BC513442) (*Jacobs*), (2) requiring the Stoll firm to "dismiss all claims and lawsuits against" Avenatti in *Eagan Avenatti v. Stoll* (Orange County Super. Ct. No. 30-2011-00483570) (*Avenatti v. Stoll*), and (3) enjoining the Stoll firm from "continuing to file, pursue and/or maintain released claims and lawsuits" against Marchino or Avenatti.

At a hearing on April 15, 2016, the trial court granted the motion as to Marchino and denied it as to Avenatti. The trial court entered judgment on April 21, 2016 and entered an amended judgment on April 22.

Marchino and Avenatti filed a notice of appeal on April 25, 2016. Stoll moved to dismiss the appeal, and on July 18, 2016, we dismissed the appeal as to Avenatti and deferred the motion as to Marchino. We vacated that order on August 12, 2016, and deferred the ruling on the motion to dismiss. On September 11,

2017, Stoll filed an application for leave to file a motion for sanctions against Marchino and Avenatti.

DISCUSSION

Motion to Dismiss

Stoll contends the appeal must be dismissed because neither Avenatti nor Marchino is a "party aggrieved" under section 902, and therefore each lacks appellate standing. "[O]nly parties of record may appeal," Stoll argues, quoting *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736 (*Carleson*), and Avenatti was a party neither in the *Triantos* lawsuit nor to the settlement agreement he sought to enforce. Stoll also contends that orders denying motions to enforce judgments under section 664.6 are not appealable. Further, Stoll contends, Marchino is not "aggrieved," because the trial court entered judgment in Marchino's favor.

Avenatti and Marchino counter that the amended judgment is appealable as a final judgment under section 904.1, subdivision (a)(1). They further argue that *In re The Clergy Cases I* (2010) 188 Cal.App.4th 1224 (*Clergy Cases*) confers standing on Avenatti as a nonparty "that has an interest in the subject matter of the judgment and whose interest is adversely affected by the judgment . . . ." (*Id.* at p. 1233.) Citing *In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 13, they also contend that Avenatti took "appropriate steps to become a party of record in the proceedings," and was, therefore, a party to the *Triantos* litigation. Finally, Avenatti and Marchino contend Marchino has standing to appeal because the trial court did not grant all of the relief Marchino requested.

Because neither Avenatti nor Marchino has appellate standing, we will dismiss the appeal. "Any party aggrieved may

appeal . . . ." (§ 902.) But "only parties of record may appeal." (*Carleson*, *supra*, 5 Cal.3d at p. 736.) A nonparty "who is legally 'aggrieved' by a judgment may become a party of record and obtain a right to appeal" by various means the courts have identified. (*Ibid.*; *Braun v. Brown* (1939) 13 Cal.2d 130, 133; *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715.) A nonparty may move to intervene in the trial court, for example, under section 387. An "order denying intervention is appealable because 'it operates as a final determination against the intervenor and is appealable as a *final judgment* against him.' " (*Royal Indem. Co. v. United Enterprises, Inc.* (2008) 162 Cal.App.4th 194, 202 [emphasis in original].) Or a nonparty "may become a party of record and obtain a right to appeal by moving to vacate the judgment pursuant to Code of Civil Procedure section 663." (*Carleson*, *supra*, 5 Cal.3d at p. 736.) The Court of Appeal has extended *Carleson* to apply to parties who move for judgment notwithstanding the verdict under section 629 and for new trial under section 657. (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1342-1343.)

Avenatti was not a party of record in the action below and took no steps to become a party of record. Filing a motion to enforce a settlement agreement to which Avenatti was not a party did not make Avenatti a party of record in the trial court. Avenatti, therefore, has no standing to appeal the trial court's amended judgment.

Neither is Marchino a "party aggrieved" by the amended judgment. "A party is aggrieved only if its 'rights or interests are injuriously affected by the judgment.' " (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.)

Marchino and Avenatti point out that the motion to enforce the settlement agreement requested three different types of relief. They claim, however, the trial court granted only one. Therefore, appellants argue, Marchino did not receive all the requested relief and is, therefore, "aggrieved." (See *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1472.) We disagree.

Marchino effectively *did* receive all the relief requested *for Marchino*. The section 664.6 motion requested an order (1) requiring Stoll to release and dismiss claims against Marchino in the *Jacobs* matter, (2) requiring Stoll to dismiss all claims against Avenatti in the *Avenatti v. Stoll* matter, and (3) enjoining Stoll from ever again pursuing or maintaining any released claim or lawsuit against Marchino or Avenatti.

The amended judgment notes that it is based on the trial court's April 15, 2016 tentative ruling, "as amended by the [April 15] minute order." On its face, the judgment grants Marchino the relief requested in the *Jacobs* action (the first of the three requests for relief).[2] And the referenced minute order further specifies that as "to Stoll . . . on the one hand and [Marchino], each have released each other from *all claims, etc. as set forth in Paragraph 4.11* of the general release, *including* with respect to the *Jacobs* action." While the trial court did not style its finding as an injunction, we discern no functional difference between the relief requested and the relief granted. The nominal distinction between the relief sought and granted is neither immediate, pecuniary, nor substantial, but rather is a "remote consequence of

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[2] The trial court entered judgment in *Jacobs* on March 10, 2017 based on the amended judgment from which Marchino and Avenatti appealed here.

the judgment." (*Hensley v. Hensley* (1987) 190 Cal.App.3d 895, 899.)

Marchino was not injured by the trial court's refusal to grant relief to *Avenatti*. "[A] would-be appellant 'lacks standing to raise issues affecting another person's interests.' " (*In re D.S.* (2007) 156 Cal.App.4th 671, 674.) That *Marchino* was not granted relief for *Avenatti*, then, creates no standing.

Because neither Marchino nor Avenatti has appellate standing, we dismiss the appeal. And because the outcome of the case turns on this jurisdictional question, we do not reach the merits of the appeal.

Motion for Sanctions

Stoll requests sanctions against Marchino and Avenatti under section 907 and California Rules of Court, rule 8.276(a)(1), alleging Marchino and Avenatti appealed the amended judgment solely to delay trial in the *Avenatti v. Stoll* action pending in Orange County. We grant Stoll's application for leave to file the motion for sanctions, but deny the motion for sanctions.

"[S]anctions should be used sparingly to deter only the most egregious conduct . . . ." (*Kleveland v. Siegel & Wolensky, LLP* (2013) 215 Cal.App.4th 534, 557.) While the record here suggests delay was at least a substantial motivating purpose of this appeal, we cannot find it was the *sole* purpose.

DISPOSITION

The appeal is dismissed. Respondents' motion for sanctions is denied. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.