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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

NEW LIFE OASIS CHURCH,

Plaintiff and Respondent,

v.

CENTRAL KOREAN
EVANGELICAL CHURCH et al.,

Defendants and Appellants.

B286061

(Los Angeles County
Super. Ct. No. BC576279)

APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Dismissed.

Law Offices of Steven C. Kim & Associates, Steven C. Kim and Gabriel Colorado, for Defendants and Appellants.

Law Offices of Timothy V. Milner, Timothy V. Milner, for Plaintiff and Respondent.

Defendants Central Korean Evangelical Church and Jang Kyun Park executed a deed of trust on real property that is the subject of litigation in order to secure the payment of unpaid attorney fees owed to their lawyer, Steven C. Kim. The trial court granted plaintiff New Life Oasis Church's ex parte application to expunge the deed of trust. Defendants appeal from that post-judgment order. We dismiss the appeal because defendants are not aggrieved by the subject order, and therefore lack standing.

FACTUAL AND PROCEDURAL SUMMARY

This is the fifth appellate decision arising from disputes over the ownership of a Koreatown church property. Pertinent to this appeal, New Life Oasis Church (New Life) leased the church property from Central Korean Evangelical Church (Central Korean) in October 2011.¹ The lease agreement contained an option to purchase the entire property, including an adjacent parking lot, for \$2.55 million. New Life put down \$400,000 as a security deposit, which would be credited toward the purchase price if New Life bought the property. This court later determined that Central Korean had no ownership interest in the parking lot. (*Central Korean Evangelical Church v. Superior Court* (July 15, 2015, B260831) [nonpub. opn.])

In 2013, during litigation regarding ownership of the subject property, Central Korean executed a deed of trust to

¹ A more detailed statement of facts underlying this case can be found in our recent decision concerning these disputes in *New Life Oasis Church v. Central Korean Evangelical Church* (July 16, 2018, B281703) [nonpub. opn.] .

secure the payment of outstanding attorney fees owed to Kim. Kim was named as the beneficiary.

New Life later sued Central Korean and its pastor, Jang Kyun Park (Park),² for breach of contract, fraud and fraudulent inducement, alleging they refused to honor New Life's exercise of the purchase option. Following a bench trial, the trial court found in favor of New Life on its breach of contract claim, ordering the specific performance of the purchase option. The court determined that the church property was to be sold for \$1.22 million. After deducting the value of the parking lot (\$1.33 million) from the original purchase price, along with the \$400,000 down payment, the remaining sum to be paid by New Life was \$820,000. Appellants appealed the judgment, which we recently affirmed in *New Life Oasis Church v. Central Korean Evangelical Church*, *supra*, B281703.³

After the entry of judgment, New Life filed an ex parte application for an order expunging Kim's deed of trust against the property. New Life alleged that, on the day scheduled for closing, Kim entered an escrow demand in the amount of \$826,051.06 based on the deed of trust.⁴ According to New Life,

² We refer to Central Korean and Park collectively as appellants.

³ During the pendency of the appeal, appellants filed a petition for writ of supersedeas seeking a stay of the enforcement of the judgment. (Case No. B281703.) We issued a temporary stay, but ultimately denied the petition.

⁴ The attorney fees claimed by Kim narrowly exceed the \$820,000 amount New Life was ordered to pay for the property.

Kim’s lien clouded title to the property, thus preventing the parties from closing escrow.

Appellants opposed, contending the court lacked jurisdiction to order the termination of the deed of trust because Kim was not a party to the action, and a deed of trust cannot be extinguished in the underlying action. The trial court granted the application. The court ordered that the deed of trust be “extinguished,” and that Kim withdraw his escrow demand. According to New Life, Central Korean sold the property to New Life on October 30, 2017, pursuant to the trial court judgment.⁵

DISCUSSION

Appellants challenge the validity of the order extinguishing the deed of trust on the same grounds advanced below. We requested supplemental briefing to address three issues, including whether appellants have standing to appeal the subject order, or whether Kim is purporting to challenge an order affecting his own interests through his clients. We conclude appellants lack standing to appeal.

“An appeal may be taken only by a party who has standing to appeal. [Citation.]” (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) Standing to appeal is jurisdictional; thus, it cannot be waived. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.)

Code of Civil Procedure section 902 provides the statutory basis for standing to appeal. It requires the appellant to be “[a]ny party aggrieved” by the judgment or order. (Code Civ.

⁵ The parties do not address whether the sale moots appellants’ claims.

Proc., § 902.) “To be sufficiently ‘aggrieved’ to qualify for appeal standing, a person’s rights or interests must be injuriously affected by the judgment or order, and those rights or interests ““must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment . . .” . . .’ or order. [Citation.]” (*Marsh v. Mountain Zephyr, Inc.*, *supra*, 43 Cal.App.4th at p. 295, quoting *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) We liberally construe standing and resolve all doubts about it in favor of the right to appeal. (*Vitatech International, Inc. v. Sporn* (2017) 16 Cal.App.5th 796, 804.)

To determine who is the aggrieved party, the test has been described as follows: “Would the party have had the thing, if the erroneous judgment had not been given? If the answer be yea, then the person is the “party aggrieved.” But his right to the thing must be the immediate, and not the remote consequence of the judgment, had it been differently given.’ [Citation.]” (*Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1201, italics omitted.)

Appellants are obviously parties of record insofar as they are the named defendants in the complaint, the judgment, and the order extinguishing Kim’s deed of trust. It is less clear whether appellants were sufficiently aggrieved by the subject order. In fact, appellants concede in their reply brief that “[t]his appeal deals with attorney *Kim’s own* substantive and independent property rights arising out of the deed of trust.” (Capitalization omitted, emphasis added.)

Appellants contend they were aggrieved by the subject order because it deprived them of the only means they had to pay for the legal services provided by Kim. Not so. The deed of trust simply secured Kim’s interest in his unpaid attorney fees. The

termination of the deed of trust did not prevent appellants from using the proceeds from the property sale to pay for the fees owed to Kim. In fact, appellants presumably had the funds to satisfy the attorney fees obligation after the property was sold to New Life last year. Had the deed of trust remained in effect, appellants would not have “had the thing” they sought in the underlying litigation—prevailing against New Life’s breach of contract cause of action. (See *Crook v. Contreras*, *supra*, 95 Cal.App.4th at p. 1201.)

Kim, as the beneficiary, was the only person who was aggrieved by the order extinguishing his deed of trust. “By definition, a deed of trust is a contractual power to sell the property of the trustor held by a trustee for the *benefit of the beneficiary*.” (5 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 13:1, emphasis added.) Any harm to appellants was nominal at best, as they do not articulate any immediate, pecuniary and substantial injury stemming from the subject order. (See *County of Alameda v. Carleson*, *supra*, 5 Cal.3d at p. 737.)

Appellants’ reliance on *20th Century Insurance Co. v. Choong* (2000) 79 Cal.App.4th 1274 (*20th Century*) is unavailing. In *20th Century*, the trial court imposed a monetary sanction on plaintiff’s counsel. (*20th Century*, at p. 1276.) After the trial court dismissed the case, both plaintiff and counsel’s employer filed a notice of appeal. (*Ibid.*) The Court of Appeal held that counsel’s employer was aggrieved by the sanction order, and thus had standing to appeal, because he and his firm were required by law to reimburse counsel for the sanction. (*Id.* at pp. 1276–1277.) The court concluded that denying standing to appeal “would be fundamentally unfair because if the employee fails to appeal, and under Labor Code section 2802 he has no incentive to do so, the

employer would be bound to pay the sanction without any opportunity to contest its legality.” (*Id.* at p. 1277.)

20th Century is inapposite because appellants were not injuriously affected by the subject order. The fundamental unfairness noted in *20th Century* is also inapplicable because Kim had a remedy to challenge the order. A nonparty who is aggrieved by a judgment or order may become a party of record and obtain a right to appeal by filing a motion to vacate pursuant to Code of Civil Procedure section 663.⁶ (*Marsh v. Mountain Zephyr, Inc.*, *supra*, 43 Cal.App.4th at p. 295; *County of Alameda v. Carleson*, *supra*, 5 Cal.3d at pp. 736–737.) The filing of a motion to vacate provides a means by which a nonparty may become a party with a right of appeal without the need to formally intervene in the action. (*Henry M. Lee Law Corp. v. Superior Court* (2012) 204 Cal.App.4th 1375, 1382.) The record does not reflect the filing of any such motion in this case.

We conclude appellants were not directly aggrieved by the order extinguishing the deed of trust, and Kim failed to secure the right to appeal by pursuing a motion to vacate. Accordingly, the appeal must be dismissed. (*Crook v. Contreras*, *supra*, 95 Cal.App.4th at p. 1201.)

⁶ That section provides, in part, that a judgment or decree may be vacated based on an “[i]ncorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts. . . .” (Code Civ. Proc., § 663, subd. 1.)

DISPOSITION

The appeal is dismissed. Respondent shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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MICON, J.*

We concur:

MANELLA, P. J.

WILLHITE, J.

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.