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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARIA MORALES,

Plaintiff and Appellant,

v.

RESIDENTIAL CREDIT SOLUTIONS,
INC.,

Defendant and Respondent.

B255813

(Los Angeles County
Super. Ct. No. TC026548)

APPEAL from a judgment of the Superior Court of Los Angeles County. William Barry, Judge. Dismissed.

Law Offices of Ernesto F. Aldover and Ernesto F. Aldover; Robert E. Stenson for Plaintiff and Appellant.

First American Law Group and Patrick Reider for Defendant and Respondent.

Plaintiff and appellant Maria Morales also known as Maria Vasquez brought an action against defendant and respondent Residential Credit Solutions, Inc. Respondent moved for summary judgment. The trial court granted the motion, and on October 28, 2013, judgment was entered in respondent's favor. Respondent served notice of entry of judgment on February 6, 2014. Sixty-two days later, on April 9, 2014, appellant filed her notice of appeal.

According to California Rules of Court, rule 8.104, a party has 180 days after a judgment is entered to file a notice of appeal (Cal. Rules of Court, rule 8.104(a)(1)(C)), unless the time is shortened to 60 days in one of several ways. The time may be shortened if "the party . . . serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment." (Cal. Rules of Court, rule 8.104(a)(1)(B).) Service by mail of a triggering document (a document that can trigger the time to file a notice of appeal) does not extend the time to file a notice of appeal. (Cal. Code Civ. Proc., § 1013, subd. (a).) The 60-day period begins on the date of mailing and does not depend upon the party's actual receipt of the document. It is the initial mailing or service of the triggering document that commences the running of the time to appeal. (See *InSyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, 1134–1135.)

The timely filing of a notice of appeal is jurisdictional. (*Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 83.) This court may not consider an appeal that has been untimely filed. (Cal. Rules of Court, rule 8.104(b).) In fact, "[t]he failure to file a notice of appeal within the statutory time period mandates dismissal of the appeal." (*Adaimy v. Ruhl* (2008) 160 Cal.App.4th 583, 588.)

Here, respondent served appellant with a notice of entry of judgment on February 6, 2014. But, her notice of appeal was not filed until April 9, 2014, 62 days later. Accordingly, this court is without jurisdiction to consider this appeal and we must dismiss it.

In reaching this conclusion, we note that there apparently were two notices of entry of judgment served on appellant—one on February 6, 2014, and one on February 10, 2014. The February 6, 2014, notice is part of the appellant’s appendix; the February 10, 2014, notice is not, but was brought to our attention in appellant’s belatedly filed reply brief. We asked the parties to submit letter briefs discussing this discrepancy and we reject the arguments raised by appellant in her belatedly filed letter brief.

First, appellant asserts that we cannot consider the February 6, 2014, notice of entry of judgment because it was not filed in the superior court.¹ She cannot complain about the notice of entry of judgment that is part of the appendix that she prepared and submitted.

Second, there is no evidence or legal authority to support her unfounded presumption that the “clear implication” of the fact that two notices of entry of judgment were served is that there was “something wrong” with the initial document. While she points to the fact that the February 6, 2014, document was not filed with the superior court, but the February 10, 2014, document was, California Rules of Court, rule 8.104(a)(1)(C) does not require that a file-stamped copy of the notice of entry of judgment be served.

Third, appellant’s speculation as to why respondent served two notices of entry of judgment does not support her contention that the later document must be “treated as the operative pleading.”

¹ There appears to be no reason why this earlier notice of entry of judgment could have not been filed at any time, even after it was served and triggered the 60-day clock.

DISPOSITION

The appeal is dismissed. Respondent is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ