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

MILAGROS T. MANAPAT et al.,

Plaintiffs and Appellants,

v.

MELVIN M. HOFFMAN et al.,

Defendants and
Respondents.

B268328

Los Angeles County
Super. Ct. No. LC101642

APPEAL from a judgment of the Superior Court of
Los Angeles County, Huey P. Cotton, Jr., Judge. Dismissed in
part; affirmed in part.

Michael V. Hesse for Plaintiffs and Appellants.

Early Sullivan Wright Gizer & McRae, Eric P. Early and
Peter D. Scott for Defendants and Respondents Paul E.
Pepperman, Jacalyn A. Pepperman, and Mickely M. Welan.

Fidelity National Law Group and J. Walter Gussner for
Defendants and Respondents Fidelity National Title Company
and Bank of America, N.A.

Law Office of Harris L. Cohen and Harris L. Cohen; Law
Offices of Elkanah J. Burns and Elkanah J. Burns for Defendants
and Respondents Strategic Acquisitions, Inc., Peter Baer, and
Long Point Properties, LLC.

Wolfe & Wyman, Kelly Andrew Beall and
Carrie A. Stringham for Defendant and Respondent Genesis
Capital Mortgage Fund, LLC.

INTRODUCTION

Plaintiffs Milagros T. Manapat, Theodore Martin T. Manapat, Maria Teresa Esperanza M. Francq, and Catherine Beatriz M. DeLa Calzada (collectively plaintiffs) sued fourteen defendants¹ over title to real property after the death of former record title holder Luis O. Manapat. Following a ruling sustaining demurrers to plaintiffs' first amended complaint without leave to amend, the trial court entered a judgment of dismissal in favor of the demurring defendants on April 22, 2015. A notice of entry of judgment was served on plaintiffs on May 8, 2015. Although they were included in the original judgment entered in April 2015, a second judgment of dismissal was entered in favor of defendants Hoffman, All Counties, and Creative Investment on June 16, 2015. A third judgment of dismissal was entered on August 25, 2015; it was identical to the original judgment entered in April 2015 except that it added two new but nominal defendants, Fidelity and First American. On October 19, 2015, plaintiffs filed their notice of appeal from an unspecified judgment of dismissal.

¹ The fourteen defendants are as follows: Melvin M. Hoffman (Hoffman); David J. Haser (Haser); All Counties Trustee Service Company (All Counties); Creative Investment Group, Inc. (Creative Investment); Strategic Acquisitions, Inc.; Long Point Properties, LLC; Peter Baer; Genesis Capital Mortgage Fund, LLC (Genesis); Paul E. Pepperman; Jacalyn A. Pepperman; Mickely M. Welan; Bank of America, N.A.; Fidelity National Title Company (Fidelity); and First American Title Company (First American). We will refer to all of the defendants, excluding Fidelity and First American, collectively as the "demurring defendants."

Because plaintiffs' notice of appeal was untimely as to the demurring defendants, we dismiss the appeal as to them. As for the August 2015 judgment entered in favor of Fidelity and First American, we affirm because plaintiffs failed to present any legal argument or authority in support of their appeal as to those parties.

PROCEDURAL BACKGROUND

On May 9, 2014, plaintiffs filed a complaint contending that they are the successors in interest of a deceased former record title holder of real property located in Los Angeles County. In their complaint, plaintiffs allege, among other things, causes of action for fraud, quiet title, and slander of title against fourteen defendants. Two of the defendants, Fidelity and First American, were sued in their capacity as trustees under one of the deeds of trust; they filed, respectively, a declaration of non-monetary status and a disclaimer of interest.

On October 24, 2014, plaintiffs filed their operative first amended complaint. After a hearing on April 3, 2015, the trial court entered an unsigned order sustaining the demurring defendants' demurrers to plaintiffs' first amended complaint without leave to amend. Since Fidelity and First American did not file demurrers, they were not included in the court's order.

The court entered a judgment of dismissal in favor of the demurring defendants on April 22, 2015. Fidelity and First American were not named as parties in this judgment. A notice of entry of judgment was served on plaintiffs on May 8, 2015 by one of the parties. On April 30, 2015, however, the court, on its own motion, entered an unsigned minute order stating that the judgment of dismissal should be "set aside," and that the judgment "shall be resubmitted [as] a single document." There is

no indication in the record that the clerk or any party provided notice of the court's April 30, 2015 minute order.

On June 16, 2015, the court signed a second judgment of dismissal in favor of defendants Hoffman, All Counties, and Creative Investment even though judgment was entered in their favor on April 22, 2015. On July 31, 2015, the court, on its own motion, "vacated" the June 16, 2015 judgment and directed defendants to prepare a single judgment of dismissal for all defendants; notice of the court's unsigned minute order was provided by the clerk.

On August 25, 2015, the court signed a third judgment of dismissal. This judgment was identical to the original judgment entered on April 22, 2015, except that it added two additional defendants, Fidelity and First American. On September 4, 2015, Genesis provided notice of "re-entry" of judgment of dismissal to all of the parties. On October 19, 2015, plaintiffs filed their notice of appeal from a judgment of dismissal after an order sustaining a demurrer.

DISCUSSION

1. The appeal is untimely as to the demurring defendants.

California Rules of Court, rule 8.104(a)(1),² states that, unless otherwise provided, "a notice of appeal must be filed on or before the earliest of: (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a file-endorsed copy of the judgment, showing the date either was served; (B) 60 days after the party filing the notice of appeal serves or is served by a party

² All references to rules are to the California Rules of Court.

with a document entitled ‘Notice of Entry’ of judgment or a file-endorsed copy of the judgment, accompanied by proof of service; or (C) 180 days after entry of judgment.” Rule 8.104(b) states: “Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.” Rule 8.66, which authorizes the court to extend the time for doing an act required by the rules because of a public emergency, has no application here. Similarly, rule 8.108, which extends the time to appeal if certain post-trial and reconsideration motions are filed, is not implicated in this appeal.

“The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal. [Citation.]” (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) “If a notice of appeal is not timely, the appellate court must dismiss the appeal. [Citation.]” (*Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 582.)

Plaintiffs’ notice of appeal is not timely as to the demurring defendants. Plaintiffs were served by a party with notice of entry of the April 2015 judgment on May 8, 2015. Thus, the last day plaintiffs could have filed a timely notice of appeal was July 7, 2015. (Rule 8.104(a)(2).) In their opening and reply briefs, plaintiffs have not provided this court with any basis for questioning that the deadlines set forth in rule 8.104 apply to them.³

³ We acknowledge that before briefing on the appeal was complete, Genesis moved to dismiss the appeal as untimely and plaintiffs opposed the motion. Although we denied the motion, our order does not preclude a later assertion of the issue. (*Chernett v.*

Nor did the trial court's April 30, 2015 unsigned minute order setting aside the April 22, 2015 judgment, or its August 25, 2015 entry of the third judgment in favor of all fourteen defendants, restart the time for appeal. First, a court has no jurisdiction to vacate, on its own motion, a judgment which is not void, and there is no basis for concluding that the April 22 judgment was void. (*Kimball Avenue v. Franco* (2008) 162 Cal.App.4th 1224, 1230 [trial court cannot restart clock for filing notice of appeal by vacating and re-entering judgment].) Second, since the August 25 judgment did not constitute a substantial or material change from the original judgment as to the demurring defendants, the earlier April 22 judgment remained the final judgment for the purpose of establishing the time to appeal. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842 [appeal untimely when subsequent judgment did not substantively modify earlier judgment]; *Laraway v. Pasadena Unified School Dist.*, *supra*, 98 Cal.App.4th at p. 582 [time to appeal cannot be restarted by filing a subsequent judgment making same decision].) "While it is unfortunate that the circumstances here may have caused some confusion for [plaintiffs,]" in the face of a validly served notice of entry of judgment on May 8, 2015, "the prudent course of action" would have been to appeal from the April 22 judgment as well as the August 25 judgment. (*Ellis v. Ellis*, *supra*, 235 Cal.App.4th at p. 845.)

Jacques (1988) 202 Cal.App.3d 69, 71 [initial denial of motion to dismiss is not law of the case].) Even if plaintiffs had reiterated the same arguments in their briefs on the merits of the appeal, it would not change our determination that the appeal is untimely as to the demurring defendants.

Since plaintiffs filed their notice of appeal on October 19, 2015, more than five months after they were provided with notice of entry of the April 22 judgment, we are without jurisdiction to consider the merits of their appeal, and we dismiss the appeal as to the demurring defendants.

2. The judgment against Fidelity and First American is affirmed.

Fidelity and First American filed, respectively, a declaration of non-monetary status and a disclaimer of interest in the underlying litigation. Since judgment was not entered in favor of these defendants until August 25, 2015, plaintiffs' October 19, 2015 notice of appeal is timely as to Fidelity and First American. Plaintiffs have not, however, presented any legal argument or cited any legal authority in their appellate briefs as to why the court erred in entering judgment in favor of these nominal parties. Accordingly, we affirm the judgment entered in favor of Fidelity and First American. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116 [appellant must affirmatively demonstrate error through reasoned argument and discussion of legal authority].)

DISPOSITION

The appeal is dismissed with regard to the judgment entered in favor of the demurring defendants. The judgment in favor of Fidelity and First American is affirmed. Respondents, except for Hoffman, Haser, All Counties, Creative Investment, and First American who did not participate in the appeal, shall recover their costs.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

GOSWAMI, J.*

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