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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

UNITED GRAND
CORPORATION,

Plaintiff and Appellant,

v.

MARCIE STOLLOF,

Defendant and
Respondent.

B279215

(Los Angeles County
Super. Ct. No. BC554172)

APPEAL from orders of the Superior Court of Los Angeles
County, Mark Borenstein, Judge. Dismissed.

Cyrus Sanai for Plaintiff and Appellant.

Cozen O'Connor, Erik L. Jackson and Nathan Dooley for
Defendant and Respondent.

* * * * *

Following the payment of discovery sanctions in full by defendant and respondent Marcie Stolof on April 29, 2016, the trial court ordered plaintiff and appellant United Grand Corporation (United Grand) to file a “code compliant” acknowledgement of satisfaction of judgment and to pay certain attorney fees, which it failed to do. United Grand appealed the April order and other related orders. Stolof moved to dismiss the appeal under the disentanglement doctrine. After examining the record, we agree with Stolof that applying the disentanglement doctrine is appropriate in this case due to United Grand’s violation of the trial court’s orders. We therefore dismiss the appeal.

BACKGROUND

In connection with Los Angeles Superior Court case No. BC554172,¹ on October 6, 2015, the trial court imposed postjudgment discovery sanctions against Stolof and in favor of United Grand in the amount of \$2,500. After Stolof paid the discovery sanctions amount in full, a dispute arose between the parties involving United Grand’s execution of an acknowledgement of satisfaction of judgment, the subject of which is the focus of this appeal.

1. The Trial Court Issues Orders Requiring United Grand to File an Acknowledgement of Satisfaction of Judgment and to Pay Certain Attorney Fees

On March 30, 2016, Stolof filed a motion to compel, demanding that United Grand file an acknowledgment of

¹ The underlying proceeding involved an action brought by United Grand against Stolof and others seeking alleged unpaid rent for a repudiated lease. Because those facts are not pertinent to this appeal, we do not recite them here.

satisfaction of judgment because it had received the discovery sanctions payment in full.

On April 29, 2016, the trial court granted Stollof's motion to compel, ordering United Grand to file a "code compliant" acknowledgement of satisfaction of judgment by May 6, 2016, and that its counsel pay attorney fees in the amount of \$500 to Stollof's counsel by June 1, 2016.

On May 16, 2016, United Grand filed a motion to vacate and reconsider the April 29, 2016 order. It argued the April order was "void" because (1) Stollof's demand was made before the discovery sanctions payment had cleared the bank in violation Code of Civil Procedure² section 724.050;³ and (2) the trial court's award of attorney fees against United Grand's counsel, and not United Grand, was in violation of section 724.080.⁴

On August 1, 2016, the trial court granted in part United Grand's motion for reconsideration, ruling only that United Grand, and not its counsel, must pay the \$500 in attorney fees.⁵

² All further statutory references are to the Code of Civil Procedure.

³ Section 724.050 provides "the exclusive method for obtaining an order for entry of satisfaction of judgment." (*Quintana v. Gibson* (2003) 113 Cal.App.4th 89, 91 (*Quintana*).) It states, in pertinent part, "[i]f a money judgment has been satisfied, the judgment debtor . . . may serve personally or by mail on the judgment creditor a demand in writing" (§ 724.050, subd. (a).)

⁴ Section 724.080 provides: "In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party."

⁵ In connection with this appeal, we granted Stollof's request to augment the record to include the reporter's transcript of the August 1, 2016 hearing. United Grand also filed a request for

Effectuating this determination, on August 15, 2016, the trial court issued a nunc pro tunc order correcting the April order to require United Grand, and not its counsel, to make the \$500 payment.

2. The Trial Court Sets an Order to Show Cause Requiring United Grand to Explain Why It Should Not Be Adjudged in Contempt of Court for Violating Its Order

On May 4, 2016, United Grand executed an acknowledgment of satisfaction of judgment, omitting, among other things, the identity of the judgment debtor in violation of section 724.060, subdivision (a)(3).⁶ On May 24, 2016, United Grand executed an amended acknowledgment of satisfaction of judgment, again, omitting the identity of the judgment debtor.

On May 23, 2016, Stolof filed a request to show cause initiating indirect contempt proceedings against United Grand for failing to file a “code compliant” acknowledgement of satisfaction of judgment in violation of the April 29, 2016 order. The trial court signed the order to show cause and directed United Grand to explain why it should not be adjudged in contempt of court.

On August 15, 2016, United Grand filed a motion to vacate the order to show cause and dismiss the contempt proceedings. United Grand again argued that it had no legal obligation to

judicial notice of the same August 1, 2016 transcript. Because the transcript is now part of the record on appeal, we deny United Grand’s request for judicial notice as moot.

⁶ Section 724.060, subdivision (a)(3) provides, in pertinent part: “(a) An acknowledgment of satisfaction of judgment shall contain the following information: [¶] . . . [¶] (3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any.”

comply with the April 29, 2016 order because it was “void.” It also contended the order to show cause was “facially defective” for failing to follow the notification procedures of the California Rules of Court and other statutory requirements.

Stollof opposed the motion, arguing: (1) the trial court had authority to order the acknowledgment of satisfaction of judgment under section 724.030;⁷ (2) United Grand was estopped from complaining about the April order because it consented to the trial court’s jurisdiction and attempted to comply with the order by filing acknowledgments of satisfaction of judgment; and (3) Stollof personally served United Grand with the order to show cause and the accompanying charging affidavit in compliance with the notice requirements.

On September 7, 2016, the trial court denied United Grand’s motion to vacate, setting a trial date on the order to show cause on January 18, 2017. After United Grand filed several ex parte applications requesting a stay of the contempt proceedings, the trial court granted one such request, staying the contempt trial.⁸

⁷ Section 724.030 provides: “When a money judgment is satisfied, the judgment creditor immediately shall file with the court an acknowledgment of satisfaction of judgment.”

⁸ On June 27, 2018, the day before oral argument in this matter, United Grand filed a request for judicial notice of: (1) an acknowledgement of satisfaction of judgment, filed August 2, 2016; (2) several trial court orders, dated December 1, 2016, December 15, 2016, January 5, 2017, and January 13, 2017; and (3) a printout of the language of section 724.050 from the California Legislative Information Web site. We recognize the relevance of section 724.050 in this matter and have taken judicial notice of this statute and other relevant statutes on our own motion. (Evid. Code, §§ 451, subd. (a), 459, subd. (a).)

3. The Trial Court Denies Stolof's Second Motion to Compel United Grand to File an Acknowledgment of Satisfaction of Judgment

On June 15, 2016, Stolof filed a second motion to compel demanding that United Grand file an acknowledgment of satisfaction of judgment. On September 23, 2016, the trial court denied Stolof's second motion to compel, ruling it was "unnecessary." The trial court noted it already had ordered United Grand to file a satisfaction of judgment so there was no reason to make the same order a second time. And it noted there was a contempt trial pending to determine whether United Grand's failure to comply with the April order was willful. As noted above, the contempt trial was eventually stayed by the trial court.

4. United Grand Appeals the Trial Court's April 29, 2016 Order and Other Related Orders

On October 7, 2016, United Grand filed a notice of appeal, purporting to appeal from (1) the April 29, 2016 order granting Stolof's motion to compel acknowledgment of satisfaction of judgment; (2) the August 1, 2016 order granting in part United Grand's motion to vacate and reconsider the order of April 29, 2016; (3) the August 15, 2016 nunc pro tunc order correcting the April 29, 2016 order; (4) the September 7, 2016 order denying

However, United Grand's "effort to submit new evidence for our review in the first instance is [not only] improper," but the referenced documents are unnecessary to our resolution on appeal. (*Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1194; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].) Accordingly, we deny United Grand's request for judicial notice.

United Grand's motion to vacate order to show cause and dismiss contempt proceedings; and (5) the September 23, 2016 order denying Stollof's second motion to compel acknowledgment of satisfaction of judgment.

DISCUSSION

Stollof has moved to dismiss the appeal under the disentitlement doctrine⁹ due to United Grand's failure to comply with the April 29, 2016 order. We agree with Stollof and dismiss the appeal.

"An appellate court has the inherent power, under the 'disentitlement doctrine,' to dismiss an appeal by a party that refuses to comply with a lower court order." (*Stoltenberg v.*

⁹ We reject United Grand's contention that Stollof is barred by the collateral estoppel doctrine from filing this disentitlement motion because we previously denied her motion to disentitle United Grand in a separate appeal before us. The collateral estoppel doctrine precludes relitigation of an issue only if, among other things, the decision in the former proceeding was both final and on the merits. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Our Supreme Court has made clear that the denial of a motion to dismiss an appeal made without qualification is not considered a final determination on the merits. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 900 ["a summary denial of a motion to dismiss the appeal" does not preclude "later full consideration of the issue"].)

Here, Stollof's motion to disentitle United Grand and her accompanying request for judicial notice were denied without any explanation in the prior appeal, *United Grand Corporation v. Stollof* (July 6, 2017, B270076). We take judicial notice of this order. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) Under this circumstance, the doctrine of collateral estoppel does not preclude us from reaching the merits of Stollof's pending motion to disentitle United Grand.

Ampton Investments (2013) 215 Cal.App.4th 1225, 1229.)

“ ‘Appellate disentitlement “is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction” [Citation.]’ [Citation.] No formal judgment of contempt is required; an appellate court ‘may dismiss an appeal where there has been *willful disobedience or obstructive tactics*. [Citation.]’ [Citation, italics added.] The doctrine ‘is based upon fundamental equity and is not to be frustrated by technicalities.’ ” (*Id.* at p. 1230.)

Here, the April 29, 2016 order required United Grand to file a “code compliant” acknowledgement of satisfaction of judgment and to pay attorney fees by a date certain, which it failed to do. Instead, United Grand’s conduct following issuance of the April order demonstrates a deliberate effort to evade compliance with a legitimate order. For example, although the task of executing a one page Judicial Council form in compliance with section 724.060 is relatively simple, United Grand executed several defective versions of the “Acknowledgment of Satisfaction of Judgment,” continually omitting the same required information. There exists no good reason for such conduct. Also, United Grand repeatedly flouted the trial court’s order by filing a series of motions to prevent its compliance with the April order, none of which caused the trial court to vacate its order. To date, United Grand has failed to pay the attorney fees that had been ordered.

Because United Grand continued to disobey the trial court’s order, Stollof filed a request for issuance of an order to show cause to commence indirect contempt proceedings against it, which request the trial court granted. Rather than comply with the April order, United Grand filed a motion to vacate the order to show cause, which the trial court also denied. The trial court

eventually stayed the contempt trial, but it was only after United Grand had filed several ex parte applications requesting the stay.

United Grand seeks to justify its refusals to issue a proper acknowledgement of satisfaction of judgment and pay attorney fees by arguing it had no legal obligation to comply with the April 29, 2016 order because that order was “void” or “voidable.” United Grand’s reliance on *People v. Gonzalez* (1996) 12 Cal.4th 804, for the proposition that the “voidness and voidability” of an order is an “absolute defense[]” to a disentitlement motion is misplaced. *Gonzalez* did not concern application of the disentitlement doctrine. Instead, the issue addressed in *Gonzalez* was whether the municipal court and/or the appellate department of the superior court had the authority to review the validity of an order that formed the basis of charges of contempt. (*Id.* at p. 811.) Nothing in *Gonzalez* precludes either application of the disentitlement doctrine in this case, or prevents United Grand from asserting any challenge it may have to the contempt proceedings in the trial court.¹⁰ Moreover, it is well settled that the merits of an appeal are irrelevant to an appellate court’s determination whether to dismiss an appeal under the disentitlement doctrine. (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 266 (*Ironridge*); *Stone v. Bach* (1978) 80 Cal.App.3d 442, 448 (*Stone*) [rejecting defendant’s claim that dismissal was not warranted because the orders he violated were “invalid”].)

¹⁰ We note a finding of contempt in this case which might result from the trial on the order to show cause is not foreclosed by the dismissal of the present appeal. (*Conn v. Superior Court* (1987) 196 Cal.App.3d 774, 784 [a judgment in civil contempt proceedings may be reviewed by extraordinary writ].)

Assuming arguendo that the disentitlement doctrine did not apply, United Grand's claim that the trial court's April 29, 2016 order is void or voidable because Stollof's demand was delivered before the discovery sanctions payment cleared the bank, and was premature based on section 724.050, is without merit. In *Quintana, supra*, 113 Cal.App.4th 89, Division 5 of this court held a trial court has the authority to disregard a judgment debtor's compliance with section 724.050 so long as the judgment creditor had suffered no prejudice. (*Quintana*, at p. 96.) United Grand attempts to distinguish *Quintana*, contending it suffered prejudice as a result of Stollof's defective demand because the trial court's order "created sufficient detriment" by requiring it to file a satisfaction of judgment and to pay attorney fees. We are not persuaded. Stollof's demand contained the statutory warnings required by section 724.050 and informed United Grand of the statutory period within which it could comply with the demand and thus avoid liability for fees and the imposition of any penalty. On these facts, United Grand has failed to establish prejudice.

United Grand also contends the April 29, 2016 order cannot be enforced because of the automatic stay resulting from this appeal. United Grand cites no authority for this proposition. Rather, "[t]he disentitlement doctrine 'is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed.'" (*Ironridge, supra*, 238 Cal.App.4th at p. 265.) Thus, United Grand's appeal of the April order does not prevent us from considering Stollof's motion to disentitle United Grand.

As stated in *Stone*: "[I]t would be a flagrant abuse of the principles of equity and of the due administration of justice to consider the demands of a party who becomes a voluntary actor

before a court and seeks its aid while he stands in contempt of its legal orders and processes.’ ” (*Stone, supra*, 80 Cal.App.3d at p. 444.) Given United Grand’s flagrant violation of the April 29, 2016 order and other related orders, it cannot now seek relief from the appellate court. We therefore dismiss this appeal.¹¹

DISPOSITION

The appeal is dismissed. Stolof shall be entitled to her costs on appeal.

GOODMAN, J. *

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

¹¹ Given our ruling, we need not consider the parties’ other contentions. Stolof’s pending motions to dismiss, filed December 12, 2016, and July 5, 2017, are denied as moot.

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