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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of DANIEL WEI
LEUNG YEM, Deceased.

2d Civil No. B293126
(Super. Ct. No. 56-2015-
00467837-PR-LA-OXN)
(Cons. w/ No. 56-2016-
00480991-CU-PT-VTA)
(Ventura County)

JOSEPH MAN LEUNG et al.,
as Co-Administrators, etc.,

Plaintiffs and Appellants,

v.

WELLS FARGO BANK, N.A.,

Defendant and Respondent.

Joseph Man Leung and Sammy Kwok-Chi Chan,
administrators of the estate of Daniel Yem (hereafter
administrators), appeal from the denial of the motion to vacate
order of dismissal of Wells Fargo Bank, N.A. (Wells Fargo) and/or

for relief from default judgment. The administrators contend that their attorney's declaration of fault required the probate court to vacate the dismissal. Because the appeal is not taken from an appealable order, we dismiss it.

BACKGROUND

In consolidated probate and conservatorship cases, the administrators, also serving as coconservators of the estate of Yem's widow, Joanne Yuk-Lan Yem, filed an amended petition to quiet title and a complaint for fraud and elder abuse.¹ The administrators allege that an individual fraudulently transferred to himself a single-family residence owned by Yem, that the property was then fraudulently transferred to a second individual, and that after this second transfer, Wells Fargo loaned funds and recorded a deed of trust against the property.

Wells Fargo ultimately reconveyed the deed of trust to the estate and the court made an order quieting title in favor of the estate. The administrators continued to seek double damages and attorney fees from Wells Fargo pursuant to Probate Code section 859 and Welfare and Institutions Code section 15657.5.

On April 20, 2018, the administrators' counsel did not appear at a status conference and motion for attorney fees. On its own motion, the court dismissed Wells Fargo and the other

¹ The notice of appeal lists Sammy Kwok-Chi Chan and Joseph Man Leung in their capacities as both administrators of the estate of Daniel Yem and as conservators of the estate of Joanne Yuk-Lan Yem. However, the conservatorship estate is no longer a party to this appeal, and no brief was filed on behalf of conservators. Appellants' opening brief also lists the administrators' attorney, Marc B. Hankin, as an appellant, but he was not a party in the trial court and is not listed as a party in the notice of appeal.

remaining defendants, with prejudice. Counsel for Wells Fargo gave notice of entry of judgment of dismissal by mail on May 2, 2018. Counsel for administrators received notice of entry of judgment on May 15, 2018.

On June 14, 2018, the administrators filed a motion to vacate the dismissal and/or for relief from default judgment pursuant to the attorney neglect provisions of Code of Civil Procedure section 473, subdivision (b). A supporting declaration of counsel asserted, inter alia, that counsel made a calendaring error, was unable to keep up with workload based upon litigation in an unrelated matter, and confused the hearing date with another case.

The court denied the motion to vacate the dismissal. On September 28, 2018, the administrators filed a notice of appeal from the denial of the motion to vacate the dismissal.

DISCUSSION

In probate matters, the only appealable orders are those listed in the Probate Code. (Code Civ. Proc., § 904.1, subd. (a)(10); *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125-1126.) Appealable orders in proceedings governed by the Probate Code, including decedents' estates and conservatorships, are set forth in Probate Code sections 1300-1304. These provisions are exclusive; there is no right to appeal from orders not enumerated in these sections. (*Stoddart*, at pp. 1125-1126.)

An order denying a motion to vacate under Code of Civil Procedure section 473 is not an appealable order under the Probate Code. (*In re Estate of O'Dea* (1940) 15 Cal.2d 637, 638 [motion to vacate dismissal of claimants at probate trial]; *Conservatorship of Harvey* (1970) 3 Cal.3d 646, 652 [motion to vacate order in conservatorship case].)

Kalenian v. Insen (2014) 225 Cal.App.4th 569, 575-576, recognizes an exception to the general rule that denial of a motion to vacate pursuant to Code of Civil Procedure section 473, subdivision (b), is not appealable in cases governed by the Probate Code. Pursuant to that exception, an appeal will lie where an appealable judgment is entered ex parte with no actual notice to the party in time to appeal. (*Kalenian*, at pp. 576-579.) The exception is inapplicable here because counsel for the administrators received timely notice of the dismissal order.

DISPOSITION

The appeal is dismissed. In the interests of justice, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(4) & (5).)

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Glen M. Reiser, Judge

Superior Court County of Ventura

Law Offices of Marc B. Hankin, Marc B. Hankin;
Evan D. Marshall, for Plaintiffs and Appellants.

Kutak Rock, Jeffrey S. Gerardo and Steven M.
Dailey, for Defendant and Respondent.