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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CROSSROADS
INTERCONTINENTAL, LTD.,

Plaintiff and Appellant,

v.

AVENUE REAL ESTATE
INTERNATIONAL,

Defendant and Respondent.

B288238

(Los Angeles County
Super. Ct. No. BC661810)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael L. Stern, Judge. Reversed and
remanded with directions.

Herzlich & Blum, Allan Herzlich, Jerome J. Blum and
Marta Roza for Plaintiff and Appellant.

Greer & Rineer, Allegra Rineer and Kathryn Greer for
Defendant and Respondent.

Crossroads Intercontinental, Ltd. brought an action against Avenue Real Estate International, doing business as Engel & Volkers Los Angeles, alleging Avenue Real Estate failed to make payments to Crossroads pursuant to an assignment order under Code of Civil Procedure section 708.510.¹ The trial court sustained Avenue Real Estate's demurrer without leave to amend and dismissed the action with prejudice, ruling a judgment creditor does not have a private right of action under section 708.510 against a third party obligor who fails to make payments pursuant to a post-judgment assignment order. Although there are remedies for an obligor's failure to comply with section 708.510, a separate action for violation of that statute is not one of them. Nevertheless, Crossroads may be able to state a cause of action as an assignee of the judgment debtor's rights. Therefore, we reverse the judgment and remand with directions for the trial court to give Crossroads leave to amend, if it can, to plead a cause of action, not for violation of section 708.510, but as an assignee.

FACTUAL AND PROCEDURAL BACKGROUND

A. Crossroads Obtains an Assignment Order

Crossroads sued Richard Benichou and obtained a \$746,250.52 default judgment against him. The trial court subsequently granted an application by Crossroads for an assignment order under section 708.510 that required individuals or entities who owe or may owe money to Benichou (referred to in post-judgment terminology as obligors) to make those payments,

¹ Undesignated statutory references are to the Code of Civil Procedure.

subject to an exemption for certain earnings, to Crossroads instead of Benichou. The order further provided that, if Benichou received any money from such an obligor, he had to pay that money to Crossroads and that failure to do so could result in a finding of contempt. Crossroads served Avenue Real Estate with the assignment order pursuant to section 708.540.

B. *Crossroads Sues Avenue Real Estate for Violating the Assignment Order*

Several years later, Crossroads filed this action alleging Avenue Real Estate paid money it owed Benichou directly to Benichou, or to third parties at Benichou's directions, rather than to Crossroads. Crossroads alleged Avenue Real Estate was "*personally liable* to [Crossroads] just the same as a garnishee, in accordance with applicable law, including the provisions of [sections] 701.020 and 701.050," which concern execution levies by service of writs of execution on third persons. Although Crossroads sought \$746,250.52 (the entire judgment against Benichou) in damages, plus interest, attorneys' fees, and costs under section 701.020, subdivision (c), Crossroads acknowledges it is only entitled to "the lessor [sic] of 1) the value of [Benichou's] interest in the property or the amount of the payments required to be made or [sic] 2) the amount required to satisfy the judgment." Crossroads attached the judgment and assignment order to its amended complaint.

C. *The Trial Court Sustains Avenue Real Estate's Demurrer Without Leave To Amend*

Avenue Real Estate demurred to the first amended complaint on the ground there is no private right of action for

violation of section 708.540. Avenue Real Estate further argued the statutes imposing liability on third persons who fail to comply with a levy by writ of execution under section 701.020 do not apply to obligors who fail to comply with an assignment order under section 708.510. The trial court agreed and sustained the demurrer without leave to amend. Crossroads timely appealed from the ensuing judgment of dismissal.

DISCUSSION

A. *Assignment Orders Under Section 708.540*

Section 708.540 is part of the statutory scheme governing enforcement of money judgments, in an article authorizing assignment orders. An assignment order, as provided in section 708.510, allows the trial court to order a judgment debtor to assign to the judgment creditor all or part of a right to payments that are or may become due. It is one of several “miscellaneous creditors’ remedies” (the name of the chapter in which the article on assignment orders appears in the Code of Civil Procedure) that include written interrogatories, examination proceedings, creditors’ suits, charging orders, liens, and the appointment of a receiver. A creditor can seek an assignment order to recover payments due the judgment debtor such as rents, commissions, royalties, payments from a patent or copyright, accounts receivable, or other income from assignable property. (§ 708.510, subd. (a); see *Casiopea Bovet, LLC v. Chiang* (2017) 12 Cal.App.5th 656, 661; Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) ¶ 6:1423.) The statutory provisions governing assignment orders are strictly construed because they are “purely legislative creations.”

(*Landstar Global Logistics, Inc. v. Robinson & Robinson, Inc.* (2013) 216 Cal.App.4th 378, 390; see *Casa Eva I Homeowners Assn. v. Ani Construction & Tile, Inc.* (2005) 134 Cal.App.4th 771, 778 [“judgment lien statutes are subject to strict construction because they are purely the creation of the Legislature”].)

Section 708.540 defines an obligor under an assignment order and defines the obligor’s rights. It states: “The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. For the purpose of this section, ‘obligor’ means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments.”

B. *There Is No Private Right of Action for Violation of Section 708.540*

“A violation of a state statute does not necessarily give rise to a private cause of action. [Citation.] Instead, whether a party has a right to sue depends on whether the Legislature has ‘manifested an intent to create such a private cause of action’ under the statute. [Citations.] Such legislative intent, if any, is revealed through the language of the statute and its legislative history.” (*Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 596.) “The Legislature’s intention to create a private cause of action must be expressly stated or strongly implied in the statutory language or legislative history.” (*Vasquez v. SOLO 1 Kustoms, Inc.* (2018) 27 Cal.App.5th 84, 91 (*Vasquez*); *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 379 [“courts will not find a private right of action unless the Legislature has ‘clearly manifest[ed] an intent to create a private

cause of action under a statute”].) “[W]e consider the statute’s language first, as it is the best indicator of whether a private right to sue exists.” (*Lu*, at p. 603.) Where “there is no statutory language that could be reasonably interpreted as expressing an intent to create a private cause of action, we need not resort to the legislative history.” (*Vasquez*, at p. 93, fn. 9.) Whether a statute creates a private cause of action is a question of law, which we review de novo. (*Vasquez*, at p. 90.)

Section 708.540 does not state that a judgment creditor can bring an action against an obligor or that an obligor is liable to the judgment creditor in the event the obligor fails to make payments required by an assignment order. Section 708.540 defines what an obligor is and describes how and when an obligor’s rights are affected. Nothing in the text of the statute imposes civil liability on an obligor for failing to comply with an assignment order or suggests a judgment creditor can sue an obligor for any such failure. (See *Vasquez, supra*, 27 Cal.App.5th at p. 93 & fn. 9 [no private right of action “[g]iven the complete lack of statutory language manifesting a Legislative intent to create a private cause of action”].)

Moreover, the Legislature knows how to make a third party liable for failing to comply with statutes governing enforcement of money judgments. For example, once “a levy is made by service of a copy of the writ of execution and a notice of levy on a third person” under section 701.010, subdivision (a), section 701.020, subdivision (a), provides that “person is liable to the judgment creditor” if the third person “fails or refuses [to deliver the property] without good cause to do so.” (See, e.g., *Grayson Services, Inc. v. Wells Fargo Bank* (2011) 199 Cal.App.4th 563, 575-576 [bank was liable for its failure to comply with a levy and

writ of execution under section 701.020].) The Legislature did not include any such language in section 708.540, and the remedies for one kind of enforcement mechanism do not necessarily apply to others. (See *Ilshin Investment Co., Ltd. v. Buena Vista Home Entertainment, Inc.* (2011) 195 Cal.App.4th 612, 628-629.) That the Legislature provided for third party liability in the statutes governing levies under writs of execution, but not those governing assignment orders, is a clear manifestation of the Legislature's intent *not* to create a private right of action under section 708.540. (See *Rashidi v. Moser* (2014) 60 Cal.4th 718, 726 [““[w]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed””]; *Riske v. Superior Court* (2018) 22 Cal.App.5th 295, 306 [same]; see also *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725 [““when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded””].)

Crossroads cites a reference to an analogy in the Law Revision Commission comment to section 708.540 that states: “Section 708.540 makes clear that the person obligated to make payments to the judgment debtor or who will become obligated is not affected by the assignment order until notice of the order is received. This section is analogous to provisions governing the effect of an execution levy. See, e.g., Sections 701.020 (liability of third person under levy), 701.050 (duty of account debtor). See also Civil Code § 955.1 (rights of certain obligors upon assignment); Com. Code § 9318 (rights of account debtor).” A practice guide, also cited by Crossroads, suggests this comment

means “an obligor who fails to obey an assignment order is *personally liable* to the creditor (just the same as a garnishee; see CCP §§ 701.020, 701.050)” (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, ¶ 6:1455.) As stated, however, where, as here, there is no statutory language providing or suggesting a private cause of action, we do not need to refer to legislative history or other materials, such as Law Revision Commission comments. (*Vasquez, supra*, 27 Cal.App.5th at p. 93, fn. 9; see *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 340, fn. 14 “[b]ecause plaintiffs have pointed to no statutory language that could be reasonably interpreted to provide a private right of action, we need not consider extrinsic materials”].)

In any event, three of the statutes mentioned in the comment, section 701.050,² Civil Code section 955.1,³ and

² Section 701.050 prescribes the duties of an account debtor after “service of a copy of the writ of execution and a notice of levy on an account debtor.” Subdivision (b) provides: “If the account debtor has been making payments to a third person or is required to make payments to a third person (whether pursuant to a security agreement, assignment for collection, or otherwise), the account debtor shall continue to make such payments to the third person notwithstanding the levy until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by the third person. After the account debtor receives notice that the obligation to the third person is satisfied, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer.”

³ Civil Code section 955.1, subdivision (b), provides: “As between bona fide assignees of the same right for value without notice, the assignee first giving notice of the right to the obligor in writing has priority.” Subdivision (c) states: “The assignment

Commercial Code section 9318,⁴ concern notice and the effects of notice, not civil liability for failure to comply with an order. As for section 701.020, the analogy does not hold. The absence in section 708.540 of any provision for or mention of third party civil liability for failing to comply with an assignment order is not analogous to the express provision for such liability in section 701.020. “Comments of the Law Revision Commission do not have the effect of law and are not binding on the courts. They are merely sources by which legislative intent may be discerned when interpreting the meaning of a statute. [Citations.] ‘Legislative intent[, however,] is best determined by the language of the statute.’” (*People v. San Nicolas* (1986) 185 Cal.App.3d 403, 407.) While a report of the Law Revision Commission “is entitled to substantial weight in construing” a statute (*Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 1081, 1096, fn. 6; see *Estate of Joseph* (1998) 17 Cal.4th 203, 216 [“we give ‘substantial weight’ to the commission’s understanding of a provision it proposed”]), Crossroads has not cited any cases applying that rule to an analogy in a comment that is contrary to the language of the statute.

is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.”

⁴ At the time the Legislature enacted section 708.540, former Commercial Code section 9318, subdivision (b)(3), provided: “The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective.”

This is not to say that a judgment creditor has no recourse against an obligor who willfully fails to comply with section 708.510. For example, under section 1209, subdivision (a)(5), a judgment creditor can seek a contempt order against an obligor for failure to comply with an assignment order. (See Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, ¶ 6:1456 [“both the judgment debtor and obligor could be held in *contempt* for failure to obey an assignment order”].) A judgment creditor can also file a creditor’s suit against a third party that “has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor” and seek a restraining order enjoining the third party from making transfers to the judgment debtor. (§§ 708.210, 708.240; see *Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1242-1243.) But Crossroads has not (yet) sought either of those remedies.

C. *Crossroads Is Entitled to Leave To Amend*

Where, as here, the trial court sustains a demurrer without leave to amend, “we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment.” (*Brown v. Ralphs Grocery Company* (Oct. 31, 2018, B278911) __ Cal.App.5th __, __ [2018 WL 5629874, at p. 10]; see *Arce v. Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1471.) “If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we conclude that the trial court abused its discretion in denying leave to amend. If we determine otherwise, then we conclude it did not. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect.” (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.) Even where

the plaintiff did not seek leave to amend in the trial court, the plaintiff may still be entitled to leave to amend. (See § 472c, subd. (a) [“[w]hen any court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made”]; *Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1044 [“plaintiff may request leave to amend for first time on appeal”]; *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 668 [a plaintiff can make a showing how he or she can amend a complaint “for the first time to the reviewing court”].)

Crossroads argues for the first time in its reply brief that, because Benichou could have brought an action against Avenue Real Estate for payment of money owed to him, Crossroads, as Benichou’s assignee, can step into his “shoes” and pursue his rights to payment. Crossroads did not plead this theory in its complaint. But Crossroads may be able to do so.

As counsel for Avenue Real Estate conceded at oral argument, an assignee under an order of assignment is an assignee (albeit an involuntary one) of the judgment debtor’s rights to collect money owed from a third party obligor. (See § 708.510, subd. (a).) If the obligor has not made all of the payments that are or may become due to the judgment debtor, the judgment creditor, as the judgment debtor’s assignee, can bring an action to enforce the judgment debtor’s rights to those payments. Avenue Real Estate concedes Crossroads could have maintained such an action here if Avenue Real Estate had not already made the payments to Benichou and third parties at Benichou’s direction. If, however, the obligor has made all of the

payments that are or may become due to the judgment debtor, the judgment creditor cannot bring an action as an assignee to enforce the judgment debtor's rights to the payments because there are no payments due. In the latter case, the judgment debtor no longer has any right to payments from the obligor, and the judgment creditor, standing in the judgment debtor's shoes, has no greater right than the judgment debtor does. (See *Casiopea Bovet, LLC v. Chiang, supra*, 12 Cal.App.5th at p. 663 ["under section 708.510, a court can only assign a judgment creditor's 'interest in the property or "right to payment due,"' and the "assignee's 'rights are no greater than those of the assignor'"]; *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 775 ["[t]he assignee 'stands in the shoes' of the assignor and his rights are no greater than those of the assignor"].)

Crossroads did not allege Avenue Real Estate paid Benichou and the third parties at Benichou's direction all of the payments owed to Benichou. To the contrary, Crossroads alleged Avenue Real Estate paid only a "majority of those monies due to" Benichou. Crossroads may be able to assert claims for the balance of the monies due, as well as for payments that may be due in the future. Crossroads is entitled to amend its complaint to assert claims, as Benichou's assignee, for (unpaid) payments from Avenue Real Estate that are or may become due to Benichou.

DISPOSITION

The judgment is reversed and remanded with directions for the trial court to vacate its order sustaining the demurrer

without leave to amend and to enter a new order sustaining the demurrer with leave to amend to allow Crossroads to allege, if it can, causes of action as Benichou's assignee under the assignment order to recover unpaid past and future payments. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.