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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SURJIT P. SONI,

Plaintiff and Respondent,

v.

CH&I TECHNOLOGIES, INC.,

Defendant and Appellant.

B240173

(Los Angeles County  
Super. Ct. No. GC044712)

APPEAL from an order of the Superior Court of Los Angeles County, James A. Kaddo, Judge. Dismissed.

Law Offices of Michael L. McQueen, Michael L. McQueen; Ferguson Case Orr Paterson and Wendy C. Lascher for Defendant and Appellant.

The Soni Law Firm, Leo E. Lundberg, Jr., and M. Danton Richardson for Plaintiff and Respondent.

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This is the third appeal we consider in this matter. Plaintiff Surjit P. Soni is an attorney who sued his former client, defendant CH&I Technologies, Inc. (CHI), and CHI's president, Lawrence Levenstein, for unpaid legal fees and costs. Soni prevailed at trial against CHI but not against Levenstein because the trial court determined that Levenstein was not personally liable under the retainer agreement between Soni and CHI. The trial court awarded Soni his attorney fees against CHI and Levenstein his attorney fees against Soni. CHI and Soni each appealed the attorney fees awards against them. We consolidated these two appeals and affirmed both orders in an unpublished opinion. (*Soni v. CH&I Technologies, Inc.* (Oct. 3, 2012, B235130).)

During the pendency of the prior consolidated appeal, CHI filed a petition for writ of supersedeas. CHI sought to stay enforcement of the award of attorney fees against it. We determined that the award of attorney fees was automatically stayed when CHI filed its appeal from the award. We granted the writ in a corrective capacity because Soni was attempting to collect the award immediately in violation of the automatic stay. (*Soni v. CH&I Technologies, Inc.*, *supra*, B235130.)

In the present appeal, CHI repeats the contentions it made in its petition for writ of supersedeas -- i.e., that the trial court erred by refusing to enforce the automatic statutory stay of the attorney fees award. Regardless of the fact that we agreed and issued the writ of supersedeas, CHI contends this appeal is not moot because we should "make it clear now that no matter what the outcome of the attorney fees appeal, [CHI] was the prevailing party on the issue of enforcement [of the automatic stay]," and order that CHI shall recover the costs it incurred in fighting enforcement of the fee award. We disagree and dismiss this appeal as moot.

### **RELEVANT FACTUAL AND PROCEDURAL HISTORY**

In the underlying trial, the court determined that CHI owed Soni \$66,317.52 in unpaid fees, plus prejudgment interest of \$11,373.91. It entered judgment for Soni in the total amount of \$77,691.43. As the prevailing party against CHI, Soni moved for attorney fees pursuant to Civil Code section 1717. The court granted the motion and awarded Soni attorney fees in the amount of \$204,465.07 against CHI. CHI filed a

timely appeal from the order granting the attorney fees motion on August 5, 2011. It did not appeal from the judgment for damages against it.

On August 3, 2011, CHI asked Soni how much it owed to satisfy the judgment, including interest. Soni responded that the total due as of that date was \$79,372.97, with an additional \$21.29 of interest accruing each day until CHI paid. CHI immediately sent a check for that amount to Soni by registered mail. Soni received the check on August 4, 2011.

Soni then attempted to collect on the attorney fees award against CHI and filed a motion for contempt when CHI refused to appear for a judgment debtor exam. Soni contended that CHI's appeal of the attorney fees award did not stay collection without posting a bond, and CHI had not posted a bond. The trial court denied the motion for contempt on the ground of improper service, but it concluded that the fee award was not stayed.

Soni submitted a proposed amended judgment at the direction of the court. The amended judgment added a paragraph stating that the court had awarded attorney fees and costs to Soni in the amount of \$202,371.26.<sup>1</sup> CHI objected to the proposed amended judgment on various grounds and moved the court to affirm the automatic stay of the attorney fees award that CHI had triggered by appealing the award. CHI contended that, having paid the damages portion of the judgment in full, it was not required to post a bond to stay execution of the remaining attorney fees award. Soni opposed on several grounds. One ground was that CHI had not paid the full amount of the damages portion of the judgment -- it still owed an additional \$21.29 in interest for August 4, 2011, the day on which Soni received the check for the judgment.

The court ruled that CHI did not owe an additional day of interest and it had thus satisfied the damages portion of the judgment in full. But it also ruled that the attorney

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<sup>1</sup> After the court granted Soni's motion for attorney fees, it subsequently reduced the total award by approximately \$2,000 for reasons that do not concern us here.

fees award was not stayed because CHI was required to post a bond to stay the award and had not. The court entered the amended judgment on March 8, 2012, crediting CHI for the amount it had paid in satisfaction of the damages award, and stating that CHI owed Soni \$202,371.26 for attorney fees.

CHI filed a timely notice of appeal from the court's order denying its motion for affirmation of the automatic stay. That is the notice of appeal at issue in this proceeding. At the same time, CHI filed a petition for writ of supersedeas in its then-pending appeal from the order granting Soni's motion for attorney fees (*Soni v. CH&I Technologies, Inc.*, *supra*, B235130). CHI contended that the trial court erred in refusing to honor the automatic statutory stay of the attorney fees award. Its argument was as follows. Under Code of Civil Procedure section 916, subdivision (a),<sup>2</sup> the perfecting of an appeal automatically stays proceedings in the trial court unless certain statutory exceptions apply. One such exception, section 917.1, subdivision (a), is that the perfecting of an appeal does not stay enforcement of a money judgment unless the judgment debtor gives an undertaking. Subdivision (d) of section 917.1, however, makes the undertaking requirement inapplicable to a judgment for costs only. Under section 917.1, subdivision (d), a judgment debtor who pays and does not appeal the amount of a judgment for damages, but who appeals from the order after judgment assessing costs and attorney fees, is not required to file an appeal bond to stay execution on the unpaid attorney fees award. Execution is automatically stayed pending appeal by operation of the statute. (*Ziello v. Superior Court* (1999) 75 Cal.App.4th 651, 652, 655; see also *Chapala Management Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, 1546; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1430.) The writ petition requested that we award CHI its costs and attorney fees attributable to Soni's failure to honor the automatic stay.

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<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless stated otherwise.

We agreed with CHI regarding the automatic stay and, on April 25, 2012, granted its petition for writ of supersedeas in the following order:

“We have read and considered the petition for writ of supersedeas and request for an immediate stay filed on April 2, 2012. We have also read and considered respondent’s opposition filed on April 13, 2012, and the reply filed on April 20, 2012.

“Enforcement of the July 6, 2011 post-judgment award of attorneys’ fees and costs is automatically stayed based upon the appeal filed on August 5, 2011. [Citations.]

“Accordingly, we grant a writ of supersedeas in a corrective capacity due to the threatened violation of the automatic stay.” (*Soni v. CH&I Technologies, Inc.*, *supra*, B235130.)

Our order granting the writ of supersedeas was silent as to any award of fees and costs for CHI’s efforts to enforce the automatic stay.

On October 3, 2012, we affirmed the trial court’s order awarding Soni attorney fees and costs against CHI. Our opinion ordered that Soni was entitled to recover costs from CHI on the appeal. (*Soni v. CH&I Technologies, Inc.*, *supra*, B235130.)

### **DISCUSSION**

In the present appeal, CHI repeats the same contentions it made in the petition for writ of supersedeas. Almost as an afterthought, CHI contends this appeal is not moot, even though we already agreed with its argument that the trial court erred on the stay and granted the writ of supersedeas. According to CHI, this is because the writ order did not address the right to costs, and we should clarify now that CHI was the prevailing party and entitled to costs on the stay issue. We disagree and hold the appeal is moot.

We recognize that CHI requested costs in its writ petition, but there was nothing requiring us to make an award of costs at that juncture. California Rules of Court, rules 8.112 and 8.116 relate to petitions for writ of supersedeas. Those rules do not require the court to apportion costs when we dispose of a writ of supersedeas or, indeed, even provide for an award of costs in any manner. By contrast, rule 8.493(a), relating to writs of mandate, certiorari, and prohibition, provides that when the court resolves these

writ proceedings with a written opinion, the court *must* specify the award or denial of costs.

By remaining silent on costs in our order granting the writ, we effectively denied CHI's request for costs at that point. We later made a determination on costs. CHI filed the supersedeas petition in the appeal from the order awarding Soni attorney fees and costs. Indeed, the rules required CHI to file it as part of that proceeding and not as a separate proceeding. (Cal. Rules of Court, rule 8.112(a)(2) [petition seeking to stay enforcement of judgment or order pending appeal must bear same title and docket number as appeal].) We have awarded costs in that appeal to Soni, pursuant to rule 8.278, which provides that the prevailing party in the Court of Appeal is entitled to costs on appeal. (Rule 8.278(a)(1).) Thus, we have already resolved costs for the proceeding including CHI's writ petition. CHI's request -- and this appeal -- is moot. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10 [appellate court cannot render opinions on moot questions and will dismiss such an appeal].)

#### **DISPOSITION**

The appeal is dismissed as moot. Respondent Soni is to recover costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.