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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PETER NYDRLE, Plaintiff and Respondent, v. HERVE WILLEMS et al., Defendants and Appellants.	B238379 (Los Angeles Country Super. Ct. No. BC413040)

APPEAL from a judgment of the Superior Court of Los Angeles Country, Alan B. Haber, Temporary Judge (pursuant to Cal. Const., art. VI, § 21.), Joanne B.O'Donnell, Judge. Reversed and remanded with directions.

David S. White & Associates, David S. White, for Plaintiff and Respondent.

Law Offices of Henry N. Jannol, Henry N. Jannol and Paul H. Levine, for Defendants and Appellants.

Herve Willems and Convertibles Only, Inc., doing business as Heritage Classics Motorcar Company (Heritage), appeal from a money judgment in favor of respondent Peter Nydrle. Appellants argue that the judgment is void for lack of jurisdiction. We agree and reverse.

FACTUAL AND PROCEDURAL SUMMARY

Willems is the president of Heritage, a licensed vintage car dealer. In 2009, Nydrle sued both Willems and Heritage for fraud and conversion. He alleged he paid the full purchase price of $138,000 for a 2003 Aston Martin Vanquish by writing a check for $118,000 on December 26, 2007, and trading in a 1963 Mini Cooper, valued at $20,000. Nydrle claimed appellants converted the Vanquish and three other vintage cars he parked in Heritage's lot: a 1976 Rolls Royce, a 1965 Porsche, and a 1994 Porsche.

Heritage cross-complained for breach of an oral contract. It alleged that, other than trading in the Mini Cooper, Nydrle never paid the full purchase price for the Vanquish: $150,500. The cross-complaint also sought a commission for the sale of a 275 GBT Ferrari, but that claim was abandoned.

In May 2010, the parties filed a stipulation for the appointment of retired judge Alan B. Haber as a "privately compensated temporary judge" for all purposes, including mediation and trial. The estimated completion date was December 31, 2010. The assigned Los Angeles Superior Court (LASC) trial judge, Joanne B. O'Donnell, approved the stipulation and appointed Judge Haber as a temporary judge until the conclusion of all matters within the trial jurisdiction of the LASC or until the appointment was revoked by a further court order. The appointment was subject to revocation unless the case was disposed of within 30 days of the completion date.

After an unsuccessful meditation before Judge Haber, in June 2011 the parties stipulated to have a private trial before him, based on his stipulated appointment. The one-day trial took place on June 13, 2011. The parties' settled statement indicates Willems testified that he (on behalf of Heritage) and Nydrle had orally agreed to share profits equally on the sale of cars bought with Nydrle's funds. Willems claimed that

Nydrle did not write the December 2007 check to buy the Vanquish, but to buy out Heritage's interest in the 275 GBT Ferrari. He claimed no one at Heritage knew of the existence of the Vanquish until January 2008. Nydrle denied the existence of any joint venture and insisted he paid the full purchase price for the Vanquish with the $118,000 check and the trade-in of his Mini Cooper.[1]

On July 11, 2011, Judge Haber issued a signed four-page decision, captioned "Judgment." In it, he found Nydrle had failed to prove his complaint, but appellants had proven the cross-complaint. The judge credited Willems's testimony that Heritage did not know about the Vanquish until January 2008, and questioned Nydrle's testimony that he paid for it with the December 2007 check. The judge awarded appellants $135,235 plus interest on the cross-complaint, and conditioned delivery of the Vanquish to Nydrle on full payment of the judgment.

There were some typographical and other errors in the decision. Although only Heritage had brought the cross-complaint, the judge referred to "defendants" in the plural and, at the same time, used a singular possessive in relation to the cross-complaint, finding "defendants" were entitled to judgment in "its favor" on "it's [*sic*] cross-complaint." In one place, the judge incorrectly identified breach of contract as one of the causes of action in the complaint, and conversion as a cause of action in the cross-complaint. In another, he correctly stated that Nydrle alleged appellants converted certain vehicles (the Vanquish, a 1976 Rolls Royce, and two Porsches[2]), and that the cross-complaint alleged Nydrle failed to pay the balance of the purchase price of the Vanquish. On July 21, Judge Haber corrected some of the errors in a document

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[1] The settled statement does not present all trial testimony. Judge Haber referred to the testimony of other witnesses presented by Nydrle, including a valuation expert. Additionally, Nydrle's counsel made unobjected-to references to testimony that Nydrle returned the Vanquish to Heritage for resale in January 2008, and that Willems placed the car in storage in November 2008.

[2] Judge Haber stated the two Porsches were no longer at issue in the litigation. Appellants raise no issue on appeal with regard to any car other than the Vanquish.

captioned "Amendment to Judgment for Typographical Errors not Affecting the Merits of the Controversy."

On July 22, Nydrle filed a motion for "1) Reconsideration of; 2) Clarification of, and/or; 3) To Vacate Award/Judgment." The motion referred to the trial before Judge Haber as an "Arbitration hearing" and described the July 11 decision as an "Award/Judgment." The motion challenged Judge Haber's decision on the following grounds: (1) the cross-complaint, brought only by Heritage, did not allege a cause of action for conversion; (2) the allegation in the cross-complaint that Nydrle and Heritage entered into an oral contract for the purchase of the Vanquish "[i]n or around October 2007" was a judicial admission that controlled over Willems's testimony that Heritage did not know about the Vanquish until January 2008; (3) Nydrle could not be liable for conversion because he returned the Vanquish to Heritage; (4) the statute of frauds barred Nydrle's liability for breach of an oral contract; (5) appellants should be estopped from proceeding on the cross-complaint because their counsel represented in a deposition that the cross-complaint was dismissed. Nydrle's counsel also argued Heritage could not have incurred any damages for breach of contract since Nydrle returned the Vanquish in early 2008 and Heritage failed to mitigate.

Judge Haber filed his July decisions with LASC on August 1. The judge heard Nydrle's motion on August 29. On September 15, the judge sent counsel for the parties a letter that incorporated a signed "Judgment/Award After Reconsideration." In it, the judge stated: "I have reconsidered my previous Award/Judgment, and my decision is that Plaintiff is the prevailing party on his Complaint for Conversion of the Shadow vehicle and the Vanquish vehicle, and is entitled to monetary damages." He awarded Nydrle damages in the amount of $136,500 plus interest.

On September 20, 2011, Nydrle filed a notice of ruling with the LASC and submitted a proposed judgment to Judge O'Donnell. Both documents included Judge Haber's September 15 letter. The proposed judgment included a review of the case's procedural history, but did not mention that Judge Haber had filed the July decisions on August 1. Appellants objected to the proposed judgment on the ground that judgment

already had been entered on August 1, and Judge Haber had exceeded his jurisdiction in purporting to alter that judgment. On October 12, Judge O'Donnell overruled the objections and ordered judgment entered. Appellants filed a motion for a new trial, which was denied by operation of law.

This timely appeal followed.

DISCUSSION

I

Appellants argue the October 12, 2011 judgment is void for lack of jurisdiction because Judge Haber did not have the power to rule on a motion for reconsideration after judgment had been entered. They also argue Judge O'Donnell lacked jurisdiction to sign the judgment since Judge Haber had been appointed temporary judge for all purposes. We agree that Judge Haber had lost power to reconsider the judgment he filed on August 1. The October 12 judgment is void for that reason and not because Judge O'Donnell lacked jurisdiction to order its entry.

A. Private Judging

In the motion for reconsideration, Nydrle's counsel characterized the trial before Judge Haber as an arbitration hearing and the judge's decision as an award. But the parties did not agree to arbitrate their dispute, and the proceeding was not governed by the rules for judicial or contractual arbitration. (See Code Civ. Pro. §§ 1141.10 et seq., 1282 et seq.;[3] *Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 344.) Rather, by its plain terms, the parties' stipulation was for the appointment of Judge Haber as a "privately compensated temporary judge." Because of the confusion in this case, we briefly review the procedural rules applicable to private judging.

Cases may be adjudicated by a temporary judge under section 21, article VI of the California Constitution, which provides: "On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar,

[3] All statutory references are to the Code of Civil Procedure.

sworn and empowered to act until final determination of the cause." (Cal. Const., art. VI, § 21.) A temporary judge is thus empowered to act until the final determination of the cause or proceeding and may rule on post-trial motions, such as motions to reconsider, for new trial, or to vacate judgment. (*Gridley v. Gridley* (2008) 166 Cal.App.4th 1562, 1580–1581; *McCartney v. Superior Court* (1990) 223 Cal.App.3d 1334, 1339; *Reisman v. Shahverdian* (1984) 153 Cal.App.3d 1074, 1095–1096.)

A temporary judge is empowered to render a judgment. (*Kajima Engineering and Construction, Inc. v. Pacific Bell* (2002) 103 Cal.App.4th 1397, 1401.) This broad power distinguishes a temporary judge from a general referee, who renders only a statement of decision, on which the court renders judgment. (*Ibid*.) When a temporary judge renders judgment, he or she usually files it with the court clerk of the appointing court. (Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2012), ¶ 6:113, pp. 6–29.) The clerk then enters the judgment in the court's judgment book (*ibid*.; § 668), or under the newer methods in section 668.5, judgment may be entered in the register of actions or in the court's electronic data-processing system. (See *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1268 fn. 2.)

B. Judge Haber's Jurisdiction

Appellants correctly argue that, after the entry of judgment, the court has no jurisdiction to hear or decide a motion for reconsideration. (See *APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 180–182.) "A court may . . . reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, . . . the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment." (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.)

Nydrle argues in passing that appellants waived any objection to Judge Haber's lack of jurisdiction when they did not raise it at the hearing on the motion. We need not consider conclusory arguments unsupported by citation to authority. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) For the sake of clarity, we note

that the jurisdictional issue in this case does not go to Judge Haber's "fundamental authority over the subject matter, question presented, or party," which would make the judgment void *ab initio*. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) Rather, his reconsideration of the judgment is more properly characterized as "an act in excess of [his] jurisdiction or defined power, rendering the judgment voidable." (*Ibid*.) The distinction is important because acts in excess of jurisdiction are subject to waiver, consent and estoppel principles, while acts without fundamental jurisdiction are not. (*Mt. Holyoke Homes, LP v. California Coastal Com.* (2008) 167 Cal.App.4th 830, 842.)

The record in this case does not support a finding of waiver or estoppel. It is unclear whether, on August 29, 2011 when Nydrle's motion was heard, appellants knew that Judge Haber already had filed his July decisions. Besides, Nydrle's motion was presented in the alternative as a motion for reconsideration or to vacate the judgment, and Judge Haber had jurisdiction to hear a motion to vacate. (See *Passavanti v. Williams*, *supra*, 225 Cal.App.3d at p. 1606.) Once Nydrle offered Judge Haber's September 15 decision, titled "Judgment/Award After Reconsideration," for entry as part of the proposed judgment, appellants immediately objected that the judge had exceeded his authority in "purporting to alter the Judgment entered on August 1, 2011." On this record, there is no waiver of their right to challenge Judge Haber's jurisdiction.

Nydrle argues that no judgment was entered on August 1, 2011, but he does not dispute that, on that date, Judge Haber filed his signed decisions captioned "Judgment" and "Amendment to Judgment for Typographical Errors not Affecting the Merits of the Controversy."[4] In light of the modern methods of entry of judgments permitted under section 668.5 and used in most counties in the state, "the concept of 'entry,' as distinct from filing, appears to have lost its utility." (*Palmer v. GTE California, Inc.*, *supra*, 30 Cal.4th at p. 1268, fn. 2.) The distinction between filing and entry of judgment Nydrle draws is, thus, not dispositive since the clerk's "file stamped" date on the judgment is its

[4] Before oral argument, appellants submitted to this Court file-stamped copies of these documents.

entry date. (§ 668.5; *Palmer v. GTE California, Inc.*, at p. 1268, fn. 2; *Filipescu v. California Housing Finance Agency* (1995) 41 Cal.App.4th 738, 741.)

A judgment is the final determination of the parties' rights. (§ 577.) Decisions that are signed and filed and constitute the court's final determination of the merits may be treated as judgments. (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901, citing *Estate of Lock* (1981) 122 Cal.App.3d 892, 896 ["[I]t is well settled that the substance or effect of the judgment and not its designation is determinative of its finality. A memorandum of decision may be treated as . . . judgment when it is signed and filed, and when it constitutes the trial judge's determination on the merits"].) The signed July 11 decision bore the caption "Judgment" and contemplated no additional act by Judge Haber or any other judge. The July 21 amendment expressly corrected only typographical errors not affecting the merits. We, therefore, conclude that the July 11 decision constituted a judgment, which was entered when the decision, along with the amendment, was filed on August 1. It could not be reconsidered after that date. (*APRI Ins. Co. v. Superior Court*, *supra*, 76 Cal.App.4th at p. 180.)

Yet, in the "Judgment/Award After Reconsideration," Judge Haber purported to do just that—reconsider his previous judgment. Adopting the misleading nomenclature used in Nydrle's motion for reconsideration, the judge stated that he had "reconsidered" his "previous Award/Judgment" and decided to award damages to Nydrle rather than to appellants. The previous judgment was not designated an award, and it could not be so designated since, as we have explained, the proceeding before Judge Haber was not an arbitration. Nor would a motion for reconsideration have been a proper vehicle for challenging an arbitration award. (See generally Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2012), ¶ 4:149, p. 4-42 [request for trial de novo allowed after entry of judicial arbitration award]; ¶¶ 5:439, 5:446, pp. 5-305, 5-446 [in contractual arbitration, arbitrator has no power to reconsider merits; award subject to limited judicial review on petition to confirm or vacate].) Judge Haber offered no reason for reconsidering a judgment he already had signed and filed, and we can find none, other than the judge believed he had made the wrong decision on the merits.

As we have stated, Nydrle's motion was styled in the alternative as a motion "to vacate award/judgment," something Judge Haber acknowledged in the September 15 decision. In that part of the motion, Nydrle proceeded under section 663, which permits a party to move to vacate a judgment when there is an "[i]ncorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected." Section 663 applies if "the trial judge draws an incorrect legal conclusion or renders an erroneous judgment upon the facts found by it to exist. [Citation.]" (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 738.) In response to such a motion, the court may correct the judgment to conform it to the facts, but it has "no power to disturb a determination of fact." (8 Witkin, Cal. Procedure (5th ed. 2008) Attack, § 140, p. 732.) "[I]f the facts are not correctly determined, and the attack is on the decision, the aggrieved party should move for a new trial." (*Ibid*.)

It is the substance of a motion and not its label that is determinative, and the trial court has discretion to treat one type of motion as another based on its substance and despite its labeling. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193.) We asked the parties to address whether Nydrle's motion could be treated as a motion to vacate. At oral argument, Nydrle's counsel contended Judge Haber had power to correct his error in misidentifying conversion as a cause of action in the cross-complaint. But the July 11 decision did not award appellants damages for conversion, and it cannot fairly be read to do so. Although in one part of the decision Judge Haber transposed the causes of action in the complaint and cross-complaint, in other parts he correctly stated the complaint alleged that appellants converted the Vanquish, and the cross-complaint alleged that Nydrle did not pay its full purchase price. A cause of action is determined by the factual allegations rather than its label. (See *Dutra v. Eagleson* (2006) 146 Cal.App.4th 216, 221.) The single transposition of the causes of action in the complaint and cross-complaint was a clerical, rather than a judicial, error. (See *Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1034 ["A clerical error in the judgment includes inadvertent errors made by the court 'which cannot reasonably be

attributed to the exercise of judicial consideration or discretion'"].) The award in favor of both appellants on the cross-complaint also was a clerical error because the determination that Willems was not a party to the cross-complaint did not require any judicial consideration or discretion. (*Ibid*.) The correction of clerical errors could not have been used as an occasion to set aside the judgment in appellants' favor and find in Nydrle's favor.

This is so because, as appellants' counsel correctly argued, a motion to vacate is not an invitation to reweigh the evidence, which is what Judge Haber did in order to find in Nydrle's favor. The judge originally had credited Willems's trial testimony that Heritage did not know about the existence of the Vanquish until January 2008. In his motion, Nydrle challenged that finding on the ground that the unverified cross-complaint alleged the oral contract for Nydrle to buy the Vanquish was made "[i]n or around October 2007." He argued the allegation was binding on Heritage as a judicial admission and could not be varied at trial. Whether or not it had merit, this argument challenged Judge Haber's factual determination, which the judge had no power to disturb on a motion to vacate. (See 8 Witkin, Cal. Procedure (5th ed. 2008) Attack, § 140, p. 732.)

On appeal, neither side addresses the rest of the arguments advanced in Nydrle's motion—that Heritage should be estopped from proceeding on the cross-complaint, that the breach of contract cause of action in the cross-complaint was barred by the statute of frauds, and that Heritage failed to mitigate its damages. Whatever their merit, these arguments were directed to the portion of the judgment awarding damages on the cross-complaint. None went to Judge Haber's conclusion that Nydrle had failed to prove his own complaint so as to justify amending the judgment to award damages to Nydrle.

Appellate courts have required "extremely good cause" to treat a motion for reconsideration as another kind of motion. (*Passavanti v. Williams, supra,* 225 Cal.App.3d at p. 1608.) In *APRI Ins. Co. v. Superior Court*, *supra*, 76 Cal.App.4th 176, 184, we declined to treat a motion for reconsideration as a motion to vacate because the trial court did not do so even though the issue had been raised. Similarly, here, there is no evidence Judge Haber treated Nydrle's motion as a motion to vacate even though the

motion was so captioned. In any event, the judge would have had no power to reweigh the evidence in order to find in Nydrle's favor had he treated the motion as one to vacate the judgment. Nydrle has not asked us to construe the motion as a motion for a new trial, and we decline to do so in the absence of evidence that Judge Haber was asked to or did in fact treat it that way.

In sum, the September 15, 2011 decision is void because Judge Haber had lost his jurisdiction to rule on Nydrle's motion for reconsideration after filing his original and amended judgments on August 1. The October 12, 2011 judgment, which is based on the September 15 decision, should be set aside as void for the same reason.

C. Judge O'Donnell's Jurisdiction

Appellants argue that Judge O'Donnell had no jurisdiction to sign the October 12 judgment because Judge Haber had been appointed temporary judge for all purposes. Although this argument is moot, we will address it briefly to clear up the parties' confusion.

Judge Haber was appointed a temporary judge until the conclusion of all matters within the trial jurisdiction of the LASC or until his appointment was revoked by court order. The record does not indicate that the appointment was ever revoked. While the parties' initial stipulation stated that it did not extend to "post judgment enforcement and modification proceedings," appellants do not argue this language gave Judge Haber more limited power than the appointment order or section 21 of article VI of the state Constitution.

Nothing in the constitutional provision declares that the power of a temporary judge "shall be exclusive, or that it shall be in any way greater than that of elected judges." (*Graziani v. Denny* (1917) 174 Cal. 176, 179.) Thus, when a temporary judge is unavailable, a matter assigned to him may be heard by another judge. (*New Tech Developments v. Bank of Nova Scotia* (1987) 191 Cal.App.3d 1065, 1069–1070.) If the temporary judge is available, however, the case should properly be presented to him. (See *id*. at p. 1070.) This is so because "once a matter has been assigned to one department of the superior court for hearing and determination, and there has been no

final disposition, 'it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned.' (*Williams v. Superior Court* (1939) 14 Cal.2d 656, 662.) The policy basis for such a rule is clear. It prevents the certain confusion generated by 'conflicting adjudications of the same subject-matter by different departments of the one court' (*ibid.*) and invidious forum-shopping within the superior court." (*New Tech Developments v. Bank of Nova Scotia,* at p. 1069.)

Here, there is no evidence that Judge Haber was unavailable, but in an apparent belief that the temporary judge did not or could not render judgment, Nydrle's counsel submitted the September 15 decision to the LASC as part of a "Notice of Ruling" and also submitted it to Judge O'Donnell as part of a proposed judgment. As we explained, a temporary judge has power to render judgment. (*Kajima Engineering and Construction, Inc. v. Pacific Bell*, *supra*, 103 Cal.App.4th at p. 1401.) Rendering a judgment is a judicial act, while its entry by the clerk is ministerial. (See *Bank One Texas v. Pollack* (1994) 24 Cal.App.4th 973, 978.) Since Judge Haber had power to render a judgment, no further judicial act would have been necessary if his September 15 decision was a judgment. Any party could submit the judgment for entry. Any judge could order it entered, since the entry of judgment could be compelled by mandamus. (See 8 Witkin, Cal. Proc. (5th ed. 2008) Writs, § 112, p. 1006.)

The signed September 15 decision was captioned "Judgment/Award After Reconsideration." It purported to be a final determination of the merits and did not contemplate any other judicial act. In that sense, it may be considered a judgment. (See *Estate of Lock*, *supra*, 122 Cal.App.3d at p. 896.) Nydrle's counsel could have filed it for entry with the court clerk, instead of submitting it to Judge O'Donnell. The October 12 judgment bearing Judge O'Donnell's stamp did not change the substance of Judge Haber's September 15 decision. It only ordered that it be entered as judgment. Thus, it did not run afoul of the prohibition against one judge interfering with another judge's handling of a case. (*Alvarez v. Superior Court* (2004) 117 Cal.App. 4th 1107, 1111). Whether or not the submission of the proposed judgment to Judge O'Donnell was

procedurally proper, the fact that she, rather than Judge Haber, signed the October 12 judgment does not invalidate that judgment.

However, if Nydrle's counsel indeed believed that the September 15 decision, incorporated as it was in the body of a letter addressed to counsel, was not a judgment, and if Judge Haber was available, counsel should have proceeded before Judge Haber until the judge rendered judgment. (See *New Tech Developments v. Bank of Nova Scotia*, *supra,* 191 Cal.App.3d at p. 1069.) The proposed judgment purported to recount the procedural history of the case but made no mention of Judge Haber's August 1 filing of judgment. Appellants objected, but their objections to the proposed judgment were not the proper vehicle to challenge Judge Haber's September 15 decision for lack of jurisdiction or on the merits. (*See Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292 [main purpose of objections is to bring to court's attention inconsistencies between court's ruling and document that embodies it].) In any event, Judge O'Donnell would not have been in a position to interfere with Judge Haber's decision if the case was still pending before Judge Haber and that judge was available. (See *New Tech Developments v. Bank of Nova Scotia*, at pp. 1069–1070.)

The October 12, 2011 judgment is void and should be set aside because Judge Haber had lost jurisdiction to reconsider his previous judgment. That Judge O'Donnell, rather than Judge Haber, ordered the judgment entered does not separately invalidate it, even though the procedural step Nydrle's counsel took may have been irregular.

II

Because we declare the October 12, 2011 judgment void, we do not consider appellants' alternative argument that it is not supported by substantial evidence. Additionally, we express no opinion on the appealability of the August 1, 2011 judgment upon reinstatement as that issue is not before us.

DISPOSITION

The October 11, 2011 judgment is reversed. The matter is remanded and the trial court is directed to vacate that judgment and to reinstate the judgment filed on August 1, 2011.

Appellants are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.