Filed 10/2/19 In re 7250 Franklin Ave., No. 207, L.A., Cal. 90046 CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re 7250 Franklin Avenue, No. 207 Los Angeles, California 90046 G. GREGORY WILLIAMS et. al., Defendants and Appellants, vs. ELI LEVI, Defendant and Respondent.	B287098 (Los Angeles County Super. Ct. No. BS084615)

APPEAL from an order of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Dismissed.

G. Gregory Williams and Plernpit Polpantu, in pro. per., for Appellants.

Christie Gaumer for Eli Levi and Levi Estates, LLC.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer, Vikram Sohal for Andrew Ritholz and Law Offices of Andrew Ritholz, Inc.

INTRODUCTION

Appellants G. Gregory Williams and Plernpit Polpantu purport to appeal from a November 20, 2017 order, which revoked an earlier order without prejudice, set a hearing on disbursement of surplus funds from a foreclosure sale, and set a briefing schedule for claims to the surplus funds. Because it is a nonappealable interlocutory order, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background

This appeal is the latest installment in a 16-year saga of federal and state litigation, all arising from the non-judicial foreclosure sale of a single condominium unit in 2003. Our most recent opinion was filed on June 4, 2019. (*Williams et al., v. Levi et al.* (June 4, 2019, B289174) [nonpub. opn.]). As best we can, we will limit our discussion of legal issues to topics relevant to this narrow appeal. As we have done in our previous opinions, however, we begin with an overview of the litigation in order to put this appeal in context and introduce the parties. The summary is excerpted from one of our previous opinions. (*R.E.F.S., Inc. v. Williams* (April 3, 2017, B266574) [nonpub. opn.]).

"'Williams, who purchased the condominium in 1995, transferred title to his fiancée, P. Toi Polpantu, by a deed recorded on April 21, 1999. However, by a quitclaim deed that was also dated April 21, 1999, but was not recorded, Polpantu transferred title back to Williams.

"'Williams and Polpantu were living in the condominium when the condominium association served notice of an April 3, 2003 foreclosure sale for Polpantu's nonpayment of approximately $11,000 in association fees. Two days before the foreclosure sale, Williams filed his April 1, 2003 bankruptcy petition, but the petition did not disclose his interest in the condominium. When the April 3, 2003 foreclosure sale was held, Polpantu, not Williams, was the owner of record title. [Eli] Levi purchased the condominium at the foreclosure sale for $215,000. One day after the foreclosure sale, Williams recorded the previously unrecorded April 21, 1999 quitclaim deed from Polpantu.

"Williams's April 2003 bankruptcy petition was dismissed in August 2003. It was followed by another bankruptcy petition, filed in October 2003 and dismissed in February 2004. In December 2003, the bankruptcy court retroactively annulled the automatic stay to the date of Williams's . . . April 1, 2003 bankruptcy petition, thereby precluding Williams from attacking the April 3, 2003 foreclosure sale on the ground that the sale was conducted in violation of the automatic stay [citation]. The annulment of the automatic stay was affirmed on appeal and is now final [citations].

"Levi was granted a writ of possession in an unlawful detainer action, and [Williams and Polpantu] were evicted in late February 2004, 10 months after the foreclosure sale. In 2008, after many procedural complications, Levi obtained a default judgment, in which [title was quieted in his favor, the quitclaim deed from Polpantu to Williams was voided, record title to the property was perfected in favor of Levi, Levi obtained a

$256,639.12 damages award against Polpantu and Williams, and Levi obtained additional relief.]

"Meanwhile, in July 2003, the foreclosure trustee, R.E.F.S., Inc., commenced this proceeding by filing a form 'Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds' from the trustee's sale in the amount of $198,600.62. (Civ. Code §2924j.) . . . .

"In August 2003, Levi filed a court claim to the surplus funds. He claimed that, if the foreclosure sale was deemed valid, he was entitled to the amount still owed to a senior lienholder, and that, if the foreclosure sale was deemed void, he was entitled to the entire surplus, as part of the return of his purchase price. No other claim was filed with the court and no action to release the funds was taken until 2014, when Levi moved for their release . . . .

"On March 26, 2014, Judge Mark A. Borenstein, to whom the case was assigned . . . issued an order to show cause (OSC) why the deposited funds should not be released to Levi . . . .

"[Williams and Polpantu] did not appear at the . . . hearing, and [the court] ordered the surplus funds paid to Levi by way of a check to be mailed to his counsel." (*Williams et al. v. Levi* (April 3, 2017, B266574) [nonpub. opn.].

In our April 3, 2017 decision, we reversed orders awarding the surplus funds to Levi, and remanded for further proceedings to determine how the funds should be paid. We stated, in relevant part, "Levi had no recorded interest in the real property before the trustee's sale. His 2003 claim to the surplus funds was based on his status as a purchaser at the foreclosure sale and on the continued existence of a senior lien on the property. Neither circumstance entitled him to the surplus proceeds under [the

nonjudicial foreclosure provisions] . . ." (*Williams et al. v. Levi* (April 3, 2017, B266574) [nonpub. opn.]. We explained, however, "[t]o the extent Levi may have rights to the funds under the Enforcement of Judgments Law (Code Civ. Proc., § 680.010 et seq.), the record before us does not show he has pursued any of the available avenues for enforcing a money judgment." (*Ibid.*) Accordingly, we remanded the case for an order directing Levi to return the surplus proceeds to the court, noting "[what] further action the parties or the court may choose to take with regards to the funds in this or other proceedings is not a matter properly before us, and we express no view on it." (*Ibid.*)

B. The November 20, 2017 Order and Subsequent Proceedings

After the case was remanded, on July 13, 2017, Williams filed a motion for an order distributing the surplus funds to Williams and Polpantu, but failed to serve the motion on Levi. Unaware that Levi had not been served, on September 13, 2017, the court granted the motion.

On November 20, 2017, however, after being informed about Williams's and Polpantu's failure to serve their July 13, 2017 motion on Levi, the trial court revoked its September 13, 2017 order distributing the surplus funds to Polpantu without prejudice, ordered Levi to return the funds to the court, set a hearing on how the funds should be disbursed, and set a briefing schedule for claims to be submitted for the funds. On December 18, 2017, Williams filed a notice of appeal, purporting to appeal from the November 20, 2017 order and "[a]ll subsequent [o]rders and/or judgments."

Levi later filed motions seeking to demonstrate he was entitled to the surplus funds. On July 23, 2018, the court granted Levi's motions, directing payment "to be made to Eli Levi as lien holder." On August 13, 2018, Williams filed a notice of appeal from the July 23, 2018 order (Case No. B292011). That appeal was dismissed, however, for failure to timely file an opening brief.

DISCUSSION

We first address the threshold question of which issues are properly before us on appeal. As noted above, Williams purports to appeal from the November 20, 2017 order "and all subsequent [o]rders and/or judgments." As we explained in our June 4, 2019 opinion, "[u]nspecified 'subsequent' orders and judgments, which have yet to be entered, are not appealable. (*See* [Civ. Code] § 904.1.) Similarly, to the extent Williams seeks to challenge prior orders not specified in the notice of appeal, we lack jurisdiction to review them (even assuming they are appealable). (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073 ['Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from'].)" (*Williams et al. v. Levi et al.* (June 4, 2019, B289174) [nonpub. opn.] Accordingly, the only order relevant to this appeal is the November 20, 2017 order. That order, however, is a nonappealable interlocutory order.

A reviewing court lacks jurisdiction on direct appeal in the absence of an appealable order or judgment. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) Under the "'one final judgment'" rule, review of intermediate rulings by appeal must await final resolution of the case. (*Id.* at p. 697.) "'[W]here anything further in the nature of judicial action on the

part of the court is essential to a final determination of the rights of the parties'" following the issuance of an order, the order is merely interlocutory rather than final and appealable. (*Id.* at p. 698.)

In Williams's response to this court's issuance of a notice to show cause in writing why the appeal should not be dismissed as having been taken from a nonappealable order, he contended the order is appealable under Code of Civil Procedure section 904.1 because it is an appeal "from an order made after a judgment." (Code Civ. Proc. § 904.1(a)(2).) He argued the September 13, 2017 order granting his motion to distribute the surplus funds was a final order because "the clerk finalized everything to be accomplished in such *special proceedings*; namely, the conclusive payout of proceeds . . . ."[1] But the November 20, 2017 order *revoked* the September 13, 2017 order, and set a further hearing and briefing schedule on claims to the surplus funds. Thus, the November 20, 2017 order did nothing to finally determine the rights of the parties; it only set a further hearing and briefing schedule. Then, as noted above, on July 23, 2018, the court directed payment of the surplus funds be made to Levi. Because the November 20, 2017 order required further judicial action to finally determine the rights of the parties to the funds, the order was interlocutory rather than a final and appealable order. (*Griset v. Fair Political Practices Com., supra*, 25 Cal.4th at p. 696.)

Even if the November 20, 2017 order were appealable, we would affirm on the merits. As noted above, Williams failed to serve the motion for an order distributing the surplus funds on

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[1] Levi did not file a reply, and the appeal was returned to active status on May 10, 2018.

Levi. Williams does not contend otherwise. Accordingly, the trial court's decision to revoke its order distributing the surplus funds was entirely warranted because service of a motion is compelled both by statute and due process.

DISPOSITION

The appeal is dismissed. Respondents are awarded their costs on appeal.

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CURREY, J.

WE CONCUR:

WILLHITE, acting P. J.

COLLINS, J.