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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re

ANNE KIHAGI

on Habeas Corpus.

B282439

(Los Angeles County
Super. Ct. No. SC119079)

ORIGINAL PROCEEDING; petition for a writ of habeas corpus, Mitchell L. Beckloff, Judge. Petition granted.

Zfaty | Burns, Isaac Zfaty, Ryan N. Burns and Sam Maralan for Petitioner.

Michael Jenkins, City Attorney, and Alison G. Regan, Staff Attorney, for Real Party in Interest City of West Hollywood.

Mesisca, Riley & Kreitenberg and Dennis P. Riley for Real Party in Interest John Sheehe.

Petitioner Anne Kihagi (Kihagi) challenges a judgment of contempt via this petition for writ of habeas corpus. She contends that the trial court's June 6, 2013 preliminary injunction is invalid, and that the trial court's April 25, 2017 order sentencing her to serve five days in county jail for violation of that order should be vacated.

Because we conclude that the preliminary injunction Kihagi violated was invalid, we grant the petition and direct the trial court to vacate its April 25, 2017 order.

BACKGROUND

The following facts are summarized from our unpublished opinions in *City of West Hollywood v. Kihagi* (Jan. 7, 2014, B244072) (*Kihagi I*) and *Sheehe v. Kihagi* (July 19, 2016, B259455) (*Kihagi II*), and our most recent published opinion in *City of West Hollywood v. Kihagi* (2017) 16 Cal.App.5th 739, 744–747 (*Kihagi III*).

1263 North Crescent LLC owns an eight-unit apartment building at 1263 to 1267-1/2 North Crescent Heights Boulevard (Building) in the City of West Hollywood (City). Kihagi is the managing member of 1263 North Crescent LLC and Aquat 009 LLC. On July 17, 2008, Kihagi notified the City that the Building would be withdrawn from the rental market. At the time, four of the units were occupied and the other four units were vacant. Kihagi notified the tenants in the four occupied units that their tenancies would be terminated as of November 14, 2008.

The City asserted that Kihagi violated the City's Rent Stabilization Ordinance (RSO), and filed an action seeking a temporary restraining order and permanent injunction against Kihagi. On October 30, 2008, the trial court issued a temporary

restraining order enjoining Kihagi from refusing to restore electricity and hot water to one of the units, performing any plumbing work on the unit, as well as enjoining her termination of the four remaining tenancies.

In January 2009, the City and Kihagi reached a settlement of the matter. If Kihagi violated the terms of the settlement, the City would be entitled to a permanent injunction and \$10,000 in liquidated damages with no opportunity for Kihagi to cure the breach. The parties agreed that the City would dismiss the complaint, but that the trial court would retain jurisdiction under Code of Civil Procedure section 664.6 in order to enforce the terms of the settlement agreement.

In 2012, Kihagi notified the City she would be renting units 1263-1/2, 1265, and 1265-1/2, the unit at issue in this case, and re-rented four of the eight units at market prices rather than rent-controlled prices. The City successfully moved the court to enforce the settlement agreement against Kihagi. The trial court found that Kihagi was in breach of the settlement agreement, and entered judgment enjoining Kihagi from proceeding with her intent to rent the units. Kihagi appealed.

After Kihagi filed the notice of appeal in *Kihagi I* but before we issued our opinion in that case, Sheehe filed this lawsuit on November 15, 2012, alleging that Kihagi had violated the City's municipal codes implementing the Ellis Act. The City intervened and successfully moved for a preliminary injunction, which enjoined Kihagi from re-renting units at the Building pending trial in *Kihagi II*. Kihagi did not appeal the issuance of the preliminary injunction. The injunction, issued on June 6, 2013, stated that "Defendants, their agents, servants, assigns, successors, and all those acting in concert with them, are

enjoined pending trial of this action from: [r]e-renting Units 1263, 1265 1/2, 1265 3/4, and 1267 at 1263-1267 N. Crescent Heights Boulevard in West Hollywood, California.” This preliminary injunction is the subject of the contempt order underlying this petition.

We issued our opinion in *Kihagi I* in January 2014, reversing the judgment against Kihagi and holding that under the terms of the settlement agreement, Kihagi could return units where tenants had been displaced to the rental market as long as she complied with the Ellis Act. The facts established that Kihagi had complied with the Ellis Act and thus was not in breach of the settlement agreement. With respect to unit 1265-1/2, which was occupied by Sheehe at the time of the notice of withdrawal, Kihagi had not re-rented the unit in 2012, when the City sought enforcement of the settlement agreement. Therefore, Kihagi could not be in breach of the Ellis Act as to this unit because no rental had actually occurred.

Despite the trial court’s preliminary injunction, on May 5, 2014, Kihagi returned unit 1265-1/2 to the rental market without offering Sheehe the right of first refusal to return to his unit. The City sought to hold Kihagi in contempt for violating the preliminary injunction. Kihagi moved to dissolve the injunction on July 3, 2014, and the trial court denied the motion but modified the injunction on September 5, 2014. Kihagi appealed on October 1, 2014. We stayed the proceedings in the trial court, including the hearing on the motion to hold Kihagi in contempt, pending resolution of *Kihagi II*.

On November 20, 2015, the City filed a motion to enforce the settlement agreement. On December 31, 2015, the trial court found that Kihagi had violated the terms of the settlement

agreement and entered judgment in favor of the City. The trial court issued a permanent injunction, enjoining “Kihagi, their agents, representatives, successors, assigns, and all those acting in concert with them . . . from proceeding with the termination of tenancies at 1263–1267-1/2 N. Crescent Heights Blvd. under the Notice to the City of Intent to Withdraw Rental Units from the Market” filed on July 17, 2008.” Kihagi appealed the permanent injunction on February 24, 2016.

On July 19, 2016, we issued our opinion in *Kihagi II*, holding that our decision in *Kihagi I* did not bar the City from moving for a preliminary injunction enjoining Kihagi from re-renting units at the Building pending trial because the opinion in *Kihagi I* interpreted the settlement agreement with the City and nothing else. On December 2, 2016 the remittitur issued in *Kihagi II*, and on January 27, 2017, the contempt proceeding commenced. The trial court heard testimony on February 21, 2017 and on April 25, 2017, held Kihagi in contempt for violating the June 6, 2013 preliminary injunction. The court found that Kihagi had knowledge of the preliminary injunction, had the ability to comply with it, and willfully disobeyed it. Kihagi was ordered remanded to the custody of the Los Angeles County Sheriff’s Department to serve five days in the county jail. This petition followed on May 11, 2017. The trial court stayed enforcement of the sentence pending resolution of this petition.

We issued our opinion in *Kihagi III* on September 29, 2017 and reversed the permanent injunction. We concluded in *Kihagi III*, as we had in *Kihagi I*, that the settlement agreement did not in fact bar Kihagi from re-entering the rental market. Rather, Kihagi could return formerly-occupied units to the rental market as long as she complied with the Ellis Act. In reaching

this conclusion we agreed with the parties, who conceded that the preliminary injunction as drafted was unenforceable and thus ineffectual. On October 19, 2017 we issued an alternative writ, directing the trial court to vacate the April 25, 2017 order finding Kihagi in contempt for violating the preliminary injunction. On December 29, 2017, the trial court issued a minute order declining to vacate the order. In the minute order, the trial court acknowledges that “it could be argued the scope of the preliminary injunction is not consistent with the Ellis Act because it completely prohibits re-renting plaintiff’s unit.” It then states that “the preliminary nature of the injunction and the facts here warrant considerations different than with a permanent injunction.”

DISCUSSION

Contempt of a valid order of a court may be punished via two methods, one of which includes that “an order to show cause regarding an alleged act of contempt may issue in the court that made the order that was violated, commencing a separate action in the ordering court. Upon a finding of contempt, the contemner may be punished with up to five days in jail and a fine.” (*People v. Gonzalez* (1996) 12 Cal.4th 804, 816 (*Gonzalez*)). This is considered a quasi-criminal proceeding and the defendant possesses some of the rights of a criminal defendant. (*Ibid.*)

A judgment of contempt is reviewable by a petition for writ of habeas corpus. (*In re Berry* (1968) 68 Cal.2d 137, 145–146.) We review to determine whether there existed any substantial evidence to sustain the jurisdiction of the trial court. (*In re Coleman* (1974) 12 Cal.3d 568, 572–573.) A void order, however, cannot form the basis for a contempt judgment. (*Gonzalez, supra*, 12 Cal.4th at pp. 818–819.) Among other arguments, Kihagi

contends that the preliminary injunction is invalid and, therefore, it cannot form the basis of the judgment of contempt. Because we agree that the preliminary injunction was overbroad, we grant the petition on that basis and do not address the remaining arguments.

As a threshold matter, in *Kihagi II* we concluded that Kihagi was unable to challenge the preliminary injunction, which she failed to challenge via an appeal. Here, however, Kihagi may collaterally challenge that order as it is underlying a contempt judgment. Unlike a direct challenge to the preliminary injunction on appeal, Kihagi is able to collaterally attack an order in contempt proceedings because a person facing a decision whether to comply with an order “may consider it a more prudent course to comply with the order while seeking a judicial declaration as to its jurisdictional validity. [Citation.] On the other hand, he may conclude that the exigencies of the situation or the magnitude of the rights involved render immediate action worth the cost of peril. In the latter event, such a person, under California law, may disobey the order and raise his jurisdictional contentions when he is sought to be punished for such disobedience. If he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess of jurisdiction, his violation of such void order constitutes no punishable wrong.” (*Gonzalez, supra*, 12 Cal.4th at pp. 818–819.)

As the trial court acknowledged, “it could be argued the scope of the preliminary injunction is not consistent with the Ellis Act because it completely prohibits re-renting plaintiff’s unit.” Our holding in *Kihagi III* supports this reading of the scope of the preliminary injunction, which completely prohibits

Kihagi from re-renting the units in the Building, even to the extent those re-rentals were compliant with the Ellis Act. Moreover, our opinion in *Kihagi II*, which precluded Kihagi from challenging the preliminary injunction because she did not appeal it, does not affect her ability to challenge the validity of that injunction in the context of a quasi-criminal contempt judgment.

As with the permanent injunction we reversed in *Kihagi III*, as acknowledged by the trial court, the scope of the preliminary injunction is broader than the injunctive relief available to the City under the Ellis Act. As a result, we conclude that this preliminary injunction cannot support a judgment of contempt against Kihagi.

DISPOSITION

Because the preliminary injunction was invalid, the petition is granted and the order holding Anne Kihagi in contempt of the order is vacated. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

CHANEY, J.

ROTHSCHILD, P. J., concurring:

I agree with the majority that the preliminary injunction that petitioner Kihagi violated was invalid, and I join in granting the petition for writ of habeas corpus and vacating the order holding Kihagi in contempt. I write separately because the trial court's injunction is invalid for a more fundamental reason than the majority recognizes.

The majority concludes that the preliminary injunction is invalid because the scope of the injunction "is broader than the injunctive relief available to the City under the Ellis Act." (Maj. opn. *ante*, at p. 8.) For the reasons expressed in my concurring and dissenting opinion in *City of West Hollywood v. Kihagi* (2017) 16 Cal.App.5th 739, 755–758, however, a city may not obtain injunctive relief under the Ellis Act. The problem with the court's injunction, therefore, is not merely a matter of its breadth, but that it was issued at all.

ROTHSCHILD, P. J.