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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ARNO FEUER,

Plaintiff, Cross-defendant and Appellant,

v.

ANTON FEUER,

Defendant, Cross-complainant and
Respondent.

2d Civil No. B222208
(Super. Ct. No. SC050082)
(Ventura County)

This appeal arises from the trial court's orders appointing a receiver to sell certain real property co-owned by appellant Arno Feuer and his father, respondent Anton Feuer. Shortly after the appeal was filed, the receiver completed the sale. The trial court approved the receiver's final report and terminated the receivership. Because we cannot order the relief sought by appellant, we dismiss the appeal as moot.

PROCEDURAL AND FACTUAL BACKGROUND

Appellant and respondent were co-owners of horse property located at 4394 Hitch Boulevard, Moorpark, California (Property). Appellant filed a complaint for partition. Respondent cross-complained for conversion, fraud, intentional infliction of emotional distress and elder financial abuse.

On March 7, 2008, the parties placed an oral settlement agreement on the record. In essence, the parties agreed that respondent would pay off the existing loans on

the Property and "buy out" appellant's interest. The trial court reserved jurisdiction to enforce the settlement under Code of Civil Procedure section 664.6.

After the parties disagreed regarding the Property's fair market value and payment of the delinquent taxes, respondent moved to enforce the settlement agreement. On August 28, 2008, the trial court entered judgment consistent with the terms of the oral settlement agreement. Among other things, the trial court determined that the fair market value of the Property was \$880,000, and gave each party an opportunity to purchase the Property at that price by a date certain. Otherwise, the Property would be listed for sale on the open market.

A series of disputes arose between the parties. On September 29, 2009, appellant moved to set aside the settlement agreement and judgment. Once again, respondent moved to enforce the terms of the settlement agreement. Both parties requested appointment of a receiver.

On November 20, 2009, the trial court denied appellant's motion to set aside the settlement agreement and judgment, granted respondent's motion to enforce the judgment and appointed Lindsay F. Nielson as receiver. After authorizing Roger Case Realty to list the Property, the trial court stated: "The Receiver will protect the broker Mr. Case in this contentious father-son dispute, in that Mr. Case will not be representing either of them. Both Arno and Anton Feuer are co-owners of the property. Instead, Mr. Case will report to the Receiver, who has full authority to facilitate getting this property sold at the highest market price obtainable."

On January 7, 2010, the trial court granted the receiver's ex parte application to confirm a sales contract to sell the Property to respondent for \$749,000. On February 1, 2010, appellant appealed from the orders (1) denying appellant's motion to set aside the settlement agreement and judgment, (2) granting respondent's motion to enforce the judgment, (3) appointing the receiver to list and sell the Property and (4) granting the receiver's ex parte application to confirm the sale to respondent.

Appellant did not post a bond or undertaking to stay enforcement of these orders pending appeal. (See Code Civ. Proc., § 917.1.) Appellant filed an opening brief. Respondent did not file a brief.

Appellant's opening brief does not reference the status of the sale. The trial court's file reflects that on April 28, 2010, Nielson filed a final report of receiver and request for termination of receiver's duties. On that same date, the trial court entered an order confirming the receiver's final report and terminating the receivership.¹ According to the final report, appellant received \$94,940.17 from the escrow. The order states that "all payments due Arno Feuer have been paid to him." Appellant did not appeal that order.

On July 9, 2012, we sent appellant a letter requesting that he file a supplemental brief addressing whether his appeal is moot in light of the sale and termination of the receivership, and also addressing whether he impliedly waived his right to appeal by voluntarily accepting a portion of the sales proceeds. Appellant's counsel acknowledged receipt of the letter, but did not submit a supplemental brief.

DISCUSSION

Appellant challenges the trial court's decision to appoint a receiver to sell the Property and then to authorize the sale to respondent. Specifically, appellant contends that "the trial court, by way of December 7, 2009 and January 7, 2010 orders, erroneously added to or modified the express terms of the settlement agreement by allowing it to be purchased by Respondent."

As a general rule, an order appointing a receiver is not subject to appellate review after the receiver has settled accounts and been discharged because, at that point, the receiver and the court no longer have control of the subject matter of the receivership. (*Kato v. Busick* (1916) 174 Cal. 118, 121; see *First Federal Bank of Cal. v. Fegen* (2005)

¹ We take judicial notice of the final report of receiver and request for termination of receiver's duties and the trial court's order confirming the receiver's final report and termination of receivership. (Evid. Code, §§ 452, subd. (d), 459.)

131 Cal.App.4th 798, 800-801 (*Fegen*); *Scoville v. De Bretteville* (1942) 50 Cal.App.2d 633.)

In *Fegen*, the judgment debtor appealed the trial court's order authorizing the sale of his real property. He did not post an undertaking, and the property was sold. (*Fegen, supra*, 131 Cal.App.4th at p. 801.) The appellate court dismissed the appeal as moot because it could not "fashion any order which would have the effect of reversing the trial court's order of sale or otherwise preventing the sale of the Property, an event which has already occurred." (*Ibid.*)

The same analysis applies here. Although appellant appealed the orders appointing the receiver and authorizing the sale to respondent, he did not seek a stay of those orders pending appeal. With the trial court's approval, the receiver sold the Property, disbursed the sales proceeds and terminated the receivership. In our request for supplemental briefing, we asked appellant to advise whether he contends that any portion of the appeal survived the sale and termination of the receivership and, if so, to "identify the order or orders that are not moot, the specific relief to which appellant would be entitled if those orders were reversed and the authority for such relief." Appellant did not respond to the request. Because we cannot afford him the relief that he seeks, the appeal is moot.

The appeal is dismissed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Barbara A. Lane, Judge
Superior Court County of Ventura

Law Offices of Steven K. Perrin and Steven K. Perrin for Appellant.
No appearance for Respondent.