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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SISTER RITA CALLANAN, IHM
et al.,

Intervenors and Appellants,

v.

ROMAN CATHOLIC
ARCHBISHOP OF
LOS ANGELES et al.,

Plaintiffs and Respondents.

B275366

(Los Angeles County
Super. Ct. No. BC585604)

APPEAL from an order of the Superior Court for Los Angeles County, Stephanie M. Bowick, Judge. Vacated.

Browne George Ross, Eric M. George; Shiff Hardin, Amy M. Rubenstein and John N. Scholnick for Intervenors and Appellants.

McKool Smith Hennigan, J. Michael Hennigan, Robert W. Mockler and Kirk D. Dillman for Plaintiffs and Respondents.

Based upon findings it made in granting summary adjudication of declaratory judgment and quiet title claims in a lawsuit filed by plaintiffs Roman Catholic Archbishop of Los Angeles (RCA),¹ the California Institute of the Sisters of the Most Holy and Immaculate Heart of the Blessed Virgin Mary (the Institute), and Archdiocese of Los Angeles Education & Welfare Corporation (collectively, Plaintiffs) against defendant Dana Hollister, the trial court ordered intervenors Sister Rita Callanan, IHM, and Sister Catherine Rose Holzman, IHM (collectively, the Intervening Sisters) to turn over to Plaintiffs the books, records, and assets of the Institute. The Intervening Sisters appeal from the turnover order, arguing that the order must be vacated because it ordered relief that was not requested in or encompassed by the pleadings, and because the trial court improperly made the order on an ex parte basis.

We agree that the turnover order improperly granted relief that Plaintiffs had not requested in their complaint, against parties who were not named as defendants in the complaint. But there is a more immediate reason why the turnover order must be vacated: it was premised on findings made in a summary adjudication ruling that was vacated. Although, as Plaintiffs note, the trial court subsequently conducted a new hearing on Plaintiffs' renewed motion for summary adjudication and entered a new order granting that motion, that order

¹ RCA is alleged to be a corporation sole under the laws of California, and is the corporate entity through which the Archbishop of Los Angeles acts in the civil realm.

has been stayed and is presently before this court on a petition for writ of mandate. Therefore, we reverse the order directing the Intervening Sisters to turn over the books, records, and assets of the Institute.

BACKGROUND

The underlying facts of this case are complex. The issue on appeal, however, is not. Therefore, we will limit our discussion of the facts to those that are necessary to resolve the sole issue on appeal, i.e., whether the turnover order can stand.

The Intervening Sisters belong to the Sisters of the Most Holy and Immaculate Heart of the Blessed Virgin Mary (the IHM), a Roman Catholic religious organization for women. The IHM founded the Institute, which is a California nonprofit religious corporation, in 1970. The “general and primary purpose [of the Institute] is the operation, support and maintenance of [the IHM].” This includes buying, owning, and/or selling real property to house the organization and its members. In 1970, the Institute acquired the real property at issue in Plaintiffs’ complaint (the Property); the members thereafter lived in the residence on the property until the last few surviving members were relocated in 2012.²

From its inception, the members of the IHM managed the affairs of the Institute in accordance with the Institute’s articles of incorporation and bylaws. Beginning in 2005, a dispute arose regarding

² At one time, there were over 100 members; at the time the lawsuit was filed there were five remaining members, ranging in age from 77 to 88.

control of the Institute. The details of that dispute are not relevant for purposes of this narrow appeal. Suffice to say that the Intervening Sisters assert that under the articles of incorporation and bylaws of the Institute they, as members, directors, and officers, have the authority to act on behalf of the Institute, while Plaintiffs assert that only the Archbishop and his designees have that authority by reason of certain decrees from the Vatican.

In 2014, the Intervening Sisters (and other members of the Institute) were informed by the Archbishop that he planned to sell the Property to Katheryn Hudson (also known as pop star Katy Perry). The Intervening Sisters (and other members) objected to the plan, and believed they had the right to control the sale of the property. They then executed, purportedly on behalf of the Institute, a contract for the sale of the Property to Hollister, and adopted a corporate resolution approving the sale. Hollister obtained and recorded a grant deed to the Property. In the meantime, the Archbishop, also purportedly on behalf of the Institute, entered into an agreement to sell the Property to The Bird Nest, LLC (Bird Nest), an entity created to own the Property for Hudson.

Upon learning of the Intervening Sisters' purported sale of the Property to Hollister, Plaintiffs filed the instant lawsuit "to confirm that [the] attempted sale of the Property to [Hollister] is void; to quiet title in the Property in the Institute; to cancel Hollister's void Grant Deed; to prevent [Hollister's] continuing slander of title, trespass and in[ter]ference with Plaintiffs' sale of the Property to [a different party]; and to recover all appropriate damages, including punitive damages."

The Intervening Sisters were not named as defendants in Plaintiffs' complaint.

The Intervening Sisters, in their capacities as members, directors, and officers of the Institute, and on behalf of the Institute, filed a complaint in intervention. The Intervening Sisters aligned themselves with Hollister and also asserted affirmative cross-claims against RCA, Monsignor Joseph Brennan, Father Thomas Anslow, and Bird Nest, challenging RCA, Msgr. Brennan, and Father Anslow's claim of authority to act on behalf of the Institute, including their authority to sell the Property to Bird Nest.³

Plaintiffs filed a motion for summary adjudication, seeking adjudication of their first two counts against Hollister (for declaratory judgment and quiet title), "on the grounds that [Hollister's] purchase transaction is void, she has no legitimate right, title, or interest in the Property, the Institute owns the Property free and clear of any claimed interest by [Hollister], and [Hollister] has no defense to Counts I or II." They argued that the purported sale to Hollister was void because (1) Hollister did not obtain prior written approval of the sale from RCA or the Holy See; (2) the documents memorializing the sale were invalid on their face; and (3) none of the Sisters of the IHM had the authority to

³ Bird Nest filed a cross-complaint against Plaintiffs and Hollister seeking declaratory relief against all cross-defendants and other claims against Hollister. The Intervening Sisters are not parties to the cross-complaint, although the cross-complaint alleges that the IMH Sisters are not authorized to act on behalf of the Institute. Bird Nest filed a motion for judgment on the pleadings, which the trial court granted in part. That ruling is not at issue in this appeal.

act on behalf of the Institute. Plaintiffs concluded their motion by stating, “Because the Hollister transaction is void, Plaintiffs are entitled to summary adjudication of Count I, which seeks declaratory relief establishing the invalidity of the transaction,[⁴] and Count II, which seeks to quiet title to the Property in the name of the Institute.”

The Intervening Sisters filed an opposition to Plaintiffs’ motion, arguing that continuance of the motion was required to allow them to conduct discovery, and challenging the motion on the merits. The trial court found that a continuance was not mandated, and that the Intervening Sisters had failed to show good cause for a continuance. It granted Plaintiffs’ motion for summary adjudication. In granting the motion, the court found, among other things, that “the Archbishop, and not the IHM Sisters, has authority over the Institute’s assets and affairs.”

The trial court entered its written order granting the summary adjudication motion on May 2, 2016. Ten days later, Plaintiffs made an ex parte application to request that the court order the Intervening Sisters, Hollister, and anyone acting in concert with them to turn over

⁴ Count I sought “a declaratory judgment that (a) neither IHM nor the [IHM] Sisters has any authority to sell, lease, encumber, convey, exchange, transfer or otherwise dispose of any part or all of the Property without the prior written approval of Plaintiffs and of the Holy See; (b) the Hollister Purchase and Sale Agreement and transaction is void; (c) the Hollister Grant Deed is void; (d) the Institute is the rightful holder of title to the Property, and Hollister has no right, title or interest in the Property; (e) Hollister and her agents, representatives, invitees and assigns have no right to possession of the Property; (f) Hollister and her agents, representatives, invitees and assigns must immediately vacate the Property.”

to Plaintiffs all books, records, and assets of the Institute. They contended that the turnover order was “necessary to effectuate the Order of this Court granting summary adjudication for Plaintiffs against Hollister and [the Intervening Sisters].” Counsel for the Intervening Sisters objected to the ex parte application, arguing that the requested order was not a proper subject for ex parte relief, and that it would be improper in any event because the Intervening Sisters remain directors and members of the corporate Institute. The trial court granted Plaintiffs’ ex parte application and entered the requested order on May 12, 2016.

On May 19, 2016, Plaintiffs filed an ex parte application requesting the trial court to issue an order to show cause why the Intervening Sisters’ counsel, John Scholnick, should not be held in contempt of the turnover order for failing to turn over the books, records, and assets of the Institute. Despite Scholnick’s representations that he did not possess any of the Institute’s books, records, or assets, and that the Intervening Sisters told him they were refusing to comply with the turnover order, on May 23, 2016, the trial court issued the order to show cause and set a hearing for June 3, 2016.

The next day, May 24, 2016, the Intervening Sisters filed a petition for writ of mandate challenging the summary adjudication order (as well as the order granting in part Bird Nest’s motion for judgment on the pleadings), and seeking an immediate stay. On May 31, 2016, we ordered the May 2, 2016 orders stayed and requested that Plaintiffs file a preliminary response to the petition.

On June 2, 2016, Mr. Scholnick filed an ex parte application for an order discharging, or continuing the hearing on, the order to show cause re contempt. At the hearing on the application, Scholnick's counsel noted that the court of appeal had issued an order staying the order granting summary adjudication; he argued that, since the purpose of the turnover order was to effectuate an order that had been stayed, the hearing on the order to show cause should not go forward until the appellate court resolved the issues presented by the writ petition. The court responded that it had imposed a temporary stay on all proceedings because it believed "that the ruling on the turnover order, and any ruling the court may make on the OSC, were directly related to this court's rulings on the motion for summary adjudication and motion for judgment on the pleadings, [as to] which the court of appeal has imposed a temporary stay." The court later reiterated that its "decision to issue the turnover order was directly related to its decision and rulings in the motion for summary adjudication." The court stated it would reschedule the hearing on the contempt order to show cause (which was scheduled for the following day), but ordered the parties to return to court the next day for a further hearing on the stay order.

At the hearing the next day, June 3, 2016, the court modified its stay order to allow discovery to continue, and heard from all parties regarding the turnover order. The court concluded that the turnover order remained in effect because it was not within the court of appeal's stay order, and it should have been complied with before the Intervening Sisters filed their writ petition. The Intervening Sisters filed the instant appeal from the May 12, 2016 turnover order that

same day. Although they believed the appeal automatically stayed the turnover order, the Intervening Sisters subsequently filed a petition for writ of supersedeas. We issued an immediate stay, and ultimately granted the petition, staying the turnover order pending this appeal.

In the meantime, proceedings on the writ petition challenging the May 2, 2016 orders granting summary adjudication and partially granting judgment on the pleadings continued. On September 23, 2016, we issued an alternative writ directing the trial court either to vacate the orders on the ground it was an abuse of discretion not to permit the Intervening Sisters the time and opportunity to conduct discovery or, in the alternative, to show cause why a peremptory writ of mandate should not issue. On September 29, 2016, the trial court vacated the May 2, 2016 orders.

DISCUSSION

In light of the procedural history of this case, there is no question that the turnover order must be vacated. By Plaintiffs' own admission, the turnover order was sought "to effectuate the [May 2, 2016] Order of [the trial court] granting summary adjudication for Plaintiffs and against Hollister and [the Intervening Sisters]." ⁵ Since the May 2, 2016 order was vacated -- including the trial court's finding that RCA, rather than the IHM Sisters, have sole authority over the Institute -- there no

⁵ We note that Plaintiffs incorrectly assert that the May 2, 2016 order was against the Intervening Sisters. The order summarily adjudicated the first two counts of Plaintiffs' complaint, which sought relief only against Hollister.

longer is any order to “effectuate,” and no findings to support the turnover order. Therefore, the turnover order must be vacated.

But even if the May 2, 2016 order had not been vacated, the turnover order nevertheless was improper because it granted relief that Plaintiffs had not sought in their complaint or their motion for summary adjudication.

A. *The Turnover Order Is Not Consistent With the Case Made by the Complaint and Embraced Within the Issue*

Code of Civil Procedure⁶ section 580 provides that in a case in which there is an answer, “the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue.” (§ 580, subd. (a).) Plaintiffs argue that “relief consistent with the case made by the complaint and embraced within the issue” includes matters raised in the complaint and in responsive pleadings, as well as all matters litigated in the course of the action. (Quoting *Baar v. Smith* (1927) 201 Cal. 87, 98 [“parties may voluntarily submit and try an issue without any specific pleadings and thus be estopped from complaining thereat after judgment”] and *Oldenburg v. Brody* (1956) 139 Cal.App.2d 543, 552 [“[t]he matter of pleading becomes unimportant when a case is fairly tried upon the merits and under circumstances which indicate that nothing in the pleadings misleads the unsuccessful litigant to his injury”].)

⁶ Further undesignated statutory references are to the Code of Civil Procedure.

Plaintiffs contend that the turnover order is consistent with the complaint and embraced by the issue because the complaint alleges that RCA has the authority to act on behalf of the IHM and the Institute in all matters, and that the IHM Sisters did not have the authority to enter into the agreement to sell the Property to Hollister. They also point to allegations in the Intervening Sisters' complaint in intervention, which alleges that RCA's amendment of the Institute's bylaws was improper and the election of RCA and Msgr. Brennan as officers and directors was invalid, and seeks an injunction enjoining RCA, Msgr. Brennan, and Father Anslow from exercising corporate control over the Institute and its assets, accounts, and interests.

In making this argument, Plaintiffs ignore the fact the entire focus of their complaint was to void the sale of the Property to Hollister and to seek damages from Hollister. The complaint does not seek a declaration that RCA has authority over the Institute, let alone a mandatory injunction ordering the Intervening Sisters to turn over the Institute's books, records, and assets to Plaintiffs. Indeed, the complaint does not mention the Institute's books, records, or assets, nor does it seek *any* relief against the Intervening Sisters, who are not named as defendants. Similarly, the summary adjudication motion did not address the Institute's books, records, or assets, nor did it seek any relief with regard to those items. It simply cannot be said that an order, resulting from the summary adjudication of claims alleged in the complaint, that requires someone who is not a party to the complaint to turn over items that are not mentioned in the complaint or in the

summary adjudication motion is “consistent with the case made by the complaint and embraced within the issue.” (§ 580, subd. (a).)

The allegations of the Intervening Sisters’ complaint in intervention, including the allegation seeking an injunction enjoining RCA, Msgr. Brennan, and Father Anslow from exercising corporate control over the Institute and its assets, accounts, and interests, do not assist Plaintiffs here. Plaintiffs’ motion for summary adjudication was limited to the first two counts of their complaint against Hollister, and did not seek to adjudicate any of the Intervening Sisters’ claims. Thus, the only claims that were “tried” were Plaintiffs’ claims seeking to void the sale of the Property; possession of the Institute’s books, records, and assets was not at issue in the motion.

B. *The Turnover Order Cannot be Construed as a Modification of the Preliminary Injunction Granted at the Start of This Case*

Plaintiffs contend on appeal that the turnover order may be upheld as “a proper exercise of the [trial] Court’s authority to modify the preliminary injunction” they obtained at the start of the case. We disagree.

At the start of this case, Plaintiffs moved for a preliminary injunction to enjoin Hollister and her agents from “(a) entering on or otherwise occupying the Property; (b) interfering in any way with the quiet use, tranquility and enjoyment of [a building on the Property dedicated as a House of Prayer for Priests]; (c) interfering in any way with Plaintiffs’ sale of the Property to a preferred purchaser; (d) attempting to sell, lease, encumber, convey, exchange, transfer or

otherwise dispose of any part or all of the Property; and (e) altering in any way the Property or any of the structures on the Property.” The trial court granted the preliminary injunction as requested, except for item (c).

Plaintiffs argue that “[t]rial courts have inherent power to modify preliminary or permanent injunctions ‘upon a showing that “there has been a change in the controlling facts upon which the injunction rested . . . or where . . . the ends of justice would be served by modification.”’”

(Citing *Union Interchange, Inc. v. Savage* (1959) 52 Cal.2d 601, 604 and *Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 95.)

That may be so, but Plaintiffs did not *ask* the trial court to modify the preliminary injunction. Nor could they, because the Intervening Sisters are not parties to the complaint from which the preliminary injunction arose, and the Institute’s books and records are not a subject of the complaint, which only concerned the validity of the sale of the Property to Hollister. Simply put, Plaintiffs’ argument cannot save the turnover order.

C. *Issuance of the Turnover Order Was Not Harmless Error*

Plaintiffs argue that even if the turnover order was procedurally defective, the error should be deemed harmless because the order has no substantive effect on the Intervening Sisters in light of the preliminary injunction order, the May 2, 2016 order granting summary adjudication, a subsequent order granting summary adjudication, and an order from a separate proceeding, all of which state that the Intervening Sisters have no authority over the Institute. We disagree.

First, Plaintiffs mischaracterize the finding made by the court in granting their request for a preliminary injunction. The court did *not* find that the Intervening Sisters have no authority over the Institute. Rather, the court focused solely on the authority to administer *the Property*: it concluded, “In sum, by reason of the Church’s canons, as underscored by the parties’ practice beginning in 1992, the Roman Pontiff through the Dicastery, Archbishop, and Father Anslow, has authority to administer the Property.” In fact, the court found that “the assets of the Institute belong to the IHM Sisters until Suppression of the Institute.” Thus, the turnover order is contrary to the findings of the court in the preliminary injunction order.

Second, the May 2, 2016 summary adjudication order cannot establish harmless error because it has been vacated. We are aware that Plaintiffs renewed their summary adjudication motion after the May 2, 2016 order was vacated, and that the trial court granted the motion on March 23, 2017 -- after the Intervening Sisters filed their opening brief in this appeal. But the Intervening Sisters filed a petition for writ of mandate seeking to vacate the order granting the renewed motion, and we have issued a stay of the order while we consider the merits of the petition. Therefore, neither summary adjudication order provides support for the turnover order.

Finally, Plaintiffs point to a ruling in a separate action they filed under Corporations Code section 9418 to “confirm” RCA’s control over the Institute, in which the trial court found that RCA and his delegates were the lawful directors of the Institute. We decline Plaintiffs’ request to take judicial notice of documents related to that action, inasmuch as

the action was filed more than five months after the turnover order at issue here was made, and the minute orders setting forth the trial court's ruling are not final because they direct that further action be taken; thus the orders do not have collateral estoppel effect in this case.⁷ (*Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1115 [order is not final where further action is to be taken]; *National Union Fire Ins. Co. v. Stites Prof. Law Corp.* (1991) 235 Cal.App.3d 1718, 1726 ["collateral estoppel appl[ies] only when a final judgment on the merits has been rendered"].)

In short, Plaintiffs have not shown that issuance of the turnover order was harmless error.

DISPOSITION

The May 12, 2016 turnover order is vacated. The Intervening Sisters shall recover their costs on appeal.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.

⁷ We also decline to take judicial notice of documents related to a petition the Intervening Sisters filed under Corporations Code section 9418, because they have no relevance to the only issue on appeal, i.e., the propriety of the turnover order.