Filed 1/5/26 Lamm v. Chicago Title Co. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LORELEI LAMM et al.,	
Plaintiffs and Appellants,	G064863
v.	(Super. Ct. No. JCCP 4811)
CHICAGO TITLE COMPANY et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from an order of the Superior Court of Orange County, Melissa R. McCormick, Judge. Dismissed.

Catanzarite Law Corporation, Kenneth J. Catanzarite and Tim James O'Keefe for Plaintiffs and Appellants.

Hahn Loeser & Parks, Erica L. Calderas, Michael J. Gleason and Samuel C. Sneed for Defendants and Respondents.

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Lorelei Lamm and a certified plaintiff class (collectively Plaintiffs) appeal the trial court's grant of summary adjudication to Chicago Title Company and Chicago Title Insurance Company (collectively Chicago Title). No judgment was entered because other claims are still pending between these parties in this lawsuit.

Plaintiffs' appeal is from a nonappealable order. We conclude the one final judgment rule applies, and the death knell doctrine does not. Therefore, the appeal is dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying action involved the sale of tenant in common (TIC) interests in six commercial buildings between 2003 and 2006. Plaintiffs purchased the TIC interests through a series of escrow transactions. In each transaction, the seller paid a real estate broker commission to a designated payee, Ari Commercial Properties, Inc. (Ari Commercial). Plaintiffs alleged Ari Commercial was not properly licensed and Chicago Title breached the duty to inform Plaintiffs about this issue during escrow. After these investments failed, multiple investors, including Lamm, sued various defendants, including Chicago Title.

Lamm's fifth amended complaint is the operative pleading in this matter. It asserts the following causes of action against Chicago Title: (1) breach of contract based on the breach of the purchase agreement and escrow instructions through a violation of Business and Professions Code section 10138; (2) unfair business practices under Business and Professions Code section 17200; (3) breach of fiduciary duty; and (4) negligence.

Plaintiffs sought to bifurcate the class claims from individual claims and to define the class claims. The trial court granted the motion: "The Class Definition as set forth in the 5th Amended Complaint at

paragraph 62 is defined to include only the claims regarding the alleged wrongful payment of a commission to an unlicensed real estate broker as to the six alleged properties ('the Commission Claims'), and excludes any and all claims or allegations regarding the disbursement of deposits out of escrow prior to delivering a deed to Plaintiffs (the 'Loan Claims')." The trial court also ordered that the Commission Claims would be bifurcated from the Loan Claims and would be tried first, with discovery on the Loan Claims being stayed until the Commission Claims were resolved.

Lamm later moved for, and the trial court granted, certification of the following class on the Commission Claims: "All persons who through use of an escrow with [Chicago Title] acquired Tenant-In-Common Interests in one or more of the six Properties promoted by ARGUS Defendants identified in the fifth amended complaint where ARI Realty Broker received a real estate commission, estimated to be from October 16, 2002 through March 27, 2007. The six properties are the Potomac Mills Property, the Powers Ferry Property, the Copley Business Center Property, the Atrium Property, the Meridian Plaza Property, and the Rancho Conejo Property." The class totaled approximately 243 individuals or entities who were TIC owners of one of the six properties.

The parties filed cross-motions for summary judgment and/or summary adjudication. Chicago Title asserted various issues for each of the four causes of action, but only with respect to the Commission Claims. These issues were: (1) Chicago Title did not pay any commission to anyone from Lamm's escrowed funds (Issues 1–4), (2) Ari Commercial was not required to have a corporate license to be the designated payee of the commissions earned (Issues 5–8), (3) Chicago Title did not owe or breach any alleged duty to Lamm (Issues 9–12), (4) Lamm could not prove causation and loss

(Issues 13–16), and (5) the remedies Lamm sought were unavailable as a matter of law (Issues 17–20). Chicago Title did not seek summary adjudication of the bifurcated Loan Claims.

The trial court denied Plaintiffs' motion for summary adjudication but issued an order granting summary adjudication as to Issues 1–4 and 9–12 of Chicago Title's motion for summary adjudication. No judgment was entered. Plaintiffs filed a notice of appeal from the order granting summary adjudication.[1]

DISCUSSION

This appellate court does not have jurisdiction to entertain an appeal taken from a nonappealable judgment or order. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696; see *Farwell v. Sunset Mesa Property Owners Assn., Inc.* (2008) 163 Cal.App.4th 1545, 1550 ["whether an order is appealable goes to the jurisdiction of an appellate court, which is not a matter of shades of grey but rather of black or white"].) An order granting or denying a motion for summary judgment or summary adjudication is not directly appealable. (*Longobardo v. Avco Corp.* (2023) 93 Cal.App.5th 429, 431–432; *Wilkin v. Community Hospital of Monterey Peninsula* (2021) 71 Cal.App.5th 806, 820.) Such an order may be reviewed in an appeal from a final judgment. (*Wilkin,* at p. 820; see *Jennings v. Marralle* (1994) 8 Cal.4th 121, 128.)

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[1] The notice of appeal states that the appeal is taken from a judgment after an order granting a summary judgment motion but attaches the trial court's minute order granting the motion for summary adjudication, not a judgment. At oral argument, the parties conceded that no judgment has been entered. Moreover, although the notice of appeal indicates the appeal is taken from a grant of summary judgment, it is undisputed the order appealed from granted only summary adjudication.

"Under the one final judgment rule, an "'appeal may [generally] be taken only from the final judgment in an entire action.'"" (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 756 (*Baycol*).) "The one final judgment rule is 'a fundamental principle of appellate practice' [citation], recognized and enforced in this state since the 19th century [citations]. . . . [¶] Given the one final judgment rule's deep common law and statutory roots and the substantial policy considerations underlying it, we are reluctant to depart from its principles and endorse broad exceptions that might entail multiple appeals absent compelling justification. '[E]very exception to the final judgment rule not only forges another weapon for the obstructive litigant but also requires a genuinely aggrieved party to choose between immediate appeal and the permanent loss of possibly meritorious objections.' [Citation.] Accordingly, '*exceptions to the one final judgment rule should not be allowed unless clearly mandated*.' [Citation.]" (*Id.* at pp. 756–757, fns. omitted, italics added.)

The parties agree there is no judgment in this case; Plaintiffs appealed only from the order granting summary adjudication. Although that order did not dispose of the entire action between these parties, both Plaintiffs and Chicago Title contend the order is appealable pursuant to the "death knell" doctrine.

"The death knell doctrine is a "'*tightly defined and narrow*'" exception to the one final judgment rule in the class action context." (*Chavez Reyes v. Hi-Grade Materials Co.* (2025) 110 Cal.App.5th 1089, 1096, italics added.) "Under the death knell doctrine, . . . an order 'is appealable if it effectively terminates the entire action as to the class, in legal effect being "tantamount to a dismissal of the action as to all members of the class other than plaintiff."'" (*Ibid.*)

If there are still claims pending between the named plaintiffs and/or the members of the plaintiff class and the Chicago Title defendants, then this appeal would be premature. (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304 ["'judgment is final "when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined"'"].)

In *Baycol*, the California Supreme Court considered its own opinion in *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695 (*Daar*), in which it first applied the death knell doctrine. "Two procedural circumstances were critical to our decision in *Daar, supra*, 67 Cal.2d 695: first, that the appealed-from order was the practical equivalent of a final judgment for some parties, and second, that in the absence of our treating the order as a de facto final judgment, any appeal likely would be foreclosed. On the first point, the order 'virtually demolished the action as a class action' [citation] and was in "'legal effect" . . . tantamount to a dismissal of the action as to all members of the class other than plaintiff' [citation]. In cases decided since *Daar*, we and the Courts of Appeal have emphasized that orders that only limit the scope of a class or the number of claims available to it are not similarly tantamount to dismissal and do not qualify for immediate appeal under the death knell doctrine; only an order that entirely terminates class claims is appealable. [Citations.]

"Equally important in *Daar* was the circumstance that the order appealed from was essentially a dismissal of everyone '*other* than plaintiff.' [Citation.] We emphasized that permitting an appeal was necessary because '[i]f the propriety of [a disposition terminating class claims] could not now be reviewed, it can never be reviewed" [citation], and we were understandably reluctant to recognize a category of orders effectively immunized by

circumstance from appellate review. This risk of immunity from review arose precisely, and only, because the individual claims lived while the class claims died. As the United States Supreme Court has explained, '[t]he "death knell" doctrine assumes that without the incentive of a possible group recovery the individual plaintiff may find it economically imprudent to pursue his lawsuit to a final judgment and then seek appellate review of an adverse class determination.' [Citations.] This concern—that an individual plaintiff may lack incentive to pursue his individual claims to judgment, thereby foreclosing any possible appellate review of class issues—is present in cases such as *Daar*, where individual claims persist but remain unresolved, but is wholly absent in cases where a final judgment resolving all claims will follow as a matter of course without further action by the individual plaintiff. Consistent with this understanding, decisions in other jurisdictions specially permitting appeal of orders terminating class claims routinely rely on the assumption that appeal is warranted because review otherwise would be foreclosed by the persistence of individual claims. [Citations.]

"Thus understood as requiring an order that (1) amounts to a de facto final judgment for absent plaintiffs, under circumstances where (2) the persistence of viable but perhaps de minimis individual plaintiff claims creates a risk no *formal* final judgment will ever be entered, the death knell doctrine fits comfortably within the existing statutory framework." (*Baycol, supra,* 51 Cal.4th at pp. 757–759.)

The death knell doctrine is not applicable in this case because the granting of summary adjudication as to the class's Commission Claims, by the parties' admission, does not mark the end of the litigation between these parties. "[T]he death knell doctrine did not apply where there was no risk that 'an individual plaintiff may lack incentive to pursue his individual

claims to judgment, thereby foreclosing any possible appellate review of class issues.'" (*Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 244, quoting *Baycol, supra*, 51 Cal.4th at p. 758.) Based on our reading of the appellate record, the order granting summary adjudication of various issues relating to the Commission Claims does not entirely resolve any single cause of action asserted against Chicago Title in the fifth amended complaint, as the Loan Claims and Commission Claims are all alleged within the same causes of action.

Chicago Title brought two cases to our attention regarding the applicability of the death knell doctrine. We do not find either case to be on point. In *Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377 (*Kight*), the plaintiffs borrowed money from defendant CashCall. (*Id.* at p. 1384.) The plaintiffs alleged CashCall secretly monitored and eavesdropped on telephone calls between the plaintiffs and CashCall employees involving "'sensitive financial information.'" (*Ibid.*) The plaintiffs sued CashCall for unlawful invasion of privacy in violation of the Penal Code, unlawful intrusion into private affairs, and violation of their constitutional right to privacy. (*Ibid.*) The trial court certified a class of plaintiffs regarding the claim alleging a violation of Penal Code section 632. (*Ibid.*) The trial court then granted CashCall's motion for summary adjudication of the Penal Code section 632 class claim, and the plaintiffs appealed. (*Id.* at p. 1386.)

In a footnote, the appellate court stated: "On our own motion, we raised the issue whether the summary adjudication order was appealable because the named plaintiffs had remaining unresolved claims against CashCall. We conclude the order is appealable under the death knell exception to the one final judgment rule because the order terminated all class claims and left the named plaintiffs' individual claims for further

adjudication in the lawsuit. [Citation.]" (*Kight, supra*, 200 Cal.App.4th at p. 1386, fn. 2, citing *Baycol*.) The *Kight* court did not specifically address whether the individual claims would continue to be pursued in the absence of the class claims, or whether the summary adjudication order was, in essence, the termination of the litigation between the parties. Given that the court found the death knell doctrine was applicable, and without indication the *Kight* court was intending to expand the death knell doctrine set forth by our Supreme Court, we must conclude it was the latter.[2]

In *Baker v. Pacific Oaks Education Corp.* (2024) 99 Cal.App.5th 77 (*Baker*), the plaintiff sued the defendant preschool for negligence resulting in harm to the plaintiff's child. (*Id.* at p. 82.) Almost two years later, the plaintiff amended his complaint to add putative class claims for common law fraud, unfair competition, and false advertising; the plaintiff's individual negligence claims were stayed. (*Id.* at p. 83.) All of the class claims alleged the defendant preschool had admitted more children than its state license permitted, had knowingly concealed this information from the parents, and had falsely advertised it had """state-of-the-art""" facilities and equipment. (*Ibid.*) The trial court ultimately certified a class on the unfair competition law (UCL) claims of fraud by omission and unlawful conduct. (*Id.* at p. 84.)

The trial court granted a motion for summary adjudication of "plaintiffs' individual and class [unfair competition law] claims based on

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[2] At least one treatise agrees with our reading of *Kight*. The Rutter Group cites to *Kight* as follows: "Similarly, an order granting summary adjudication is appealable as the 'death knell' of class litigation if it *terminates all class claims and leaves only the named plaintiffs' individual claims for further adjudication*." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2025) ¶ 2:39, italics added.)

fraud by omission and the false advertising law claims." (*Baker, supra*, 99 Cal.App.5th at pp. 84–85.) The UCL class claim based on unlawful conduct was bifurcated and a bench trial was conducted. (*Id.* at p. 85.) The court found in favor of the defendant preschool (*id.* at p. 88) but "deferred entry of judgment in favor of [the defendant preschool] until after plaintiffs' individual claims were tried" (*id.* at p. 90). As to appealability, citing *Kight*, among other cases, the *Baker* court held, "The trial court's findings and order in favor of [the defendant preschool] is a final determination of the merits of plaintiffs' [unfair competition law] class claim for unlawful conduct and it terminated all class action litigation. [Citation.] The order is therefore appealable under the death knell exception to the one final judgment rule. [Citation.]" (*Baker,* at p. 90, fn. 9.) As in *Kight*, the *Baker* court did not indicate it was departing from the rule of *Baycol* and *Daar* by expanding the death knell doctrine, and we therefore infer that it was not doing so.

The parties read the footnotes in *Kight* and *Baker* as proof the California courts have significantly expanded the applicability of the death knell doctrine. We disagree. In a normal death knell case, when the class claims are eliminated, only the de minimis individual claims of the named plaintiffs remain. Those named plaintiffs have little or no incentive to pursue their individual claims because of their de minimis nature, and the class members therefore may lose the right to appeal. The death knell doctrine preserves their appellate rights. *Kight* and *Baker* are less than clear as to whether they fall within this category. But if they do not, then they are inconsistent with the California Supreme Court opinions in *Baycol* and *Daar*, and we do not follow them.

There is no judgment or appealable order in this case, and the death knell doctrine is not implicated.

DISPOSITION

The appeal is dismissed. In the interests of justice, neither party shall recover costs on appeal.

BANCROFT, J.*

WE CONCUR:

MOORE, ACTING P. J.

GOODING, J.

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.