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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RICHARD S. STEELE,

Plaintiff and Respondent,

v.

WEST COAST METALS, INC.,

Defendant and Appellant.

A136768

(Sonoma County
Super. Ct. No. SCV 246200)

Plaintiff and respondent Richard Steele moves to dismiss the appeal filed by defendant West Coast Metals, Inc. as untimely. West Coast maintains its time for appeal should properly be measured from the trial court's modified judgment, not the judgment originally entered, and that, so measured, the appeal is timely. We agree with Steele that West Coast was required to timely appeal from the original judgment. Because it did not, we lack jurisdiction to entertain this appeal and must dismiss it.

BACKGROUND

This commercial dispute involved claims for breach of contract, conversion, and unpaid services. After a bench trial, a tentative statement of decision and additional briefing and argument, judgment was entered on June 1, 2012, awarding Steele \$111,669.34 for breach of contract and conversion and \$52,112.36 in prejudgment interest. Notice of entry of judgment was served on June 13.

Neither party was satisfied with the judgment. Steele moved for a new trial, primarily on grounds that the trial court erroneously found that certain of his claims were barred by the statute of limitations. Steele also asked the court to modify and expand its factual findings concerning his conversion claim and to reduce the amount of

prejudgment interest, which Steele acknowledged had been incorrectly calculated. West Coast moved to vacate the judgment in its entirety as “inconsistent, incorrect, and [unsupported] by law or facts.” It also agreed the judgment incorrectly inflated the award of prejudgment interest.

On August 10 the court issued its “Ruling After Hearing and Modification of Judgment” that denied both motions and explained its findings supporting the conversion award. The court also modified the judgment to reduce the total prejudgment interest awarded to \$40,305.24. Notice of entry of the amended judgment was served the same day.

West Coast filed a notice of appeal on October 3, 2012, 123 days after notice of entry of the original judgment, 65 days after the court denied the post-trial motions, and 55 days after notice of entry of the amended judgment. Steele moved to dismiss the appeal.

DISCUSSION

West Coast, correctly, does not dispute that the timeliness of this appeal turns on whether it was properly taken from the amended judgment. (See Cal. Rules of Court, rules 8.104(a) [notice of appeal must be filed 60 days from service of notice of entry of judgment], 8.108(b) [or 30 days from service of order denying post-trial motions].) Its position is that the appeal taken from the amended judgment is timely because the court’s expanded discussion of the conversion claim in the order and the reduction of the prejudgment interest award in the amended judgment are substantive changes that restarted the 60-day appeal period. We disagree.

Dakota Payphone, LLC v. Alcaraz (2011) 192 Cal.App.4th 493 (*Dakota*) cogently analyzes the controlling considerations. The question there was whether an amended default judgment that reduced damages by some \$4 million to the amount sought in the complaint superseded an original judgment for purposes of computing the time for the defendant’s appeal. The court concluded it did not. Under the case law, it explained, the analysis turns on whether the amended judgment “results in a substantial modification” of the original, and therefore becomes the one final, appealable judgment. (*Id.* at p. 504.)

But what is a “substantial modification”? While various courts considered whether the error corrected was “clerical” or “judicial” or whether a modification “materially affected the rights of the parties,” the *Dakota* court observed that such considerations did not resolve the issue. Therefore, it examined the rationale for the “substantial modification” rule to determine whether it applied on the facts before it. (*Id.* at pp. 505–507.)

“The crux of the problem,” the court reasoned, “is whether there is a substantial change in the rights of the parties such that allowing an amendment nunc pro tunc (relating back to the original judgment) would unfairly deprive them of the right to contest the issue on appeal or otherwise.” (*Id.* at pp. 506–507.) “[I]t is ultimately the parties’ ability to challenge the ruling that is key. The right we are concerned with materially affecting is the right to appeal.” (*Id.* at p. 508.) Under this analysis, the reduction of damages in appellant’s favor was not “substantial,” despite the large sum involved, because “[a]ll other parts of the judgment not affected by the modification remained valid and could have been challenged by appeal.” (*Id.* at p. 509; *cf. Sanchez v. Strickland* (2011) 200 Cal.App.4th 758, 767 [amended judgment that reduced damage award restarted *plaintiff’s* time to appeal].) Therefore, the defendant’s attempt to appeal from the amended judgment was untimely.

Dakota’s analysis applies and is dispositive here. The only change effected by the amended judgment was to reduce the award of prejudgment interest. Even if we assume the judgment was also amended to expand the court’s articulation of its findings regarding the conversion claims, neither change affected West Coast’s right or ability to appeal the original judgment or added further grounds to any appellate challenge he might have pursued. “[I]f a party can obtain the desired relief from a judgment before it is amended, he must act—appeal therefrom—within the time allowed after its entry.” (*George v. Bekins Van & Storage Co.* (1948) 83 Cal.App.2d 478, 481.) That is the case here. As in *Dakota, supra*, West Coast’s attempted appeal from the amended judgment was untimely and must be dismissed.

DISPOSITION

The appeal is dismissed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.