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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RANDY STEVENS et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SONOMA
COUNTY,

Respondent;

FRANCISCO OROZ et al., as Trustees etc.,

Real Parties in Interest.

A137014

(Sonoma County
Super. Ct. No. SCV 247164)

FRANCISCO OROZ et al.,

Plaintiffs and Respondents,

v.

RANDY STEVENS,

Defendant and Appellant.

A137060

Real parties Francisco and Antoinette Oroz, as Trustees of the Oroz Family Trust, brought an unlawful detainer action against petitioners Randy Stevens, individually, and doing business as Flamingo Properties/Jiffy Lube, alleging that petitioners failed to pay rent on a piece of commercial property in Rohnert Park, California. Trial was set for May 11, 2010. However, petitioners abandoned the property in April 2010 and, on May 11, formally surrendered possession. The case was re-set for trial on June 23, 2010, to determine the amount of back rent petitioners owe real parties.

Trial commenced as scheduled but the court continued the case to permit real parties to file a first amended complaint alleging breach of contract, which they did on July 22, 2010. On August 25, 2010, petitioners answered the amended complaint and filed a cross-complaint, naming real parties, plus an additional party, Bryan Shiflett, as cross-defendants.¹

On October 3, 2011, real parties filed a motion to sever the cross-complaint, which the court granted. The court also ruled that petitioners' affirmative defenses should not be presented during the trial on the complaint, but could be presented at the trial on the cross-complaint. On February 27, 2012, the court granted real parties' ex parte application for an order confirming the severance of the cross-complaint and re-setting the continued trial. During the subsequent trial proceedings on the complaint, the court did allow testimony regarding waiver, one of the affirmative defenses raised by petitioners, but did not allow testimony on the other affirmative defenses. After hearing additional testimony, on June 29 the court issued an order awarding real parties approximately \$34,000 plus interest. On August 7, 2012 the court entered a judgment against petitioners in the amount of \$69,422.33.

The court issued a writ of execution on September 11, 2011, and on October 25 a notice of levy was delivered to petitioners, levying "any and all cash/check proceeds during the on-going business." On November 5, 2012, petitioners served a notice of appeal, in which they included the contention that the August 7 judgment is neither final nor enforceable. The next day, November 6, petitioners filed their petition for writ of mandate and/or prohibition, contending that the appeal would provide an inadequate remedy because it would be impossible to reverse the effects of the premature enforcement of the judgment. Simultaneously, petitioners sought a stay of the

¹ A second amended cross-complaint was filed on July 23, 2012, which names real parties, Shiflett, and Glenn Meyers as cross-defendants. According to real parties, a July 2011 first amended cross-complaint had also named Shiflett and Meyers as cross-defendants; no copy of the first amended cross-complaint is contained in our record. Regardless, neither Shiflett nor Meyers is a party to these writ proceedings.

enforcement of the “purported judgment.” On November 15, 2012, this court temporarily stayed the writ of execution and notice of levy, requested informal briefing, and served notice that if circumstances so warranted, we might issue a peremptory writ in the first instance pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.

If a judgment is void, an order to execute that judgment is beyond a court’s jurisdiction. (See *Garra v. Superior Court of San Diego County* (1943) 58 Cal.App.2d 588, 591, footnote 2, superseded by statute on another ground as stated in *In re McMillin’s Estate* (1956) 284 P.2d 864, 878, vacated by *Estate of McMillin* (1956) 46 Cal.2d 121.) If a judgment is entered prematurely, it is void. (See *Shapiro v. Equitable Life Assurance Soc.* (1946) 76 Cal.App.2d 75, 99.) Thus, if the judgment in this case was entered prematurely it is void and unenforceable.

As explained in *Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 132, generally a complaint and a cross-complaint are treated as if they were independent actions, except with respect to the one final judgment rule. If a complaint and cross-complaint involve the same parties, a judgment entered with respect to one is not a final judgment until both are resolved.² (*Ibid.*) The adjudication of the complaint is not final if the cross-complaint remains unresolved.

Relying on *Moreheart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743-744, real parties argue that if a trial has been bifurcated, there is no final judgment until all the causes of action have been adjudicated, but that where independent actions have been severed, a final judgment is appropriate when the first of the severed cases is decided. In *Moreheart*, some causes of action were tried separately from others. The appellant contended that a judgment entered on those causes of action that had been tried was final “because it resolved issues that had been severed from separate and independent issues remaining to be tried” (*id.* at p. 736) and the Court of Appeal considered the judgment “separately appealable on a severed issue” (*ibid.*). The Supreme Court, however,

² Here, although there is not a complete identity of the parties to the complaint and cross-complaint, the petitioners and the real parties in interest are parties in both.

disagreed. Disapproving of contrary statements in prior cases, including *Schonfeld v. City of Vallejo* (1976) 50 Cal.App.3d 401 (*Morehart*, p. 743), the high court held that a judgment entered on causes of action tried first is not final if it does not dispose of “all the causes of action between the parties, even if the causes of action disposed of by the judgment have been ordered to be tried separately or may be characterized as ‘separate and independent’ from those remaining” (*ibid.*). Nothing in *Morehart* supports the bifurcation/severance distinction urged by real parties. The reasoning in *Morehart* unquestionably applies whether the causes of action are bifurcated or severed. If the complaint and cross-complaint have been severed, there is no final judgment until both have been adjudicated. This principle is particularly important in a case such as this, where resolution of affirmative defenses to the complaint is deferred until trial on the cross-complaint.

DISPOSITION

Resolution of this issue is sufficiently clear-cut such that “no purpose could reasonably be served by plenary consideration of the issue.” (See *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241.) Accordingly, we employ the *Palma* procedure and direct the trial court to vacate its August 7, 2012 judgment in *Oroz v. Stevens* (Super. Ct. Sonoma County, No. SCV-247164) and to rescind the writ of execution and notice of levy issued pursuant to the judgment. Upon entry of the trial court orders complying with this directive, the stay issued by this court on November 15, 2012, will be automatically dissolved.

Pursuant to this court’s own motion, the appeal *Oroz v. Stevens* (A137060) is consolidated with this petition and the appeal is dismissed as moot.

Petitioners are awarded allowable costs.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.