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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

21X PROPERTIES, LP,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
MATEO COUNTY,

Respondent;

GERRY HALL et al.,

Real Parties in Interest.

A144030

(San Mateo County
Super. Ct. No. CIV526229)

Petitioner 21X Properties, LP (21X) seeks a writ of mandate directing the trial court to require real parties in interest, Gerry Hall, Rachel Sherman, Blach Realty Investors I, Lisa Treadwell, John D. Morton and Mason-Tarlton Co., LLC., to give an undertaking to stay execution of the judgment on appeal in *3600 West Bayshore Road, LLC v. Hall et al.*, case No. A143398. Petitioner contends that a judgment adjudicating a party's right to interpleaded funds, such as the judgment at issue here, is not stayed by the perfecting of an appeal unless an undertaking in a sum fixed by the trial court is given. We agree and, accordingly, grant the petition for writ of mandate.

Background

On January 13, 2014, plaintiff 3600 West Bayshore Road, LLC (West Bayshore) filed an interpleader action, depositing with the court approximately \$8 million.¹ The interpleader complaint states that West Bayshore was dissolving and winding up its affairs, that it had no interest in the money, and that there was a dispute among its members as to who was entitled to distribution of the proceeds. 21X and real parties in interest were named as defendants in the interpleader action and asserted conflicting rights to entitlement to the funds.

On December 22, 2014, the trial court entered a judgment adjudicating and declaring 21X's right to the interpleaded funds. On January 12, 2015, the court denied 21X's request that real parties in interest be required to post an undertaking to stay enforcement of the judgment pending appeal.

Thereafter, 21X filed the present petition for writ of mandate seeking an order directing the trial court to require and fix the amount of an undertaking to stay execution of the judgment pending appeal. On January 28, 2015, we requested that real parties file an opposition on or before February 9, 2015, and gave notice, pursuant to *Palma v. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171 that, if warranted, we might issue a peremptory writ "in the first instance."

Discussion

Code of Civil Procedure section 916, subdivision (a)² provides: "Except as provided in Sections 917.1 to 917.9, inclusive, . . . the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order. . . ."

Section 917.1 provides, in relevant part: "(a) Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial

¹ After the superior court granted petitioner's motion to release \$1.63 million on July 8, 2014, approximately \$6.3 million remains on deposit with the court

² All statutory references are to the Code of Civil Procedure.

court if the judgment or order is for any of the following: [¶] (1) Money or the payment of money” Subdivision (b) of section 917.1 provides, in relevant part, however, that “[t]his section shall not apply in cases where the money to be paid is in the actual or constructive custody of the court; and such cases shall be governed, instead, by the provisions of Section 917.2.”

Section 917.2 provides: “The perfecting of an appeal shall not stay enforcement of the judgment or order of the trial court if the judgment or order appealed from directs the assignment or delivery of personal property, including documents, whether by the appellant or another party to the action, . . . unless an undertaking in a sum and upon conditions fixed by the trial court, is given that the appellant or party ordered to assign or deliver the property will obey and satisfy the order of the reviewing court, and will not commit or suffer to be committed any damage to the property, and that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the appellant shall pay the damage suffered to such property and the value of the use of such property for the period of the delay caused by the appeal. The appellant may cause the property to be placed in the custody of an officer designated by the court to abide the order of the reviewing court, and such fact shall be considered by the court in fixing the amount of the undertaking.”

Under section 17, subdivision (b), “personal property” when used in the Code of Civil Procedure includes money, “unless otherwise apparent from the context.” In *McCallion v. Hibernia Sav. & Loan Soc.* (1893) 98 Cal. 442, 445, the court concluded that money held by the court constituted personal property within the meaning of the predecessor statute to section 917.2. The court explained, “This money constituted a special fund in the hands of the court, and the litigation between these parties was conducted for the purpose of securing a judgment of the court, adjudicating as to where the title to this fund was located. When the money came into the possession of the court the litigation resolved itself essentially into an action to try the title to personal property, and if the judgment rendered in this case was such as to bring itself within the provisions of any of the sections of the code from 942 to 945 inclusive, it came within section 943 as

a judgment directing the delivery of personal property. While it is intimated in [*Estate of Schedel* (1886) 69 Cal. 241, 242] that the term “personal property,” as used in section 943, does not include money, we have no doubt that where the money is a special fund and capable of identification, it would answer to the term ‘personal property,’ as used in that section.”³ (*McCallion*, p. 445.)

Nonetheless, the trial court reasoned that personal property should not be interpreted to include “money” under section 917.2. The court explained: “If ‘personal property’ in section 917.2 included ‘money’ within its definition, then there would be no reason to exclude interpleaded funds from the scope of section 917.1. Under that definition of personal property, section 917.2 would be redundant as to money, since money is already covered in section 917.1.” We disagree.

There are significant differences in the amount of the undertaking required by section 917.1 and section 917.2. Under section 917.1, subdivision (b), “The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order.” No such requirement as to the amount of the undertaking is imposed by section 917.2, nor is such a large undertaking required since the funds are held by the court and are therefore secure. This is made clear by the requirement in section 917.2 that in fixing the amount of the undertaking the court consider the fact that the money has been placed in the custody of the court. In contrast to the formula in section 917.1, subdivision (b), when the personal property at issue is money, section 917.2 requires only that the undertaking be in a sum sufficient to pay the prevailing party “the value of the

³ In 1968, when the Legislature recodified the statutory provisions for stays pending appeal, former sections 942-949a were replaced by present sections 916-923. (Stats. 1968, ch. 385, §§ 1-2, pp. 816-820.) In particular, section 943, which provided for stay of judgments or orders directing assignment or delivery of documents or personal property was recodified in section 917.2. (Stats. 1897, ch. 64, § 1, p. 56.)

In *McCallion v. Hibernia Sav. & Loan Soc.*, *supra*, 98 Cal. at page 445, the court went on to hold that no bond was required for a stay because the fund was not in the possession of appellants, as required under the former code section. As discussed *post*, such a requirement does not remain in section 917.2.

use of such property for the period of the delay caused by the appeal.” The provision in section 917.1, subdivision (b) that “cases where the money to be paid is in the actual or constructive custody of the court . . . shall be governed, instead, by the provisions of Section 917.2,” requires the court to fix an undertaking under the terms of section 917.2.

Real parties in interest argue that even assuming that the interpleaded funds are personal property within the meaning of the statute, an undertaking nonetheless is not required because the judgment requiring the court clerk to release the interpleaded funds is not a judgment directing the delivery of personal property *by the appellant or another party to the action*. They rely on cases decided prior to the 1968 recodification that held that no bond was required to stay enforcement “where the judgment appealed from does not require any performance by the appellants.” (*Jensen v. Hugh Evans & Co.* (1939) 13 Cal.2d 401, 404; *Gavin v. Landfair Realty Corp.* (1939) 13 Cal.2d 56, 59-60.) Changes in the statutory language of section 917.2, however, “reflect a legislative intent to broaden the trial court’s authority to require an undertaking as a condition for a stay.” (*Estate of Murphy* (1971) 16 Cal.App.3d 564, 567.) Specifically, “while former section 943 provided that judgments to assign, deliver or sell personal property would not be stayed unless the property was deposited in the custody of the court or an undertaking was executed to insure performance by the appellant, present section 917.2 requires protective measures regardless of whether performance is demanded of “ ‘the *appellant or another party to the action.*’ ” (*Id.* at pp. 567-568.) Likewise, depositing property in the custody of the court no longer satisfies the need for an undertaking. The statute recognizes that a respondent on appeal may still suffer from the loss of use of the property held by the court during the delay caused by the appeal. The interpleaded funds in this case are no different. The judgment determining the right to interpleaded money is, in effect, a court ruling that the interpleader plaintiff should deliver the funds through the court to the prevailing party. The prevailing party in an interpleader action suffers the same loss of use of the funds caused by the delay in distribution attendant to an appeal as any prevailing party holding a money judgment where the judgment amount, or a bond in the prescribed amount, is delivered to the court pending appeal.

Because the court erred in holding that no undertaking is required to stay enforcement of the judgment on appeal, we shall direct the court to vacate its order denying 21X's request to require and fix an undertaking to stay execution of the judgment pending appeal and to enter a new order providing that enforcement of the judgment shall not be stayed pending resolution of the appeal unless real parties in interest give an undertaking in an amount to be fixed by the trial court pursuant to section 917.2. The accelerated *Palma* procedure is appropriate here because "petitioner's entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue" (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236–1237, 1240–1241), and because prompt disposition will expedite the trial court's consideration of an appropriate order in this case.

Disposition

Let a peremptory writ of mandate issue directing respondent court to vacate its January 12, 2015 order denying 21X's request to require and fix an undertaking to stay execution of the judgment pending appeal and to enter a new order providing that enforcement of the judgment shall not be stayed pending resolution of the appeal unless real parties in interest give an undertaking in an amount to be fixed by the trial court pursuant to section 917.2. Petitioner shall recover the costs it incurred in this writ proceeding.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.