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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

ELENA DELGADILLO,

Plaintiff and Appellant,

v.

BANK OF AMERICA et al.,

Defendants and Respondents.

A146238

(Alameda County
Super. Ct. No. RG15780993)

Respondents, Bank of America, N.A. and Maria Ivarra, move to dismiss Elena Delgadillo’s appeal. The appeal, taken from an order denying her motion for a preliminary injunction, is moot in light of a subsequently entered final judgment and cannot be construed as a timely appeal from the judgment itself. We grant the motion and dismiss the appeal.

BACKGROUND

Delgadillo sued Bank of America and bank employee Maria Ivarra (jointly, the bank) for alleged violations of the Home Affordable Modification Program. On September 3, 2015 the court denied Delgadillo’s motion for a preliminary injunction to enjoin a trustee’s sale of her property.

Delgadillo filed a notice of appeal from that order on September 11. The notice stated: “Plaintiff ELENA DELGADILLO appeals the September 09, 2015 Order denying the Motion of Plaintiff ELENA DELGADILLO for a Preliminary Injunction after issuance on August 19, 2015 of a Temporary Restraining Order to Prohibit Defendants from Conducting the Trustee’s Sale of Real Property common [sic] known as 24606

Patricia Court, Hayward pursuant to CCP § 526 and dissolving the August 19, 2015, Temporary Restraining Order. [¶] Notice of the denial was given on September 10, 2015. This Notice is intended to include appeal from all findings of fact, conclusions of law, or Orders in favor of defendants on the Complaint of ELENA DELGADILLO and from all Orders on Motions and all Orders relating to plaintiff ELENA DELGADILLO's pleadings and claims made in favor of defendants.”

Six days later, on September 17, the court sustained the bank's demurrer to Delgadillo's complaint without leave to amend. Judgment was entered on September 29 and notice of entry of judgment was served on October 1.¹ Delgadillo did not file a notice of appeal from the judgment.

ANALYSIS

The bank correctly argues that Delgadillo's appeal from the order denying her preliminary injunction application has been mooted by the final judgment. Because the order “dealt solely with the right to preventive relief pending final judgment and denied such relief, the entry of judgment rendered the question of the right to interim relief moot.” (*Agnew v. City of Los Angeles* (1958) 51 Cal.2d 1, 2; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 398–399 [appeal from denial of preliminary injunction moot after court sustained demurrer without leave to amend]; *MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623 [same].)

Although Delgadillo did not appeal from the judgment, she urges us to construe her notice of appeal from the order denying her preliminary injunction motion as an appeal from the judgment. We may not. “ “[W]here several judgments and/or orders occurring close in time are separately appealable (e.g., judgment and order awarding attorney fees), each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal.” ’ [Citations.] The policy of liberally construing a notice of appeal in favor of its

¹ A separate judgment of dismissal in favor of various co-defendants not involved in this motion was entered on October 22, 2015.

sufficiency (Cal. Rules of Court, rule 8.100(a)(2)) does not apply if the notice is so specific it cannot be read as reaching a judgment or order not mentioned at all.” (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 173.) Delgadillo’s notice identifies that her appeal is taken from the order denying her preliminary injunction motion. It does not mention a judgment, and despite its nebulous reference to “all” findings and orders in favor of the bank, cannot reasonably be read to encompass judgment entered on a demurrer that had not even been argued when Delgadillo filed her notice of appeal.

In any event, Delgadillo’s notice was fatally premature. While notices of appeal filed before rendition of judgment but after the court has announced its intended ruling may be treated as timely, “[a] notice of appeal filed *before announcement* of the court’s intended ruling is not *valid*—i.e., it cannot be treated as a premature but timely notice of appeal.” (Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2014) ¶¶ 3:55.5, 3:52-3:54, pp. 3-26–3-28; Cal. Rules of Court, rule 8.104(d); *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960–961 [notice of appeal filed before default prove-up; *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 691 [invalid notice of appeal from order on attorneys’ fees motion filed before the hearing or ruling on the motion].) Delgadillo relies on cases that do not seek to give effect to notices filed before the announcement of the ruling purportedly appealed, so they do not support her position. (See *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1154, fn. 5 [notice filed after orders granting summary judgment but before entry of judgments]; *County of Alameda v. Johnson* (1994) 28 Cal.App.4th 259, 261, fn. 1 [appeal from minute order that directed preparation of a written order]; *Lee Newman, M.D., Inc. v. Wells Fargo Bank* (2001) 87 Cal.App.4th 73, 78 [appeal filed from order sustaining demurrer without leave to amend rather than from subsequent judgment of dismissal].)

Delgadillo’s appeal from the denial of her request for preliminary injunctive relief is moot and she did not appeal from the judgment. This court is therefore without jurisdiction to consider her appeal. (*Hollister Convalescent Hospital, Inc. v. Rico* (1975) 15 Cal.3d 660.)

DISPOSITION

The appeal is dismissed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.

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