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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JOHN YUAN,

Plaintiff and Appellant,

v.

NORIKO KOMIYAMA,

Defendant and Respondent.

B230427

(Los Angeles County  
Super. Ct. No. KD034341)

APPEAL from orders of the Superior Court of Los Angeles County,  
H. Don Christian, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Order  
affirmed; appeal from second order dismissed.

John Yuan, in pro. per., for Plaintiff and Appellant.

John M. Gantus & Associates, John M. Gantus and Nicole Abboud for  
Defendant and Respondent.

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This appeal follows orders made after a judgment was entered in a dissolution of marriage proceeding between John Yuan (appellant) and Noriko Komiyama (respondent). Appellant, in pro. per., appeals from the trial court's orders granting respondent's motion for an order directing that funds in escrow from the sale of the family residence be paid to her through her attorney and denying his motion for division of omitted assets.

### ***FACTUAL AND PROCEDURAL BACKGROUND***<sup>1</sup>

This is the second appeal stemming from the dissolution of marriage proceeding involving the parties. The first was an appeal from a judgment on reserved issues that was entered on January 26, 2009. That judgment awarded to respondent “[a]ll rights, title and interest in and to the real property located at 803 Rimrock Circle, Walnut, California 91789” (the family residence) and authorized respondent to sell the family residence. The sale closed on February 23, 2010 and the proceeds were held in escrow, requiring a court order to release such proceeds, pending resolution of the appeal. Appellant challenged the judgment on several grounds which we found to be without merit and we affirmed the judgment in whole. (*Yuan v. Komiyama*, 2010 Cal.App.Unpub. LEXIS 8228 (Cal.App. 2d Dist. Oct. 19, 2010) (*Yuan I.*)) As we fully explained the factual background of the underlying family law case in that opinion, we need not include such details again here.

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<sup>1</sup> The factual and procedural background is drawn from the record, which included three sets of volumes of Clerk's Transcript (CT). They include a one-volume CT filed on April 29, 2011, a five-volume CT filed on July 29, 2011, and a two-volume CT filed on September 16, 2011. It also included three Reporter's Transcripts (RT), covering hearings held on November 18, 2008, April 10, 2009, and January 6, 2011.

After the appeal, respondent sought to enforce the terms of the affirmed judgment and filed an ex parte application on November 4, 2010 seeking an order directing the proceeds of the sale of the family residence to be distributed to her from the escrow account. Shortly thereafter, appellant filed a postjudgment motion for division of omitted assets on December 6, 2010 pursuant to Family Code section 2556.<sup>2</sup> The trial court continued respondent's motion in order to hear both motions on the same date.

At the hearing, held on January 6, 2011, the trial court granted respondent's motion stating that the "funds [in the escrow account] were the result of an asset awarded to the respondent and as such the liquid capital follows the real estate and/or the personal property from which it generates it [sic] and therefore that is ordered released forthwith." The trial court denied appellant's motion stating that the motion was "not taken in good faith" and was barred by "res judicata and collateral estoppel" as it was identical to the motion for division of omitted assets filed by appellant on June 11, 2009, which was denied on July 23, 2009.

Appellant filed a notice of appeal on January 13, 2011.

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<sup>2</sup> Family Code section 2556 states, "In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

## *ISSUES ON APPEAL*

Appellant's notice of appeal stated that he intended to appeal from the trial court's January 6, 2011 orders. He seeks to reverse the trial court with instructions for it to order (1) \$82,179.91, which he alleges was taken from the proceeds from the sale of the family residence by respondent's attorneys, to be returned to the escrow account; and (2) \$54,126.24, the remaining net proceeds from the sale of the family residence, to be returned to the escrow account. He asserts that, after taking into account the omitted assets and liabilities, pursuant to his motion for division of omitted assets, a distribution of a portion of the escrow proceeds must be made to him instead of to respondent.

Appellant also seeks (3) to vacate the judgment in Los Angeles Superior Court case number BC372652, *Green Century Development, LLC v. Komiyama*,<sup>3</sup> an appeal from which is currently pending before Division 5 of this District (appellate case number B230616); (4) sanctions against counsel for respondent for "his Cheating and Misleading the Appellate Court[;]" and (5) an order returning the family residence to his current wife, Fu-Xia Sun. We shall not address these three requests for the following reasons. With respect to (3), we do not have jurisdiction to address the judgment in that case because the appeal is not before us. With respect to (4) and (5), appellant provides neither argument nor citation of authority in support of these requests and thus, they are deemed to be without foundation and to have been abandoned. (*Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021.)

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<sup>3</sup> We have taken judicial notice pursuant to Evidence Code section 452, subdivision (d), of the docket for *Green Century Development, LLC v. Komiyama*. Appellant is included as a defendant in that case along with respondent.

## *DISCUSSION*

### 1. *Appealability*

With certain limited exceptions not applicable here, an order made after a judgment is appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). “To appeal from a superior court judgment or an appealable order of a superior court, . . . an appellant must serve and file a notice of appeal in that superior court. . . . [¶] The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. . . .” (Calif. Rules of Court, Rule 8.100, subd. (a); see also, Rule 8.405, subd. (a).) An appellate court’s review is limited in scope to the judgment or order specified in the notice of appeal. (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073 (*Soldate*); *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46-47 (*Norman*).)

Appellant’s notice of appeal stated that he intended to appeal from the trial court’s January 6, 2011 orders. As these orders are orders made after a judgment, they are generally appealable. (Code of Civ. Proc., § 904.1, subd. (a)(2).) Although orders made subsequent to the January 6, 2011 orders may also be appealable,<sup>4</sup> they are not included in the scope of our review pursuant to *Soldate* and *Norman*. As a result, we shall only review appellant’s contentions that stem from the January 6, 2011 orders.

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<sup>4</sup> Appellant included two additional orders entered after the judgment in the record. These are (1) a motion for stay of the enforcement of the judgment filed on January 21, 2011; and (2) a supplemental motion for stay of the enforcement of the judgment filed on February 22, 2011. As neither is included in appellant’s notice of appeal, we do not address the merits of any contentions stemming from either one.

2. *The Trial Court's Order Granting Respondent's Motion Seeking Enforcement of the Terms of the Affirmed Judgment*

Appellant contends that the trial court erred in granting respondent's motion seeking enforcement of the terms of the affirmed judgment. He makes no arguments and cites no applicable authority in support of his contention.<sup>5</sup> The trial court's ordering the escrow proceeds from the sale of the family residence to be paid to respondent is clearly supported by the January 26, 2009 judgment, which awarded the family residence to respondent. The trial court did not err in making this order.

3. *Appellant's Motion for Division of Omitted Assets Was an Improper Motion for Reconsideration*

Although not entirely clear in his brief, appellant appears to argue that his previous motion for division of omitted assets was not ruled upon by the trial court and therefore, res judicata does not apply. We disagree. However, we believe that this issue is one involving the reconsideration of a prior order rather than res judicata.<sup>6</sup>

Code of Civil Procedure section 1008, subdivision (b),<sup>7</sup> provides that, "A party who originally made an application for an order which was refused in whole or part, . . . may make a subsequent application for the same order upon new or different

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<sup>5</sup> Appellant's arguments are mainly made against the January 26, 2009 judgment which we affirmed in *Yuan I*. They are inapplicable here.

<sup>6</sup> In response to our request for further briefing on this issue, respondent submitted a letter brief on July 12, 2012. Appellant submitted his reply letter brief on July 27, 2012, which included an attached 22-page transcript. As appellant did not file a proper motion to augment the record with respect to this transcript, we disregard it.

<sup>7</sup> All section references in this paragraph are to the Code of Civil Procedure unless otherwise noted.

facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” The moving party must provide the court with a satisfactory explanation for his or her previous failure to present the allegedly new or different evidence or legal authority offered in the second motion. (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 383.) There is no specified period limiting when such motions may be renewed. (*Stephen v. Enterprise Rent-A-Car* (1991) 235 Cal.App.3d 806, 816.) However, an order denying a motion pursuant to section 1008, subdivision (b), is not appealable. (*Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 159-160 (*Tate*).)<sup>8</sup>

Although appellant’s motion for division of omitted assets filed on December 6, 2010 (the December motion) is not labeled as a motion for reconsideration, it is in effect such a motion. The content of the December motion is virtually identical to his motion for division of omitted assets filed on June 11, 2009 (the June motion). The exact same assets are listed, the same facts are provided in his declarations with only minor changes

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<sup>8</sup> Prior to 2012, there was a split in decisional authority over whether an order denying a section 1008, subdivision (a), motion for reconsideration was separately appealable. (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1576-1577.) An amendment, part of Assembly Bill 1067, added new language as subdivision (g) which states, “An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order.” (Assem. Bill No. 1067 (Reg. Sess. 2011-2012) § 1.) This resolved the split in favor of the majority of courts. Subdivision (g) does not address renewed motions pursuant to subdivision (b), however, and prior case law establishing that an order denying such motions is not an appealable order remains in effect.

to dates and some facts being omitted the second time around, the same arguments are presented and the law cited is also the same. The June motion was heard before the trial court on July 23, 2009 and was denied. The December motion contained no new or different evidence or legal authority as the basis for appellant's request for reconsideration and was, thus, an improperly made motion for reconsideration and the trial court denied it. Under *Tate*, the trial court's denial order is not an appealable order and we shall dismiss appellant's appeal with respect to this order.

***DISPOSITION***

The order granting respondent's motion directing the proceeds of the sale of the family residence to be distributed to her from the escrow account is affirmed.

Appellant's appeal of the order denying his improper motion for reconsideration is dismissed as unappealable. Respondent shall recover her costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.