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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DAN CAMERON et al.,

Plaintiffs and Respondents,

v.

ED LUGO, JR.,

Defendant and Appellant.

D058936

(Super. Ct. No. ECU05055)

APPEAL from orders of the Superior Court of Imperial County, Donal B.

Donnelly, Judge. Affirmed; the motion to substitute plaintiff/respondent is granted.

Defendant and appellant Ed Lugo, Jr. (Lugo), appeals postjudgment orders of the trial court that granted two motions brought by a set of proposed judgment creditors, plaintiffs and respondents on appeal (the Camerons, and two other groups, the Lillywhite and Saikhon families; all are represented by trustees of their respective family trusts; sometimes collectively referred to as Respondents). The first challenged order confirmed Respondents as real parties in interest in the lawsuit and substituted them in as successors

in interest for the original judgment creditors (predecessors Dan Cameron, Dale Lillywhite, Mario Saikhon, and companies) under a 1989 judgment that was renewed in 1999 and again in 2009. (Code Civ. Proc., §§ 367, 683.110 et seq.)¹ The second challenged order granted by the trial court created "Another and Different Renewal of the Judgment Pursuant to CCP 683.170(c)."²

The subject trial court hearings were held pursuant to directions issued by this court in our opinion in a previous appeal in this matter, also brought by Lugo to challenge the trial court's denial of his motion under section 683.170, which sought to vacate the 2009 renewal of the 1989/1999 monetary judgment against him in favor of Respondents. (*Cameron v. Lugo* (June 24, 2010, D055727) [nonpub. opn.], the prior appeal or opinion.)

In that prior appeal, this court agreed with Lugo that the trial court "should have granted Lugo's motion to vacate the renewal of judgment" under section 683.170, subdivision (a). We reversed that order (effectively in part, allowing further proceedings on the renewed judgment). We remanded the matter with these instructions: "[W]e are aware that section 683.170 allows a court to grant a motion to vacate a renewal, but then

¹ All further statutory references are to the Code of Civil Procedure. A money judgment may be enforced for 10 years (§ 683.020) and the period of enforceability may be extended upon application for renewal of judgment before expiration of the original 10-year period. (§§ 683.110, 683.130.)

² A defendant may seek to have a renewed judgment vacated, raising "any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect" (§ 683.170, subd. (a).)

to permit the judgment creditor to enter 'another and different' renewal of judgment. (§ 683.170, subd. (c).) *On remand, the trial court has the authority to decide whether this procedure would be applicable in this case.* Specifically, the court may wish to provide a reasonable time for parties to file the requisite substitutions. If and when the proper substitutions are filed, the court may then decide whether it is appropriate to order a renewal of judgment to be filed in the correct judgment creditor names. (§ 683.170, subd. (c).)" (Italics added.)

On appeal and in his opposition to the Lillywhite Respondents' pending motion to substitute parties,³ Lugo contends the trial court's resolution of the motions concerning the renewal of judgment failed to properly implement those directions, and the trial court erred or abused its discretion because: (1) the motions were too late or too early under the relevant portions of the statutory scheme, § 683.110 et seq.; and (2) insufficient evidence supports Respondents' showing that they are the successors in interest to the original judgment creditors. (§ 377.31.)

Contrary to Lugo's contentions, the record substantially supports the orders, no abuse of discretion occurred, and we affirm.

³ The Lillywhite Respondents have also brought, and we have deferred consideration for this merits panel, a pending motion to substitute the Lillywhite Plaintiff/Respondent, and this is opposed by Lugo. We grant this motion as will be explained in the discussion portion of this opinion, due to the death in March 2011 of Margaret Lillywhite, such that she is no longer a proper party as a successor in interest. (Cal. Rules of Court, rule 8.36(a); all further rule references are to the Cal. Rules of Court.)

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Opinion

As laid out in our prior opinion, on May 26, 1989, the trial court entered a \$105,231.34 judgment against Lugo (by stipulation, as one of several named defendants), in favor of the predecessors in interest to the current Respondents (individuals Dan Cameron, Dale Lillywhite, and Mario Saikhon, and two artificial entities, Lillywhite Land and Cattle Co. (a partnership) and Mario Saikhon, Inc.). The record reflects that Cameron died in 1994, and Saikhon died in 1993. Nevertheless, counsel for the group obtained a clerk's ministerial renewal of judgment on March 9, 1999.⁴

The earlier motion proceedings that gave rise to our prior opinion in this matter were outlined there as follows: "Ten years later, on March 9, 2009, attorney Neil Gerber filed a second application for renewal of the judgment. Gerber identified the three plaintiffs on the 1989 judgment (Cameron, Lillywhite, and Saikhon) as the 'Applicant[s]' on the application. [¶] Lugo moved to vacate the renewal of judgment based on the fact that each 'Applicant' was deceased and did not have the capacity to enforce the judgment by seeking a renewal." The trial court at that time denied Lugo's motion to vacate the renewed judgment, ruling that it "finds that the attorney for plaintiffs renewed the judgment in this matter in the name of the deceased judgment creditors, at the behest of

⁴ Renewal of a judgment is a ministerial act performed by the court clerk upon receipt of an application for renewal. (§§ 683.120, subd. (b), 683.150, subd. (a).)

the deceased judgment creditors['] successors in interest. This would appear to be in compliance with [section] 686.010."

In our prior opinion, we reversed that determination, ruling that Lugo's motion to vacate the renewal of judgment was well taken, insofar as those moving parties had failed to identify themselves adequately as the actual successors in interest to the original judgment creditors, as required by section 683.170, subdivision (a). Instead, the moving parties had submitted conflicting declarations and took confusing positions on appeal about who had actually succeeded to the assets of those original judgment creditors, e.g., family trusts, businesses, or individuals. This potentially violated Lugo's right to have the action pursued by the appropriate real parties in interest. (§ 367; *Giselman v. Starr* (1895) 106 Cal. 651, 657; *Ventura County Ry. Co. v. Hadley Auto Transport* (1995) 38 Cal.App.4th 878, 880.)

To address that issue, our prior opinion required further proceedings in the context of resolving Lugo's motion to vacate the renewal of judgment. (§ 683.170, subd. (a).) We reasoned that an inquiry was necessary to avoid harmful error in this respect. (*Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957; *Kaley v. Catalina Yachts* (1986) 187 Cal.App.3d 1187, 1194-1195.) We expressly anticipated the trial court would further consider the issues upon receipt of the remittitur:

"In reaching this conclusion, we are aware that section 683.170 allows a court to grant a motion to vacate a renewal, but then to permit the judgment creditor to enter 'another and different' renewal of judgment. (§ 683.170, subd. (c).) On remand, the trial court has the authority to decide whether this procedure would be applicable

in this case. Specifically, the court may wish to provide a reasonable time for parties to file the requisite substitutions. If and when the proper substitutions are filed, the court may then decide whether it is appropriate to order a renewal of judgment to be filed in the correct judgment creditor names. (§ 683.170, subd. (c).)"

Thus, our disposition read: "We reverse the order denying Lugo's motion to vacate the renewal of judgment. Upon remand, the court is directed to vacate the renewal of judgment and consider whether to permit 'another and different' renewal of judgment. (See § 683.170, subd. (c).)"

B. Subsequent Proceedings; Review

After the remittitur was issued, these Respondents brought two sets of motions in the trial court, but took the first off calendar. In the second motion, they supplemented their factual showing with new declarations. Respondents then successfully argued to the trial court they were the successors in interest to the original judgment creditors, based on the March 9, 2009 application for renewal in the court's records. We will defer outlining the record showing the pattern of succession as to each group of creditors until the discussion portion of this opinion (pt. II, *post*).

At argument before the trial court, the parties discussed whether Lugo's previous application to vacate the renewal of judgment was still pending, and the court concluded that it was, by interpreting the language of our prior opinion and the showing made on the current motions by Respondents. Moreover, the court noted that our prior opinion anticipated that an additional hearing would be appropriate to address the omitted or unproved issues, with respect to Lugo's challenges to the 2009 renewal, and those

challenges did not require refiling or supplementation. However, the court determined that the 1999 renewal was no longer subject to objections by Lugo.

In granting the related motions, the trial court determined that Respondents had made a sufficient showing to permit their substitution as successors in interest for the original judgment creditors, and they qualified as real parties in interest for purposes of the proceedings to renew the judgment. Although there were no probate decrees, original wills, or written and executed documents to assist the court, other evidence adequately showed the claimed succession of interests.

The court then addressed the specific issue of whether, under section 683.170, "another and different renewal should be entered." The court found no question that Lugo owed money and that it should be paid to the proper parties, determined there was no discernible prejudice to him, and stated that any remaining disputes about collection of the judgment could be dealt with in the appropriate forum (probate court or a private action between the parties).

The trial court accordingly issued a minute order directing the preparation of a formal order and the different renewal of judgment, pursuant to the terms of section 683.170, subdivision (c). With interest, the original \$105,231.34 judgment balance was increased to an amount of \$226,567.07 in the renewed and different judgment.

Pending appeal, we ordered that the Lillywhite Respondents' appellate "Motion to Substitute Plaintiff/Respondent Pursuant to CRC Rule 8.36(a)" (due to the death of Margaret Lillywhite) and opposition to the motion would be considered concurrently with the appeal, and we discuss it below.

DISCUSSION

All the orders under review stem from Lugo's ongoing challenges under section 683.170 to the 2009 renewal of the judgment. As the judgment debtor, Lugo "bears the burden of proving, by a preponderance of the evidence, that he . . . is entitled to relief under section 683.170." (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 199 (*Fidelity*)). On appeal of the orders on Respondents' integrally related motions, we examine the record of the proceedings in a light most favorable to the orders under review, and evaluate the trial court's ruling for any abuse of discretion. (*Ibid.*)

To the extent pure statutory interpretation issues are presented, our review is de novo. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.) Applying those basic standards, and mindful of the directions set forth in our prior opinion, we address Lugo's challenges to the current orders.

I

PROCEDURAL STATUS OF CURRENT MOTIONS BEFORE THE TRIAL COURT

A. Statutory Standards

As outlined in our prior opinion, where a judgment creditor has died before achieving enforcement of the judgment, section 686.010 provides that the judgment may

be enforced "by the judgment creditor's executor or administrator or successor in interest." (§ 686.010.) This stage of the proceedings is another chapter in the ongoing struggle by Respondents to correctly substitute the proper parties (now, trustees of family trusts) as real parties in interest in the judgment renewal proceedings. (See §§ 367, 377.31.)⁵

As to the ministerial act of the 2009 renewal under section 683.150, subdivision (a), "entry of the renewal of judgment does not constitute a new or separate judgment." (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262 (*Goldman*), fn. omitted.) "[R]enewal does not create a new judgment or modify the present judgment. Renewal merely extends the enforceability of the judgment." (*Jonathan Neil & Associates, Inc. v. Jones* (2006) 138 Cal.App.4th 1481, 1489.) "The renewed judgment 'has no independent existence' from the original judgment." (*Goldman, supra*, at p. 262, fn. omitted.) The court that entered the original judgment has continuing jurisdiction to enforce it through the statutory renewal process. (*Id.* at p. 263.)

⁵ Even though there were originally five judgment creditors to the 1989 judgment, and only the three individual ones were the named applicants for the 1999 renewal (although two of them were no longer living), the ministerial renewal of judgment was accomplished without objection at that time. We need not accept Respondents' unduly broad argument that under section 683.120, subdivision (a), not just a part or portion of the judgment was renewed, but the entire judgment as to every judgment creditor. That argument merely begs the question of whether a sufficient showing has been made of the identity of the current real parties in interest, which should be decided on the evidence in the record. (§§ 367, 377.31.)

Lugo nevertheless argues that it is too late for Respondents to obtain a renewal of the 1989 judgment, because under section 683.020, "*Except as otherwise provided by statute*, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: [¶] (a) The judgment may not be enforced. [¶] (b) *All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease*" (Italics added.)

The procedural history of the two renewals of judgment in this case, and the defense motion to vacate the 2009 renewal, make it inappropriate for Lugo to rely on that broad language of section 683.020, subdivision (b), to demand cessation of all enforcement procedures. Instead, since the 2009 renewal application was timely filed, and the subsequent motion to vacate the renewal was brought before the superior court, and the issuance of our prior opinion was the result, the timeliness of the current motions must be examined for whether they meet specified requirements, as "otherwise provided by statute." (§ 683.020, subd. (b).) That requires ongoing examination of the issues under section 683.170.

Also, Lugo has no basis to argue untimeliness of the motions on the basis that his legal status as a defendant was ever interrupted, such as where a corporation is suspended and has to undergo a revival process. (*Timberline, Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1365-1368.)

B. Application

Based on the above set of rules, we agree with the trial court that the March 2009 renewal, not the 1999 renewal, remains at issue here, as well as the motion to vacate it.

In general, an application for renewal of a money judgment may be filed at any time before expiration of the 10-year period of enforceability under section 683.020.

(§ 683.130, subd. (a).) "[T]he filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed."

(§ 683.120, subd. (b).) Thus, although this appeal was directly taken from the orders granting the motions by Respondents, the trial court correctly concluded that the procedural posture of the case, after the remittitur, required additional hearing and consideration of the previous challenge filed by Lugo, seeking to vacate the 2009 renewal of judgment under section 683.170. In seeking to have a renewed judgment vacated, a defendant may raise "any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect" (§ 683.170, subd. (a).)

This 1989 judgment states on its face that it was entered by stipulation against Lugo, one of several named defendants, and portions of it have apparently been satisfied, since Lugo does not dispute the balance still owed, as it is represented on the 1999 renewal application. Lugo questions the applicability of section 683.170, subdivision (c), because the main grounds for allowing "another and different renewal" include, but are

not limited to, "the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount." (See *In re Marriage of Henderson* (1990) 225 Cal.App.3d 531, 535 [remand for determination of correct amount of renewed judgment].)

Because section 683.170, subdivision (c) does not limit the grounds for allowing "another and different renewal" to a mere correction of the amount, the trial court had continuing jurisdiction to consider whether other criteria for the statutory renewal process had been met. (See *Goldman, supra*, 160 Cal.App.4th at p. 263.) It thus had the discretion, upon appropriate proof, to consider allowing another and different renewal of the judgment to properly accord with the actual identity of the real parties in interest, as they had changed over time. (§§ 367, 377.33.) The rights of any judgment creditor continue to arise from the underlying judgment, and the renewal merely extends the time for its enforceability. (*Jonathan Neil & Associates, Inc. v. Jones, supra*, 138 Cal.App.4th 1481, 1489.)

Lugo cannot be heard to again attack the merits of the renewals, by claiming that two of the three individual judgment debtors/"applicants" had died by that time (Cameron and Saikhon), and the two artificial entities that were judgment creditors (Mario Saikhon, Inc. and Lillywhite Land and Cattle Co.) were not named parties to that renewal application. Our focus should be upon the substantive rights represented by the 1989 judgment. This matter has been extensively litigated and there is no reason or justification for this court to go behind the issues presented in the previous appeal or to

expand the scope of the matters that were expressly preserved for this further review. This further review concerns only the motions pertaining to the validity of the 2009 renewal, and they were each timely under section 683.170 and as appropriate follow-up proceedings after the issuance of the remittitur from our prior opinion.

II

APPLICATION OF STANDARDS

We next examine whether the evidence in the record supports the orders allowing substitution of parties. As acknowledged by the trial court, Respondents could have made a clearer or more thorough showing, but nevertheless, the court concluded that the evidence presented was sufficient to support each substitution of the moving parties in place of the original judgment creditors, for purposes of the requirement that only real parties in interest may properly pursue judgment renewal proceedings. (§§ 367, 377.31, 377.33.)

It is well accepted that judgments will be construed to uphold them if any uncertainties or irregularities contained therein can be reasonably resolved by reference to the record. (*Watson v. Lawson* (1913) 166 Cal. 235, 241; see 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 43, pp. 580-581.) The statutory policies to be promoted in this particular context were identified in our prior opinion as follows:

"[T]he fact that the wrong party is bringing or continuing an enforcement action is a defense to an action on the judgment, and thus constituted a basis for vacating the renewal of judgment. (§ 683.170, subd. (a).) [¶] The failure to substitute a successor for a deceased party is not a reversible error if there was no prejudice to

the defendant. [Citations.] 'The reason for the real party in interest statute is to protect a defendant from a multiplicity of actions predicated on the same gravamen and to preserve to that defendant all personal defenses and counterclaims available.' [Citation.] If the defendant is protected from further suit and will have the opportunity to raise all defenses or setoffs against the nominal plaintiff, these objectives have been satisfied and the defendant 'can have no further legitimate concern.' [Citations.]"

A. Cameron Assets

First, as to the Cameron group, the record shows that two of the three trustees of the Cameron family trust (Paul and Debbie) are joining in this motion, seeking to substitute the trust as the appropriate successor in interest to the assets of the deceased judgment creditor, Dan Cameron. The Cameron trust provisions include a "majority rules" provision as to decisions made by the three trustees. The record demonstrates that there is a third Cameron trustee, Frederick, who supplied a declaration below stating he does not want to join in the two other Cameron trustees' motion, and the trial court at argument on the motions noted he could fight that out in probate court if necessary.

Accordingly, since the application by the current Cameron trustees, in declaration form, states that there are no other competing claimants to Dan Cameron's interest in the subject renewed judgment, and explains the succession procedure, they have made a prima facie showing that they are entitled to substitute the trust as a judgment creditor. Lugo has made no contrary showing, nor showed any prejudice from such substitution, and the trial court properly granted the application.

B. Lillywhite Assets; Appeal and Motion to Substitute Respondents

With respect to the judgment creditor status of Dale Lillywhite, who died in 2003, the record on appeal shows that his widow Margaret Lillywhite and two other relatives (Daniel H. Lillywhite II (Daniel) and Robin Lillywhite) were cotrustees of the family trust (1990 and 1998 versions), which is the proposed successor in interest to Dale. Declarations filed at that time showed that Dale died without a signed will, and the family company which he ran along with Daniel (Lillywhite Land and Cattle Co.), was dissolved in 2004. Margaret Lillywhite stated that she was the successor in interest to that company, which was a family partnership.

Margaret Lillywhite passed away in March 2011, and counsel for Respondents has filed a motion to substitute those same other two relatives, Daniel and Robin Lillywhite, on behalf of the family trust as the successor in interest. (Rule 8.36(a).) The motion is supported by Daniel and Robin Lillywhite's declaration stating there are no competing claimants, and attaching exhibits including Margaret's death certificate, portions of the amended trust documents, and written assignments of interest, which describe the succession and assignments of interests through various subtrusts and through Daniel as an individual, and showing he then assigned his interest to the 1998 family trustees.

Lugo opposes the Lillywhites' motion for substitution on the same grounds as the appeal, arguing it is either premature or untimely, with regard to the 1999 renewal, or the 1989 judgment. He also claims the evidence does not clearly enough demonstrate the pattern of succession from the Lillywhite family and trust to the three subtrusts, created

under its article 5.4, as of the times of deaths of either Dale or Margaret.⁶ Lugo contends that the living Lillywhite relatives/trustees, on behalf of the family trust, should not be allowed to succeed to the interest of Dale in the judgment, without a probate decree or a written assignment of interests.

It is not disputed that Dale's will was not probated, and it appears from the record that generally, the family trust business was not diligently conducted, and the Lillywhites are now "playing catch-up." Nevertheless, Lugo has shown no prejudice and no danger that there are other claimants to the judgment creditor status, other than these family trusts in their various iterations, all of which business was conducted by the same individuals. It is difficult to see how any colorable defense to the renewal can be asserted on this basis by Lugo.

We accordingly grant the current motion to substitute the remaining Lillywhite trustees, Daniel and Robin Lillywhite, in place of Margaret Lillywhite as respondents in this appeal. None of Lugo's appellate objections has any merit.

C. Saikhon Assets

With respect to the Saikhon judgment creditor status, Lugo again argues the 1999 renewal of judgment was ineffective, since Mario Saikhon died in 1993 (before that 1999

⁶ In the Lillywhite family trust, three subtrusts are created, a marital trust, survivor's trust, and a credit shelter or "exemption" trust. Lugo complains that additional written assignments should have been provided for the transfers among the trusts, and property schedules are missing. Those objections may show that the family trust transactions were sloppy and incomplete, but they do not sufficiently establish that competing claimants to Dale's original judgment creditor status exist, causing any prejudice to Lugo.

application was made), and his family corporation (Inc.) was not specified to be a party to the application. According to the declaration of his widow, Dora Saikhon, she is the trustee of the family trust, and in that capacity, she received all of his interest in the dissolved corporation, such that the family trust is the appropriate successor in interest. There are no other competing claimants to its interest in the subject renewed judgment.

Moreover, with respect to the individual judgment creditor status, Mrs. Saikhon's declaration supports the trial court's conclusion that she, as the trustee of the family trust, has shown that the trust is the only designated successor in interest to her husband's personal interests. Lugo has made no adequate showing of prejudice from such a substitution.

We conclude that the trial court acted properly in allowing each of the substitutions and in renewing the judgment. Respondents have been attempting to pursue this judgment for more than two decades, and there is no indication of anything other than inadvertence or mistake in the previous errors that they have made in doing so. In this unique historical context, substantial evidence supports the trial court's finding that no defense to the renewal of the judgment, based on an alleged lack of proper parties, is available to Lugo. The trial court properly exercised its discretion by addressing and resolving the still-pending section 683.170 motion to vacate renewal of judgment, in the manner that it did, in combination with ruling on the motions by Respondents. Lugo has not carried his burden on appeal to show the trial court abused its discretion in substituting parties or in allowing the different renewed judgment to be issued. (*Fidelity*,

supra, 89 Cal.App.4th 195, 199 [judgment debtor bears the burden of proving entitlement to relief under section 683.170].)

DISPOSITION

Orders affirmed; motion to substitute Lillywhite Plaintiff/Respondent granted.

Costs on appeal are awarded to Respondents.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.