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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BUN BUN TRAN,

Plaintiff and Appellant,

v.

LEONEL ARELLANO et al.,

Defendants and Respondents.

D059263

(Super. Ct. No. 37-2007-00065432-
CU-PA-CTL)

APPEAL from an order of the Superior Court of San Diego County, Linda B. Quinn, Judge. Affirmed.

Plaintiff Bun Bun Tran appeals from an order denying his motion for an injunction prohibiting defendant Leonel Arellano's insurer, nonparty Progressive West Insurance Company (Progressive), from refusing to post an appeal bond for the entire amount of an over-limits judgment against Arellano. Tran contends the trial court erred because it had jurisdiction over Progressive. He also asserts that Arellano's defense counsel, the law

firm of Winet, Patrick & Weaver and attorneys Randall L. Winet and Marilyn Perrin (collectively the Attorneys) engaged in unethical conduct.

We conclude the trial court properly denied the motion and that the allegations of unethical conduct by the Attorneys were forfeited because they either were not raised or ruled on below.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2006, Arellano ran a stop sign and struck the vehicle driven by Tran. Having suffered serious brain injuries as a result of the collision, Tran now requires 24-hour medical and nursing care. Arellano, an undocumented worker, was driving while intoxicated and pleaded guilty to various felonies in connection with the collision. Progressive insured Arellano at the time of the accident. The policy limit was \$15,000.

In this civil action for personal injury, the jury returned a \$24,804,135 verdict in Tran's favor. Arellano appealed, contending the jury's verdict arose from passion and prejudice based on erroneous evidentiary rulings, erroneous jury instructions, and improper closing argument by Tran's counsel. Arellano's attorney contacted Progressive on his client's behalf, asking the insurer to post the bond necessary for Arellano to perfect his appeal of the judgment. Progressive responded that it would post an appeal bond up to the \$15,000 policy limit and no more.

Arellano then filed a motion to waive the appeal bond on grounds he was indigent and unable to obtain sufficient sureties. The trial court granted Arellano's motion, finding that: (1) Arellano was indigent; (2) he had no assets; (3) the risk of Arellano being unable to satisfy the judgment was not increased by waiver of the appeal bond; and

(4) the court had no jurisdiction over Progressive and the coverage issue was not before it. We concluded that Arellano was not indigent and reversed the order waiving the appeal bond. (*Tran v. Arellano et al.*, (Nov. 15, 2010, D057162) [nonpub. opn.] (the Bond Opinion).)

Tran then filed a motion in the trial court for an injunction prohibiting Progressive from refusing to post an appeal bond, which the trial court denied. Tran now appeals from the denial of his motion. In the meantime, we rejected Arellano's arguments on appeal from the judgment and affirmed the judgment. (*Tran v. Arellano et al.*, (April. 21, 2011, D056694) [nonpub. opn.] (the Tort Opinion).) The California Supreme Court denied review of the Tort Opinion and the judgment is now final.

DISCUSSION

I. *Denial of Motion*

Tran asserts the trial court erred in denying his motion based on lack of jurisdiction over Progressive. He claims that when an insurer defends a case without a reservation of rights and exercises its right to control the defense, public policy compels the finding that the trial court has jurisdiction over the insurer in all disputes related to payment of defense costs, including the resolution of policy ambiguities related to defense costs. Alternatively, Tran asserts the trial court should have recognized that an unwaivable conflict of interest existed between Progressive and Arellano requiring the appointment of independent counsel for Arellano.

As a threshold matter, a court has jurisdiction over a party in a pending action if that party has been served with a summons or has made a general appearance. (Code

Civ. Proc., § 410.50.) Jurisdiction over a party does not result from that party's mere knowledge of a proceeding; it requires notice through service of process in compliance with statutory mandates. (*Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 111.) Here, there is nothing in the record showing Progressive was served with a summons or made a general appearance in the action. Rather, Progressive filed an objection to Tran's motion stating it was a nonparty to the action and that its objection did not constitute a general appearance. Accordingly the trial court properly denied the motion based on lack of jurisdiction.

Tran contends that courts "routinely exercise jurisdiction over insurers" that are not parties to the litigation. To support this argument, Tran cites certain rules requiring that insurers attend mandatory settlement conferences and a case upholding a monetary sanction against an insurer for failing to attend such a conference. (*City of El Monte v. Takei* (1984) 158 Cal.App.3d 244, 249-250 (*City of El Monte*) [appellate court affirmed the imposition of monetary sanctions against an insurance carrier after the carrier failed to appear at a mandatory settlement conference]; Cal. Rules of Court, rule 3.1380(b) [Requiring that "[t]rial counsel, parties, and persons with full authority to settle the case must personally attend [a mandatory settlement] conference, unless excused by the court for good cause."]; Super. Ct. S.D. County, Local Rules, rule 2.2.2 [Requiring that "[c]laims adjusters for insured defendants . . . must be present [at all court-ordered settlement conferences], with complete authority to settle the case."].)

This authority, however, cannot be read for the broad proposition that a trial court has general jurisdiction over a nonparty insurer. Rather, the California Rules of Court expressly provide the power to sanction, after notice and an opportunity to be heard, for the failure to comply with applicable rules. (Cal. Rules of Court, rule 2.30(b) ["[T]he court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or an aggrieved person, or both, for failure without good cause to comply with the applicable rules. For the purposes of this rule, 'person' means . . . an insurer or any other individual or entity whose consent is necessary for the disposition of the case."].) Thus, in *City of El Monte*, sanctions against the nonparty insurer were proper under the California Rules of Court, not because the trial court had jurisdiction over the insurer.

In the Bond Opinion we stated that: "[U]ntil Progressive does, in fact, refuse to provide all or part of the \$36 million bond, the question of what is required under the allegedly ambiguous policy language is not before us." Tran relies on this sentence to argue that the language of the insurance policy is now before us and we must address the policy language and decide whether Progressive had duty to bond an over-policy limits judgment. Not so.

In the Bond Opinion we concluded that Arellano was not indigent and that the trial court abused its discretion in granting his request for waiver of the appeal bond. We assumed that upon issuance of the remittitur, the trial court would hold a hearing to address Progressive's duty to file an appeal bond. Our review of the appendices does not show the trial court held such a hearing. We requested the superior court file and take

judicial notice thereof. (Evid. Code, § 452, subd. (d).) Our review of the file reveals that Tran filed the instant motion for an injunction against Progressive after we issued the Bond Opinion and that the trial court denied the motion before we issued the remittitur. Accordingly, the trial court never interpreted the language of the policy or addressed Progressive's duty under the policy and the issue of what the policy required is not before us. Moreover, as to this action, the appeal bond issue is moot as the judgment is now final. The issue of what the policy requires is more appropriately addressed in the pending bad faith action against Progressive. Tran's alternative request that we appoint independent counsel for Arellano is similarly moot, and the issue whether such a duty existed should be addressed in the pending bad faith action.

II. *Alleged Unethical Conduct*

In his motion for an injunction against Progressive, Tran alleged the Attorneys engaged in unethical conduct for the purpose of setting aside Arellano's assignment of his bad faith rights against Progressive to Tran. Among other things, Tran accused the Attorneys of unlawfully receiving a copy of the assignment from a former employee of Tran's attorneys and using documents stolen from Tran's attorneys. At the hearing on the motion, however, the trial court did not address these accusations and stated that the issue before it was its jurisdiction over Progressive. In his opening brief, Tran expanded his accusations of misconduct against the Attorneys and claimed the trial court did nothing to investigate his allegations. He requests that we refer the matter back to the trial court with an order that it conduct an investigation and evidentiary hearing into the improper activity of the Attorneys and Progressive. There is no indication in the record, however,

that the trial court addressed any of these accusations or that Tran asked the trial court to conduct an investigation and evidentiary hearing. Accordingly, these issues have been forfeited. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 [forfeiture rule applies to civil and criminal proceedings and "is designed to advance efficiency and deter gamesmanship."].) The judgment in this action is now final and these accusations are more appropriately addressed in a different proceeding.

DISPOSITION

The order is affirmed. Arellano shall recover costs on appeal.

MCINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.