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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITIBANK, N.A. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

YEKHISAPET GASPARYAN,

Real Party in Interest.

E064908

(Super.Ct.No. CIVDS1500123)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Keith D. Davis,
Judge. Petition is granted.

Wright, Finlay & Zak, T. Robert Finlay and Kathryn A. Moorer for Petitioners.

No appearance for Respondent.

Yekhisapet Gasparyan, in pro. per., for Real Party in Interest.

In this matter we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

Although the record is not entirely clear, or complete, as to why certain procedural matters occurred, it *is* clear that the steps which occurred have the effect of prohibiting further prosecution of this action. Accordingly, we will grant the petition.

Real party in interest commenced this action in the California state court. Petitioners thereafter had it removed to federal court under that court's diversity jurisdiction. Pursuant to petitioners' motion, the case was *dismissed* by the federal court. The order did *not remand* the case to the California court.

Allstate Ins. Co. v. Superior Court (1982) 132 Cal.App.3d 670 is on point. The federal court's order *terminated* the action so that there is presently nothing upon which California can exercise jurisdiction. Accordingly, the trial court should have granted the relief essentially sought by petitioners through the mechanism of demurrer—that is, to dismiss the action for lack of jurisdiction. The result does not, in and of itself, prohibit the filing of a new action, but real party in interest cannot continue to litigate a case which no longer has any legal existence.

DISPOSITION

Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino to vacate its order granting real party in interest leave to amend the complaint, and to issue a new order sustaining petitioners' demurrer without leave to amend.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties. In the interest of justice, the parties shall bear their own costs.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.