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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

2010-1 CRE VENTURE, LLC,
Plaintiff and Respondent,

v.

BILLY JOE JOHNSON, SR.,
Defendant and Appellant.

F066898

(Super. Ct. No. CV-278353)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Sidney P. Chapin,
Judge.

Billy Joe Johnson, Sr., in pro. per., for Defendant and Appellant.

Akin Gump Strauss Hauer & Feld and Jeffrey A. Zuidema for Plaintiff and
Respondent.

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Defendant appeals from an order appointing a receiver to take charge of, operate,
and collect rents from certain real property. The order was entered after defendant failed
to make required payments on a note secured by a deed of trust and assignment of rents

* Before Hill, P. J., Poochigian, J. and Peña, J.

on the real property. Because the appeal has become moot, and defendant fails to identify any error in the order, the appeal is dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

The complaint alleges plaintiff's predecessor in interest loaned defendant \$2.2 million, and defendant executed a promissory note in which he promised to repay the loan in monthly installments until the maturity date, when all unpaid principal and accrued unpaid interest would become due. The note was secured by a deed of trust, giving plaintiff's predecessor a lien on defendant's interest in certain real property and a security interest in the rents and personal property related to that real property. The deed of trust also contained a provision that, in the event of defendant's default in payment, defendant irrevocably and unconditionally agreed to court appointment of a receiver to take possession of and operate the property. After plaintiff was assigned its predecessor's interest in the deed of trust, defendant failed to make the monthly payments as required.

Plaintiff filed its complaint against defendant, seeking foreclosure of the deed of trust and sale of the real and personal property secured by it; it also sought appointment of a receiver to take possession of the property and to conserve and manage it pending foreclosure sale. After the complaint was served on defendant, plaintiff filed a motion for appointment of a receiver. Defendant filed opposition to the motion, but failed to file an answer or other pleading in response to the complaint. Defendant's default was entered; four days later, the court heard and granted the motion for appointment of a receiver.

Defendant appeals the order appointing a receiver. Plaintiff responded to defendant's opening brief with a motion to dismiss the appeal on various grounds and a request for sanctions for the filing of a frivolous appeal.

DISCUSSION

I. Motion to Dismiss

Plaintiff moved to dismiss the appeal and for an award of monetary sanctions, asserting defendant cannot appeal because 1) he was in default in the trial court; 2) the appeal is moot because the property was sold and the receiver was discharged; 3) defendant's arguments are without legal or factual merit; and 4) defendant's brief failed to comply with the California Rules of Court.

A. Mootness

It is well settled that an appellate court will decide only actual controversies and that a live appeal may be rendered moot by events occurring after the notice of appeal was filed. (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557.) When a pending appeal has become moot, so the court is unable to grant any effectual relief, the court will dismiss the appeal. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.)

Defendant filed his notice of appeal on March 6, 2013. On April 9, 2013, the trustee issued a trustee's deed upon sale to 2010-1 CRE CA-Industrial, LLC. On June 13, 2013, the trial court entered an order approving the receiver's final account and report; it also ordered that the receiver be discharged from further duties upon the filing of proof that he paid the balance of the funds he held, after paying attorney fees, to plaintiff. Defendant initially filed his opening brief on July 1, 2013. Thus, by the time defendant filed his opening brief, the property had been sold and the receiver had been discharged or was in the process of being discharged; defendant had no further interest in appealing the order appointing a receiver to operate the property on his behalf. This court could no longer grant defendant relief from the appealed order. The appeal should be dismissed on the ground it is moot.

B. No Coherent Argument in Support of Appeal

An appealed judgment or order is presumed correct, and the appellant must affirmatively demonstrate error. (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.) “This means that an appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record.” (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557.)

Defendant’s brief does not include a statement of the relevant facts, supported by references to the places in the record where evidence establishing those facts can be found. (Cal. Rules of Court, rule 8.204(a)(1)(C), (a)(2)(C).) Defendant’s brief also does not present any legal argument supported by citation of authority. The arguments made do not challenge the merits of the order appointing a receiver. Defendant argues there is no foundation for appointment of a receiver, but by defaulting he has conceded the factual basis for the order. (*Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823.) Additionally, he accuses the trial court judge of criminal activity and conflict of interest, asserts lack of due process, mentions bankruptcy,¹ claims the receiver quit, complains there was no jury trial, and contends there was no foundation for an order of appearance that apparently was made after entry of the order appointing a receiver. In addition to failing to include references to facts in the record and citations to supporting legal authority, defendant does not tie any of his arguments to any prejudicial error in the order he challenges.

¹ On May 16, 2013, after requesting letter briefs regarding whether there was any automatic bankruptcy stay in effect, preventing this appeal from going forward, we determined there was no such stay in effect.

When an appellant fails to make a coherent argument supported by authority on a point raised, we may treat the point as forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) When the entire brief is deficient in this respect, the court has discretion to deem the appeal abandoned and dismiss it. (*In re Sade C.* (1996) 13 Cal.4th 952, 994; *County of Kern v. Dillier* (1999) 69 Cal.App.4th 1412, 1425.) On this ground also, defendants appeal should be dismissed.

II. Sanctions

“When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just.” (Code Civ. Proc., § 907.) “[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]” (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) The test for an improper motive is a subjective one; the test for lack of merit is objective. (*Id.* at p. 649.)

Defendant is not represented by an attorney, and we decline to apply an objective reasonable attorney standard to him. (*Kabbe v. Miller* (1990) 226 Cal.App.3d 93, 98.) It does not appear defendant filed this appeal for purposes of delay; he made no attempt to stay the proceedings in the trial court and the sale of the subject property took place in spite of the appeal. While some aspects of his conduct might suggest an improper motive, we decline to exercise our discretion to impose sanctions in this case.

DISPOSITION

The appeal is dismissed. Plaintiff is awarded its costs on appeal.