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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BEHNAZ SHEILA SHAHBAZI,

Plaintiff and Respondent,

v.

ZAMAN KABIR,

Defendant and Appellant.

G044652

(Super. Ct. No. 30-2009-00123661)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Appeal dismissed.

Law Offices of Foroozandeh and Majid Foroozandeh for Plaintiff and Respondent.

Law Offices of Alex J. Llorente and Alex J. Llorente for Defendant and Appellant.

Zaman Kabir appeals from a default judgment entered against him on the complaint filed by Behnaz Sheila Shahbazi. However, as the parties acknowledged at oral argument and in supplemental briefing submitted thereafter, Kabir also filed a cross-complaint against Shahbazi which remains pending in the trial court, and thus the judgment he appealed from does not reflect a complete disposition of all the claims placed at issue between these litigants. As such, the judgment appealed from does not qualify as a final judgment for purposes of appeal, and we consequently order it dismissed.

### FACTS

This lawsuit involves a loan transaction gone awry. Shahbazi alleged that in December of 2007, she made a loan of \$50,000 to Edwin and Suzanne Gam at Kabir's behest, and he agreed to act as guarantor of the loan. The Gams subsequently defaulted, and Kabir allegedly failed live up to his obligations as guarantor. On May 27, 2009, Shahbazi filed her complaint in this case alleging breach of contract and fraud. Kabir answered the initial complaint.

Kabir also filed a cross-complaint against Shahbazi, alleging she had breached a separate contract to split commissions with him on a real estate transaction, and defamed him. Shahbazi answered Kabir's second amended cross-complaint on April 16, 2010.

Meanwhile, in March of 2010, Shahbazi filed a first amended complaint, adding an additional cause of action for breach of the covenant of good faith and fair dealing against Kabir. Kabir did not timely respond to that amended complaint, and on May 5, 2010, the court entered Kabir's default on Shahbazi's amended complaint.

The court denied Kabir's subsequent motion to vacate the default, and later granted a default judgment against Kabir on the complaint.

Kabir appealed from that default judgment, arguing (1) the court erred by entering his default to all causes of action alleged, despite the fact he had earlier answered a version of the complaint which contained two of the three causes of action alleged against

him; (2) the court abused its discretion in denying him relief from default; (3) there was insufficient evidence to support the court's determination he was guilty of fraud; (4) there was an insufficient basis for inclusion of an attorney fee award in the judgment; (5) the court abused its discretion in the amount of fees awarded; and (6) the court abused its discretion in the amount of punitive damages awarded.

Shahbazi filed a respondent's brief, arguing both that Kabir's opening brief was deficient as a matter of law and should be stricken, and that the contentions advanced therein were without merit. Unfortunately, however, neither party recognized the significance of Kabir's as-yet unresolved cross-complaint against Shahbazi, and thus neither party acknowledged its existence in their briefing on appeal.

Our own review of the record revealed the existence of the cross-complaint, and suggested it was still pending in the trial court. Consequently, at oral argument, we asked the parties to submit additional briefing addressing whether the pendency of that cross-complaint required dismissal of this appeal pursuant to the one final judgment rule.

#### DISCUSSION

In their letter briefs, the parties both acknowledge the cross-complaint filed by Kabir against Shahbazi remains pending in the trial court. However, both also argue that since the claims asserted in the cross-complaint arise out of facts separate from those underlying the loan guaranty placed at issue in the main complaint, its pendency should not preclude entry of a separate, appealable judgment on that complaint.

We are not persuaded. A final judgment must dispose of all issues between the parties affected, and there is no exception for claims that could have been, but were not, brought as a separate action. A judgment which disposes of only part of the issues is not appealable. As explained in *ECC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 122 Cal.App.4th 994, 1002, the one final judgment rule means “‘an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties.’” (*Morehart v. County of Santa Barbara* (1994)

7 Cal.4th 725, 743.) Even if the various causes of action are tried separately or can be characterized as independent of one another, there can be no appeal taken until a final judgment that disposes of all causes of action is entered. (*Ibid.*) [¶] Where a complaint and cross-complaint involving the same parties have been filed, there is no final, appealable judgment until both have been resolved. (*American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 556-557.)”

In this case, Kabir’s unresolved cross-complaint against Shahbazi means there is yet no final, appealable judgment between these parties. As a consequence, the appeal challenging the default judgment entered on the complaint only must be dismissed.

DISPOSITION

The appeal is dismissed. Each party shall bear its own costs.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.