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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PROGENEX DAIRY BIOACTIVES,
INC.,

Plaintiff, Cross-defendant and
Appellant,

v.

ZINC SOLUTIONS, INC.,

Defendant, Cross-complainant and
Respondent.

G046384

(Super. Ct. No. 30-2010-00369049)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, David Hood, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) The appeal is dismissed.

Beckstrand Law Offices and Dwight Beckstrand for Plaintiff, Cross-defendant and Appellant.

Gladych & Associates and John A. Gladych for Defendant, Cross-complainant and Respondent.

* * *

The appellant has endeavored to appeal from a nonappealable order. We dismiss.

I
FACTS

Zinc Solutions, Inc. (Zinc) apparently obtained a money judgment against Progenex Dairy Bioactives, Inc. (Progenex). We say “apparently” because neither party cites any portion of the record containing a copy of a judgment. For that matter, Progenex does not provide one single record reference in its entire opening brief (the only brief it filed). We pause here to note that we could rule against Progenex for that one failure alone (*Roden v. AmerisourceBergen Corp.* (2010) 186 Cal.App.4th 620, 634), if we had jurisdiction to hear the appeal.

Progenex does at least make mention of the January 6, 2012 minute order from which it appeals. While we are not required to locate documents on our own (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368), we found the order without difficulty.

The minute order indicates that Progenex filed motions requesting that the court quash subpoenas duces tecum served on JP Morgan Chase Bank, Paypal, Inc., and National Merchant Center, Inc., or in the alternative issue protective orders. The court denied the motions to quash but granted the requests for protective orders. It directed counsel for Progenex to draft the protective order and to submit it to the court by January 19, 2012, and further ordered that the records in question not be produced until the protective order was issued. On January 19, 2012, Progenex filed a notice of appeal from the January 6, 2012 minute order.

Each party has endeavored to draw our attention to additional activities taking place after the filing of the notice of appeal, and in so doing each has failed to comply with the California Rules of Court. Each party attached a copy of a court order

directly to its brief, rather than filing either a motion to augment or a request for judicial notice. (Cal. Rules of Court, rules 8.155, 8.252.) Zinc attached a copy of a formal protective order filed March 2, 2012, and Progenex attached a copy of a June 15, 2012 minute order pertaining to a motion to quash a subpoena duces tecum directed to Michael R. Brown.

Progenex asserts that the court erred in denying its earlier motions to quash, with respect to JP Morgan Chase Bank, Paypal, Inc. and National Merchant Center, Inc. It contends that postjudgment discovery may only be served on the judgment debtor, not on third parties. Zinc makes two arguments in response. First, it asserts that the unsigned minute order is not appealable because it was not a final determination of issues, but was instead preliminary to the formal, signed protective order. Second, it says that any error was not prejudicial error because “Zinc has obtained copies of [Progenex’s] bank, Pay Pal, and merchant account records” and it could have obtained the same information through postjudgment discovery served on Progenex itself. Progenex did not file a reply brief and thus did not avail itself of the opportunity to respond to the issues Zinc raised about appealability or prejudice (or for that matter, the implied argument about mootness).

II

DISCUSSION

In its opening brief, Progenex says that the minute order is appealable under Code of Civil Procedure section 904.1, subdivision (a)(2). That statutory provision permits an appeal to be taken from an order made after an appealable judgment. This notwithstanding, not every postjudgment order is appealable. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651.)

It is not enough that an order follow a final, appealable judgment. It must satisfy two additional requirements as well. First, “the issues raised by the appeal from the order must be different from those arising from an appeal from the judgment. [Citation.]” (*Lakin v. Watkins Associated Industries, supra*, 6 Cal.4th at p. 651.) Second, “‘the order must either affect the judgment or relate to it by enforcing it or staying its execution.’ [Citation.]” (*Id.* at pp. 651-652.) The second requirement is at issue here.

What we have is a minute order pertaining to discovery. It is a preliminary order in that it does not even permit the discovery to take place until after a formal protective order is entered. The minute order is not appealable. (*Rogers v. Wilcox* (1944) 62 Cal.App.2d 978 [order denying motion to quash order re judgment debtor exam]; *Ahrens v. Evans* (1941) 42 Cal.App.2d 738 [postjudgment order denying motion to quash subpoena duces tecum].)

The order “was one of the steps taken in the course of a proceeding to obtain” information pertaining to a judgment debtor’s assets. (*Rogers v. Wilcox, supra*, 62 Cal.App.2d at p. 979.) “It did not constitute a final order. A court should not be interrupted in the exercise of its jurisdiction until its judgment has become final. Error in the course of a proceeding does not warrant a review. [Citations.]” (*Ibid.*) Neither an order denying a motion to quash an order for a judgment debtor examination (*id.* at pp. 978-980), nor a postjudgment order denying a motion to quash a subpoena duces tecum served on a third party (*Ahrens v. Evans, supra*, 42 Cal.App.2d 738), is appealable.

We note that *Rogers v. Wilcox, supra*, 62 Cal.App.2d 978 and *Ahrens v. Evans, supra*, 42 Cal.App.2d 738 were decided when Code of Civil Procedure former section 963 was in effect. That does not mean that these cases have lost their vitality, however.

Code of Civil Procedure former section 963 as originally enacted “provided: [¶] ‘An appeal may be taken . . . from a Superior Court . . . in the following cases: [¶] . . . [¶] 2. . . . [F]rom any special order made after final judgment’ [Citation.] [¶] This language remained unchanged . . . as long as the statute was in effect. [Citations.]” (*Krikorian Premiere Theatres, LLC v. Westminster Central, LLC* (2011) 193 Cal.App.4th 1075, 1079.)

“[I]n 1968, the Legislature repealed former section 963 and replaced it with . . . current section 904.1 . . . , which, as relevant here, provides: [¶] ‘An appeal . . . may be taken from any of the following: [¶] . . . [¶] ‘(2) From an order made after a judgment made appealable by paragraph (1).’ [Citation.]” (*Krikorian Premiere Theatres, LLC v. Westminster Central, LLC, supra*, 193 Cal.App.4th at p. 1081.) True, the language of former section 963 and current section 904.1 is not identical. (*Krikorian Premiere Theatres, LLC v. Westminster Central, LLC, supra*, 193 Cal.App.4th at p. 1082.) However, in changing the wording of the statute, “[i]t does not appear that the Legislature intended to make any substantive change in the law. [Citations.] Rather, ‘the apparent primary purpose of the 1968 changes was to subdivide the cumbersome language of former section 963.’ [Citation.]” (*Krikorian Premiere Theatres, LLC v. Westminster Central, LLC, supra*, 193 Cal.App.4th at pp. 1082-1083.)

In closing, we note that after the case before us was submitted, Progenex attempted to file a motion to disqualify counsel for Zinc and a request for judicial notice. Papers will not be accepted for filing after the case has been submitted. (Cal. Rules of Court, rule 8.256(d)(1).) The clerk of this court is directed not to file either the motion or the request.

III
DISPOSITION

The appeal is dismissed. Zinc shall recover its costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.