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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CLEARWATER HAND CAR WASH,
LLC,

Plaintiff and Respondent,

v.

STEVEN ROGER GUTIERREZ,

Defendant and Appellant.

G049033

(Super. Ct. No. 30-2011-00515852)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Fell, Judge. Affirmed.

Roy-Law and Derik J. Roy III for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Steven Roger Gutierrez appeals from a judgment after a court trial. He objects to conditions imposed by the judgment on his gaining ownership of a car wash. He contends that he subsequently discovered that he was unable to meet these conditions.

Considering the rather complicated history of the ownership of the business, we do not find the conditions to have been unreasonable and we therefore affirm the judgment. To the extent that defendant complains of an order issued after the judgment wherein the court denied his request to remove the conditions, we do not address the issues raised there. Because this was a postjudgment order from which he could have appealed under Code of Civil Procedure section 904.1, subdivision (a)(2) and because he failed to appeal from that order, we cannot consider whether the court should have granted all or part of his motion to modify the judgment.

FACTS

Plaintiff Clearwater Hand Car Wash, LLC doing business as Marina Classic Car Wash filed an action against defendant, another individual not a party to this appeal, and an entity not a party to this appeal. In its complaint plaintiff sought damages and injunctive relief; plaintiff alleged defendant had indicated a desire to purchase the car wash and was given access to plaintiff's records and property. Defendant allegedly engaged in a scheme to convert plaintiff's assets and its revenue and to claim ownership of the business. Plaintiff's first cause of action alleged trespass; its second cause of action sought injunctive relief.

Defendant filed an answer in the form of a general denial and asserting some 25 alleged affirmative defenses. He also filed a cross-complaint containing four causes of action: fraud-deceit, breach of contract, punitive damages, and restitution/unjust enrichment.

The case was tried to the court. The court concluded that Chelsea Braun had given the business to defendant and awarded him ownership of it on condition he satisfy various legal obligations Braun had incurred in connection with her ownership and operation of the business. Specifically, the transfer of ownership was conditioned upon the following:

“1. Within 90 days, Mr. Gutierrez is required to put an agreement in place with the property owner regarding the amount to be paid for monthly rent to include satisfaction of any and all arrears;

“2. Within 90 days, Mr. Gutierrez is required to put an agreement in place with the seller, Mr. Holloway regarding payment of his note, including arrears, which proceeds were used to purchase the car wash and which is secured by the real property of Chelsea Braun;

“3. Within 90 days, Mr. Gutierrez is required to put an agreement in place with Wells Fargo Bank which either forgives the balance of the note executed by Chelsea Braun for the purchase of the car wash or which sets forth a repayment schedule of the note.

“Within 95 days, Mr. Gutierrez shall present these agreements to Ms. Braun as proof of compliance with this Order and Judgment. Additionally, Mr. Gutierrez shall present proof each month to Ms. Braun of his compliance with the terms of each of the agreements reached with these creditors. The proof to Ms. Braun shall be in whatever form is requested by Ms. Braun.

“Should Mr. Gutierrez be unable to perform the conditions above, the car wash will revert to Ms. Braun upon Ex-Parte notice and application for relief.”

In his brief and in his opposition to subsequent orders issued by the court restoring ownership of the business to Braun, defendant acknowledges he was unable to satisfy any of the conditions and seeks to be relieved of them.

DISCUSSION

1. The appeal is from the judgment; issued raised by subsequent orders are not before us.

Defendant’s primary complaints relate to the refusal of the court to relieve him from the conditions imposed by the judgment. But as noted, he did not appeal from those orders.

Postjudgment orders are subject to appeal. (Code Civ. Proc., § 904.1, subd. (a)(2).) But they require their own notice of appeal. Defendant here is in the same situation as appellant in *Golightly v. Molina* (2014) 229 Cal.App.4th 1501. There appellant argued he was entitled to appellate review of a postjudgment order denying his motion for attorney fees based on his appeal from the judgment. The court stated: “Plaintiff did not file notice of appeal from the . . . postjudgment order denying his motion for attorney fees. However, Plaintiff asserts the . . . order is properly before this court because his notice of appeal from the . . . judgment embraces the . . . order. He is mistaken.” (*Id.* at p. 1520.) Defendant’s attempt to argue the merits of the postjudgment orders restoring ownership to Braun, even though he did not appeal from those orders, is similarly mistaken.

2. *Considering the obligations owed by Braun as a result of her purchase and ownership of the business, the conditions requiring defendant to relieve her of these remaining obligations did not constitute an abuse of the court's discretion.*

In his cross-complaint, defendant acknowledged that Braun had been operating the car wash business and “had acquired considerable debt and was unable to meet the operating expenses.” “The object of restitution is to restore the status quo.” (*Aleksick v. 7-Eleven, Inc.* (2012) 205 Cal.App.4th 1176, 1184.) There was no contention that defendant should receive ownership of the business free and clear and that Braun should remain responsible for the debts she incurred in acquiring and operating the car wash.

Restitution is a form of equitable relief. (*Shuts v. Covenant Holdco LLC* (2012) 208 Cal.App.4th 609, 618.) “A party who seeks equity must do equity. Under this maxim, a court will not grant equitable relief to a plaintiff unless he or she acknowledges or provides for the equitable claims or demands of the adverse party growing out of the particular controversy or connected with the same subject matter.” (13 Witkin, *Summary of California Law* (10th ed. 2005) Equity, § 6, p. 286.) To grant defendant ownership of the business, while leaving Braun responsible to the landlord, the prior owner of the business, and the bank, would have violated equitable principles. The trial court properly imposed conditions that would require defendant to assume these obligations.

DISPOSITION

The judgment is affirmed. In light of respondent's failure to file a brief, each party shall bear their own costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.