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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT MARTIN,

Plaintiff, Cross-defendant and  
Respondent,

v.

JOHN KLING,

Defendant, Cross-complainant and  
Appellant.

G049271

(Super. Ct. No. 30-2011-00528939)

OPINION

Appeal from judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Motion to dismiss appeal granted.

Robert H. Brownlee for Defendant, Cross-complainant and Appellant John Kling.

Law offices of Frank W. Chen, Frank W. Chen for Plaintiff, Cross-defendant and Respondent Robert Martin.

\* \* \*

THE COURT:<sup>\*</sup>

This is an appeal from an order sustaining, without leave to amend, a demurrer to the appellant's third amended cross-complaint. Since dismissal of the cross-complaint did not conclude the action between the parties, the order is not appealable.

**BACKGROUND**

Kling and Martin are both in the fire protection industry and are involved in a business dispute, with each asserting claims against the other. Kling appeals from the trial court's dismissal on demurrer of his cross-complaint against Martin.

In December 2013, we issued an order notifying Kling that we were considering dismissing his appeal because he had not yet secured a signed judgment of dismissal of the cross-complaint from the trial court. (Code Civ. Proc., § 581d; *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1578.) We ordered Kling to file a signed judgment of dismissal, or we would dismiss his appeal.

Kling asked for an extension of time to secure a judgment of dismissal, but Martin opposed Kling's extension request because Martin's claims against Kling were not affected by the dismissal order, and were set for trial.

On January 3, 2014, we filed an order treating Martin's opposition as a motion to dismiss the appeal based on the "one final judgment" rule, and asked for further briefing from the parties.

Kling opposed the motion to dismiss, claiming his issues on the cross-complaint are different than those in the main complaint. He subsequently submitted a signed judgment of dismissal on his cross-complaint.

In February 2014, the parties jointly filed an ex parte application with the trial court to vacate the trial date because of this appeal. The trial court vacated the trial date.

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<sup>\*</sup> Before Rylaarsdam, Acting P. J., Bedsworth, J., and Moore, J.

## **DISCUSSION**

The “one final judgment” rule precludes an appeal while there are still pending proceedings between the parties in the trial court, including a complaint or cross-complaint. “Under California’s ‘one final judgment’ rule, a judgment that fails to dispose of all the causes of action pending between the parties is generally not appealable.” (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100.)

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.’ [Citation.] 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. [Citation.] [¶] Where a complaint and cross-complaint involving the same parties have been filed, there is no final, appealable judgment until both have been resolved. [Citation.]”

Here, Martin’s complaint against Kling remains unresolved, and would have been set for trial but for Kling’s premature appeal. The trial should proceed.

## **DISPOSITION**

In the absence of a final, appealable judgment between the parties, the appeal is dismissed. Costs on appeal are awarded to respondent.