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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ACQUIRE II, LTD et al.,

Plaintiffs and Respondents,

v.

COLTON REAL ESTATE GROUP et al.,

Defendants and Appellants.

G050745

(Super. Ct. No. 30-2011-00462521)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Robert J. Moss, Judge. Motion to dismiss appeal granted. Appeal dismissed.

O'Melveny & Myers, Michael G. Yoder, and Adam G. Levine, and Weintraub/Tobin, Gary A. Waldron and Jacob C. Gonzales for Defendants and Appellants.

Callahan & Blaine, Daniel J. Callahan, Jill A. Thomas, and Paul Torres, and Cadden & Fuller, Thomas H. Cadden, and John B. Taylor for Plaintiffs and Respondents.

* * *

THE COURT:*

Appellants filed this appeal from an order confirming an arbitration award as to a single cause of action while 26 additional claims remain to be adjudicated in the arbitration. Respondents moved to dismiss the appeal, contending it is from a nonappealable order. We agree and dismiss the appeal for lack of jurisdiction.

BACKGROUND

Respondents are claimants in a Judicial Arbitration and Mediation Services (JAMS) arbitration in which they have stated 27 causes of action against appellants in connection with a series of real estate investments appellants organized and managed.¹ In addition to claims against appellants for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duties, and fraud, respondents stated a cause of action for injunctive relief (the 12th cause of action), essentially seeking enforcement of respondents' right to "vote out" appellants as managers of the four investment funds at issue in the arbitration, and to elect new managers.

On November 8, 2013, respondents moved in the arbitration for a "summary disposition ruling" under JAMS Comprehensive Rules of Arbitration, Rule 18, as to the 12th cause of action for injunctive relief. The arbitrator issued orders on February 20, 2014 and April 11, 2014, which, together, determined appellants had no voting rights in the four investment funds, respondents (and the other individual investors) held the only voting rights, and they could hold a vote to remove and replace the managers of the funds.

* Before O'Leary, P. J., Fybel, J., and Ikola, J.

¹ The underlying arbitration and related superior court action are procedurally and substantively complex, involving over two hundred plaintiffs/claimants and investments worth many millions of dollars. The facts are simplified here to the essentials needed for determining this motion to dismiss.

On June 16, 2014, appellants filed a petition to vacate the February 20 and April 11, 2014 arbitration awards pursuant to Code of Civil Procedure, sections 1285 and 1286.2(a)(4). (All further statutory references are to the Code of Civil Procedure.)

On September 26, 2014, the trial court issued a minute order denying appellants' petition to vacate the February 20 and April 11, 2014 orders, and confirming those two orders. On October 17, 2014, respondents filed a notice of entry of the September 26, 2014 order "confirming the arbitration awards issued on February 20, 2014 and April 11, 2014."

On November 13, 2014, appellants filed a notice of appeal from the September 26, 2014 order confirming the arbitration awards. Though no judgment had been entered, appellants checked the box on the notice of appeal form indicating the appeal was from an "order after judgment under Code of Civil Procedure, section 904.1(a)(2)."

On February 11, 2015, respondents filed a motion to dismiss the appeal for lack of jurisdiction. They included a request for sanctions for filing an appeal "for an improper purpose: to delay turnover of control and management of the Funds to Plaintiffs' elected manager." On March 6, 2015, appellants filed their opposition to the motion to dismiss the appeal, and on March 10, respondents filed their reply to the opposition.²

DISCUSSION

The right to appeal is purely statutory, and absent an appealable judgment or order, the appellate court has no jurisdiction to consider the appeal. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) Under section 904.1, "no appeal lies from an interlocutory judgment unless it is of a type specified in the statute. This

² Respondents also filed a request for judicial notice of two documents from the superior court file, and a copy of JAMS Comprehensive Rules of Arbitration, Rule 18. Appellants do not oppose the request. The request is granted.

provision codifies the fundamental principle known as the ‘final judgment rule’ . . . the essence of which is that an appeal lies only from a final judgment” (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 962-963.)

The September 26, 2014 order being appealed here was an interim arbitration award resolving issues raised in a single cause of action in a complaint with 26 additional claims. There is clearly no final judgment, and an interim arbitration award is not one of the three types of interlocutory orders made appealable by section 904.1, subdivision (a)(1) (see interlocutory orders described in § 904.1, subs. (a)(8), (9) or (11)). Consequently, the order is not appealable.

Appellants’ opposition memorandum implicitly concedes as much, explaining they filed the appeal as a protective measure, fearing if they failed to do so, respondents would argue appellants waived their “right to appeal.” There is no merit to appellants’ two arguments for finding the order appealable.

First, appellants argue there is a “split of authority” on the question of whether an order confirming an arbitration award is appealable, citing a line of cases that allowed such appeals to proceed. In their reply, respondents defeat the assertion of such a “split of authority,” pointing out appellants’ cases are no longer good law because they predate adoption of the current arbitration statute. As the court explained in *Cummings v. Future Nissan* (2005) 128 Cal.App.4th 321: “An appeal lies only from the *judgment* entered on an order confirming an arbitration award, not from the order. [Citations.]” (*Id.*, at pp. 326-327.) The court in *Cummings* refused to follow the same case law appellants rely on here, noting the “outdated authority permitting an appeal in the absence of a judgment” was irrelevant because “the current [arbitration] statute no longer provides for this option.” (*Ibid.*)

Second, appellants argue the order is appealable under section 904.1, subdivision (a)(6) as an “order granting or dissolving an injunction” because “the *effect* of the order is to grant [respondents] a portion of the injunctive relief they seek by way of

their Twelfth Cause of Action[.]” Appellants contend “the Order, once enforceable, would forbid [appellants’] LLC interests from being counted for voting purposes or quorum purposes,” thereby facilitating “the final remedy [respondents] seek through their injunctive relief claim: the permanent removal of the [Colton managers].” Appellants urge this court to follow *PV Little Italy, LLC v. Metrowork Condominium Assn.* (2012) 210 Cal.App.4th 132 (*PV Little Italy*), in which the trial court’s order resolving a voting rights dispute among shareholders, though not technically an order granting an injunction, was treated as such for purposes of finding the order appealable under section 904.1, subdivision (a)(6).

Appellants’ reliance on *PV Little Italy, supra*, 210 Cal.App.4th 132 is misplaced. Though that case rightly held the substance of an order rather than its label determines its appealability, the court allowed that appeal to proceed despite the lack of a judgment because the order “resolved the core conflict between the parties” and nothing “of substance remains to be done in the litigation, except entry of judgment.” (*Id.* at pp. 143-144.) In contrast, the instant appeal is from an order confirming an arbitration award that leaves the bulk of the case — 26 causes of action — still to be arbitrated.

DISPOSITION

The appeal is dismissed. The request for sanctions is denied. Costs are awarded to respondents.