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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOSEPH F. RALSTON et al.,

Plaintiffs, Cross-defendants and
Respondents,

v.

MARGARET DUMOUCHEL,

Defendant, Cross-complainant and
Appellant;

DONITA L. JONES et al.,

Defendants, Cross-complainants and
Respondents;

THEODORE G. PHELPS, as Receiver,
etc.,

Respondent.

G051902

(Super. Ct. No. 30-2011-00475196)

OPINION

Appeal from an order of the Superior Court of Orange County, Kimberly Knill, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Law Office of James A. Anton and James A. Anton; John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes for Defendant, Cross-complainant and Appellant Margaret Dumouchel.

Craig P. Kennedy & Associates, Craig P. Kennedy and Frank C. Cracchiolo; Good Wildman and Nikki P. Miliband for Defendants, Cross-Complainants and Respondents Donita L. Jones and William C. Ralston, and Plaintiffs, Cross-defendants and Respondents Joseph F. Ralston and Donald J. Ralston.

No appearance for Respondent Theodore G. Phelps.

* * *

INTRODUCTION

This appeal is moot and must therefore be dismissed. Appellant Margaret Dumouchel has identified two issues for review: the appointment of a receiver to sell a disputed piece of commercial real estate and a preliminary injunction forbidding her from disbursing certain funds formerly in her possession. The real property has been sold, and the receiver discharged. After the injunction issued, Dumouchel stipulated to turning over the funds covered by the injunction to the receiver. These funds are no longer in her possession, and she can neither comply with nor disobey the injunction. There is no practical remedy that our court can offer, and any opinion we rendered would be advisory only. We therefore dismiss the appeal.

FACTS

Dumouchel and her four siblings were tenants in common of a piece of commercial real estate inherited from their parents. Dumouchel collected the rents from the property on behalf of herself and her four siblings, pursuant to the terms of a rent collection agreement.

The siblings wanted to sell the property. Dumouchel objected and proposed that the property be partitioned in kind: 20 percent to her, 80 percent to her four siblings. After a partition lawsuit was filed, the trial court ordered a sale, following

the recommendation of a court-appointed referee. Dumouchel appealed, and we affirmed the court's order.¹

Dumouchel continued to oppose the sale, interfering with the referee's efforts to negotiate with potential buyers. At one point, Dumouchel also withheld \$193,000 in rent money she had collected pursuant to the rent collection agreement. She informed the other tenants that she intended to use the money to pay her lawyers and to sue the tenant leasing the commercial property. Her stated intention was to slow or prevent the sale. The siblings objected to both actions, and they moved for the appointment of a receiver and for an injunction to prevent Dumouchel from disbursing the rent money. The referee appeared at the subsequent hearing, informing the court that Dumouchel's actions were scaring off a potential buyer willing to pay \$12.5 million for the property. The buyer who was next in line – the tenant Dumouchel was proposing to sue – offered only \$10 million.

In an order dated May 6, 2015, the trial court appointed the referee to act as receiver and enjoined Dumouchel from disbursing the \$193,000 in rent money.² This is the order from which Dumouchel appeals.

The May 6 order was a minute order. Subsequently the referee/receiver applied to the court for a signed order, because the bank would not release funds without one. The court issued the order on May 19, reiterating the referee's appointment as receiver and the injunction against Dumouchel regarding the rent money. The May 19 order provided that the May 6 minute order "is amended and supplemented as follows, and except as amended or supplemented herein, the Minute Order remains in full effect."

¹ *Ralston v. Dumouchel* (Sept. 30, 2014, G049241) [nonpub. opn.] (*Ralston I*).

² The order directed the receiver to take control of the bank accounts, to collect rents and receivables, to pay ordinary expenses, and to take possession of accounts, books and records pertaining to the commercial property. Dumouchel was ordered to turn over the property's books and records and to cooperate with the receiver.

With respect to the rent money, the order stated, "Dumouchel is prohibited from making any distributions, payments, or transfers to herself or anyone affiliated with her, whether held in her own personal accounts or otherwise, pending resolution of this case."

On August 21, 2015, the court issued a stipulated order requiring Dumouchel to turn the rent money over to the receiver. He, in turn, was to keep the funds in a separate account until the court had determined the parties' entitlement to the funds. As part of the stipulation, Dumouchel was relieved of any obligation to produce her bank records.

The sale of the property closed on February 9, 2016. On May 16, 2016, the court issued an order terminating the receivership and discharging the referee/ receiver. The order also specified the final fees to be paid to the referee/receiver, his counsel, and his accountants. The siblings subsequently moved to dismiss the appeal as moot.

DISCUSSION

“It is well settled that an appellate court will decide only actual controversies and that a live appeal may be rendered moot by events occurring after the notice of appeal was filed. We will not render opinions on moot questions or abstract propositions, or declare principles of law which cannot affect the matter at issue on appeal. [Citation.]” (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [court could not order termination of expired contract]; see *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 [court could not rule on validity of city's construction resolutions after construction completed]; *First Federal Bank of California v. Fegen* (2005) 131 Cal.App.4th 798, 801 [appeal from order authorizing sale of real property moot after property sold].)

The mootness doctrine has been applied to both appointments of receivers, when the receiver has been discharged (see, e.g., *Mayo v. Mayo* (1936) 8 Cal.2d 9, 10; *Scoville v. De Bretteville* (1942) 50 Cal.App.2d 633), and to preliminary injunctions, when events have moved past those that gave rise to the request for injunctive relief. (See, e.g., *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 110; *Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1103; *Jennings v. Strathmore Public etc. District* (1951) 102 Cal.App.2d 548, 549.)

I. Appointment of Receiver

“An order appointing a receiver is not subject to appellate review after the receiver has settled accounts and been discharged because, at that point, the receiver and the court no longer have control of the subject matter of the receivership.” (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682.) The receiver in this action has been discharged, so even if he was improperly appointed, as Dumouchel argues, we cannot order him unappointed. He is already gone. (See *Kato v. Busick* (1916) 174 Cal. 118, 121 [appeal regarding appointment of receiver moot after receiver performed task and was discharged]; *Visalia City Water Co. v. Superior Court* (1898) 120 Cal. 219 [appeal moot after receiver discharged; no existing order to review]; 6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 449, p. 380.)

Dumouchel argues that the appeal from this order is not moot because if the receiver was improperly appointed, he should not receive any fees.³ But the May 6, 2015, order made no provision for paying any fees to the receiver.⁴ As of May 6, the receiver was also the referee, tasked with selling the property and entitled to fees for his work in that capacity. (See Code Civ. Proc., § 874.010, subd. (b).) Payment to him of fees in his capacity as receiver was, at that point, purely speculative. If appropriate, Dumouchel can argue that the receiver is not entitled to fees as a receiver as part of her appeal from the discharge order of May 16, 2016.⁵

II. Issuance of Preliminary Injunction

The issuance of the preliminary injunction is similarly moot. The injunction prevented Dumouchel from distributing or transferring the rent money, whether to herself or to anyone affiliated with her. The money was later turned over –

³ We decline Dumouchel’s invitation to rule on this issue as a matter of continuing public interest.

⁴ The order of May 19, 2015, from which Dumouchel did *not* appeal, provided for the payment of the fees of the receiver’s attorneys. Because we are dismissing the appeal as moot, we will not address the issue of whether Dumouchel appealed from a superseded order.

⁵ We have taken judicial notice of the existence of Dumouchel’s appeal from the discharge order of May 16, 2016.

pursuant to an order to which she stipulated – to the referee/receiver. She no longer has the money, so an injunction preventing her from spending it is meaningless. (See, e.g., *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10-11 [denial of preliminary injunction to halt election moot after election held];

Dumouchel contends the appeal is not moot because interpreting the rent collection agreement, that is, her entitlement to keep the rent money, is still alive as an issue. She is incorrect as to this appeal. The injunction was a preliminary one. It did not constitute a ruling on the merits of anyone's claims to the rent money. (See *Yee v. American National Ins. Co.* (2015) 235 Cal.App.4th 453, 457-458; *American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 293 (*American Indian*)). The injunction merely kept Dumouchel from spending the money until the court could determine who was entitled to it. (See *American Indian, supra*, 227 Cal.App.4th at p. 293.) Now that Dumouchel no longer controls it, the injunction is unnecessary. Any arguments she wishes to make concerning her right to the rent money under the rent collection agreement must be made in the first instance during the trial.

DISPOSITION

The motion to dismiss the appeal is granted, and the appeal is dismissed. Respondents are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.