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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MINAKSHI JAFA-BODDEN, Plaintiff and Respondent, v. BIKRAM CHOUDHURY et al., Defendants and Appellants.	B272374 (Los Angeles County Super. Ct. No. BC512041)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Mark V. Mooney, Judge. Dismissed.

Dentons US, Nick S. Pujji, Jules S. Zeman, and Andy Jinnah, for Defendants and Appellants.

Minnard Bosch, Carla V. Minnard, and Greene Broilett & Wheeler, Mark Quigley, for Plaintiff and Respondent.

INTRODUCTION

It has long been the rule in California that an appealing party may not flagrantly disobey court orders concerning the subject of the appeal without risking dismissal. This case presents no exception, and we dismiss the appeal under the disentitlement doctrine.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Minakshi Jafa-Bodden prevailed in her action against defendants Bikram Choudhury (individually, Choudhury), Bikram, Inc., and Bikram Choudhury Yoga, Inc. (collectively, defendants) for damages based on sexual harassment and wrongful termination. She accepted the trial court's remittitur reducing the jury's punitive damages award. An amended judgment, which included a substantial attorney fees award and costs, was then entered in the sum of $6,689,951.

Defendants timely appealed, but did not post an undertaking to stay enforcement of the judgment on appeal. (Code Civ. Proc., § 917.1, subd. (a)[1]). Plaintiff initiated efforts to enforce the judgment. Upon learning defendants had shuttered a number of their business locations, plaintiff, inter alia, applied for a writ of execution for 43 vehicles, a Franck Muller watch, and stock certificates in Bikram, Inc. and Bikram Choudhury Yoga, Inc. (§ 699.010 et seq.) Having also received information that defendants were attempting to hide or transfer assets outside California, plaintiff obtained an ex parte temporary restraining order (TRO) on September 21, 2016. The order

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1 All statutory references are to the Code of Civil Procedure.

prohibited defendants from "transferring, assigning, [or] disposing of" the property pending a hearing and ruling on plaintiff's request for the turnover order.

Four days later, on September 25, 2016, Choudhury was personally served in Thailand with the TRO and an order for a judgment debtor examination. Choudhury failed to appear at the judgment debtor examination. Defendants subsequently failed to respond to postjudgment interrogatories.[2]

Before the turnover hearing and within one month of being served with these orders, defendants transported a number of the vehicles listed in the TRO out of state.[3] The trial court issued a second TRO November 8, 2016, prohibiting defendants "from transferring, assigning, alienating, or encumbering" (1) their rights to payments from more than 300 Bikram Yoga operations, their interest in a related limited partnership, and several trademarks and web domains. Within days of this order, Choudhury assigned a registered trademark to a limited liability company in which his son and daughter were members.

The hearing on plaintiff's request for a turnover order was continued several times and was finally held November 16, 2016. Court minutes and the order reflect defendants were represented by counsel and plaintiff's motion was "granted as to the [Franck Muller] watch and stock certificates, as well as to all vehicles on

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[2] The record before this court does not include an order compelling Choudhury's appearance at a judgment debtor examination or defendants' responses to written discovery; however, plaintiff's counsel indicated at oral argument such an order was recently issued.

[3] A number of the luxury vehicles on plaintiff's inventory lists were located in a warehouse in Florida.

exhibit F that reflect[] the registration . . . in the name of Bikram Choudhury." At a subsequent hearing on December 13, 2016, plaintiff was assigned defendants' rights to receive payments from more than 300 Bikram operations.

Notwithstanding the orders, plaintiff was unable to enforce the money judgment in her favor.[4] On March 6, 2017, before defendants' opening brief was due, plaintiff filed a motion in this court to dismiss the appeal based on the disentitlement doctrine. Plaintiff asserted three grounds for the involuntary dismissal: defendants' refusal to comply with postjudgment orders in this case; defendants' waiting until the 59th day to file their notice of appeal in this case and allowing appellate deadlines to lapse; and defendants' misconduct in unrelated matters. We invited defendants to submit opposition to the motion no later than March 21, 2017.

Appellate counsel timely opposed the motion. Counsel acknowledged this court's discretion to dismiss the appeal as well as the line of appellate authority holding "the merits of the appeal are irrelevant to the application of the doctrine." Nonetheless, counsel urged this court to reach the merits of the appeal because the issues defendants raised were "of substantial statewide importance[, arose with] . . . frequency," and deserved to be addressed.

Counsel avoided all references to plaintiff's stymied collection efforts other than to suggest the due date for defendants' opening brief was not a contributing factor: "Lastly, the collections activity of the Plaintiff has not been prejudiced by

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[4] The record in this court does not include documentation establishing a partial satisfaction of judgment, for example. (§ 724.110.)

the timing of the filing of the Appellants' Opening Briefs and shall not be prejudiced if this Court permits the appeal to go forward. Plaintiff's enforcement of the trial court judgment is independent of the consideration of the appellate issues."

After plaintiff filed a reply to defendants' opposition, this court requested supplemental briefing. Our March 24, 2017 order read in part, "The supplemental briefing should identify with specificity the acts in this case which support application of the disentitlement doctrine. Second, the court desires the parties brief whether misconduct in other cases can support the application of the disentitlement doctrine in this appeal."

Both sides submitted timely responses. Defendants contended application of the disentitlement doctrine should be based only on conduct in this litigation, not unrelated actions. They also asked that any application of the disentitlement doctrine result in "a stay of appeal rather than dismissal, given the merits of the appeal . . . ." Again, defendants did not address their conduct in obstructing plaintiff's efforts to collect the judgment and made no mention of an intent to comply with the trial court's postjudgment orders.

Plaintiff conceded the absence of authority for this court to base a disentitlement dismissal on defendants' conduct in unrelated litigation. She subsequently advised this court that on June 5, 2017, the trial court found Choudhury in contempt of the September 21, 2016 and December 13, 2016 TROs and the November 16, 2016 turnover order. Choudhury was not present at the contempt hearing, and the court minutes do not reflect an appearance by counsel on behalf of defendants. The trial court issued a warrant of attachment for Choudhury's person, with "the

posting of bail . . . set at $8,000,000." (§§ 1212, 1213.) Monetary sanctions were also ordered.[5]

After reviewing the submissions in support of and opposition to the motion to dismiss, we once again contacted appellate counsel and advised them oral argument would be limited to the issues raised in the motion unless defendants "demonstrate[d] in writing their compliance with all outstanding postjudgment trial court orders and written discovery requests." In response, defendants advised they "cannot demonstrate compliance with the outstanding post-judgment trial court orders and written discovery requests" and were proceeding in the superior court to have the postjudgment orders declared void.

Included with the response was a copy of a proposed motion to vacate the contempt order along with an unsigned declaration by Choudhury. In the proposed memorandum of points and authorities, counsel stated Choudhury "is no longer a resident of California, or the United States;" there was no declaration under penalty of perjury to that effect, however.[6]

DISCUSSION

I. Disentitlement Doctrine

In *Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225 (*Stoltenberg*), our colleagues in Division Five of this District dismissed an unbonded appeal from a money

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[5] Plaintiff has not provided this court with reporter's transcripts of any postjudgment hearing.

[6] At oral argument, defendants' counsel advised the motion had been filed and is scheduled to be heard in the trial court on October 24, 2017.

judgment under circumstances similar to those present here. The *Stoltenberg* opinion surveyed generations of decisions discussing the disentitlement doctrine and the dismissal of appeals based on it. These decisions invariably invoke the same rationale and the same strong language.

The Supreme Court has led the way in terms of forceful language. For example, in *Knoob v. Knoob* (1923) 192 Cal. 95, a mother's appeal of a child custody order was dismissed after she fled the state with the child. The Supreme Court explained an appellant "cannot, with right or reason, ask the aid or assistance of this court in hearing her demands, while she stands in an attitude of contempt to the legal orders and processes of the courts of this state . . . ." (*Id.* at p. 97.)

The Supreme Court continued the theme in *MacPherson v. MacPherson* (1939) 13 Cal.2d 271, noting the appellant "wilfully and purposely evaded legal processes and contumaciously defied and nullified every attempt to enforce the judgments and orders of the California courts, including the very order from which he seeks relief by this appeal." (*Id.* at p. 277.) That "flagrant disobedience and contempt effectually bar[red] him from receiving the assistance of an appellate tribunal," and his appeal was dismissed. (*Ibid.*)[7]

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[7] The United States Supreme Court has employed language only slightly more moderate. In affirming the Washington State Supreme Court's dismissal of an appeal where the appellant was in contempt of postjudgment turnover orders, the Supreme Court noted, "The order here violated was issued in a supplemental proceeding to discover and safeguard property of [the appellant], without which the judgment would have little or no value. [The appellant's] failure to deliver the specified out-of-state property to the court's receiver frustrated the state court much as the escape

In *Stone v. Bach* (1978) 80 Cal.App.3d 442 (*Stone*), the Court of Appeal dismissed the defendant's appeal after the trial court found him in contempt of postjudgment orders: "Our duty in these circumstances is clear. [The defendant's] conduct is intolerable. It demonstrates a deliberate effort to achieve a stay of execution of the money judgment against him without complying with legal procedures. At oral argument, his reason for refusal to comply with the trial court's orders to deposit partnership funds into trust and to be sworn for examination was that the orders and the judgment of the court are invalid, as he will assertedly demonstrate during the appeal. This is the worst kind of bootstrapping. A trial court's judgment and orders, all of them, are presumptively valid and must be obeyed and enforced. (6 Witkin, Cal. Procedure [(2d ed. 1971)], Appeal, § 235, p. 4225.) They are not to be frustrated by litigants except by legally provided methods." (*Id.* at p. 448.)

Although an appellate dismissal under the disentitlement doctrine typically comes on the heels of a contempt order issued by the trial court, a formal adjudication of contempt is not a prerequisite. Rather, "[t]he principle permitting [an appellate] court to . . . dismiss an appeal . . . 'is based upon fundamental

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of a prisoner would frustrate it in attempting to review his conviction. Where the effectiveness of a money judgment is jeopardized by the judgment debtor, he has no constitutional right to an appeal extending that frustration. [¶] The dismissal here is not regarded by us as a penalty imposed as a punishment for criminal contempt. It is an exercise of a state court's inherent power to use its processes to induce compliance with a supplemental order reasonably issued in aid of execution." (*National Union of M. C. & S. v. Arnold* (1954) 348 U.S. 37, 43-44.)

equity and is not to be frustrated by technicalities,' such as the absence of a formal citation and judgment of contempt." (*Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1683; see also *Blumberg v. Minthorne* (2015) 233 Cal.App.4th 1384, 1391 [appellant violated two postjudgment orders and appeal was dismissed]; *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757-758 ["No formal judgment of contempt is required under the doctrine of disentitlement. . . . An appellate court may dismiss an appeal where the appellant has willfully disobeyed the lower court's orders or engaged in obstructive tactics"].)

Although defendants ask this court to overlook the principle, it is well settled the merits of an appeal are irrelevant to the application of the disentitlement doctrine. (See *Ironridge Global IV, Ltd. v. ScrippsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265.) As explained above, the doctrine is grounded in equitable principles and our inherent power to dismiss an appeal by a party who engages in willful disobedience or obstructive tactics in the trial court.

II. Application of Doctrine

The documentation in support of plaintiff's motion to dismiss demonstrates willful disobedience and a pattern of obstructive tactics.[8] It presents the classic scenario for application of the disentitlement doctrine.

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[8] We do not base our decision to dismiss defendants' appeal on their conduct in unrelated cases. We also are not persuaded that waiting until the 59th day to file a notice of appeal evidences the type of willful disobedience of court processes that would justify a dismissal under the disentitlement doctrine. Defendants also missed several deadlines in this court, resulting in several

By their conscious and calculated efforts to thwart plaintiff's lawful collection efforts, defendants ignored and defied presumptively valid postjudgment orders. They offered no explanation for their conduct nor have they indicated a belated willingness to comply. Instead, defendants attempt to deflect attention from their actions by reiterating the significance of the appellate issues they hoped to raise and by faulting the trial court.

Defendants' expressed confidence in the merits of their appeal has not extended to confidence in the judicial system itself. Under our system, judgment debtors may stay execution of a money judgment by complying with straightforward statutory procedures while challenging the underlying adverse judgment. Or, judgment debtors may forgo that protection and allow their appeal and the judgment creditor's collection efforts to proceed contemporaneously. But the consequence to judgment debtors deliberately attempting "to achieve a stay of execution of the money judgment against them without complying with legal procedures" is dismissal of their appeal under the disentitlement doctrine. (*Stone, supra,* 80 Cal.App.3d at p. 448; *Stoltenberg, supra,* 215 Cal.App.4th at p. 1231.)

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dismissals of the appeal. Each time, however, defendants brought themselves into compliance with appellate rules; and the appeal was reinstated. That conduct does not support dismissal under the disentitlement doctrine.

DISPOSITION

The appeal is dismissed. Plaintiff is awarded costs on appeal.

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DUNNING, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.