

2d Civ. No. B235731

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

1680 PROPERTY TRUST, et al.,

Plaintiffs and Respondents,

vs.

AMPTON INVESTMENTS, INC., et al.,

Defendants and Appellants.

Appeal from the Los Angeles Superior Court
Honorable Terry A. Green, Judge
Case No. BC322141

**MOTION TO DISMISS APPEAL BY APPELLANTS
IN CONTEMPT OF COURT; DECLARATION OF
RICHARD A. LOVE; [PROPOSED] ORDER
[Motion for Judicial Notice and Exhibits filed separately]**

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MOTION TO DISMISS APPEAL BY APPELLANTS
IN CONTEMPT OF COURT

Plaintiffs and respondents Stoltenberg, et al., respectfully move to dismiss the appeal filed September 2, 2011 by defendants Laurence Strenger and Ampton Investments, Inc., from a judgment awarding damages to plaintiffs. The jury found that defendants, acting with malice and oppression, aided and abetted a massive fraud against plaintiffs.

Defendants' appeal should be dismissed because they are systematically abusing the legal systems of two states. They have not bonded the judgment as required by California law and were denied a petition for writ of supersedeas by this Court, yet they have made no effort to pay any part of the judgment. Now they have willfully ignored orders of the courts of the State of New York, where defendants live and work, to reveal the nature and location of their assets. As a result, that court has adjudged defendants in contempt and fined them. Defendants are thus "disentitled" to prosecute this appeal.

THE PERTINENT FACTS: APPELLANTS ARE CONTEMNORS

The accompanying declaration and exhibits to Motion for Judicial Notice establish the following facts.

Judgment for \$8,516,704 in compensatory damages plus costs was entered in June 2011. (Declaration of Richard A. Love [RAL], ¶ 4; Motion for Judicial Notice [MJN] 37¹.) Defendants appealed but have never filed a bond to stay enforcement of the judgment. (RAL, ¶¶ 5-6.) This Court

¹ The exhibits are consecutively paginated.

denied defendants' petition for writ of supersedeas, finding that defendants "fail[ed] to show they have insufficient assets to support an appeal bond, or demonstrate the merit of their proposed appellate arguments." (RAL, ¶ 7; MJN 73.)

Plaintiffs then domesticated their judgment in the State of New York, where defendants reside and work, and initiated enforcement proceedings in the courts of that state. (RAL, ¶¶ 8-9; MJN 31-51, 52-61.) Defendants, however, snubbed their noses at plaintiffs' lawful subpoenas for financial information. (RAL, ¶ 9.)

In February 2012, plaintiffs moved to enforce the information subpoenas. (RAL, ¶ 10; MJN 4-106.) Defendants filed a cross-motion to stay enforcement proceedings, arguing that they believe the judgment will be reversed by this Court. (RAL, ¶ 10, MJN 65-70.) This was the same argument that was rejected by this Court when defendants unsuccessfully applied for a writ of supersedeas. (MJN 73.)

On June 8, 2012, the New York Supreme Court denied defendants' cross-motion for a stay and ordered defendants to comply with plaintiffs' subpoenas. (RAL, ¶ 10; MJN 1.) That court found no merit in defendants' argument: "No basis for a stay in this matter has been sufficiently stated." (*Ibid.*)

Defendants still did not comply with the subpoenas. (RAL, ¶ 10.)

In September 2012, plaintiffs obtained an order to show cause why defendants should not be held in contempt of the New York Supreme Court. (RAL, ¶ 11; MJN 2-3.) Defendants moved to dismiss the proceeding on the ground that they were not properly served. (RAL, ¶ 11; MJN 107-110.) Plaintiffs replied with proof of proper service. (MJN 111-122.)

On January 23, 2013, the New York Supreme Court held the defendants in contempt, fined them, and gave them 30 days to comply with plaintiffs' subpoenas. (RAL, ¶ 12; MJN 123.) Plaintiffs gave notice of the decision and order that same day. (MJN 124-126.)

Defendants are now adjudicated contemnors and have still not complied with the subpoenas. (RAL, ¶ 13.)

**THE APPLICABLE LAW: CONTEMNORS ARE
“DISENTITLED” TO APPEAL**

“[I]t would be a flagrant abuse of the principles of equity and of the due administration of justice to consider the demands of a party who becomes a voluntary actor before a court and seeks its aid while he stands in contempt of its legal orders and processes.” (*Stone v. Bach* (1978) 80 Cal.App.3d 442, 444, quoting *Travis v. Travis* (1948) 89 Cal.App.2d 292, 295.)

Accordingly, the “disentitlement” doctrine enables an appellate court to dismiss or stay an appeal by parties who have refused to obey a court’s legal orders. (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 459 (*Hofer*); *Say & Say v. Castellano* (1994) 22 Cal.App.4th 88, 94.) Dismissal is a legitimate response to an affront to the authority of the courts by cutting off the wholly-statutory (not constitutional) right to appellate review. (*TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 380, citing *National Union v. Arnold* (1954) 348 U.S. 37, 44-45; *Bishop v. Merging Capital, Inc.* (1996) 49 Cal.App.4th 1803, 1806 [“the right to appeal is wholly statutory”], disapproved on another point in *Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 11, fn. 6.)

Hofer, supra, is a case analogous to this one. In that marital dissolution action, husband appealed from an order to pay wife's attorneys fees and costs. But meanwhile, husband ignored three discovery orders to disclose evidence of his financial circumstances and was sanctioned by the trial court. The Court of Appeal dismissed husband's appeal. The Court cited numerous instances where appeals have been dismissed or stayed because the appellants (like the appellants in our case) were in contempt of court. Among those cases are *Tobin v. Casaus* (1954) 128 Cal.App.2d 588 (defendant failed to appear for debtor's examination in a deliberate effort to frustrate enforcement without complying with legal requirements for a stay); *Polanski v. Superior Court* (2009) 180 Cal.App.4th 507 (fugitive from justice not entitled to appeal); *Stone v. Bach, supra*, 80 Cal.App.3d 442 (defendant twice disobeyed order to pay specified funds to plaintiff); and *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669 (defendants failed to comply with order to deposit income with a receiver).

Plaintiffs have waited patiently for more than a year and a half to enforce their judgment. In the meantime, defendants have willfully and unlawfully stymied enforcement of the judgment at every turn, refused to follow the requirements of California law, and snubbed multiple New York state court enforcement orders. They have been adjudged in contempt of court.

DECLARATION OF RICHARD A. LOVE

I, Richard A. Love, declare:

1. I am a partner in Love & Erskine, LLP, counsel for plaintiffs Herbert W. Stoltenberg, trustee of 1680 Property Trust, Michael L. Epstein, trustee of Michael L. Epstein Trust, Stephen Ellis Gordon, trustee of Stephen Ellis Gordon and Linda S. Gordon Revocable Trust, and Ruth Ann Runnells-LaMonica, trustee of The LaMonica Family Trust, in this action.

2. I have personal knowledge and am fully familiar with the facts and circumstances set forth in the accompanying motion and motion for judicial notice, and this declaration. If called to testify, I would be able to attest to these facts. I refer to the Exhibits attached to the concurrently filed Motion for Judicial Notice.

3. This is an action for damages against defendants Ampton Investments, Inc., and Laurence N. Strenger for aiding and abetting a massive fraud against plaintiffs, Stoltenberg, et al. The jury found defendants liable and that they acted with malice and oppression.

4. On June 9, 2011, judgment was entered awarding plaintiffs a total of \$8,516,704 in compensatory damages, plus costs.

5. On September 2, 2011, after losing post-trial motions to set aside the judgment, defendants filed notice of appeal from the judgment.

6. Defendants have never posted a bond to stay enforcement of the judgment as required by Code of Civil Procedure section 917.1.

7. On January 10, 2012, this Court denied defendants' petition for writ of supersedeas to stay enforcement of the judgment pending appeal. (MJN 73.)

8. Plaintiffs then domesticated their judgment in the State of New York, where defendants live and work, and initiated enforcement proceedings in the courts of that State. (MJN 31-51.) Plaintiffs initially retained Dewey & LeBoeuf, LLP to represent them in the New York proceedings. Upon that firm's demise, in June, 2012 plaintiff's retained and substituted Hogan Lovells USA LLP to represent them in those proceedings. I have continually monitored the enforcement proceedings in New York, but have not entered an appearance in that court on behalf of plaintiffs.

9. Plaintiffs issued subpoenas for financial information. (MJN 52-60.) Defendants did not comply with the subpoenas.

10. On February 1, 2012, plaintiffs obtained an order to show cause why defendants should not be held in contempt. Defendants objected and moved to stay all judgment enforcement proceedings because they believe the judgment will be reversed on appeal. (MJN 65-70.) On June 8, 2012, the New York Supreme Court found there was no basis for a stay and ordered defendants to respond to the information subpoenas within ten days. The court warned: "Failure to comply with this Order may result in [defendants] being held in contempt." (MJN 1.) Defendants did not comply with the June 8, 2012 order.

11. On September 4, 2012, plaintiffs obtained another order to show cause why defendants should not be held in contempt. (MJN 2-3.) On September 21, 2012, defendants filed a cross-motion to dismiss the contempt proceeding based on alleged insufficiency of service of process. (MJN 107-110.) Plaintiffs replied with proof of proper service on defendants of the order to show cause. (MJN 111-122.)

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[PROPOSED] ORDER

Good cause having been shown, the appeal filed by defendants Ampton Investments, Inc. and Lawrence N. Strenger on September 2, 2011 is dismissed. Respondents are to recover their costs on appeal.

Dated: _____

Presiding Judge