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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

AMERICAN RAG CIE, LLC, et al.,

Plaintiffs and Respondents,

v.

HARRY HARALAMBUS,

Defendant and Appellant.

B275231

(Los Angeles County
Super. Ct. No. BC446588)

APPEAL from an order of the Superior Court of Los Angeles County, Mark Borenstein, Judge. Affirmed.

Harry Haralambus, in pro. per., for Defendant and Appellant.

Russ, August & Kabat and Nathan D. Meyer for Plaintiff and Respondent American Rag Cie, LLC.

Wolkin Curran and Shashauna Szczechowicz for Plaintiff and Respondent SureTec Insurance Company.

Defendant and appellant Harry Haralambus (Haralambus) prevailed against plaintiff and respondent American Rag Cie, LLC (American Rag) in a non-jury trial on causes of action for declaratory relief (brought by American Rag) and breach of contract (brought by Haralambus). The court issued a judgment (1) declaring American Rag and Haralambus had an agreement that entitled Haralambus to certain royalty payments, and (2) awarding Haralambus damages for American Rag’s breach of that agreement in the years before the lawsuit. We consider whether the declaratory relief aspect of the judgment, which would obligate American Rag to make future royalty payments, was a judgment for “[m]oney or the payment of money” (Code Civ. Proc., § 917.1, subd. (a)(1))¹ such that Haralambus should be allowed to obtain some of those payments by drawing on the amount of the surety bond American Rag obtained to appeal the judgment.

I. BACKGROUND

A. *The Underlying Action, Judgment, and Appeal Bond*

American Rag is a clothing company that licenses its marks to Macy’s and other retailers. In 2003, American Rag and Haralambus entered into an agreement whereby American Rag agreed to pay him a percentage of the royalties it received from certain license agreements. In 2010, litigation ensued between the parties regarding their respective obligations under their agreement and other issues not relevant to this appeal.

¹ Undesignated statutory references that follow are to the Code of Civil Procedure.

The parties' dispute was resolved by way of a bench trial, and the court entered a judgment that provides, in relevant part:

2. *On [American Rag's] third cause of action for declaratory relief, the Court declares as follows There is a contract between [American Rag] and [Haralambus] whereby:*

a. [American Rag] is to pay Harry Haralambus five percent of the North American (United States, Mexico[,] and Canada) royalty receipts it receives pursuant to . . . “the Tarrant/Guez License”[]. Payment of this five percent [royalty] shall be due on the twentieth day after [American Rag] receives payment under the Tarrant/Guez License.

b. If [American Rag] receives royalty receipts under the Tarrant/Guez License from sales outside of the United States, Canada, Mexico or Japan, [American Rag] shall pay [Haralambus] fifteen percent of those royalty receipts, also due on the twentieth day after [American Rag] receives payment under the Tarrant/Guez License.

3. *[Haralambus] is entitled to monetary judgment against [American Rag] for breach of contract in the amount of \$279,850.42 plus simple interest in the amount of ten percent (10%) per annum from the date of judgment, December 10, 2012. (Emphasis ours.)*

In January 2013, American Rag's surety, plaintiff and respondent SureTec Insurance Company (SureTec), issued a bond in the amount of \$419,775.63 (hereinafter, the Bond) to stay execution of the judgment while American Rag pursued an appeal.

B. Affirmance of the Judgment and Recovery Against the Bond

The Court of Appeal affirmed the judgment entered by the trial judge, and the remittitur issued in April 2015.

The following month, SureTec received three notices of levy in which third parties who had prevailed against Haralambus in other legal actions sought to recover on their monetary judgments against him by recourse to the Bond proceeds Haralambus was due. The amounts of those three levies totaled \$349,072.37 plus interest. Around the same time, Haralambus also made a demand on SureTec for payment of the judgment.

SureTec informed Haralambus that because the third party levy amounts exceeded the amount of Haralambus's judgment against American Rag, SureTec was required to pay the amount of the American Rag judgment plus all accrued interest to the Los Angeles County Sheriff's Department (the levying officers). SureTec did so, transferring \$348,164.59 to the levying officers. Haralambus filed an acknowledgment that the judgment he obtained against American Rag had been "partial[ly]" satisfied in the amount of \$279,850.42 (i.e., the amount specified in paragraph three of the judgment quoted above).

Approximately six weeks later, in September 2015, SureTec asked Haralambus to execute a document "releasing any further claims against SureTec under the Bond." SureTec explained it

had paid the full amount of the monetary award specified in the judgment, plus interest, and “d[id] not have any liability for any continuing obligation American Rag may have for payment of any post-judgment royalties and/or commissions.”

Haralambus refused to execute the release. He took the position that SureTec was obligated to apply whatever proceeds remained under the Bond toward American Rag’s obligation, arising from the court’s declaration in paragraph 2 of the judgment quoted above, to make additional royalty payments (hereinafter, the Ongoing Contractual Obligation). American Rag itself had calculated it owed Haralambus \$273,488.40 in post-judgment royalties as a result of its Ongoing Contractual Obligation (as of April 24, 2015), but the company had not paid him that sum because Haralambus contended his lack of access to American Rag’s books and records prevented him from confirming that was the correct amount.

C. Motion to Exonerate the Surety Bond

After Haralambus refused to release SureTec from any further claim on the Bond proceeds, American Rag and SureTec moved to exonerate the Bond, contending SureTec had fully satisfied its obligations. Haralambus opposed the motion and argued the judgment remained unsatisfied because American Rag still owed Haralambus money as a result of the Ongoing Contractual Obligation. Haralambus contended the post-judgment royalty payments that became payable to him while American Rag’s appeal was pending constituted part of the judgment that should be satisfied from the Bond proceeds.

Naturally, American Rag and SureTec disagreed. They conceded American Rag owed Haralambus additional royalties

pursuant to the Ongoing Contractual Obligation but asserted SureTec had no liability under the Bond for those amounts because they were not monetary payments awarded by the judgment. Rather, these additional sums were *post-judgment* liabilities that arose from the court's declaration setting forth the parties' "prospective" rights and obligations.

The trial court held an unreported hearing on the motion to exonerate the Bond and granted the motion.

II. DISCUSSION

Haralambus contends the trial court erred in exonerating the Bond and releasing SureTec from liability because the Bond's purpose was to cover all monetary obligations imposed by the judgment pending American Rag's appeal—meaning not just the \$279,850.42 plus interest ordered in paragraph 3 of the judgment but also the Ongoing Contractual Obligation royalties that became due before the Court of Appeal issued its remittitur.² We hold to the contrary. The trial court's declaration in paragraph 2 of the judgment is not a judgment for money or the payment of money within the meaning of the applicable provision of the Code of Civil Procedure because it did not require American Rag to pay Haralambus a settled amount of money at the time the judgment was entered.

² Haralambus separately contends American Rag has deliberately avoided paying him the Ongoing Contractual Obligation royalties in furtherance of a conspiracy against him. Haralambus's contentions in this regard are outside the scope of this appeal.

A. *Standard of Review*

Because resolution of this appeal turns on the application of law to undisputed facts, our review is de novo.³ (*Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1384; *Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724; see also *In re Insurance Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1429.)

B. *The Declaratory Relief Aspect of the Judgment is Not a Monetary Award Subject to Satisfaction by Recourse to the Bond Proceeds*

Code of Civil Procedure section 917.1⁴ requires an appealing party to provide an undertaking (often, a bond) to stay enforcement of a “judgment” for “[m]oney or the payment of money” while the appeal is taken. (§ 917.1, subd. (a)(1).) “The undertaking shall be for double the amount of the judgment . . . unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment” (§ 917.1, subd. (b).) The party owed money under the judgment may file an objection within 10 days after

³ American Rag and SureTec argue that Haralambus’s failure to provide a reporter’s transcript, or suitable substitute, of the hearing on their motion to exonerate the Bond requires affirmance because it prevents us from adequately reviewing the trial court’s decision. Considering the nature of the question presented and the lack of a dispute regarding the material facts, the appellate record is adequate for review.

⁴ Undesignated statutory references that follow are to the Code of Civil Procedure.

being served with a copy of the bond if the party believes the bond is insufficient to satisfy the amount of a judgment. (§ 995.930.) The party in whose favor the judgment was entered may seek satisfaction of the judgment from the posted undertaking if the opposing party does not pay the judgment within 30 days after the reviewing court issues the remittitur. (§ 917.1, subd. (b).)

Section 917.1 does not define what constitutes a judgment for “[m]oney or the payment of money.” But in this case, the language of the judgment itself provides that the royalty payments due as a result of the Ongoing Contractual Obligation arise from the trial court’s resolution of “Plaintiff American Rag Cie, LLC’s third cause of action for declaratory relief”

Section 1060 describes when a party may seek declaratory relief, as well as the scope of that relief. The statute provides, in pertinent part: “Any person interested . . . under a contract, or who desires a declaration of his or her rights or duties with respect to another, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the . . . contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.” (§ 1060.) The terms of section 1060 demonstrate that a court’s declaration of rights, absent a request for “other relief,” is

not a monetary award. (See, e.g., *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 898 [“Unlike coercive relief (such as damages . . .) in which a party is ordered by the court to do or to refrain from doing something, a declaratory judgment merely declares the legal relationship between the parties”]; *Babb v. Superior Court* (1971) 3 Cal.3d 841, 848 [declaratory relief is a “remedy . . . to be used in the interests of preventive justice, to declare rights rather than execute them”]; *Lortz v. Connell* (1969) 273 Cal.App.2d 286, 301 [declaratory judgment statute “enables a party to get a prompt adjudication without a dispute over the damages suffered”].)

Our conclusion that declaratory relief, by its nature, is not a judgment for the payment of money is consistent with section 680.270, which defines “[m]oney judgment” under the Enforcement of Judgments Law as “that part of a judgment that *requires* the payment of money.” (§ 680.270, emphasis added.) Because a declaration merely describes the legal relationship between parties without compelling any particular action or abstention from action, it does not ordinarily require a party to pay money.

Courts have made monetary awards pursuant to declaratory relief “causes of action” only under limited circumstances. For example, if the findings underlying a declaratory judgment establish a prior breach of contract, a court may award past money damages to provide complete relief. (See *Macmorris Sales Corp. v. Kozak* (1968) 263 Cal.App.2d 430, 439; *California Bank v. Diamond* (1956) 144 Cal.App.2d 387, 390.) Of course, that is not the situation presented here because American Rag’s forward-looking obligation to make additional royalty payments does not arise from a prior breach.

Outside the context of a claim for declaratory relief, courts on occasion have awarded future damages covered by a section 917.1 surety bond. (See *Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 213 [bond amount based on present value of future payments] (*Leung*); *Hogan v. Paddon* (1928) 91 Cal.App. 606, 612 [bond amount to account for alimony payments due during pendency of appeal] (*Hogan*).) That is not the result we reach here because the cases cited above demonstrate that in order to constitute a judgment for the payment of money, the amount of the future payment, as well as a party's entitlement to it, must be certain at the time of the judgment. In *Leung*, the jury awarded a certain amount of damages—stated in terms of their net present value—for future medical care and loss of future earnings even though payment of those damages was to be made over time. (*Leung, supra*, 168 Cal.App.4th at p. 209.) In *Hogan*, a settled amount of monthly alimony was established at the time of the order being appealed. (*Hogan, supra*, 91 Cal.App. at 612.)

Guess v. Bernhardson (2015) 242 Cal.App.4th 820 reinforces the point, i.e., that a judgment that gives rise to an obligation to pay money qualifies as a “money judgment” only if the amount of money is certain at the time of the judgment. That case considered whether an order requiring a husband to maintain a \$2 million life insurance policy for the benefit of his wife was a “money judgment” that would support a judgment lien. (*Id.* at pp. 830-832.) The *Guess* court said it was not because the order did not “requir[e]” the husband “to pay a certain amount of money.” (*Id.* at p. 831.) This principle, that an uncertain obligation cannot constitute a judgment for the payment of money, is eminently sensible: if the rule were otherwise, it would be difficult if not impossible to discern the

necessary and proper amount of the bond needed to secure the judgment. (See *Amador Valley Investors v. City of Livermore* (1974) 43 Cal.App.3d 483, 495 [declaration holding city accountable for damages proximately caused by future conduct did not establish a present award for future damages because such an award would be speculative].)

The declaratory relief aspect of the judgment in this case (paragraph 2 of the judgment) did not require American Rag to pay a certain amount of money or, indeed, any money at all. It simply set forth the terms of the parties' rights and obligations with respect to their agreement. Had the parties decided to terminate that agreement after the judgment was rendered, or had American Rag received no royalty payments to which Haralambus was entitled, American Rag would have had no future payment obligations to Haralambus. While it did later turn out that Haralambus was due additional royalty payments, the amounts thereof were not known at the time of the judgment.

The amount of the Bond itself—and Haralambus's failure to contest it—cements the point, namely, that only the monetary award in paragraph 3 of the judgment, and not the upshot of the declaratory relief granted in paragraph 2, is subject to satisfaction from the Bond proceeds. The Bond was issued in the amount of \$419,775.63, which is precisely one and one-half times the amount awarded in paragraph 3 of the judgment entered by the trial court. That proportion is significant because section 917.1 itself requires a surety insurer to provide an undertaking in the amount of one and one-half times the amount of the judgment. (§ 917.1, subd. (b).) By acquiescing in a bond amount that was statutorily sufficient to cover only the monetary award in paragraph 3 of the judgment, Haralambus confirms the

conclusion we have already drawn: the declaratory relief ordered by the trial court cannot be deemed a judgment for “[m]oney or the payment of money,” and SureTec and American Rag cannot be compelled to allocate the Bond proceeds to cover Ongoing Contractual Obligation royalties.

DISPOSITION

The order is affirmed. American Rag Cie, LLC and SureTec Insurance Company are to recover their costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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