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Recent Caselaw Affecting the Disentitlement Doctrine and Civil Appeals

THE DISENTITLEMENT DOCTRINE is a somewhat obscure, yet powerful, rule of procedure that gives a reviewing court the power to dismiss the appeal of a party who is in violation of a court order. The doctrine originated with criminal defendants who became fugitives after being found guilty and during the pendency of their appeal. One often-cited case summarizes the doctrine as one that prevents "heads I win, tails you'll never find me" situations in criminal cases.[1] The doctrine, however, applies equally to civil cases.[2] Recent California case law confirms that this doctrine remains alive and well in California and is an available remedy for a respondent confronted with an adversary who flouts court orders.

The doctrine was discussed in a 2006 article in *Los Angeles Lawyer*.[3] As indicated there, the basic outlines of the doctrine are that an appellate court has inherent power to dismiss an appeal by a party that has violated a lower court order.[4] The doctrine is discretionary, not jurisdictional, and is "not a penalty for criminal contempt," but is instead an "exercise of a state court's inherent power to use its processes to induce compliance with a presumptively valid order."[5] The California Supreme Court held many years ago that the doctrine applies because a "party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state."[6]

In California state courts, unlike federal court, a formal finding of contempt is not required for the doctrine to apply.[7] In the civil context, the doctrine has been routinely applied in cases in which "an appellant is a judgment debtor who acts to frustrate or obstruct legitimate efforts in a trial court to enforce a judgment."[8] Thus, for example, the doctrine has been applied to dismiss an appeal by a party who refused to comply with a trial court's postjudgment discovery orders[9] or when the party has refused to appear for a judgment debtor examination.[10]

Under California law, the disentitlement doctrine can be raised by a motion in the appellate court.[11] Thus, the moving party is permitted, indeed perhaps required, to submit evidence supporting the motion.[12] Because of this requirement and the nature of the doctrine—which by definition involves a factual inquiry into postjudgment or postorder conduct by the appellant—the moving party is permitted to put before the appellate court evidence that postdates the filing of the notice of appeal. This is an exception to the general rule that an appellate court will not consider matters occurring after the filing of a notice of appeal.[13]

The 2006 article in *Los Angeles Lawyer* noted the lack of "greater use of the doctrine" in California and that "[f]ew published cases have discussed the doctrine, suggesting that it is not used as extensively as it could be."[14] However, since 2006 several published California opinions have addressed and applied the doctrine.

For example, in *Stoltenberg v. Ampton Investments, Inc.*, Division Five of the Second Appellate District expanded the doctrine, holding it applicable even when the court order that was violated was not

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issued by the trial court in the pending action or indeed by a California court at all.[15] The plaintiff in *Stoltenberg* obtained a judgment against the defendant in a California trial court. The defendant appealed but did not post a bond in order to stay enforcement of the judgment pending appeal.[16] The plaintiff then registered the California judgment in New York and sought to enforce it there by serving a subpoena seeking financial information.[17] The defendant did not comply with the subpoena or with an order of a New York court compelling it to respond to the subpoena.[18] The plaintiff successfully moved to dismiss the California appeal under the disentitlement doctrine.[19]

The *Stoltenberg* court held that the disentitlement doctrine applied, even though the defendant had violated an order issued by a New York court rather than the order on appeal.[20] Relying on federal authorities, the court concluded that the doctrine is not limited to violations of orders issued by California courts. "For purposes of the disentitlement doctrine, there is no meaningful distinction between New York trial court orders and California trial court orders related to enforcement of a California judgment."[21] The court also reiterated prior case law holding that appellants cannot argue they were entitled to disobey the court's order because of the merits of their 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.…They are not to be frustrated by litigants except by legally provided methods."[22]

Stoltenberg was followed by the Fifth Appellate District in *Gwartz v. Weilert*.[23] In *Gwartz*, after the plaintiffs were unsuccessful in collecting a $1.5 million judgment, they obtained various enforcement orders that enjoined the defendants from, among other things, trans-

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ferring or dissipating any of their assets.[24] During the appeal, the defendants violated the enforcement orders by making 47 different transfers of money.[25] The plaintiffs moved to dismiss the appeal under the disentitlement doctrine. The defendants opposed the motion but did not dispute that the transfers had taken place. The Fifth District granted the motion, holding the disentitlement doctrine presented a "threshold question that must be decided before reaching the merits of the appeal."[26] The court held dismissal of the appeal was appropriate, citing numerous authorities that the doctrine should be applied when "an appellant is a judgment debtor who has frustrated or obstructed legitimate efforts to enforce a judgment."[27] The court relied in large part on the appellants' opposition to the dismissal motion, which "did not deny the transfers listed in the motion occurred and did not explain how those transfers might have been permissible under the trial court's orders."[28]

The *Gwartz* case also indicated that the dismissal of an appeal under the disentitlement doctrine constitutes a decision that "determine[s] a cause," and hence requires a written opinion from the appellate court under Article VI, Section 14 of the California Constitution.[29] In this regard, *Gwartz* arguably made new law because other panels of the court of appeal have summarily dismissed appeals under the disentitlement doctrine without a written opinion.[30] Another panel recently dismissed an appeal under the disentitlement doctrine in a rare per curiam opinion (not identifying the author of the opinion) without oral argument.[31] In federal court, the Ninth Circuit applied the disentitlement doctrine in a very perfunctory unpublished memorandum decision.[32]

Stoltenberg and *Gwartz* were both followed by Division Three of the Fourth Appellate District in *Blumberg v. Minthorne*.[33] *Blumberg* involved a dispute over the administration of a family trust. The trial court ruled in favor of the plaintiff, and the defendant appealed.[34] The trial court issued two orders, which were not stayed by the appeal and which the defendant disobeyed. The first order was to file an accounting.[35] The second was to convey title to the property in dispute. Instead of complying with the trial court's order to quitclaim the property to the plaintiff, the defendant instead quitclaimed the property to her daughter on the same date she responded to an order to show cause without mentioning the conveyance.[36] The court of appeal found the defendant's conduct was "to put it bluntly, despicable."[37] The court stated application of the disentitlement doctrine was "rare," but concluded that this was one case in which the application of the doctrine was appropriate due to the defendant's "flagrant violation of the [trial] court's orders."[38]

Most recently, Division Eight of the Second Appellate District applied the disentitlement doctrine in *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.*[39] In *Ironridge*, the parties had settled a breach of contract action through a stipulated settlement that required the defendant corporation to issue shares of its stock to the plaintiff.[40] The defendant breached the stipulated settlement, causing the plaintiff to move for relief under Section 664.6 of the California Code of Civil Procedure, which gives a trial court jurisdiction to enforce a settlement agreement.[41] The trial court agreed with the defendant and issued an order 1) requiring the defendant to issue 1.6 million shares to the plaintiff and 2) enjoining the plaintiff from issuing shares to any third parties until it issued the 1.6 million shares to the plaintiff.[42] The defendant appealed but during the pendency of the appeal issued 8.7 million shares to third parties.[43]

The court of appeal dismissed the appeal under the disentitlement doctrine. The court noted that while the mandatory portion of the trial court's injunction (requiring issuance of the 1.6 million shares) may have been stayed by the filing of an appeal, the prohibitory portion of the order (enjoining the defendant from issuing shares to any third parties) was not.[44] The court held that application of the disentitlement doctrine was

"particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed."[45] In its opposition to the motion to dismiss, the defendant did not dispute that it had violated the trial court's prohibitory injunction but contended that its violation was justified because the trial court's order was "invalid."[46] The court of appeal rejected this argument because "arguments as to the merits are irrelevant to the application of the disentitlement doctrine."[47] So long as the trial court had jurisdiction to issue the order, the order is presumed valid until set aside, and a party cannot disobey the order and simply claim that it was erroneous.[48] A party's remedy in that situation is to seek a stay either in the trial court or the court of appeal.[49] The court concluded that a balance of equities favored dismissal of the appeal because the defendant "had no cause to disobey the court's order, but did so, repeatedly."[50]

The foregoing recent cases demonstrate that the disentitlement doctrine remains an available remedy under California law that can be applied in a variety of contexts. Respondents on appeal should consider invoking the doctrine when it is undisputed that the appellant has violated an equitable order issued by the trial court, as in *Gwartz, Blumberg*, and *Ironridge*. However, the doctrine is equally available when the appellant is a judgment debtor who does not post an appellate bond to stay enforcement of the judgment and is frustrating collection efforts, as happened in *Stoltenberg*.

For appellants, the lesson from these cases is simple: obey trial court orders unless and until a stay is obtained. An appellant who violates a court order that is not stayed runs the risk of forfeiting the right to appeal, regardless of the appeal's merits. ■

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[1] Antonio-Martinez v. Immigration & Naturalization Serv., 317 F. 3d 1089, 1093 (9th Cir. 2003).
[2] *See, e.g.*, United States v. $129,374 in U.S. Currency, 769 F. 2d 583, 588 (9th Cir. 1985) (rule "should apply with greater force in civil cases where an individual's liberty is not at stake"); Stoltenberg v. Ampton Invs., Inc., 215 Cal. App. 4th 1225, 1229-34 (2013) (dismissing appeal in civil case); Stone v. Bach, 80 Cal. App. 3d 442, 443-48 (1978) (same).
[3] Henry Tashman, et al., *Flight or Fight*, Los Angeles Lawyer, Oct. 2006, at 44-51 [hereinafter Tashman]; *see also* Scott M. Reddie, *The Disentitlement Doctrine: A Trap for Unwary Judgment Debtors in Civil Appeals*, 28 California Litigation 16-18 (2015).
[4] Stoltenberg, 215 Cal. App. 4th at 1229-30.
[5] *Id.* at 1230 (internal quotation marks omitted).
[6] MacPherson v. MacPherson, 13 Cal. 2d 271, 277 (1939).
[7] TMS, Inc. v. Aihara, 71 Cal. App. 4th 377, 379 (1999) ("No judgment of contempt is required as a prerequisite to our exercising the power to dismiss"); Tashman, *supra* note 3, at 46 (discussing a federal requirement that a bench warrant be issued for the appellant).
[8] Stoltenberg, 215 Cal. App. 4th at 1230-31 (collecting and discussing cases).
[9] TMS, 71 Cal. App. 4th at 378-79.
[10] Say & Say v. Castellano, 22 Cal. App. 4th 88, 94 (1994).
[11] *See, e.g.*, Ironridge Global IV, Ltd. v. ScripsAmerica, Inc., 238 Cal. App. 4th 259, 262 (2015).
[12] Rule 8.54(a)(2) of the California Rules of Court requires that appellate motions must be supported by "declarations or other supporting evidence" if not based on matters contained in the appellate record.
[13] "[M]atters that occurred after *rendition* of an appealed judgment usually will be *disregarded* on the appeal; i.e., parties cannot challenge an appealed judgment based on *postjudgment* occurrences." Eisenberg, Horvitz & Wiener, California Practice Guide: Civil Appeals & Writs §8.176 (2015) (emphasis in original) [hereinafter Eisenberg]. There are several exceptions to this rule. *Id.* §§8.180-8.187.10.
[14] Tashman, *supra* note 3, at 46.
[15] Stoltenberg v. Ampton Invs., Inc., 215 Cal. App. 4th 1225, 1233-34 (2013).
[16] *Id.* at 1227. Under California law, an appellant is generally required to post a bond for 150 percent of the amount of a money judgment to stay the judgment pending appeal. Code Civ. Proc. §917.1(a)(1). Absent a stay, a monetary judgment is immediately enforceable upon entry. Code Civ. Proc. §683.010.
[17] Stoltenberg, 215 Cal. App. 4th at 1227.
[18] *Id.*
[19] *Id.* at 1234.
[20] *Id.* at 1233.
[21] *Id.* at 1234.
[22] *Id.* at 1231 (citing Stone v. Bach, 80 Cal. App. 3d 442, 448 (1978)).
[23] Gwartz v. Weilert, 231 Cal. App. 4th 750 (2014).
[24] *Id.* at 751-52.
[25] *Id.* at 752.
[26] *Id.*
[27] *Id.* at 758.
[28] *Id.* at 761.
[29] *Id.* at 757.
[30] *See, e.g.*, Depew v. Soroudi, No. B187643 (Cal. App. Oct. 3, 2006), *available at* http://appellatecases.courtinfo.ca.gov.
[31] *See* Pierce v. Belnap, No. G051433, 2015 WL 9304513, at *3-4 (Cal. App. Dec. 21, 2015).
[32] *See* United States v. Yellow, 613 Fed. App'x 667 (9th Cir. 2015) (order of dismissal).
[33] Blumberg v. Minthorne, 233 Cal. App. 4th 1384 (2015).
[34] *Id.* at 1386.
[35] *Id.* at 1391.
[36] *Id.* at 1391-92.
[37] *Id.* at 1386.
[38] *Id.* at 1386.
[39] Ironridge Global IV, Ltd. v. ScripsAmerica, Inc., 238 Cal. App. 4th 259 (2015).
[40] *Id.* at 261.
[41] *Id.* at 262-63.
[42] *Id.* at 264.
[43] *Id.* at 265.
[44] *Id.* at 265 n.4 (citing Ohaver v. Fenech, 206 Cal. 118, 123 (1928)) ("An injunction may grant both prohibitive and mandatory relief, and when it is of this dual character, and an appeal is taken, such appeal will not stay the prohibitive features of the injunction, but as to its mandatory provisions said injunctions will be stayed").
[45] Ironridge, 238 Cal. App. 4th at 265 (quoting Eisenberg, *supra* note 13 at §2:340).
[46] Ironridge, 238 Cal. App. 4th at 266.
[47] *Id.*
[48] *Id.* at 267.
[49] *Id.* at 267-68.
[50] *Id.*