

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SANDRA D'AMATO FLORES,

Plaintiff and Appellant,

v.

OPUS BANK,

Defendant and Respondent.

2d Civil No. B269866
(Super. Ct. No. BC573070)
(Los Angeles County)

COURT OF APPEAL – SECOND DIST.

FILED

Jul 25, 2018

JOSEPH A. LANE, Clerk

Nadia Halhoul Deputy Clerk

Sandra D'Amato Flores appeals an order granting her employer Opus Bank's (the Bank) motion to enforce a release of claims against a third party, potential class representative George Lazar. The order is not final, Lazar is not a party to this action, and Flores is not a party to the release agreement. We dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

This is one of three appeals by Flores: one from judgment after a bench trial on her individual misclassification action against the Bank (Los Angeles Superior Court Case No. BC514928 [the individual action]), and two from intermediate

orders in her putative class action against the Bank (Los Angeles Superior Court Case No. BC573070 [the class action]). This appeal is from one of the intermediate orders in the class action.

Flores is a former branch manager of the Bank. She filed her class action against the Bank in February 2015. Her individual action was already pending. In September, she conveyed to the court and the Bank that she wished to substitute George Lazar in her place to serve as the putative class representative. But before she amended her complaint to do so, she and the Bank asked the trial court to advise them whether it would enforce a release of claims that Lazar had signed in exchange for severance pay from the Bank. The parties stipulated that various other issues would be stayed while cross-motions on the question would be heard.

Specifically, the parties stipulated that “Flores intends to substitute George Lazar as the putative class representative, pending a ruling from this [c]ourt regarding the enforceability of the Severance Agreement and General Release before doing so. [The Bank] contends that this ‘wait and see’ approach is improper, and that [Flores] must identify a putative class representative. Notwithstanding, the parties have agreed that within five (5) court days of the [c]ourt’s ruling on the issues addressed at the December 3, 2015 hearing, Flores will file an amended putative class action complaint to substitute a new putative class representative.”

The court entered an order on the stipulation, and the parties filed cross-motions. The Bank’s motion asked the court to enforce the release, preclude Lazar from participating in the action, and dismiss the complaint for failure to identify an adequate class representative. Flores’s motion asked the court to

find the release was an unenforceable waiver of statutory employment benefits.

At the December 3 hearing, the court denied the Bank's motion to dismiss the complaint. But it ordered that it would enforce the release against Lazar and would not permit Lazar to act as class representative.

Flores did not amend her complaint to substitute a new putative class representative. Instead, she appealed from what she characterized in her notice as the "December 3, 2015 [¶] . . . [¶] Judgment after an order granting summary judgment motion," "Judgment of dismissal after an order sustaining a demurrer," and "Judgment enforcing severance/general release." Our colleagues in Division Three notified Flores that her appeal would be dismissed if she did not file copies of the dismissal order and notice of entry of dismissal from which she appealed.

In April 2016, Flores's counsel prepared and obtained from the trial court a written order granting the Bank's motion to enforce the release, denying the Bank's motion to dismiss, and denying Flores's motion to deny enforcement. Flores augmented the record to include the April order.

DISCUSSION

The existence of an appealable judgment is a jurisdictional prerequisite to an appeal. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.) The April 2016 order is not appealable because it is not final. (Code Civ. Proc., § 904.1.)

The April 2016 order did not, as Flores argues, effectively prevent her from proceeding with the class action. The trial court did not decide whether Flores could represent the class and did not prevent her from trying to locate and substitute a different class representative. It expressly reserved these issues

for future proceedings: “I’m not dismissing the class action. Right now it’s a headless class action. [¶] We have a new candidate head that’s [Flores]. . . . That will be briefed. [¶] If she’s out, then it’s still a headless class and the question is can plaintiff’s counsel get discovery to hunt for a new client. [¶] That’s all going to be briefed in 2016.” Flores does not cite to any further proceedings in which she made any attempt to name another class representative or proceed with the class action on her own behalf.

Nothing in the record supports Flores’s contention that a hunt for a new client would be futile. She contends many former branch managers signed releases like Lazar’s and are intimidated from pursuing claims against the Bank because the trial court imposed a fee award against Lazar. But as Flores’s counsel stated at the December 3 hearing, “There’s no evidence” to support the Bank’s assertion “that a large number of former employees did what [Lazar] did, namely, signed a release.”

Moreover, Flores does not have standing to appeal the order enforcing the release because she is not a party to the release agreement. And Lazar is not a party to this appeal. (*In re Alma B.* (1994) 21 Cal.App.4th 1037, 1043.)

DISPOSITION

The appeal is dismissed. Opus Bank is awarded its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

John Shepard Wiley, Jr., Judge
Superior Court County of Los Angeles

Brown Gitt Law Group, Cynthia E. Gitt and Thomas
P. Brown, for Plaintiff and Appellant.

Carothers DiSante & Freudenberg, Todd R.
Wulffson, Robin E. Largent and Ashley A. Halberda, for
Defendant and Respondent.