

HARDISTY v. LAGUNA GOLD MORTGAGE

19CV44041

PLAINTIFFS' MOTION TO REFER MATTERS TO REFEREE

This case involves a convoluted dispute over encumbrance arrears and ownership interests associated with certain real property used as a sober recovery home. Before the Court is plaintiff's motion to send additional matters to Referee Foley for resolution. Although the parties have fully briefed the issue subsumed within today's motion, the matter cannot proceed just yet until the parties have addressed the impact, of any, of defendants' pending appeal (C097344) of this Court's 09/16/22 order denying the defense motion to set aside Referee Foley's decision.

Perfecting an appeal stays proceedings in the trial court which are embraced in or affected by the issue currently up on appeal. (CCP §916(a).) The purpose of the automatic stay provision is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. (*Eisea v. Saberi* (1992) 4 Cal.App.4th 625, 629.) Whether a matter is "embraced" or "affected" within the meaning of section 916 depends on whether the matter would impact the overall effectiveness of the appeal. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) Merely rendering the appeal moot is not enough; it must be that the trial court's continued proceedings impact (directly or indirectly) the judgment or order from which the appeal emanates, or somehow interferes with the appellate court's ability to faithfully conduct the appeal. (*Id.*) For example, a trial court may not final an interlocutory order, or reverse a previous order, or permit amendment of a pleading which is the subject of the appeal. (*Id.* at 190; see *Prudential-Bache Securities, Inc. v. Superior Court* (1988) 201 Cal.App.3d 924, 925 [appeal of order denying motion to compel arbitration stays litigation]; *Olson v. Superior Court* (1969) 274 Cal.App.2d 311, 314 [appeal of order granting judgment on the pleadings stays motion to amend].) On the other hand, an appeal does not stay ancillary or collateral matters, including those matters which would have occurred regardless of the appeal. (*Id.* at 191; *Gridley v. Gridley* (2008) 166 Cal.App.4th 1562, 1587; *Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 453–455; *Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 666; *Bankes v. Lucas* (1992) 9 Cal.App.4th 365, 368.)

Since a principal component of this Court's decision was that a decision rendered in a §638 reference is immune from trial court review (§644) and not amenable to correction or vacation pursuant to CCP §1286.2(a)(4), it is entirely possible that any appellate court decision might touch upon the nature of the reference itself (rather than limited to review options). Thus, it appears to this Court that the present motion may be sufficiently embraced in or affected by the current appeal to necessitate a stay – despite

the absence of either side claiming such. Therefore, The Court DENIES plaintiffs' motion as not ripe, without prejudice to renew the request by a new filed motion once the appellate court has rendered its opinion.

The clerk is directed to give notice to the parties hereof. No further order shall be required.