Filed 8/2/05

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KEITH ALAN, Plaintiff and Appellant, v. AMERICAN HONDA MOTOR CO., INC., Defendant and Respondent.	B165756 (Los Angeles County Super. Ct. No. BC195461)

APPEAL from an order of the Superior Court of Los Angeles County, Charles W. McCoy Jr., Judge. Dismissed.

Law Offices of John A. Schlaff and John A. Schlaff for Plaintiff and Appellant.

Yukevich & Sonnett, Anthony E. Sonnett, Stephanie A. Hingle; Michelman & Robinson, Carol Boyd, Lary Nathenson; Neumeyer & Boyd and Katherine Tatikian for Defendant and Respondent.

---

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts II(A) and III(A).

I. INTRODUCTION

Plaintiff and appellant Keith Alan appeals an order denying a motion for class certification. In the unpublished portion of this opinion, we conclude that the order denying the motion for class certification was an immediately appealable order. Defendant and respondent American Honda Motor Co., Inc. has filed a motion to dismiss the appeal as untimely. We grant the motion.

In the published portion of this opinion, we conclude that Alan's notice of appeal was not timely filed. On January 2, 2003, the court clerk mailed to plaintiff a file-stamped copy of the appealable order and a minute order showing the date it was mailed, thus triggering the 60-day time period set forth in rule 2(a)(1) of the California Rules of Court (hereafter Rule 2). Alan filed his notice of appeal on March 6, 2003, which was 63 days after the court clerk mailed to the parties the appealable order. Therefore, this court does not have jurisdiction to consider the merits of this appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Summary of Case and Factual Allegations*

Plaintiff alleged that in January 1996, his 1987 Acura Integra stopped on a freeway due to a failed timing belt. Three vehicles rear-ended plaintiff's Intrega in a series of collisions.

Based upon an alleged failure to warn that timing belts might fail or need to be replaced at various intervals, plaintiff filed a class action lawsuit against defendant and respondent American Honda Motor Co., Inc. for violations of the Consumer Legal Remedies Act (Civ. Code, § 1770 et seq.)[1]

On January 8, 1999, during a discovery hearing, the trial court limited the scope of discovery to the 1987 Acura Integra model vehicles, subject to re-visiting the issue later.

---

[1] Plaintiff also alleged violations of Business and Professions Code sections 17200 and 17500, as well as class-action and individual claims for fraud and negligent misrepresentation. On April 16, 2002, plaintiff filed a request for dismissal without prejudice of the class claims for fraud and negligent misrepresentation.

Plaintiff, however, served a number of discovery requests concerning other vehicle models manufactured by defendant. In response, defendant filed a motion for a protective order.

During a February 10, 2000, hearing on defendant's motion for a protective order, the trial court found the scope of the complaint to be "unmanageable." The court suggested limiting the action to one vehicle and tolling the statute of limitations as to claims involving other vehicles. The court then ruled that: "The case[] will go forward as to [the] Acura Integra and the time period from November 1986 through 1993. That is without prejudice."

On November 5, 2001, the parties entered into a stipulated order regarding tolling. The order provided: "It is hereby ordered that, as to years and models of vehicles of both the 'Honda' and 'Acura' make other than, and in addition to 1986-1993 Acura Integras, the applicable statutes of limitations are, and have been, tolled for any and all individual and/or representative claims of members of the purported class alleged in Keith Alan v. American Honda, Los Angeles County Superior Court, Case No. BC 195 461 ('Alan action') from August 5, 1998, when the Alan action was filed, until the termination of the Alan action. [¶] As to vehicles other than 1986-1993 Acura Integras, the five-year mandatory dismissal statutes, Cal. Code of Civil Procedure §§ 583.310 and 583.360, are, and have been, tolled from August 5, 1998 until the final conclusion of the Alan action." (Underlining in original.)

On April 2, 2002, plaintiff moved for class certification. Contrary to the foregoing stipulated tolling agreement, plaintiff sought certification of a "Plaintiff Class" consisting of all past and current owners of "Subject Vehicles."[2] In plaintiff's third amended

---

[2] Plaintiff also moved to certify three additional sub-classes as follows:

" '4. Sub-Class No. 1 shall include Plaintiff . . . and each and every person eligible for membership in the Plaintiff Class who is a resident of the State of California. Members of Sub-Class No.1 may be members of other sub-classes defined herein.

" '5. Sub-Class No. 2 shall include Plaintiff . . . and each and every person eligible for membership in the Plaintiff Class who ever incurred the expense, or on whose behalf such expense was ever incurred, of performing routine maintenance on a timing

complaint, plaintiff defined the "Subject Vehicles" as any Acura or Honda automobiles, manufactured or sold by defendant which contained a timing belt as opposed to a timing chain.

Two weeks later, on April 16, 2002, plaintiff filed a motion for leave to file a fourth amended complaint. There, plaintiff sought leave to amend the complaint to allege an alternative cause of action under the Consumer Legal Remedies Act (Civ. Code, § 1770 et seq.). Plaintiff explained that for post-1990 vehicles, defendant began advising purchasers that the timing belts needed to be changed every 90,000 miles or 72 months. Plaintiff claimed that during discovery defendant admitted that this recommendation regarding the timing belt was unnecessary because timing belts are normally inspected every 15,000 miles during a valve adjustment. Plaintiff claimed that the representation that timing belts needed to be changed every 90,000 miles or 72 months was therefore unnecessary and a violation of Civil Code section 1770, subdivision (a)(15). ("Representing that a part, replacement, or repair service is needed when it is not.")

On June 3, 2002, the trial court denied plaintiff's motion for leave to amend, concluding that plaintiff failed to allege facts sufficient to state a cause of action under California Civil Code section 1770, subdivision (a)(15).

B. *The Trial Court's Ruling on Plaintiff's Motion for Class Certification*

On January 2, 2003, the trial court denied plaintiff's motion for class certification. The trial court's ruling consisted of a minute order and a written statement of decision mailed to the parties on January 2, 2003. In the minute order, the court explained: "Ruling on Submitted Matter/Motion for Class Certification[.] [¶] The Court, having heard argument in this Motion, and read and considered the papers, now issues its; [*sic*]

---

belt in any such Subject Vehicles. Members of Sub-Class No. 2 may be members of other sub-classes defined herein.

" '6. Sub-class No. 3 shall include Plaintiff . . . and each and every person eligible for membership in the Plaintiff Class whose timing belt broke while they owned any such Subject Vehicles (as that term is defined herein). Members of Sub-Class No. 3 may be members of other sub-classes defined herein.' "

'Statement of Decision Re: Alan's Motion for Class Certification' this date. [¶] Copies of this minute order and the Statement of Decision are sent via U.S. Mail on January 2, 2003 to counsel of record . . . ."

The accompanying statement of decision bore a "Filed" file stamp of the Los Angeles County Superior Court, dated January 2, 2003. The statement of decision was signed by the trial court. In conclusion at page 5 of the statement of decision, the trial court ruled: "Alan's Motion for Class Certification is denied."

On March 6, 2003, plaintiff filed a notice of appeal "from the Court's minute order dated January 2, 2003 in the above-referenced action, and from all the Court's rulings and findings associated therewith."

III. DISCUSSION

Defendant filed a motion to dismiss this appeal as untimely pursuant to Rule 2(a)(1). We conclude the motion is well taken.

A. *The Order Denying Class Certification Was Immediately Appealable*

An order denying class certification is immediately appealable when the order has the effect of dismissing the action as to all members of the purported class other than plaintiff. (*Daar v. Yellow Cab Co*. (1967) 67 Cal.2d 695, 699; *Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470 ["A decision by a trial court denying certification to an entire class is an appealable order."].) This is referred to as the " 'death knell' " doctrine. (*Shelley v. City of Los Angeles* (1995) 36 Cal.App.4th 692, 695.)

Plaintiff did not file a motion for class certification consistent with the trial court order limiting the class claims to past and present owners of 1987-1993 Acura Integras. Instead, plaintiff's motion sought certification of the largest possible class under the pleadings at issue in this case, all former and present owners of "Subject Vehicles" who did *not* receive a representation that the timing belt should be changed or inspected.

Likewise, the trial court's denial of the motion for class certification was to all past and present owners of Acura or Honda automobiles (containing a timing belt), who did not receive a warning as to a potential timing belt failure or need for replacement.

Thus, the trial court order had the effect of dismissing the action as to all members of the purported class other than plaintiff.

Plaintiff asserts, however, that the order denying plaintiff's motion for class certification was not the death knell of the class action allegations. According to plaintiff, the trial court's order was tantamount to a partial denial of class certification, and therefore was not appealable. (See, e.g., *Shelley v. City of Los Angeles, supra*, 36 Cal.Ap.4th 692; *General Motors Corp. v. Superior Court* (1988) 199 Cal.App.3d 247.)

Specifically, plaintiff asserts that the motion for class certification sought only certification of a class of past and present owners of 1987-1993 Acura Integras. Plaintiff also asserts that the trial court erred by denying leave to file a fourth amended complaint which would have allegedly broadened the potential class or added a second class of individuals (i.e., those persons who allegedly received the allegedly unnecessary communication about timing belt repairs). Plaintiff further asserts that the recently enacted Proposition 64 transformed the cause of action under Business and Professions Code section 17200 from a representative action to a class action.

Based upon these considerations, plaintiff claims the trial court order denying class certification was only a partial denial of certification, and therefore not immediately appealable. Plaintiff explains that this was a cautionary appeal and that this court should exercise its discretion to consider the premature appeal as a petition for a writ of mandate. (See *Szetela v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1098.) We reject these assertions.

On this record, the trial court order denying certification cannot be construed as a partial denial of class certification. Plaintiff's motion was not limited to seeking certification of only past and present owners of 1987-1993 Acura Integras. The language of the motion and of the trial court order denying certification supports the conclusion

that plaintiff sought certification of all former and present owners of "Subject Vehicles" who did *not* receive a representation that the timing belt should be changed or inspected.[3]

In addition, the trial court previously denied plaintiff's request for leave to file a fourth amended complaint. Thus, at the time the trial court ruled on plaintiff's motion for class certification, the pleadings did not allege any facts supporting certification of a class of persons who purportedly received the allegedly unnecessary representation that timing belts should be changed every 90,000 miles or 72 months.

In addition, at the time the trial court ruled on plaintiff's motion for certification, Proposition 64 had not been approved by the electorate. (*Berger v. California Ins. Guarantee Assn*. (2005) 128 Cal.App.4th 989, 1007, fn. 17 [Proposition 64 took effect on November 3, 2004.].) Thus, none of the class claims were based upon Proposition 64's modifications of Business and Professions Code section 17200. In any event, plaintiff has offered no explanation as to how the newly-enacted Proposition 64 would broaden the potential class. Plaintiff has offered no explanation as to whether a proposed class under section 17200 of the Business and Professions Code would be comprised of a different class of persons or whether such a class would present different claims.

The trial court's January 2, 2003, order was the final disposition of all class claims at issue and presented in this litigation. Thus, the trial court order denying plaintiff's motion for class certification was the death knell of the class claims presented under the Consumer Legal Remedies Act. The order was therefore immediately appealable.

---

[3] In the notice of motion, plaintiff stated: " 'The Plaintiff Class consists of all individuals who now own, or have ever owned, any one or more of the Subject Vehicles.' Plaintiff's Third Amended Complaint, ¶ 3." As noted above, in plaintiff's third amended complaint, plaintiff defined "Subject Vehicles" as an Acura or Honda automobile which contained a timing belt or timing chain. Likewise, the trial court order states: "Plaintiff Keith Alan (Alan) moves for certification of a nationwide class including 'all individuals who now own, or have ever owned, any one or more of the Subject Vehicles.' Plaintiff's Third Amended Complaint, ¶ 3."

B. *The Notice of Appeal Was Untimely*

Failure to timely appeal an immediately appealable order requires dismissal of the appeal for lack of jurisdiction. (*Filipescu v. California Housing Finance Agency* (1995) 41 Cal.App.4th 738, 742.)

Rule 2(a) provides in pertinent part: "[A] notice of appeal must be filed on or before the earliest of: [¶] (1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment, showing the date either was mailed; . . . or [¶] (3) 180 days after entry of judgment."[4]

The trial court's January 2, 2003, ruling complied with the requirements set forth in Rule 2(a)(1) and therefore triggered the 60-day time period in which to file a notice of appeal. The January 2, 2003, order showed the date it was mailed, and included a file-stamped copy of a five-page statement of decision signed by the trial court.

Plaintiff responds that the trial court's January 2, 2003, ruling did not comply with Rule 2 because it consisted of two documents as opposed to one. Plaintiff suggests that had the trial court copied the language from the statement of decision directly into the minute order and affixed a file stamp to the minute order, then the trial court's ruling would have complied with Rule 2(a)(1). Alternatively, plaintiff argues that Rule 2(a)(1) required the trial court to place a certificate of mailing or a proof of service directly upon the appealable order in order to show the date it was mailed. Plaintiff also asserts that, as a matter of law, a statement of decision cannot be an appealable order for purposes of Rule 2. We reject these assertions.

Plaintiff has presented no authority for the proposition that an appealable order must consist of one integrated written document in order to comply with Rule 2(a)(1). In fact, Rule 2(a)(1) appears to expressly contemplate and sanction the practice of trial court

---

[4] Pursuant to Rule 2(f), Rule 2(a) applies to judgments and appealable orders.

clerks mailing two documents, a file-stamped copy of the appealable order (or judgment) and a document, "showing the date [it] was mailed." (Rule 2(a)(1).)[5]

Thus, the language of Rule 2(a)(1) indicates that trial court clerks may mail to the party filing a notice of appeal two documents, a file-stamped copy of the appealable order and a document showing the date it was mailed.

In any event, the minute order, which showed the date it was mailed, expressly incorporated the statement of decision and stated that the statement of decision constituted the trial court's ruling. Thus, on this record, the court clerk did not mail the parties two separate stand-alone documents as suggested by plaintiff.

Plaintiff also asserts that as a matter of law a document bearing the title "statement of decision" cannot constitute an appealable order. Plaintiff attempts to elevate form over substance. In *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, the court explained: " 'Although the law relating to appealability speaks in terms of orders or judgments,' it is well established 'that it is not the label but rather the substance and effect of a court's judgment or order which determines whether or not it is appealable. [Citation.]' " (*Id*. at p. 205, quoting *In re Marriage of Loya* (1987) 189 Cal.App.3d 1636, 1638; see also *Art Movers, Inc. v. Ni West, Inc*. (1992) 3 Cal.App.4th 640, 645; *Elmore v. Imperial Irrigation Dist.* (1984) 159 Cal.App.3d 185, 190 ["The fact the trial court labels its ruling 'a judgment' is irrelevant in determining whether the decision is appealable."]; and *Estate of Lock* (1981) 122 Cal.App.3d 892, 897 ["By its terms, the decision constitutes a final determination on the petition and contemplates no further judicial action to give it vitality as an order. It is couched in terms of an order, as signed, filed

---

[5] This conclusion is supported by Rule 2(a) which provides: "[A] notice of appeal must be filed on or before the earliest of: [¶] . . . [¶] (2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment, accompanied by proof of service[.]" Thus, Rule 2(a)(2) allows a party to trigger the 60-day time period in which to file a notice of appeal by serving the party filing the notice with two documents: (1) a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, and (2) a proof of service.

and entered: in our view, it should be treated as final and appealable, notwithstanding its label."].)

Moreover, it is established that a document filed by a trial court entitled "statement of decision" may constitute an appealable order or judgment in appropriate circumstances. (See *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1392 ["Accordingly, '[a] memorandum of decision may be treated as an appealable order or judgment when it is signed and filed, and when it constitutes the trial judge's determination on the merits. [Citations.]' "]; *Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 896, fn. 1 ["We are satisfied the statement of decision, deemed an order, is properly appealable."]; *Estate of Lock*, *supra*, 122 Cal.App.3d at p. 897 ["Similarly, though denominated a 'Decision,' the trial court's ruling here is in effect a final judgment."].)

Pursuant to *Viejo Bancorp, Inc. v. Wood*, *supra*, 217 Cal.App.3d 200, the substance and effect of the trial court's statement of decision in this case unambiguously indicates that it was an order denying class certification. The minute order clearly stated that the statement of decision was the ruling of the trial court. Moreover, the statement of decision concluded with the sentence: "Alan's Motion for Class Certification is denied." In addition, pursuant to *MHC Financing Limited Partnership Two v. City of Santee, supra,* 23 Cal.App.4th 1372, the trial court signed and filed the statement of decision. In this regard, the statement of decision shows that the trial court intended the statement of decision to be the final ruling of the trial court on Alan's motion for class certification.

Plaintiff filed the notice of appeal on March 6, 2003. This was 63 days after the court clerk mailed plaintiff a copy of the file-stamped appealable order showing the date it was mailed, January 2, 2003. It was therefore untimely.

Because Alan did not file a timely notice of appeal, this court is without jurisdiction to consider his appeal. (*Filipescu v. California Housing Finance Agency*, *supra*, 41 Cal.App.4th at p. 742.) In addition, a party that has not timely appealed from an appealable order is not entitled to obtain review of the appealable order by requesting

that the Court of Appeal deem the untimely appeal to be a petition for writ relief. (*Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 952.)

DISPOSITION

The appeal is dismissed. Honda is awarded costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

KITCHING, J.

We concur:

KLEIN, P.J.

CROSKEY, J.