

(ENDORSED)
FILED
APR 27 2016
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
By: GOREN HANCOCK Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

THE PEOPLE OF THE STATE OF
CALIFORNIA on the RELATION of SAN JOSE
POLICE OFFICERS' ASSOCIATION,

Plaintiff,

vs.

CITY OF SAN JOSE, et al.,

Defendants,

Case No. 2013-1-CV-245503

ORDER RE: APPLICATION TO STAY
ENFORCEMENT OF JUDGMENT

The application by third-parties Peter Constant, Steven Haug, and Silicon Valley Taxpayers Association ("Moving Parties") to stay enforcement of judgment came on before the Honorable Beth McGowen on April 27, 2016, at 2:00 p.m. in Department 7. The matter having been submitted, the Court finds and orders as follows:

As a preliminary matter, plaintiff San Jose Police Officers' Association and defendant City of San Jose's joint request for judicial notice is GRANTED as to Exhibits 2-4 and DENIED as to Exhibit 1. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records].)

Additionally, Moving Parties' evidentiary objections are OVERRULED.

1 With respect to the merits of the matter currently before the Court, the Court finds that
2 Moving Parties lack standing to bring the instant application to stay enforcement of judgment.
3 Moving Parties are not parties to the action and their motion to intervene was denied on April 12,
4 2016. It is well-established that a nonparty who has not formally intervened ordinarily cannot
5 make a motion. (*People v. Martinez* (2009) 47 Cal.4th 399, 419, fn. 2; *Marshank v. Super. Ct.*
6 (1960) 180 Cal.App.2d 602, 605; *Beshara v. Goldberg* (1963) 221 Cal.App.2d 392, 395.)

7 Moving Parties argue that their pending motion to vacate judgment and for new or further
8 trial pursuant to Code of Civil Procedure section 657 gives them standing to bring the instant
9 application to stay enforcement of the judgment.¹ Moving Parties contend that they have
10 standing to bring their motion to vacate judgment and for new or further trial under Code of Civil
11 Procedure section 657 because they are “aggrieved” parties; and, “a priori,” they have standing
12 to seek a stay pending the Court’s decision on the motion to vacate judgment and for new or
13 further trial. In support of their argument, Moving Parties cite *County of Alameda v. Carleson*
14 (1971) 5 Cal.3d 730 (“*Carleson*”), *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146
15 (“*Simac*”), *Lippman v. City of Los Angeles* (1991) 234 Cal.App.3d 1630 (“*Lippman*”), *Shaw v.*
16 *Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336 (“*Shaw*”), and *Paulson v. Abdelnour* (2006)
17 145 Cal.App.4th 400 (“*Paulson*”).

18 These cases do not support Moving Parties’ argument that they have standing to bring the
19 instant application to stay enforcement of judgment. Rather, the cases stand for the proposition
20 that a person or entity that moves to vacate a judgment—irrespective of whether the motion is
21 granted or denied—has appellate standing, i.e., the person or entity makes itself a party to the
22 record for purposes of appeal. (See *Carleson, supra*, 5 Cal.3d at pp. 736-738 [“CWRO, by
23 moving to vacate the judgment, made itself a party to the Alameda action *for purposes of taking*
24 *an appeal.*”], emphasis added; see also *Simac, supra*, 92 Cal.App.3d at p. 152 [“[A] person not a
25 party to the action as originally commenced or tried may intervene even after judgment, by
26 moving to vacate the judgment under Code of Civil Procedure section 663. The person *thereby*
27 *gains the right to appeal an order denying the motion to vacate.*”], emphasis added; *Lippman,*

28 ¹ Moving Parties’ motion to vacate judgment and for new or further trial is presently set for hearing on May 17, 2016.

1 *supra*, 234 Cal.App.3d at p. 1633 [“A long line of cases has established a ‘nonstatutory’ form of
2 intervention whereby one who is legally aggrieved by a judgment *may become a party to the*
3 *record and obtain a right to appeal* by moving to vacate the judgment pursuant to Code of Civil
4 Procedure section 663”], emphasis added; *Shaw, supra*, 83 Cal.App.4th at p. 1342 [“a nonparty
5 *may obtain the right to appeal under certain circumstances*, which we conclude exist here. ‘Any
6 party aggrieved’ may appeal from an adverse judgment. [Citation.] The test is twofold—one must
7 be both a party of record to the action *and* aggrieved to have standing to appeal. *The first*
8 *requirement, that one be a party of record, is subject to an exception under which a nonparty*
9 *who moves to vacate the judgment is permitted to appeal as if he were a party*. We think the
10 exception should equally encompass a nonparty who moves for judgment notwithstanding the
11 verdict and a new trial, as we shall explain.”], emphasis added; *Paulson, supra*, 145 Cal.App.4th
12 at p. 416 [“We are also called upon to determine whether Shelby and San Diegans for the Mt.
13 Soledad National War Memorial are aggrieved parties *entitled to bring an appeal in this*
14 *action.*”], emphasis added.)

15 Notably, the California Supreme Court in *Carleson* cites with approval the case of *In re*
16 *Partridge’s Estate* (1968) 261 Cal.App.2d 58 (“*Partridge*”), which is instructive. The court in
17 *Partridge* framed the rule as follows: “Even though a person’s rights or interests are injuriously
18 affected by a judgment or an appealable order, he cannot appeal therefrom unless he is a party to
19 the proceedings. To this end he may make himself a party to the record by moving to set aside
20 the judgment or order, and may then obtain a review thereof on appeal from an order denying his
21 motion. *Such a procedure can scarcely be said to make him a party to the action, but it does*
22 *make him a party to the record, and, as such, entitled to appeal.*” (*Partridge, supra*, 261
23 Cal.App.2d at p. 61, emphasis added.) This language highlights the fact that the standing of a
24 person or entity who brings a motion to vacate judgment is limited to the right to appeal from the
25 underlying judgment. (See e.g., *In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 12-15 [“a
26 person or entity that moves to vacate a judgment pursuant to Code of Civil Procedure section 663
27 [or 657], becomes a ‘party’ for purposes of appellate standing”].)

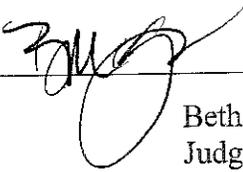
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The Court also notes that at oral argument counsel devoted significant time to the issue of whether Moving Parties are “aggrieved” as that term is used by Code of Civil Procedure section 657. That issue is not presently before the Court on the instant application for stay of enforcement of judgment; rather, it goes to the substance of the motion to vacate judgment and for new or further trial.

For the foregoing reasons, the application for stay of enforcement of judgment is DENIED. Accordingly, the temporary stay that is in effect pursuant to the April 14, 2016 court order is hereby lifted.

April 27, 2016


Beth McGowen
Judge of the Superior Court

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</p>	<p><i>Endorsed</i> FILED</p> <p>Date: <u>APR 27 2016</u> DAVID H. YAMASAKI Chief Executive Officer Clerk Superior Court of CA County of Santa Clara</p> <p>By: <u>Gorette Ramos</u> , Deputy</p>
Plaintiff: THE PEOPLE OF THE STATE OF CALIFORNIA on the RELATION of SAN JOSE POLICE OFFICERS' ASSOCIATION	
Defendant: CITY OF SAN JOSE, et al	
PROOF OF SERVICE BY MAIL OF: ORDER RE: APPLICATION TO STAY ENFORCEMENT OF JUDGMENT	Case Number: 2013-1-CV-245503

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on : April 27, 2016

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