

FEB 23 2022

Court of Appeal, Second Appellate District, Division Two - No. B314898

Jorge Navarrete Clerk

S272351

Deputy

IN THE SUPREME COURT OF CALIFORNIA

✓ **En Banc**

EVELYN HOWELL MASSEY, Plaintiff and Appellant,

v.

BIOLA UNIVERSITY INC., Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 2

EVELYN HOWELL MASSEY,
Plaintiff and Appellant,
v.
BIOLA UNIVERSITY, INC.,
Defendant and Respondent.

B314898
Los Angeles County Super. Ct. No. 20STCV45853

COURT OF APPEAL - SECOND DIST.

FILED

Dec 08, 2021

DANIEL P. POTTER, Clerk

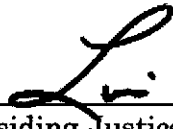
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Deputy Clerk

THE COURT:

The court has read and considered appellant's motion to vacate dismissal and reinstate appeal filed on November 15, 2021, respondent's opposition thereto filed on November 23, 2021, and the reply filed by appellant on December 3, 2021.

Appellant's motion to vacate dismissal and reinstate appeal is hereby denied.



Presiding Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COURT OF APPEAL - SECOND DIST.

FILED

Nov 10, 2021

DANIEL P. POTTER, Clerk

OCarbone Deputy Clerk

EVELYN HOWELL MASSEY,

Plaintiff and Appellant,

v.

BIOLA UNIVERSITY, INC.,

Defendant and Respondent.

B314898

(Super. Ct. No. 20STCV45853)
Los Angeles County

O R D E R

The court received and filed appellant's opening brief, the supporting exhibits, and six volumes of appendices on November 9, 2021.

Plaintiff and appellant Evelyn Howell Massey seeks to appeal from an order sustaining a demurrer issued on August 24, 2021.

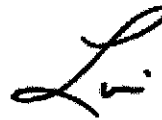
On September 22, 2021, the court informed appellant that a signed order of dismissal was required as an appealable order pursuant to Code of Civil Procedure section 904.1.

Appellant responded by letter on October 5, 2021, citing to the August 24, 2021, minute order. On October 7, 2021 the court filed an order, indicating "the scant available record is ambiguous as to any constructive finality that may be imbued in the August 24, 2021 minute order by the trial court's recorded directives", and "the determination of whether the appealed order is sufficiently final to establish jurisdiction".

An order sustaining a demurrer is generally not appealable, for lack of finality. Instead, the appeal lies from the final judgment of dismissal entered

after the order sustaining a demurrer without leave to amend. (Code Civ. Proc., § 904.1, subd. (a)(1); *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695; *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1254.) A minute order that does not satisfy this requirement is not appealable. From the records submitted in Appellant's appendix, it appears that Appellant has asserted causes of action that were previously stayed and have not yet been adjudicated. Thus, there is no final order from which an appeal may be taken.

Accordingly, the notice of appeal filed August 24, 2021 is hereby dismissed as being taken from a non-appealable order.

A handwritten signature in black ink, appearing to be the letter 'L' followed by a dot, possibly representing 'Li'.

Presiding Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION P

FILED

Oct 07, 2021

DANIEL P. POTTER, Clerk

apalencia-huerta Deputy Clerk

EVELYN HOWELL MASSEY,

Plaintiff and Appellant,

v.

BIOLA UNIVERSITY, INC.,

Defendant and Respondent.

B314898

(Super. Ct. No. 20STCV45853)
Los Angeles County

O R D E R

THE COURT:

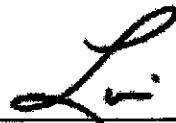
On August 24, 2021, plaintiff Evelyn Howell Massey filed a notice of appeal from a purported “judgment after court trial” entered after a hearing on defendant Biola University, Inc.’s (Biola) demurrer. However, when Massey filed her civil case information statement on September 22, 2021, she attached as the appealed order (Cal. Rules of Court, rule 8.100(g)(1)) the August 24, 2021 minute order memorializing the trial court’s sustaining of Biola’s demurrer. An order sustaining a demurrer is generally not appealable, for lack of finality. Instead, the appeal lies in the final judgment of dismissal entered after the order sustaining the demurrer. (Code Civ. Proc., § 904.1, subd. (a)(1); *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695; *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1254.) This court

lacks jurisdiction to hear an appeal taken from a nonappealable order.

(*Sherman v. Standard Mines Co.* (1913) 166 Cal.524, 525.)

On September 22, 2021, the clerk of this court sent notice to Massey requesting her to provide the final judgment of dismissal. On October 5, 2021, Massey served and filed her response to the September 22 notice. In her response, Massey addresses the fact that the August 24 minute order records the trial court's initial direction to Biola to submit a proposed judgment of dismissal within five days of the date of the hearing on the demurrer, and then the minute order records the trial court's second, contradictory directive that "[n]o proposed judgment of dismissal is to be submitted at this time." Massey argues that while no final proposed judgment of dismissal was prepared by Biola or signed by the trial court, and despite the trial court's contradictory instructions regarding preparation of the dismissal order, the trial court effectively dismissed the matter on August 24, 2021. Massey asserts that sufficient finality exists in the August 24, 2021 minute order to deem it an appealable order of dismissal that would establish this court's jurisdiction over the appeal.

The scant available record is ambiguous as to any constructive finality that may be imbued in the August 24, 2021 minute order by the trial court's recorded directives. Therefore, the determination of whether the appealed order is sufficiently final to establish jurisdiction is deferred to the panel in the division that will hear the appeal with the benefit of a full record. The clerk's September 22, 2021 notice is discharged.



Elwood Lui, Administrative Presiding Justice

**Additional material
from this filing is
available in the
Clerk's Office.**