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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO\

CAROLINE LEE,

Plaintiff and Appellant,

v.

ESSEX HARBOR COVE
APARTMENTS, L.P.,

Defendant and Respondent.

A129815

(San Mateo County
Super. Ct. No. 485500)

Respondent Essex Harbor Cove Apartments, L.P. (respondent) moves this court for an order dismissing the appeal filed by appellant Caroline Lee (appellant), on the ground that the appeal is not timely pursuant to California Rules of Court, rule 8.104(a)(2).¹ Because we conclude the appeal is untimely, we are required to dismiss the appeal.

BACKGROUND

On June 8, 2010, the trial court filed an order dismissing appellant's action for failure to amend after respondent's demurrer was granted with leave to amend. On June 28, 2010, the trial court entered a judgment of dismissal. On July 1, 2010, respondent served a notice of entry of judgment on appellant by mail. On September 27, 2010, 88 days after service of the notice of entry of judgment, appellant filed a notice of appeal.

¹ All further rule references are to the California Rules of Court.

DISCUSSION

Respondent contends that appellant's appeal must be dismissed as untimely because her notice of appeal was filed 88 days after respondent served the notice of entry of judgment. (See rules 8.104(a)(2) and 8.104(b).)

Pursuant to rule 8.104(a)(2), a notice of appeal must be filed "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" Such service "may be by any method permitted by the Code of Civil Procedure," including service by mail. (Rule 8.104(a)(4); see Code Civ. Proc., § 1012.)

Appellant states that because of issues related to her obsessive compulsive disorder, she was unable to retrieve the notice of entry of judgment from her mailbox. She argues that, therefore, her time to file a notice of appeal should be extended. As difficult as the situation she describes sounds, we unfortunately have no discretion to alter the deadline for her appeal since, as our Supreme Court has explained, "[t]he time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal. [Citation.]" (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56 (*Van Beurden*); accord, rule 8.104(b).) Because respondent properly served the notice of entry of judgment in a timely manner on July 1, 2010, to be timely, appellant's notice of appeal had to be filed within 60 days of July 1. (See rule 8.104(a)(2); see also *Sharp v. Union Pacific R.R. Co.* (1992) 8 Cal.App.4th 357, 360 [under Code of Civil Procedure section 1013, subdivision (a), "service is complete at the time the document is deposited in the mail," and "the sender does not have the burden of showing the notice was actually received by the addressee"].)

In conclusion, appellant had 60 days from the July 1, 2010 service of the notice of entry of judgment to file her notice of appeal. The notice of appeal, filed on

September 27, 2010, 28 days after that statutory deadline, was untimely and her appeal therefore must be dismissed. (See rules 8.104(a)(2) and 8.104(b); *Van Beurden*, 15 Cal.4th at p. 56.)

DISPOSITION

The appeal is dismissed.

Kline, P.J.

We concur:

Haerle, J.

Lambden, J.