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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PETER KLEIDMAN, Plaintiff and Appellant, v. RFF FAMILY PARTNERSHIP, L.P., Defendant and Respondent.	B268541 (Los Angeles County Super. Ct. No. SC121303)

APPEAL from judgment and orders of the Superior Court of Los Angeles County, Richard A. Stone and Lawrence Cho, Judges. Affirmed.

Peter Kleidman, in pro. per., for Plaintiff and Appellant.

Parcells Law Firm and Dayton B. Parcells, III, for Defendant and Respondent.

This appeal is from a judgment entered in respondent's favor when appellant failed to appear at a scheduled trial. Appellant's principal contention is that he reasonably believed the action had been dismissed and was entitled to postjudgment relief under Code of Civil Procedure sections 473, subdivision (b) and 657.[1] He also argues the trial court erred in awarding attorney fees to respondent as the prevailing party under Civil Code section 1717 and that the amount of the fee award was unreasonable. We disagree with appellant's contentions and affirm.

FACTUAL AND PROCEDURAL SUMMARY

A. *Chase's Demurrer*

In November 2013, appellant filed a complaint against JPMorgan Chase Bank, N. A. (Chase), Chicago Title Company (CTT),[2] and respondent RFF Family Partnership, L.P. (RFF). He asserted the defendants had overcharged him as to interest, fees, late charges and other expenses in connection with numerous loans. The complaint alleged that each defendant had breached its contract with appellant, that CTT had breached its fiduciary duty to appellant, and that RFF had committed, among other actions, conversion, usury, and violation of statutes pertaining to loan contracts (Civ. Code, § 1671; Bus. & Prof. Code, § 10242.5, subd. (b)).

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[1] Subsequent undesignated references are to the Code of Civil Procedure.

[2] Appellant has reached a settlement agreement with CTT. It is not a party to this appeal.

In December 2014, Chase demurred to the complaint, arguing appellant's claim with respect to it was barred by res judicata. Appellant opposed the demurrer, making arguments with respect to Chase alone and not discussing the other defendants.

At a February 2014 hearing, the trial court set the matter for trial on April 20, 2015. Appellant was served with notice of the trial date.

On June 13, 2014, the court issued an order sustaining Chase's demurrer. The same day, a judgment entitled, "Judgment of Dismissal of Plaintiff's First Amended Complaint against JPMorgan Chase, N.A." was entered. It stated:

> "1. Chase's demurrer to Plaintiff's [first amended complaint] is SUSTAINED WITHOUT LEAVE TO AMEND and Chase's Request for Judicial Notice is GRANTED.
>
> "2. Specifically, Plaintiff's cause of action for breach of contract against Chase is barred by the doctrine of res judicata. [¶] . . . [¶]
>
> "4. Plaintiff's [first amended complaint] is dismissed in its entirety with prejudice, and judgment is hereby entered in favor of Chase."

Appellant sought review of the judgment in December 2014.[3] This court dismissed the appeal as untimely on February 25,

[3] Appellant filed a supplemental request for judicial notice with this court on August 10, 2017, asking that we consider the docket of his appeals of the June 13, 2014 judgment in this court (B260735) and the Supreme Court (S225536). With respect to those appeals, appellant's request is granted. In all other respects, appellant's request for judicial notice is denied.

2015.[4] Appellant subsequently sought review in the Supreme Court, which denied his petition for review on May 13, 2015, and remittitur issued on June 16, 2015.

B. *Trial and Motion for Attorney Fees*

On April 13, 2015, respondent filed and served appellant with its witness and exhibit lists. These documents included the time, date and location of the April 20, 2015 trial. Appellant did not appear for trial and judgment was entered against him in his absence.

On June 3, 2015, RFF moved for attorney fees based on a contractual fee provision in the loan agreement between it and appellant, which states:

> "Attorneys' Fees. Upon election of . . . Lender . . . so to do, employment of an attorney is authorized, and payment by Borrower of all attorneys' fees, costs and expenses in connection with any action or actions . . . which may be brought . . . for the enforcement of any covenant or right in the Deed of Trust or any other Loan Document . . . shall be the obligation of the Borrower and shall be secured by the Deed of Trust."

RFF requested $45,263.33 in attorney fees.

Appellant opposed the motion, arguing it was untimely based on the date of entry of judgment against Chase. Appellant also argued the contractual fee provision did not apply to an action brought by the borrower. The trial court granted the motion pursuant to Civil Code section 1717, explaining that RFF permissibly filed its motion prior to entry of judgment in its favor. The court found that appellant's reading of the contract

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[4] Appellant argues we should reconsider this order. This court already has denied appellant's request to vacate our dismissal order and reinstate the previous appeal and we decline to revisit the issue in this appeal.

was "unduly narrow," and held that RFF's defense of the action was embraced by the parties' fee agreement, notwithstanding that appellant initiated the action.

The court found the motion was governed by Civil Code section 1717 and designated RFF the prevailing party. The court awarded RFF $41,200 in attorney fees and explained that it calculated this amount by utilizing the "lodestar" method described in *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*) which involves multiplying the number of hours worked by a reasonable fee per hour. The court decided that RFF's attorneys had worked 75 hours on this case and that a reasonable rate for this work was $550 per hour. The court also considered a number of other relevant factors such as "the complexity of the case, the number of parties, the extent of discovery required, the reasonableness of the time allotted to the various tasks specified in the attorney's billing records, the amount of the fees claimed relative to the case, the extent to which the party's litigation objectives were achieved, whether the hourly fee claimed is within the range of fees typically charged by other attorneys in the community, and the attorney's expertise and experience."

C. *Motions for Postjudgment Relief*

In June 2015, appellant moved to set aside the judgment and for a new trial under sections 473, subdivision (b) and 659, arguing that he believed that the entire action had been dismissed by the June 2014 order and judgment sustaining Chase's demurrer. He argued he was surprised by the trial date based on the plain language of the judgment, entries in the Superior Court's online docket, statements made by a court clerk, and a statement made by counsel for CTT.

In a declaration, appellant stated he checked the court's online docket on June 27, 2014 and saw an entry indicating there had been a judgment of dismissal (notated "06/13/2014 Judgment (OF DISMISSAL)"). The top of the online case summary stated: "**Status**: Dismissed - Other 06/13/2014 Future Hearings None." He also believed that a hearing on CTT's demurrer which had been scheduled was removed from the calendar. He concluded this was due to the dismissal of the entire action.

Appellant asserted that he called the court in early July 2014 and spoke to a court clerk who told him the action had been dismissed and there would be no further proceedings. He declared that on July 31, 2014, he received a voicemail from counsel for CTT stating: "I looked on the court's website and it says that the case has been dismissed last month. Can you please give me a call just to let me know what's going on?" As stated above, appellant was served by RFF with witness and exhibit lists on April 13, 2015, one week before the trial date. The court denied appellant's motion to set aside judgment and motion for new trial, reasoning that appellant's "claimed surprise could have been guarded against with ordinary prudence." The court also denied appellant's request that it issue a statement of decision because "this was not a trial."

This appeal from the judgment and postjudgment orders followed.

DISCUSSION

Appellant first argues that the June 13, 2014 judgment in favor of Chase effectively dismissed his action as to all defendants. He argues the April 20, 2015 judgment entered in his absence from trial is void because his claims against RFF had

been previously dismissed. His argument is based on the following language in the judgment: "Plaintiff's [first amended complaint] is dismissed in its entirety with prejudice, and judgment is hereby entered in favor of Chase." He argues the plain meaning of this language is that the entire action was dismissed. We disagree.

The meaning and effect of a judgment are determined according to the rules governing the interpretation of writings generally, *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 766, including the principle that writings are read as a whole with each word placed in context, *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 69. The judgment as to Chase is entitled "Judgment of Dismissal of Plaintiff's First Amended Complaint Against *JPMorgan Chase Bank, N.A.*" The judgment states that it is with regard to Chase three times and names no other defendant. Placing the language in this context, it is clear that the judgment only applies to Chase.[5]

Appellant argues his appeal from the June 13, 2014 judgment and order sustaining Chase's demurrer divested the trial court of jurisdiction to issue its April 20, 2015 judgment in favor of RFF. He argues that, because his appeal was pending in the Supreme Court on April 20, 2015, the court lacked the power to issue its judgment under section 916, subdivision (a) which stays trial court proceedings during the pendency of related appeals. We disagree.

Section 916, subdivision (a) provides that "the perfecting of an appeal stays proceedings in the trial court upon the judgment

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[5] Because appellant's argument that respondent's motion for attorney fees was untimely relies upon the claim that the June 13, 2014 judgment applied to respondent, it also fails.

or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." As we have stated, the June 13, 2014 judgment and order only affected appellant's claims against Chase. Appellant's claims against RFF were not embraced by his appeal of that judgment. The trial court had the power to proceed upon appellant's claims against RFF when it issued its judgment in RFF's favor.

Appellant argues the trial court erred in denying his motions to set aside judgment under section 473, subdivision (b) and for a new trial under section 657 based on his good faith belief that the judgment against Chase dismissed his entire action. We disagree.

The trial court's denial of relief from judgment under sections 473, subdivision (b) and 657, subdivision (3) is reviewed for abuse of discretion. (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 695 (*Fasuyi*); *Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 636.) The court's rulings on these motions are subject to reversal on appeal only if they are unsupported by any reasonable basis. (*Fasuyi*, *supra*, at pp. 695-696.)

Section 473, subdivision (b) provides that: "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." In this context, "surprise" means ""'some 'condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could

not have guarded against.' [Citation.]'" [Citation.]" (*County of Los Angeles v. Financial Casualty & Surety Inc.* (2015) 236 Cal.App.4th 37, 44 (*Financial Casualty*).) Similarly, section 657, subdivision (3) permits granting a new trial motion where the movant can demonstrate surprise, ""'"which ordinary prudence could not have guarded against.' [Citation.]'" [Citation.]"

Parties have the right to rely upon what they are told by a trial court's staff. (*Financial Casualty*, *supra*, 236 Cal.App.4th at p. 44 [lawyer's absence at hearing was justified since court staff had informed him incorrectly that his client's motion had been granted].) Appellant's belief that the action was dismissed was therefore justified based on the court clerk's statements, until April 13, 2015 when respondent served him with its witness and exhibit lists pertaining to the April 20, 2015 trial. Once appellant was served with these documents, he failed to act prudently. A reasonable attorney would have contacted the court or opposing counsel or requested a continuance upon receiving these documents, which included the time, date and location of the April 20, 2015 trial.[6] A self-represented party is held to the same standard as any other party, so that any confusion caused

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[6] Appellant argues that the service of witness and exhibit lists seven days before trial cannot constitute sufficient notice of trial under section 594, subdivision (a), which requires 15 days notice. That section provides for *formal* notice to be served 15 days before a trial date. Appellant was provided with formal notice of the trial date at a February 2014 hearing, more than one year before the trial date. We do not find that the witness and exhibit lists constituted appellant's formal notice of the trial date, but that they provided him with practical notice that the case had not been dismissed in its entirety and that the trial was moving forward.

by appellant's lack of legal knowledge does not excuse his failure to act prudently. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 [self-represented parties not entitled to exceptional treatment].)

Because appellant did not demonstrate surprise against which ordinary prudence could not have guarded, the trial court did not err in finding that appellant was not entitled to a new trial or to have the judgment set aside under sections 473, subdivision (b) and 657, subdivision (3).[7]

Appellant argues the court erred in denying his request for a statement of decision on the basis that there had been no trial. Because section 632 only requires that a statement of decision be issued following a trial, the court did not err. (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 [statement of decision not required after hearing on motion].)

Appellant also argues the trial court erred in awarding attorney fees to respondent and that the amount awarded was unreasonable. We disagree.

The determination of the legal basis for an award of attorney fees is a question of law which we review de novo. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 894 (*Blickman*).)

Appellant argues that the fee provision in the parties' loan agreement only applies in actions brought by the lender against the borrower to protect the lender from the borrower's nonperformance. The language of the provision is much broader than appellant suggests. It includes "any action or

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[7] Based on this conclusion, appellant's argument that the trial court failed to consider certain evidence in relation to his postjudgment relief motions is moot.

actions . . . which may be brought . . . for the enforcement of any covenant or right in the Deed of Trust or any other Loan Document . . . ." Alternatively, appellant argues that enforcement of the broad language of the provision will create an unjust and disproportionate obligation on the borrower to pay attorney fees incurred by the lender, even where the borrower is the prevailing party. But Civil Code section 1717, subdivision (a), creates mutuality of remedy where a contract provision purports to allow only one party to recover attorney fees. (*PLCM, supra*, 22 Cal.4th at p. 1091.) Under that section, the fee provision in this case provides for the recovery of attorney fees to whichever party prevails.

We review a trial court's designation of prevailing party and award of attorney fees under Civil Code section 1717 for abuse of discretion. (*Blickman*, *supra*, 162 Cal.App.4th at p. 894.) The reasonableness of the amount of fees awarded is likewise reviewed for abuse of discretion. (*PLCM*, *supra*, 22 Cal.4th at pp. 1095-1096.)

The trial court did not abuse its discretion in finding that respondent was the prevailing party, as it obtained a judgment relieving it of liability on appellant's contract claims. (*Korech v. Hornwood* (1997) 58 Cal.App.4th 1412, 1422 [defendant entitled to attorney fees under Civ. Code, § 1717 where it defeated plaintiff's contract claim].) It also did not abuse its discretion in awarding attorney fees in the amount of $41,200 following its application of the lodestar method and consideration of a number of factors relevant to the reasonableness of the fees requested. (*PLCM*, *supra*, 22 Cal.4th at p. 1096 [finding court did not err in using lodestar method paired with consideration of other relevant factors].)

DISPOSITION

The trial court's judgment and orders are affirmed. Respondent is to recover its costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.