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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SARA BABADJANIAN, Plaintiff and Appellant, v. DEUTSCHE BANK NATIONAL TRUST CO., as Trustee, et al., Defendants and Respondents.	B247017 (Los Angeles County Super. Ct. No. EC052417)

APPEAL from an order of the Superior Court of Los Angeles County. Laura Matz, Judge. Affirmed.

Law Office of Armand Tinkerian and Armand Tinkerian for Plaintiff and Appellant.

Chuck Birkett Tsoong, Stephen S. Chuck, Tiffany M. Birkett and Victoria J. Tsoong for Defendants and Respondents.

In this lawsuit by a property owner challenging a trustee sale following non-judicial foreclosure, plaintiffs' second amended complaint was dismissed after defendants' demurrer was sustained without leave to amend. Following the entry of a judgment of dismissal, plaintiffs filed a timely notice of appeal. However, prior to filing the record on appeal, plaintiffs' counsel abandoned the appeal in writing, which resulted in its dismissal and restored the jurisdiction of the superior court. (Cal. Rules of Court, rule 8.244(b)(1).) Over five months later, plaintiffs' new counsel brought a motion in superior court to vacate their abandonment of the appeal, in order that they might proceed with appellate review of the judgment. The trial court denied the motion, ruling that plaintiffs had failed to provide grounds for relief, either under California Code of Civil Procedure section 473(b) or under the court's inherent equitable powers.[1] We affirm.

FACTS AND PROCEDURAL HISTORY

This case arises out of a trustee sale of property in Burbank previously owned by Sara Babadjanian and Boghos Babadjanian (plaintiffs). On March 5, 2010, plaintiffs commenced this action against Deutsche Bank National Trust Company, as Trustee of the Indy Mac INDX Mortgage Trust 2007-AR17, a corporation; Quality Loan Service Corporation, a corporation; IndyMac Mortgage Services, a division of One West Bank, FSB, a corporation, and Does 1 through 50, inclusive, (defendants) seeking to set aside the trustee sale. On or about April 12, 2010, defendants removed the case to federal court, and nearly a year later on April 1, 2011, the case was remanded to state court. A first amended complaint was filed on May 16, 2011, and after the filing of a demurrer and a motion to strike as to that pleading, a second amended complaint was filed on July 18, 2011. Defendants filed a demurrer and motion to strike as to this latest pleading, which was heard on September 2, 2011.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Following the hearing on defendants' demurrer and motion to strike, the trial court explained in its minute order its reasons for both sustaining the demurrer and for denying leave to amend. It also granted defendants' motion to strike the second amended complaint. On September 20, 2011, the court signed an order reflecting its rulings. On October 5, 2011, it entered a judgment of dismissal of plaintiffs' action, and Notice of Entry of Judgment was filed and served by the clerk on that same date. Plaintiffs filed their timely notice of appeal on October 18, 2011 (*Babadjanian v. Deutsche Bank etc.*, B236867).

However, before the record on appeal was filed in the Court of Appeal plaintiffs' counsel abandoned their appeal in writing. An Abandonment of Appeal was initially filed in the trial court on May 10, 2012, but it erroneously indicated that the date of filing the appeal had been October 26, 2011. Presumably because of this error, a second Abandonment of Appeal was filed on May 22, 2012. Both were signed by plaintiffs' attorney of record, M. Azahar Asadi. In the meantime, since plaintiff had not procured the record on appeal, the Court of Appeal dismissed the appeal pursuant to California Rules of Court, rule 8.140(b) on May 24, 2012. On May 31, 2012, the Court of Appeal, having now been notified by the trial court of plaintiffs' abandonment of the appeal, vacated its order of dismissal which had been entered one week previously.

The abandonment of the appeal in May 2012 had the effect of dismissing it and restoring the superior court's jurisdiction. (Cal. Rules of Court, rule 8.244(b)(1).) On November 16, 2012, plaintiffs (through new counsel) filed a motion to vacate their abandonment of the appeal so they could proceed with their earlier appeal of the judgment. Plaintiffs argued that they were entitled to relief under both section 473(b) and the court's inherent equitable power to set aside judgments because their prior attorney had abandoned the appeal without their knowledge or consent. To support their motion, each plaintiff filed a sworn declaration stating that they had not authorized the attorney to dismiss and/or abandon their appeal.

On January 25, 2013, a hearing was held at which the motion was argued by counsel for both sides. The trial court denied plaintiffs' motion, as reflected in its minute

order of that date. On February 13, 2013, plaintiffs filed their timely notice of appeal of the court's order denying its motion to vacate (*Babadjanian v. Deutsche Bank etc.*, B247017).

The appeal of the denial of the motion to vacate the abandonment of the earlier appeal is presently before this court.

APPEALABILITY AND STANDARD OF REVIEW

1. *Appealability*

As noted above, in this proceeding plaintiffs do not appeal from the judgment entered against them after defendants' demurrer was sustained without leave to amend and their motion to strike was granted. Rather, they appeal from the trial court's order denying their motion to vacate their attorneys' abandonment of their earlier appeal. Where an abandonment of an appeal is filed before the record on appeal has been filed, it operates as dismissal of the appeal, and an affirmance of the judgment. (*Conservatorship of Oliver* (1961) 192 Cal.App.2d 832, 836 (*Oliver*).) Jurisdiction is then restored to the superior court. (Cal. Rules of Court, rule 8.244(b)(1).) To proceed again in the appellate court, the abandoning party must make an application in the superior court to set aside the abandonment. (*Oliver* at p. 832, citing *California Trust Co. v. Garbett* (1941) 46 Cal.App.2d 108.)[2] But the question remains as to whether the order denying the motion to vacate the abandonment is itself appealable.

As a general rule, a plaintiff "may not utilize an appeal from an order refusing to vacate as an indirect means of attacking an appealable order of dismissal." (*Peltier v. McCloud River R.R. Co*. (1995) 34 Cal.App.4th 1809, 1814 (*Peltier*).) However, a party seeking relief from a dismissal under section 473(b) "injects into the case new elements of mistake, inadvertence, surprise, and excusable neglect." (*Peltier* at p. 1814.) In part

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[2] In *California Trust, supra,* 46 Cal.App.2d at pages 108 to 110, the plaintiff mistakenly abandoned his appeal, then sought relief from his mistake pursuant to section 473(b). The trial court denied the motion, and the plaintiff appealed. The Court of Appeal affirmed.

because "the discretion of the trial court in disposing of the motion to vacate will be affected or controlled by facts not before it on the original hearing . . ." the order denying plaintiff's motion for relief under section 473 is appealable. (*Ibid*.)

Similarly, in *Generale Bank Nederland v. Eyes of the Beholder, Ltd.* (1998) 61 Cal.App.4th 1384 (*Generale Bank*), the court explained that " '[w]hile a denial of a motion to set aside a previous judgment is generally not an appealable order, in cases where the law makes express provision for a motion to vacate, such as under [section] 473, an order denying such a motion is regarded as a special order made after a final judgment and is appealable under [section 904.1, subd. (a)(2)].' " (*Generale Bank* at p. 1394.)

Therefore, the denial of plaintiffs' motion to vacate is an appealable order.

2. *Standard of Review*:

" 'Because the law favors disposing of cases on their merits, "any doubts in applying section 473 must be resolved in favor of the party seeking relief from default" . . . .' " (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200.) Nevertheless, a motion to vacate under section 473(b) "is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse . . . the exercise of that discretion will not be disturbed on appeal." (*Ibid*.) The burden of establishing excusable neglect under section 473(b) is upon the party seeking relief, who must prove it by a preponderance of the evidence. (*Iott v. Franklin* (1988) 206 Cal.App.3d 521, 528.) Thus, "if a party shows that a judgment has been taken against him through his mistake, inadvertence, surprise, or excusable neglect the court may grant relief. Or it may not. It has discretion."[3] (*Id.* at p. 528.)

The standard for appellate review is "quite limited." (*Hearn, supra*, 177 Cal.App.4th at p. 1200.) In reviewing the evidence in support of a section 473(b)

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[3] On the other hand, if a party fails to show that a judgment has been taken against him through mistake, inadvertence, surprise or excusable neglect the court has no discretion to grant relief. (*Iott, supra*, 206 Cal.App.3d at p. 528.)

motion, all legitimate and reasonable inferences should be extended to uphold the ruling, and it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.) Indeed, "when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court." (*Ibid*.) Thus, "a ruling on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse." (*Ambrose v. Michelin North America, Inc.* (2005) 134 Cal.App.4th 1350, 1354.)

When a trial court rules on a motion for discretionary relief under section 473(b), its order "is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*Generale Bank, supra*, 61 Cal.App.4th at p. 1398.) Placing the burden of affirmatively demonstrating error on the [plaintiff] is not only a general principle of appellate practice, but also "an ingredient of the constitutional doctrine of reversible error." (*Ibid*.) A similar standard applies to the appellate review of rulings relating to a trial court's exercise of its inherent equitable powers to set aside judgments. (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738 (*Aldrich*).)

It is with the above standard of review in mind that we address plaintiffs' claim of error.

DISCUSSION

Plaintiffs contend that the trial court committed error by denying their motion to vacate under both section 473(b) and under the court's inherent equitable power to set aside judgments.[4] Each of these contentions is addressed below.

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[4] It is not completely clear whether on appeal plaintiffs are pursuing the theory of the court's inherent equitable power. The argument was raised in their moving papers in the trial court, and the court addressed it in its ruling. However, plaintiffs do not expressly raise the issue in either their opening or reply briefs. But given that it was

1. *Mandatory Relief Under Section 473(b):*

While most circumstances involving a motion to vacate pursuant to section 473(b) call upon the trial court to provide discretionary relief in the setting of mistake, inadvertence, surprise, or excusable neglect, a mandatory relief provision was added to the statutory scheme in 1988.[5] (Stats. 1988, ch. 1131, § 1.) The legislature created a "narrow exception" to the discretionary relief provision relating specifically to defaults, default judgments and dismissals that occur even when an attorney's mistake or neglect was *not* excusable.[6] (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257.) To qualify for this limited exception, however, the attorney whose mistake, inadvertence, surprise or neglect is involved must provide a sworn affidavit attesting to it.[7] (§ 473(b).)

It is important to view the mandatory prong of section 473(b) in context. It did not create a "whole new class of mistakes or acts of neglect by the attorney which result in the court having to grant relief." (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682 (*Garcia*).) The legislature did not " 'intend to eliminate attorney malpractice claims by providing an opportunity to correct all professional mistakes an attorney might make in the course of litigating a case.' " (*Ibid*.) After all, the exception was not meant as a " 'perfect escape hatch' to undo dismissals in civil cases." (*Huens v. Tatum* (1997) 52 Cal.App.4th 259, 263, disagreed with on other grounds in *Zamora, supra*, 28 Cal.4th

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raised at the trial court level and that it may be considered implicit in their overall arguments, it will be addressed here.

[5] While initially relating to defaults and default judgments only, the statute was amended in 1992 to apply to dismissals as well. (Stats. 1992, ch. 876, § 4.)

[6] Unlike the original discretionary prong of the statute, in the mandatory prong the word "excusable" does not modify the word "neglect."

[7] This is sometimes referred to in the vernacular as an attorney's "fall on your sword" declaration.

at pp. 256-257.) The 1991 statutory provision, as interpreted by our courts, limited mandatory relief under section 473(b) to circumstances where (1) the application for relief is accompanied by an attorney affidavit attesting to that attorney's neglect; and (2) parties would otherwise lose their day in court due solely to an "inexcusable failure to act on the part of their attorneys." (*Zamora* at p. 257.)

The instant case contains neither of the above elements. Plaintiffs' application for relief is not accompanied by an affidavit from their prior counsel attesting to his neglect in filing the abandonments of appeal.[8] Moreover, plaintiffs do not make a contention, much less a showing, of any failure to act on the part of their prior counsel. Indeed, they contend that their lawyer took action when he should not have.[9]

Indeed, plaintiffs' present attorney recognized at oral argument before the trial court that his support for the mandatory provision was insufficient, stating, "Number one, we're not arguing mandatory relief because we don't have Mr. Assaudi's [sic] declaration. I wish I had, but I don't. . . ."[10]

There was no error by the trial court in denying relief under the mandatory provision of section 473(b).

2. *Discretionary Relief Under Section 473(b)*:

The more traditional form of relief under section 473(b) is discretionary. The legislature first enacted this provision in 1872, and its language has not changed appreciably since then. (*Zamora, supra,* 28 Cal.4th at p. 254.) A party seeking relief

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[8] For purposes of this court's present analysis, it accepts as true plaintiffs allegation that their prior attorney improperly filed the abandonments of appeal without their authorization. However, the court makes no factual findings in that regard.

[9] In part because no affidavit was submitted by prior counsel, and in part because plaintiffs provide no explanation of their own, the record is devoid of any reason as to why the abandonments of appeal were actually filed.

[10] Despite counsel's apparent concession at oral argument, plaintiffs' subsequently raised the issue of mandatory relief under section 473(b) in their appellate briefs.

under this prong of the statute must demonstrate that the mistake, inadvertence, or general neglect was excusable. (*Id.* at p. 258.) To make that determination, the trial court " 'inquires whether "a reasonably prudent *person* under the same or similar circumstances might have made the same error." ' " (*Ibid.*, emphasis in original.) The court also considers whether the party seeking relief has been diligent, and whether there has been prejudice to the opposing party. (*Ibid.*)

Conduct that amounts to substandard legal services or legal malpractice will not qualify as "excusable" because "the negligence of the attorney . . . is imputed to his client and may not be offered by the latter as a basis for relief." (*Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 898 (*Carroll*).) "To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Garcia, supra*, 58 Cal.App.4th at p. 682.)

In the instant case, plaintiffs themselves contend that their former attorney filed a written abandonment of their appeal without authorization. They describe this not as an omission to act, but as a commission amounting to gross negligence. Therefore, by plaintiffs' own description, their prior attorneys' neglect cannot be considered "excusable." Yet "inexcusable" neglect prevents relief under the statute. (*Carroll, supra*, 32 Cal.3d at p. 895.) Thus, if one accepts plaintiffs' own facts and argument, no discretionary relief is available.

There was no error by the trial court in denying relief under the discretionary provision of section 437(b).

3. *Relief Under the Inherent Equitable Power of the Court*:

In light of the somewhat unusual factual allegations by plaintiffs regarding how their appeal was abandoned and the judgment of dismissal was allowed to stand, this court addresses whether, under its inherent equitable powers, the trial court should have granted relief despite an inadequate showing by plaintiffs under section 473(b). Courts have found an exception to the general rules that apply to section 473(b) in those instances " 'where the attorney's neglect is of that extreme degree amounting to *positive*

misconduct, and the person seeking relief is relatively free from negligence.' " (*Carroll, supra*, 32 Cal.3d at p. 898, emphasis in original.) Given the strong policy in the law favoring hearings on the merits where possible, even where section 473(b) does not apply courts have exercised their inherent equitable powers to grant relief, especially in cases where there has been extrinsic fraud or mistake. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-855.) The terms fraud and mistake, in this context, have been given broad meaning by the courts, and "tend to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing." (*Aldrich, supra*, 170 Cal.App.3d at p. 738.) They have been found to occur where an attorney's misconduct is so extreme that it "obliterates the existence of the attorney-client relationship." (*Id*. at pp. 738-739.) When that happens, the usual imputation of an attorney's neglect to the client "ceases at the point where 'abandonment of the client appears.' " (*Seacall Development, Ltd. v. Santa Monica Rent Control Board* (1999) 73 Cal.App.4th 201, 205.)

If an attorney did abandon an appeal contrary to his or her client's wishes and did not notify them, thereby denying them their right to challenge a lower court's judgment, this certainly could be considered conduct that "obliterates the attorney-client relationship." In turn, this might warrant consideration of the exercise of a court's inherent equitable powers to grant relief. After all, a judgment obtained under circumstances which prevent a party from having a reasonable opportunity to litigate his claim "is not entitled to the usual conclusive effect." (*Aldrich, supra*, 170 Cal.App.3d at p. 737.) The issue arises as to whether, due to counsel's positive misconduct, plaintiffs were "effectually and unknowingly deprived of representation." (*Carroll, supra*, 32 Cal.3d at pp. 898-899, *citing Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 391; *Orange Empire National Bank v. Kirk* (1968) 259 Cal.App.2d 347; and *Buckert v. Briggs* (1971) 15 Cal.App.3d 296.)

However, in *Carroll* our Supreme Court made clear that the exception to the general rule reflected by the so-called *Daley* line of cases should be narrowly applied. (*Carroll, supra*, 32 Cal.3d at p. 900.) "The policy that the law favors trying all cases and controversies upon their merits should not be prostituted to permit the slovenly practice

of law or to relieve courts of the duty of scrutinizing carefully the affidavits or declarations filed in support of motions for relief to ascertain whether they set forth, with adequate particularity, grounds for relief." (*Ibid*.) The court went on to state that, "[w]hen inexcusable neglect is condoned even tacitly by the courts, they themselves unwittingly become instruments undermining the orderly process of the law."[11] (*Ibid*.)

But even if one were to assume, *arguendo*, that plaintiffs' prior counsel did file the abandonment of appeal without his clients' authorization and without notifying them, and that this was tantamount to abandonment of the clients; which denied the plaintiffs a reasonable opportunity to proceed with their appeal and fully litigate their claim; thereby triggering a consideration of the court's exercise of its inherent equitable powers; this would be the beginning – not the end – of the inquiry. "What constitutes 'abandonment' of the client depends on the facts in the particular action. Even where abandonment is shown, the courts also consider equitable factors in deciding whether [a] dismissal should be set aside." (*Seacall, supra*, 73 Cal.App.4th at p. 205.) These factors include an assessment of the clients' own diligence in following up and pursuing the case; whether it would be prejudicial to the other party for the case to be re-opened (*Aldrich, supra*, 170 Cal.App.3d at pp. 739-740); and even the merits of the underlying case.[12] (*Stiles v.*

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[11] The *Carroll* court clearly recognized, and attempted to solve, the apparent paradox where neglect may be inexcusable and therefore deny a party relief under section 473(b), but at the same time be *so* inexcusable that it provides a party relief under the court's inherent equitable powers. (*Carroll, supra*, 32 Cal.3d at p. 894.) One way to solve the apparent paradox was to apply the so-called *Daley* exception narrowly, "lest negligent attorneys find that the simplest way to gain the twin goals of rescuing clients from defaults and themselves from malpractice liability, is to rise to ever greater heights of incompetence and professional irresponsibility. . . ." (*Id.* at p. 900.)

[12] Here, of course, the trial court has already expressed its view on the merits of the underlying case by sustaining the demurrer without leave to amend and granting defendants' motion to strike the second amended complaint. This appeal from a post-judgment order does not fully present the merits of the underlying claim. But even where this and other grounds for equitable relief are present, the absence of diligence once the extrinsic fraud or mistake are discovered is sufficient by itself to defeat a request that a

Wallis (1983) 147 Cal.App.3d 1143, 1147-1148.) A court must also "balance the public policy favoring a trial on the merits against the public policies favoring finality of judgments and disfavoring unreasonable delays in litigation [citation] and the policy an innocent client should not have to suffer from its attorney's gross negligence against the policy a grossly negligent incompetent attorney should not be relieved from the consequences of his or her incompetence." (*Seacall* at p. 205).

Thus, a court narrowly applies the *Carroll* exception to the imputed-negligence rule by requiring a total failure on the part of counsel to represent the client, coupled with due diligence on the part of the client, lack of prejudice to the defendant, and a careful weighing of the aforementioned public policies. (*Seacall, supra,* 73 Cal.App.4th at p. 208.) In determining whether the clients themselves have shown diligence, the trial court must carefully scrutinize the affidavits or declarations filed in support of the motion for relief. (*Carroll, supra,* 32 Cal.3d at p. 900.) One key area of inquiry relates to whether the clients were diligent in seeking relief once the alleged mistake was discovered. (*Aldrich, supra,* 170 Cal.App.3d at p. 738.) A party must act diligently in moving for relief "after discovering the attorney's neglect." (*Id.* at p. 739.) The client's actions after being put on notice of the attorney's misconduct are more significant than those occurring beforehand. (*Seacall* at p. 206.) For example, in *Aldrich* the plaintiff examined the court file in his case on March 16, 1984, and learned that it had been dismissed. Prior to that time he had never been informed, nor did he have any reason to believe, that any action had been taken to dismiss his complaint. Twenty-one days later on April 6, 1984, with a new attorney, he filed his motion to vacate the order of dismissal. (*Aldrich* at pp. 732, 740.) In *Seacall,* despite a long delay in learning of the dismissal, once it was discovered on January 22, 1998, plaintiff filed its motion for relief within just a few weeks, on February 10, 1998. (*Seacall* at pp. 206-207.) While every case is different, a party moving for equitable relief must present evidence to the court that once discovering facts that support the motion, he or she acted diligently.

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court exercise its inherent, equitable powers. (*Lee v. An* (2008) 168 Cal.App.4th 558, 566.)

Plaintiffs state in their declarations that they did not authorize their former lawyer to dismiss and/or abandon their appeal. But they fail to provide any information whatsoever as to how or when they learned that the appeal had been dismissed or abandoned. Nor do they provide any specifics as to what they did upon discovering the abandonment, or when they did it. Simply put, they provide no facts upon which the trial court could have determined whether they had exercised diligence after learning of their attorney's alleged misconduct.[13]

As with a motion to vacate under section 473(b), a ruling on whether inherent equitable powers should be exercised is addressed to the sound discretion of the trial court. (*Aldrich*, *supra*, 170 Cal.App.3d at p. 738.) Here, the trial court was presented with the moving and opposing papers, heard oral argument, and issued a ruling via its minute order which reflects its finding that there was no showing of mistake, inadvertence, surprise or excusable neglect sufficient to grant relief under section 473(b). The ruling also sets forth the reasons that the court declined to exercise its inherent equitable power to grant relief. It refers to defendants' demonstration that they would suffer prejudice if the motion was granted, and it opines that plaintiffs did not show their appeal had merit or that they were diligent in pursuing relief. On the record before it, the trial court could have reasonably concluded that plaintiffs failed to exercise reasonable diligence under the circumstances.

The trial court did not abuse its discretion in denying plaintiffs' motion to vacate the abandonment of their appeal.

CONCLUSION

Our jurisprudence recognizes a strong public policy in favor of resolving disputes on their merits, and not on procedural mishaps. And although as a general proposition a

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[13] In addition, plaintiff Boghos Babadjanian filed a declaration in support of the motion to vacate claiming that he attempted to communicate with his former attorney starting in July 2012, but the attorney did not respond to his inquiries. However, defendants' attorney submitted a declaration stating that the former attorney responded promptly to her inquiry about the case.

lawyer's conduct must be imputed to his or her client in order for the system to function effectively, justice requires that in certain extreme situations a party should not lose his or her ability to prosecute or defend a case as a result of egregious attorney malfeasance. But it is not enough for a client to simply allege such malfeasance. By a preponderance of evidence, the client must show that it occurred. In addition, he or she must demonstrate a diligent response upon learning of the misconduct, coupled with an absence of prejudice to other parties.

The mandatory prong of section 473(b) is a reflection of our legislature's judgment that there may be exceptions to the general rule that an attorney's neglect is imputed to his or her client -- for example, where the attorney falls on his sword and attests to it. But the legislature did not go so far as to hand a sword to the client with which to impale his attorney and, in the process, his adversary. If mere allegations that one's lawyer was at fault were sufficient to vacate dismissals, reverse defaults, and re-open litigation, the concept of finality of judgments would be severely weakened and the orderly process of litigation undermined.

DISPOSITION

The post-judgment order of the trial court is affirmed. Each side to bear its own costs on appeal.

KUSSMAN, J.*

WE CONCUR:

RUBIN, ACT. P. J.

FLIER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.