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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

PEDRO LEMUS, Plaintiff and Appellant, v. NEW WEST HARDWOOD FLOORS, INC., Defendant and Respondent.	B268408 (Los Angeles County Super. Ct. No. BC543945)

APPEAL from an order of the Superior Court of Los Angeles County. David L. Minning, Judge. Reversed and remanded with directions.

Abrolat Law, Nancy L. Abrolat and Shahane A. Martirosyan for Plaintiff and Appellant.

Law Offices of Edward C. Tu and Edward C. Tu for Defendant and Respondent.

Appellant Pedro Lemus appeals from the trial court's September 21, 2015 order dismissing his complaint as against corporate defendant New West Hardwood Floors, Inc. (New West). Lemus argues the trial court erred in refusing to enter a default judgment against New West when New West was already in default, a jury had returned a verdict in favor of Lemus in his case against individual defendant Victor Sallas, and New West was the mere continuation of Sallas's business. We agree and, therefore, reverse the order of dismissal and remand to the trial court to conduct a default prove-up hearing.

BACKGROUND

Lemus used to work for Sallas, who was doing business as New West Hardwood Floors, installing and refinishing hardwood floors. Sallas began his hardwood floor business in 1995. It is undisputed that, when Lemus worked for Sallas and his company, New West Hardwood Floors was not incorporated. In June or July 2013, Sallas terminated Lemus from his job. Sallas incorporated New West in either October or November 2013. Sallas explained he is the sole owner, president, manager, and operator of New West, which he incorporated in order "to organize the company better."

In April 2014, Lemus filed the underlying action against Sallas and New West, alleging eight employment-related causes of action. Lemus alleged Sallas and New West were indistinguishable. Acting in propria persona, Sallas attempted to file an answer on behalf of himself and New West. At a hearing held in July 2014, the trial court explained the answer with respect to New West was stricken because the corporate defendant required legal representation.

By December 2014, New West had not hired an attorney, and Lemus moved for default. On December 26, 2014, the clerk entered default against New West.

By January 2015, New West had hired legal counsel and moved to set aside the default entered against it. At the hearing on the motion to set aside default, it came to light that New West did not exist in its corporate form when Lemus worked for Sallas. New West argued it could not be held liable for events occurring before its existence. Lemus argued New West should be held liable because it was simply a continuation of Sallas's previous business. The trial court denied the motion to set aside default, but ordered further briefing on the issue of New West's status. A few weeks later, the trial court held a further hearing on the matter. The trial court again denied New West's motion to set aside default. Although it was undisputed New West did not exist at the time Lemus worked for Sallas, the court held New West could be held liable for Lemus's alleged damages, stating Sallas "basically transitioned into another company. He's calling it another thing. It's a continuation of his business."

After the trial court denied New West's motion to set aside default, Lemus's case was transferred from Judge Susan Bryant-Deason to Judge David L. Minning (the second trial court). The case went to trial against Sallas. The jury returned a verdict in Lemus's favor on four claims and awarded damages.

Following the jury's verdict, the second trial court addressed the status of New West, noting that Lemus was never employed by New West. Counsel for Lemus explained that, prior to trial, default had been entered against New West and, as a result, counsel did not present evidence at trial as to New West's status or liability to Lemus. The second trial court continued the

"default hearing" and ordered the parties to submit additional briefing on the status of New West. Sallas submitted a one-and-a-half-page brief on behalf of New West, in which Sallas argued without citation to authority that New West could not be liable to Lemus. Sallas stated New West never employed Lemus and there was no evidence at trial that New West and Sallas were alter egos or that Sallas hid behind the corporate veil. Sallas also argued that, in any event, the jury had already found Sallas liable. In his brief, Lemus objected to New West participating in the briefing because New West was in default. Lemus also argued the trial court should not reopen the issue of New West's liability to Lemus because the previous trial court judge had already found New West was liable to Lemus.[1] Counsel for Lemus also filed a default "prove-up" declaration to support a default judgment against New West.

At the continued hearing, counsel for Lemus explained again that the previous trial court judge had already determined New West was liable to Lemus based on various liability theories. Nonetheless, the second trial court ruled, "I don't think you can make your case on a default. I don't think that [Lemus] had an employment relationship with New West Hardware [*sic*] Floors Inc. because New West Hardware [*sic*] Floors Inc. did not exist at

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[1] Lemus misstated that the trial court previously had entered default judgment against New West. Although the clerk had entered default and Judge Bryant-Deason had denied New West's motion to set aside the default, no default judgment had been entered. Entry of default judgment remained outstanding at the conclusion of trial.

the time that your client left employment." The second trial court denied Lemus's request to enter default judgment.[2]

Four months later, at a hearing on Sallas's motion to tax costs, the second trial court again took up the issue of the status of New West and, in particular, the disposition of the case with respect to New West. The parties, including New West, which was in default, again briefed the issue. In light of the second trial court's conclusion that New West could not be liable to Lemus, Lemus urged the court to enter a default judgment of "$0.00" against New West. Lemus also objected to New West submitting a brief because New West was in default. New West argued, on the other hand, that the second trial court should sua sponte dismiss New West from the action with or without prejudice. At the hearing, the second trial court again stated Lemus "could not collect against the corporation [New West] that didn't exist."

On September 21, 2015, the court dismissed New West with prejudice and Lemus appealed.[3]

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[2] Although the second trial court also stated it was denying a "request for entry of default," that appears to have been a misstatement and the court immediately corrected itself by saying, "Default judgment is denied." The clerk had entered default against New West months earlier, New West had not moved to reconsider either the entry of default or denial of its motion to set aside default, and the second trial court did not indicate it was reconsidering the issue. The only issue before the court was entry of default judgment, and the notice of ruling filed after the hearing stated, "Plaintiff's request for entry of default *judgment* against Defendant [New West] is denied." (Italics added.)

[3] Although at times the second trial court and the parties state New West was dismissed without prejudice, the

DISCUSSION

As noted above, the trial court declined to enter a default judgment against New West because New West did not exist when Lemus worked for Sallas and his unincorporated business. Instead, the trial court dismissed New West from the action. Plaintiff argues the court erred in refusing to enter a default judgment against New West because, despite the fact Lemus did not work for New West, the corporate defendant was nonetheless liable to Lemus on a variety of corporate liability theories. We agree with Lemus and conclude New West is liable to Lemus under the doctrine of successor liability.

1. Applicable Law

Although in a somewhat unusual procedural posture, this appeal presents a pure question of law; namely, can New West be held liable to Lemus despite the fact New West did not exist at the time of Lemus's employment? Because the September 21, 2015 order of dismissal was based on the trial court's application of law to undisputed facts, we conduct a de novo review.[4] (*Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929, 946–947; *Le v. Pham* (2010) 180 Cal.App.4th 1201, 1206.)

September 21, 2015 order states New West was dismissed with prejudice.

[4] Lemus states we must review both the second trial court's decision to reverse the initial trial court's order denying New West's motion for relief from default (to which Lemus states we would apply a de novo standard of review) as well as the initial trial court's ruling denying relief from default (to which Lemus states we would apply the abuse of discretion standard). These arguments are not relevant, however, because we are reviewing the trial court's order of dismissal on undisputed facts.

The doctrine of successor liability holds a corporation responsible for the liabilities of a business the corporation purchases or assumes when, as relevant here, the successor corporation is merely a continuation of that business. (*Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1327–1328; *Wolf Metals Inc. v. Rand Pacific Sales Inc.* (2016) 4 Cal.App.5th 698, 704–705.) Although as Lemus correctly states, the doctrine of "[s]uccessor liability is almost always couched in terms of liability flowing from one corporation to another corporation," successor liability also applies to a corporation that succeeds to the assets of an unincorporated business. (*Cleveland*, at pp. 1326, 1328.)

2. New West is liable to Lemus under the doctrine of successor liability.

Here, as Lemus correctly argues and as found by the first trial court judge to consider the matter, New West is liable to Lemus under the doctrine of successor liability. It is undisputed Sallas incorporated his business and formed New West after he terminated Lemus's employment. However, it is also undisputed Sallas incorporated his business, which he had been running since 1995, simply in order "to organize the company better." Sallas is also the sole owner, president, manager, and operator of New West. On these undisputed facts, it is clear New West is the mere continuation of Sallas's previously unincorporated business. It is the same business. This is precisely what the first trial court judge to consider the matter held: Sallas "basically transitioned into another company. He's calling it another thing. It's a continuation of his business." Thus, New West cannot escape liability to Lemus. (See *Cleveland*, *supra*, 209 Cal.App.4th at pp. 1327–1328.)

New West's arguments in support of dismissal are unavailing. Other than the statutes on default judgments (Code Civ. Proc., § 585) and dismissals (*id.*, § 581) generally, New West cites no legal authority to support its position. Moreover, it fails in its attempt to distinguish the successor liability cases on which Lemus relies. Finally, although New West states the jury already found Sallas liable, we see no reason why that should preclude a finding that New West also is liable. Contrary to New West's unsupported speculation, there is no evidence in the record before us that a judgment against Sallas is "much more beneficial" than a judgment against New West or that New West is "a shell corporation of limited liability and little assets."

Because we conclude New West is liable to Lemus under the successor liability doctrine and, therefore, the trial court erred as a matter of law in refusing to enter default judgment against New West, we need not and do not address Lemus's remaining arguments on appeal.

DISPOSITION

The September 21, 2015 order is reversed to the extent it dismissed the complaint against New West Hardwood Floors, Inc. The matter is remanded with directions to the trial court to conduct a default judgment prove-up hearing in which it will hear Pedro Lemus's evidence, and if it determines Lemus has established a prima facie case for his damages, it will then enter a default judgment for Lemus. Lemus is awarded his costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.