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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

EDIK GHADIMIAN,

Plaintiff and Appellant,

v.

GEICO CASUALTY COMPANY,

Defendant and Respondent.

B281262

(Los Angeles County  
Super. Ct. No. BC601645)

APPEAL from orders and judgment of the Superior Court of Los Angeles County. Barbara Ann Meiers, Judge. Affirmed.

Edik Ghadimian, in pro. per.; Scott Law Firm and Diallo K. Scott for Plaintiff and Appellant.

Freeman Mathis & Gary, Timothy W. Kenna, Rebecca J. Smith, Matthew Steven Jones, and Kristin Ingulsrud for Defendant and Respondent.

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Plaintiff and appellant Edik Ghadimian challenges the trial court's (1) July 20, 2016, order granting defendant and respondent Geico Casualty Company's (Geico) motion for relief from default, (2) January 3, 2017, order granting three of Geico's discovery motions and imposing discovery sanctions against plaintiff, and (3) January 11, 2017, order granting Geico's motion for summary judgment and January 31, 2017, judgment entered thereon.

We affirm the judgment and all orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *Factual Background*

Geico issued an insurance policy to plaintiff that provided for comprehensive coverage for damage to plaintiff's vehicle, including damage caused by fire. The policy excludes coverage for loss caused by wear and tear.

Plaintiff presented a claim to Geico for damage to his insured vehicle, which he asserted arose as a result of a fire. Geico then commenced its investigation into plaintiff's claim. Edward Moreno of Geico performed a field inspection of plaintiff's vehicle and determined that the only damage to the vehicle was caused by normal wear and tear. Thus, Geico denied the claim.

#### *Procedural Background*

##### Complaint; Geico's Default; Geico's Motion to Set Aside the Default

On November 19, 2015, plaintiff filed a complaint against Geico, asserting claims for breach of contract and breach of the implied covenant of good faith and fair dealing. He sought a variety of economic damages as well as damages for "emotional distress."

On December 18, 2015, Geico timely filed and served its notice of removal in federal court. Geico failed to file a copy of the notice of removal in state court at the time the initial notice of removal was filed in federal court. Removal was entered on December 18, 2015. Geico then filed and served its answer in federal court on December 30, 2015.

On January 15, 2016, while the matter was pending in the federal court and before plaintiff had filed a motion for remand, plaintiff filed a request for entry of Geico's default in state court. Geico's default was entered that date. Thereafter, on January 18, 2016, plaintiff filed a motion to remand in federal court. That motion was granted on February 11, 2016, with the matter being transferred back to state court on that date.

Geico did not become aware of the default that had been filed and entered in state court until April 29, 2016, when plaintiff's counsel served Geico's counsel with a statement of damages. Thereafter, Geico filed a motion to set aside its default in state court. It argued that the state court lacked jurisdiction to enter its default while the matter was pending in federal court. Even though it neglected to file the notice of removal in state court, that error was waived by plaintiff's failure to object and did not affect the federal court's jurisdiction to accept Geico's answer to plaintiff's complaint.

Alternatively, it sought relief pursuant to Code of Civil Procedure section 473, subdivision (b). In support, Geico offered a declaration from its attorney, John J. Moura (Moura), in which he stated: "Although I gave internal instructions to file a copy of the Notice of Removal with the Los Angeles Superior Court, this was not done, and I did not follow up to be sure that it was done. I did not realize that the Notice of Removal had inadvertently not

been filed with the State Court and accordingly took no steps to correct the error.”

Geico’s motion was initially heard on June 22, 2016. At that time, the trial court indicated that its “tentative [was] to grant the motion to set aside the default, but only if [Geico took] care of the costs incurred by the other side.” Counsel was instructed to meet and confer in the jury room to see if they could agree on the amount of fees and costs due; when they later reported that they were unable to agree, the trial court continued the matter to July 20, 2016, to allow plaintiff to file a “supplement seeking fees and costs as a condition to relief from default.”

At the onset of the continued hearing, the trial court indicated that its “tentative [was] to award [\$]5,309” to plaintiff and against Geico. Geico then argued that no fees should be awarded because plaintiff “fraud[ulently]” obtained the default in state court after Geico had filed an answer in federal court. Plaintiff responded that he properly filed a request for Geico’s default because Geico had not properly noticed the remand.

Ultimately, the trial court granted Geico’s motion, without awarding any attorney fees or costs to plaintiff.

#### Discovery

Once the issue of Geico’s default was resolved, Geico engaged in discovery with plaintiff. Dissatisfied with plaintiff’s responses to its discovery requests, Geico sent a meet and confer letter to plaintiff outlining the need for further responses. When it still did not receive satisfactory responses, Geico filed four motions to compel further responses. Plaintiff opposed those

motions.<sup>1</sup> The trial court granted three of those motions and awarded monetary sanctions to Geico.

Geico's Motion for Summary Judgment

On October 28, 2016, Geico filed a motion for summary judgment. It argued that plaintiff's breach of contract claim failed because it was excluded under the terms of the policy. While the insurance policy covers losses caused by fire, there are exclusions to that coverage. In particular, the policy excludes coverage for losses caused by wear and tear. According to Geico's expert, there was no fire damage to plaintiff's vehicle; rather, the failure to start was caused by normal wear and tear. As such, plaintiff has no viable breach of contract claim against Geico. Moreover, plaintiff's bad faith claim failed because there was a genuine dispute regarding coverage of the claim.

Plaintiff opposed the motion.

After entertaining oral argument, the trial court granted Geico's motion, finding that "the insurance policy in issue says on its face that the policy does not cover damages to the car resulting from mechanical defects or electrical problems, etc. Plaintiff has not set forth any facts whatsoever that prove or even suggest that some outside source caused any sort of fire."

Appeal

Plaintiff's timely appeal ensued.

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<sup>1</sup> We hereby grant plaintiff's motion to augment the record on appeal.

## DISCUSSION

### I. *Motion for Relief from Default*

#### A. Applicable law

“Failure to file a copy of the removal petition with the state court clerk is a procedural defect, and does not defeat the federal court’s jurisdiction.” (*Dukes v. South Carolina Insurance Co.* (5th Cir. 1985) 770 F.2d 545, 547.) Stated otherwise, defects in removal procedures do not oust the federal court of jurisdiction. (See, e.g., *Fristoe v. Reynolds Metals Co.* (9th Cir. 1980) 615 F.2d 1209, 1212–1213 [statutory time limit for removal petitions is merely a formal requirement and not jurisdictional; although a timely objection will defeat removal, a party may waive the defect by failing to object].)

A response to a complaint, timely filed in federal court following removal of the case from state court and prior to remand, constitutes a responsive pleading to the state court complaint and precludes entry of default against a defendant. (*Laguna Village, Inc. v. Laborers’ Internat. Union of North America* (1983) 35 Cal.3d 174, 176.)

The trial court has discretion to vacate the entry of a default after the party seeking relief has shown that there is a proper ground for relief. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.)

#### B. Analysis

Here, the trial court acted well within its discretion in granting Geico’s motion for relief from default. Geico filed its notice of removal in federal court on December 18, 2015. Plaintiff did not object to the removal on the grounds that Geico’s notice was not filed in state court, thereby waiving any such objection. Making matters worse, plaintiff knew that Geico was actively

defending the lawsuit—it timely filed an answer to plaintiff’s complaint in federal court after the action was removed. Under these circumstances, plaintiff never should have sought entry of Geico’s default. It follows that the trial court rightly granted Geico’s motion for relief from default.

In urging reversal, plaintiff relies almost entirely upon Code of Civil Procedure section 473 and whether Geico and its attorney satisfied those statutory requirements. The problem for plaintiff is that Geico did not seek relief solely pursuant to Code of Civil Procedure section 473, and the trial court did not restrict its order to that statute. Thus, regardless of whether Geico was entitled to mandatory statutory relief, plaintiff has not shown why the trial court’s primary basis for granting Geico relief from default was erroneous.

Relying upon the mandatory language set forth in Code of Civil Procedure section 473, subdivision (b), plaintiff further argues that the trial court erred in failing to award costs to him. (Code Civ. Proc., § 473, subd. (b) [“The court shall, whenever relief is granted based on an attorney’s affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties”].) Again, the problem for plaintiff is that the trial court did not grant Geico relief pursuant to Code of Civil Procedure section 473, subdivision (b). Rather, as the appellate record reflects, the trial court granted Geico relief on the grounds that plaintiff knew Geico was litigating the matter given the fact that it filed an answer in federal court; he never should have asked the state court to enter Geico’s default in the first place.

Admittedly, the trial court indicated at the original hearing on June 22, 2016, that it intended to award plaintiff attorney fees

and costs. But, as the trial court explained at the continued hearing on July 20, 2016, the trial court was revisiting the question of whether plaintiff was entitled to attorney fees and costs because he “knew [that the parties] were litigating this actively. [Plaintiff] knew that [Geico was] not disinterested, that [it was] not failing to be responsive.”

## II. *Discovery Sanctions*

Plaintiff argues that the discovery sanctions imposed were inappropriate and excessive. We review the trial court’s order for abuse of discretion. (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1435.)

Plaintiff seeks reversal on the grounds that Geico did not engage in reasonable meet and confer efforts, as required by the statutes governing discovery. The trial court found otherwise, and that finding is amply supported by the appellate record. On September 9, 2016, Geico sent plaintiff an extensive meet and confer letter, detailing the inadequacies of plaintiff’s discovery responses. In response, plaintiff requested an extension of time to provide supplemental responses; Geico gave plaintiff additional time to provide further responses. Only after Geico received those supplemental responses, which it deemed inadequate, did it seek assistance from the trial court. Under these circumstances, we conclude that the trial court acted within its discretion in finding that Geico satisfied the statutory meet and confer requirement.

To the extent plaintiff argues that Geico improperly requested certain medical records, we are not convinced. In his complaint, plaintiff specifically sought damages from Geico for “emotional distress.” It follows that Geico could rightly make



discovery requests related to this claim for damages. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842.)

Finally, we note that plaintiff appears to take issue with the fact that monetary sanctions awarded to Geico in connection with its three successful discovery motions but none was awarded to plaintiff in connection with his successful opposition to one of Geico's discovery motions. Because plaintiff failed to provide legal authority or "reasoned argument" in support of this argument, we treat it as waived. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

### III. *Motion for Summary Judgment*

#### A. Standard of review

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

""While insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." [Citations.]" (*Westoil Terminals Co., Inc. v. Industrial Indemnity Co.* (2003) 110 Cal.App.4th 139, 145 (*Westoil*).)

"Although insuring clauses normally are interpreted broadly [citation] and exclusions are strictly construed [citation], 'where an exclusion is clear and unambiguous, it is given its literal effect.' [Citation.]" (*Westoil, supra*, 110 Cal.App.4th at p. 146.) We interpret an exclusionary clause in an insurance policy de novo. (*Marquez Knolls Property Owners Assn., Inc. v. Executive Risk Indemnity, Inc.* (2007) 153 Cal.App.4th 228, 233.)

### B. Analysis

The trial court properly granted Geico's motion for summary judgment. First, there is no triable issue of material fact regarding plaintiff's breach of contract claim. The insurance policy at issue plainly excludes coverage for normal wear and tear. Moreno conducted a field inspection of plaintiff's vehicle and determined that the vehicle's problem was due to normal wear and tear. Thus, Geico properly denied coverage, and there was no breach of the insurance policy.

In urging reversal, plaintiff argues that Moreno was not qualified to give an expert opinion. Regardless of Moreno's qualifications, Geico offered testimony from three other experts, who all concluded that the damages to plaintiff's vehicle were the result of normal wear and tear. Plaintiff's argument notwithstanding, we do not see any contradiction among the experts' testimonies.

Finally, plaintiff contends that he "provided three different opinions by three different establishments all of whom . . . determined that the cause of engine failure was due to the fire. Chris Nadzharyan of Master Works Auto Body; Keys' Toyota of Van Nuys, and Four R Machine Auto Shop, all certified auto mechanics came up with the same conclusions." But, as pointed out by Geico, not one of these "experts" stated that the fire came from an outside source, as opposed to normal wear and tear.

Second, there is no triable issue of fact regarding plaintiff's bad faith claim. "It is now settled law in California that an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's

coverage claim is not liable in bad faith even though it might be liable for breach of contract.” (*Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 335, 347.) “An insurance company may not ignore evidence which supports coverage. If it does so, it acts unreasonably towards its insured and breaches the covenant of good faith and fair dealing.” (*Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1624.) However, an insurer “is entitled to be an advocate for its own interests.” (*Morris v. Paul Revere Life Ins. Co.* (2003) 109 Cal.App.4th 966, 976.)

“Under California law, a bad faith claim can be dismissed on summary judgment if the defendant can show that there was a genuine dispute as to coverage.” (*Guebara v. Allstate Ins. Co.* (9th Cir. 2001) 237 F.3d 987, 992.)

As set forth above, there was a genuine dispute as to coverage of plaintiff’s claim. Geico’s experts all opined that the damage was caused by normal wear and tear, thereby giving rise to an exclusion to coverage under the policy. Geico was entitled to rely upon its experts in determining whether it was obligated to plaintiff under the policy.

**DISPOSITION**

The trial court's orders and judgment are affirmed. Geico shall recover its costs on appeal.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
CHAVEZ