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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JOSE GUZMAN

Plaintiff and Appellant,

v.

EVANS AUTO CARE, INC., et al.,

Defendants and Respondents.

B263378

(Los Angeles County  
Super. Ct. No. BC467035)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Elizabeth R. Feffer, Judge. Reversed.

Reyes & Barsoum, Jorge H. Reyes and Christopher J. DeClue, for Plaintiff and  
Appellant.

No appearance for Defendants and Respondents.

Plaintiff and appellant Jose Guzman (plaintiff) sued his former employers, Evans Auto Care, Inc., Evans Auto Care Center, and Javier Barajas (defendants), after they terminated him following a workplace injury. Plaintiff obtained default judgments against defendants, but the trial court vacated them two years later and granted plaintiff leave to file an amended complaint. After plaintiff filed his amended complaint 25 days late, the court struck it on defendants' motion and dismissed plaintiff's case sua sponte. We consider whether there is a proper legal basis for the dismissal.

## I. BACKGROUND

This case turns on procedural issues, and our recitation of the relevant background accordingly focuses on the case's procedural history.

In the summer of 2009, plaintiff lost parts of his left hand while fixing a lawnmower blade during his employment with defendants. Soon after he informed defendants of his injuries and sought medical treatment, defendants terminated his employment.

Plaintiff sued defendants in 2011 for wrongful termination, violation of Labor Code section 132a (discrimination against injured workers), breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, and negligent infliction of emotional distress. He obtained default judgments against defendants in 2012.

Two years later, defendants moved to set aside the defaults and submitted a proposed answer to plaintiff's complaint. At a hearing on July 22, 2014, the trial court granted defendants' motion, deemed their proposed answer filed, and granted plaintiff leave to amend his complaint, specifying in a minute order that "[a]ny amended complaint shall be filed within 20 days."

After the hearing, plaintiff's counsel spoke with defendants' counsel about extending the time for plaintiff to file an amended complaint. According to plaintiff's counsel, defense counsel said he was amenable to an extension. However, when plaintiff's counsel attempted to confirm an extension through phone calls and letters over

the next two to three weeks, defendants' counsel never responded. After the deadline to amend passed, plaintiff's counsel received a notice of substitution of attorney indicating defendants were now representing themselves. Plaintiff thereafter filed a first amended complaint on September 5, 2014, 25 days after the deadline.<sup>1</sup> Four days later, defendants filed another substitution of attorney notice indicating they had retained new counsel.

With new counsel, defendants moved to strike plaintiff's amended complaint for being filed untimely. Defendants did not demur to either the original or the amended complaint, nor did they request dismissal of plaintiff's case. After defendants filed their motion to strike, the case was reassigned to a different judge. Plaintiff submitted no written opposition to defendant's motion to strike, and the court issued a tentative ruling in defendants' favor.

The court heard argument on defendants' motion to strike on February 10, 2015.<sup>2</sup> After the hearing, the court stated in a minute order that it "adopt[ed] its tentative ruling as its final ruling as follows: [¶] The unopposed motion is granted. The motion is made on the grounds that the plaintiff failed to comply with the court's July 22, 2014 order, that any amended complaint was to be filed within twenty days. The deadline for plaintiff to file a first amended complaint was August 11, 2014. Plaintiff did not file his first amended complaint until September 5, 2014. Therefore, the pleading was not drawn or filed in conformity with the order of the court, pursuant to Code of Civil Procedure

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<sup>1</sup> As compared to the original complaint, plaintiff's amended complaint altered several allegations, added causes of action under the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.), and omitted previously alleged causes of action for discrimination in violation of Labor Code section 132a, breach of the implied covenant of good faith and fair dealing, and negligent infliction of emotional distress.

<sup>2</sup> The record contains no reporter's transcript or settled statement of the hearing.

Section 436(b), and may be stricken upon noticed motion (California Rules of Court Rule 3.1320(i)). [¶] The case is deemed dismissed in this court.”<sup>3</sup>

Plaintiff moved for reconsideration of the order, arguing the trial court lacked authority to dismiss his entire case on the basis of defendants’ motion to strike. He asserted the Rule of Court the trial court cited in its dismissal order (rule 3.1320(i)) applied only in case of a demurrer, which defendants had not filed, and plaintiff did not violate a court order because the court’s grant of leave to amend was expressly permissive (“any amended complaint shall be filed”), not mandatory. Plaintiff asked the court to allow him to file the amended complaint or to strike only the additional causes of action that his amended complaint had included.

Defendants opposed plaintiff’s motion for reconsideration on procedural and substantive grounds. Procedurally, they argued the trial court had no jurisdiction to hear plaintiff’s motion because a judgment of dismissal had already been entered and plaintiff offered no new facts or legal authority to warrant reconsideration of the court’s order. Substantively, defendants asserted dismissal of plaintiff’s action was proper under Code of Civil Procedure section 581, subsection (f)(3),<sup>4</sup> which permits courts to dismiss a complaint “[a]fter a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.”

At a hearing on the reconsideration motion, plaintiff argued the court had jurisdiction to reconsider its order because plaintiff had not yet been served with the judgment of dismissal. In the alternative, plaintiff asked the court to treat his motion for reconsideration as a motion for a new trial under section 657. On the merits, plaintiff argued dismissal was improper because defendants never demurred to the original complaint or moved to dismiss. Consequently, in plaintiff’s view, even if the court had

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<sup>3</sup> The minute order did not specify whether the court’s dismissal was with or without prejudice, but the judgment of dismissal later signed by the court states the dismissal was “without prejudice.”

<sup>4</sup> Undesignated statutory references that follow are to the Code of Civil Procedure.

discretion to strike the late-filed amended complaint, the case should still proceed under the original complaint.

The trial court rejected plaintiff's arguments.<sup>5</sup> The court stated it lacked jurisdiction to hear the motion because judgment had been entered and plaintiff was present when the court announced that judgment; in addition, and on the merits, the court believed plaintiff provided no new facts or law to justify "granting a new leave." Further, the court denied plaintiff's request to convert his motion for reconsideration into a motion for a new trial because he had not made such a request in his moving papers and, consequently, had not provided adequate notice to defendants.

## II. DISCUSSION

Plaintiff contends the trial court lacked authority to dismiss his action after striking his amended complaint because defendants never demurred to plaintiff's original or amended complaint and never moved to dismiss the action.<sup>6</sup> We agree that the trial court's sua sponte dismissal of plaintiff's action was not authorized by statute or warranted as an exercise of the court's inherent authority. To justify dismissal under the relevant statute(s), defendants would have needed to seek dismissal via a noticed motion, which they never did. The court's inherent authority also provides no basis for dismissal because plaintiff did not violate a court order or otherwise engage in conduct warranting such an extreme sanction.

### *A. Dismissal Was Not Authorized by Statute*

Courts have statutory authority to dismiss a plaintiff's case under various circumstances: the court sustains a demurrer to or motion to strike the entire complaint and denies leave to amend (§ 581, subd. (f)(1), (3)), the plaintiff fails to amend the

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<sup>5</sup> The record does include a transcript of the hearing on plaintiff's motion for reconsideration.

<sup>6</sup> Defendants did not file a respondents' brief on appeal.

complaint within the time allowed after the court has sustained a demurrer to or motion to strike the entire complaint and granted leave to amend (§ 581, subd. (f)(2), (4)), the plaintiff fails to timely prosecute the action (§§ 583.250, 583.360, 583.410), the plaintiff abuses the discovery process (§ 2023.030, subd. (d)(3)), the plaintiff violates local rules in sufficiently egregious fashion (§ 575.2, subd. (a); *Tliche v. Van Quathem* (1998) 66 Cal.App.4th 1054, 1061-1062), or the plaintiff fails to furnish security under specified circumstances (§§ 399, subd. (a), 1030, subd. (d)). Some dismissals are mandatory (see, e.g., § 583.360 [requiring dismissal for noncompliance with deadlines set forth at sections 583.310 and 583.320]), while others—including dismissals under section 581, subdivision (f)—are subject to the court’s discretion and require a party to first move for dismissal. (See, e.g., *Baker v. Boxx* (1991) 226 Cal.App.3d 1303 [holding trial court’s mandatory dismissal for plaintiff’s delay in prosecution pursuant to section 583.250 was erroneous but discretionary dismissal for delay pursuant to section 583.410 was proper].) Trial courts also possess an inherent, albeit circumscribed, power to dismiss. (See *Lyons v. Wickhorst* (1986) 42 Cal.3d 911 (*Lyons*) [court has inherent, but limited, power to dismiss as a sanction]; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758-759, 761 (*Slesinger*) [court has inherent power to dismiss for “unreasonable, inexcusable delay in prosecution,” when a case is “fraudulent or ‘vexatious’,” and for “deliberate and egregious misconduct when no other remedy can restore fairness”].)

We will reverse the trial court’s decision to dismiss this action only if it constituted an abuse of discretion. (See, e.g., *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612 (*Leader*) [dismissal under section 581, subdivision (f)(2)]; *Slesinger, supra*, 155 Cal.App.4th at p. 765 [dismissal under inherent authority].) While we view the record in the light most favorable to the court’s decision (*Slesinger, supra*, at p. 765), “[t]he scope of discretion always resides in the particular law being applied. . . . Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an “abuse” of discretion.’ [Citation.]” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) “If the trial court is mistaken about the scope of its discretion, the

mistaken position may be ‘reasonable’, i.e., one as to which reasonable judges could differ. . . . But if the trial court acts in accord with its mistaken view the action is nonetheless error; it is wrong on the law.” (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-1298.)

Defendants’ motion to strike plaintiff’s amended complaint was not preceded, accompanied, or followed by a demurrer or motion to dismiss. The trial court did not elaborate upon its basis for dismissing plaintiff’s case sua sponte, but it did note that plaintiff “failed to comply with the court’s July 22, 2014 order” and that the amended complaint in its view could be stricken pursuant to California Rules of Court, rule 3.1320(i). And after plaintiff moved for reconsideration, defendants argued the court had authority to dismiss the action under section 581, subdivision (f)(3).

We agree section 581, subdivision (f)(3) is the only statute that comes even remotely close to authorizing dismissal here, and it allows a court to dismiss a complaint “[a]fter a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.” But assuming the trial court relied on this statute to dismiss plaintiff’s case after it struck the late-filed amended complaint, it did so in error. Regardless of whether dismissal was substantively warranted even though the *original* complaint on file had never been stricken or challenged via a demurrer, subdivision (f)(3)’s procedural requisite indisputably went unsatisfied: defendants never moved to dismiss the action. At the very least, a noticed motion by defendants would have apprised plaintiff of the proposed basis for dismissal and provided an opportunity to argue against it. Ordering dismissal without such an opportunity is contrary to law. (See, e.g., *Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1193 [violation of due process for court to dismiss plaintiff’s case for failure to appear at a status conference, even if authorized by statute, without prior notice or opportunity to be heard].)

Nor did California Rules of Court, rule 3.1320(i) authorize dismissal. That provision, which allows a trial court to strike late-filed amended pleadings upon noticed motion by the adverse party, is a subdivision of the rule that governs the filing of a

demurrer, which defendants never filed in this case. Standing alone, rule 3.1320(i) says nothing about dismissal.

*B. Dismissal Cannot Be Justified As an Exercise of the Court's Inherent Authority*

There being no basis for dismissal under section 581, subdivision (f)(3) or California Rules of Court, rule 3.1320(i), we turn to whether the court had a nonstatutory basis for dismissing plaintiff's case pursuant to its inherent authority. We conclude it did not.

Nothing in the record suggests plaintiff filed a frivolous action or unduly delayed prosecuting the case: indeed, there has never been a determination that plaintiff's original complaint or the complaint as amended is substantively infirm. We also do not believe plaintiff's filing of the untimely amended complaint can be treated as a violation of a court order that warrants dismissal of the action because the order did not require an amended complaint to be filed but instead only allowed plaintiff to do so if he wished. At any rate, plaintiff's failure to meet the court's deadline cannot reasonably be deemed "deliberate and egregious misconduct" as to which "no other remedy" apart from a terminating sanction "can restore fairness."<sup>7</sup> (*Slesinger, supra*, 155 Cal.App.4th at p. 761; see also *id.* at p. 764 [in determining appropriateness of dismissal as sanction, court must consider the nature of the misconduct, the strong policy in favor of deciding cases on the merits, the integrity of the court, the effect of the misconduct on the matter's fair resolution, whether other sanctions are available to remedy the harm, and any other relevant circumstances].) Even if plaintiff's conduct merited some sort of sanction, effective alternatives short of dismissal were available.

The Court of Appeal's decision in *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761 (*Vaccaro*) supports our holding. In that case, the trial court struck a plaintiff's amended

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<sup>7</sup> Even though plaintiff's action was dismissed without prejudice, the trial court's decision may have operated as a final termination of plaintiff's case depending on application of the statute of limitations, a matter we are not asked to address.



complaint because the plaintiff's attorney failed to "promptly" sign it and section 128.7, subdivision (a) justified striking the pleading under that circumstance. (*Id.* at pp. 765-766.) The court then dismissed the plaintiff's action with prejudice, sua sponte. (*Id.* at p. 766.) The appellate court reversed, reasoning that even if the order striking the complaint was proper, the trial court abused its discretion by refusing to either accept a belatedly signed complaint or grant leave to amend. (*Id.* at p. 768.) The appellate court also concluded the trial court's decision was erroneous because the defendants had not moved to dismiss the plaintiff's case. (*Id.* at pp. 768-769.) The court explained that even though section 128.7 required the pleading to be struck, it did not mandate dismissal. (*Id.* at p. 769.) Doing so was "too severe" considering that the attorney was willing to belatedly sign the pleading and the court could impose conditions short of dismissal that would still enforce the intent of section 128.7, such as requiring the plaintiff to pay the defendants' expenses in bringing the motion to strike. (*Ibid.*)

As in *Vaccaro*, the trial court's sua sponte dismissal of plaintiff's action without a noticed motion by defendants was an abuse of discretion. Also as in *Vaccaro*, there were no circumstances to suggest a sanction short of dismissal would not have sufficed, if one was needed at all. Plaintiff did not have a history of violating prior court orders, making amendments, or requesting extensions; plaintiff's case was still in its early stages (indeed, defendants had just obtained new counsel after convincing the court to set aside default judgments that long ago had been entered *for plaintiff*); and there is no evidence in the record that defendants would have been prejudiced by plaintiff's late filing. (Compare *Leader, supra*, 89 Cal.App.4th at p. 610 [dismissal where case was close to six years old, court had sustained multiple demurrers with leave to amend, and amendment was more than a month late after plaintiff received stipulated extension]; see also *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761 [policy in favor of allowing amendments to the complaint applies unless there is prejudice to the adverse party].)

## DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings consistent with this opinion. Guzman is to bear his own costs on appeal.

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BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.