Filed 9/18/17 Lizzarraga v. Crystal Property Management CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ELIZABETH LIZARRAGA et al., Plaintiffs and Appellants, v. CRYSTAL PROPERTY MANAGEMENT, INC. Defendant and Respondent.	B277952 (Los Angeles County Super. Ct. No. BC581664

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

Levian Law, K. Kevin Levian; Hennig Ruiz, Rob A. Hennig; and Jeffrey A. Richmond for Plaintiffs and Appellants.

Perona, Langer, Beck, Serbin, Mendoza & Harrison, Ellen R. Serbin for Defendant and Respondent.

Plaintiffs Elizabeth Lizarraga, Angel Peralta, and Angela Peralta brought a wage and hour action against defendants Crystal Property Management, Inc. (CPM) and Paul Yeager. Yeager demurred to their original complaint, and plaintiffs responded by untimely filing an amended complaint. The court struck the untimely filed amended complaint and gave plaintiffs leave to refile it. Plaintiffs did not do so. However, all parties to the case behaved as though they had—CPM answered the (stricken) amended complaint and propounded discovery, and Yeager demurred to the (stricken) amended complaint.

At the hearing on Yeager's second demurrer, the trial court removed the matter from its calendar because there was no operative complaint on file. Both defendants subsequently filed ex parte applications to dismiss the case pursuant to Code of Civil Procedure section 581, subdivision (f)(2).[1] The court granted the applications over plaintiffs' opposition. Plaintiffs then filed a motion for discretionary and mandatory relief from dismissal pursuant to section 473, subdivision (b) (section 473(b)), accompanied by a declaration from their counsel attesting that the filing error was due to his mistakes of law and fact. The trial court denied plaintiffs' requests for both discretionary and mandatory relief. Plaintiffs appealed.

We reverse. Under the unusual circumstances of this case, in which all counsel made the same factual error regarding the status of plaintiffs' amended complaint, we conclude the court abused its discretion by finding the misapprehension of plaintiffs' counsel inexcusable. The judgment is reversed and the case is remanded for further proceedings.

---

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

BACKGROUND

In May 2015, plaintiffs filed a complaint against CPM and Does 1-50, alleging causes of action for various violations of state wage and hour laws, unfair business practices, and wrongful constructive discharge in violation of public policy. After CPM answered the complaint, plaintiffs filed a Doe amendment substituting Yeager as a defendant in place of Doe 1. Yeager filed a demurrer in December 2015, which he noticed for hearing on March 9, 2016.

On January 1, 2016, after Yeager filed the demurrer but before it was heard, amendments to section 472 took effect. The old version of the statute provided, in relevant part, "Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, *or after demurrer and before the trial of the issue of law thereon*, by filing the same as amended and serving a copy on the adverse party. . . ." (Former § 472, emphasis added.) The version of section 472 effective January 1, 2016 provides in relevant part, "A party may amend its pleading once without leave of court at any time before the answer or demurrer is filed, or after a demurrer is filed but before the demurrer is heard if the amended complaint, cross-complaint, or answer *is filed and served no later than the date for filing an opposition to the demurrer*. A party may amend the complaint, cross-complaint, or answer after the date for filing an opposition to the demurrer, upon stipulation by the parties." (§ 472, subd. (a), emphasis added.) Thus, the amendment shortened the amount of time plaintiffs have in which to file an amended complaint as of right in response to a demurrer.

Notwithstanding the updated statute, and without obtaining a stipulation from opposing counsel, plaintiffs filed a first amended complaint one day prior to the scheduled hearing on Yeager's demurrer ("the March 8th complaint"). According to a minute order documenting the March 9th hearing, only Yeager's counsel and plaintiffs' counsel appeared.[2] The minute order further indicates that plaintiffs' counsel represented to the court that he had filed a first amended complaint, the March 8th complaint, "earlier in the week." The court noted that there "is no such pleading scanned or received in the Department, nor has defendant's counsel received an amended complaint." The minute order continued: "The court finds that to the extent that an amended complaint was filed, Code of Civil Procedure Section 472(a) requires leave of court to file an amended complaint once an answer has been filed, and that a proper amended complaint must be filed prior to the time an opposition to the demurrer is due. A first amended complaint that may have been filed in the last two days [i.e., earlier in the week] would be non-compliant with the law." The minute order stated that the court "strikes any first amended complaint filed by plaintiff prior to today under Code of Civil Procedure Section 436(b), which gives the court the authority to strike pleadings not drawn in conformity with law."

The minute order also stated that the court sustained Yeager's unopposed demurrer. It gave plaintiffs leave to amend their complaint based on plaintiffs' offer of proof regarding intended amendments. The court set a filing deadline of March 18, 2016 for the amended complaint, and ordered Yeager to

---

[2] The record does not contain a transcript of this hearing; no reporter was present.

respond by April 1, 2016.

The minute order stated that "[n]o notice is required." Yeager's counsel nevertheless prepared and served on all counsel a notice of ruling that same day. After listing appearances at the hearing, the notice of ruling stated: "After reviewing the demurrer of Yeager, there being no written opposition filed, and after hearing oral argument of counsel, the court Sustained Defendant Yeager's Demurrer in its entirety and granted Plaintiffs leave to amend. The court ordered that Plaintiff's [*sic*] file and serve their First Amended Complaint by March 18, 2016 and that Responsive Pleading thereto is to be filed and served by April 1, 2016. The court further authorized electronic service." The notice of ruling did not mention that the court struck the March 8th complaint, nor did it include a copy of the minute order.

On March 10, 2016, Yeager's counsel sent an email to plaintiffs' counsel. In it, he stated that he had received "an unconformed copy of a 'FIRST AMENDED COMPLAINT'" in the mail and asked, "Is this the final draft of the FAC which the court ordered you file by March 18, 2016, or will you be filing and serving yet another FAC?" The email further stated, "If you have indeed already filed this FAC, then another filing would in actuality be a Second Amended Complaint, which I do not believe you have been authorized to file. In point of fact the court essentially granted you leave to file a FAC, ex post facto, yesterday. If you have accomplished that by filing the pleading I received yesterday, then you have complied with the court's order. I do not believe you have the right to file a SAC." Plaintiffs' counsel responded five days later: "Attached, please find a conformed copy of the FAC filed March 8, 2016." The

record does not contain any further correspondence between counsel.

The March 18, 2016 deadline to file an amended complaint passed without any additional filings by plaintiffs. Nevertheless, on April 1, 2016, Yeager filed a demurrer "to the First Amended Complaint of Plaintiffs"—the March 8th complaint that was stricken at the previous demurrer hearing. Although his counsel attended the prior hearing, Yeager's demurrer did not mention that the March 8th complaint had been stricken. CPM filed an answer to "Plaintiffs' Unverified First Amended Complaint" on April 7, 2016. The caption on CPM's filing indicated it was responding to the "FAC Filed: March 8, 2016."

Plaintiffs opposed Yeager's demurrer. The caption on their filing also referred to the first amended complaint filed on March 8, 2016. CPM propounded discovery on plaintiffs while the demurrer was pending.

The trial court issued a tentative ruling in advance of the hearing on the demurrer. That ruling stated, in relevant part: "The First Amended Complaint filed March 8, 2016 was stricken by the court. The court then sustained the demurrer to the original complaint in its entirety and granted Plaintiff[s] leave to amend, requiring that a first amended complaint be filed and served by March 18, 2016. [¶] Plaintiffs did not file a subsequent First Amended Complaint in compliance with the court's March 9, 2016 order. Plaintiffs have not sought leave from the Court to file a now untimely first amended complaint either by motion or stipulation. As such, there is no operative complaint before the court, and the demurrer is ordered OFF-CALENDAR." The court adopted the tentative as its ruling after a hearing on June 8, 2016. The record indicates that counsel for all parties attended

that hearing, but no court reporter was present. Two days later, both Yeager and CPM filed ex parte applications for dismissal pursuant to section 581, subdivision (f)(2), which affords the court discretion to dismiss a complaint "after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." (See Cal. Rules of Court, rule 3.1320(h) [authorizing ex parte applications for relief under section 581, subdivision (f)(2)].) Plaintiffs filed an opposition to the applications, in which they argued that the March 8th complaint "was never stricken and all parties believed plaintiff had complied with the court's order." In an accompanying declaration, plaintiffs' counsel asserted, "Yeager was ordered by this Court to give notice of the ruling on his demurrer. Such notice never stated that the FAC filed on March 8 was stricken and that Plaintiff was required to file another FAC on or before March 18, 2016. Plaintiffs' FAC was never stricken by this Court." Plaintiffs' counsel also attached a copy of the email exchange he had with Yeager's counsel and asserted, "In fact, Yeager's counsel, as Plaintiff's [*sic*] counsel, believed that Plaintiff[s] had complied with the Court's order by the filing of the FAC on March 8, 2016."

The court granted defendants' ex parte applications on June 10, 2016, after considering the applications and plaintiffs' opposition in chambers. It dismissed the action with prejudice and ordered defendants to give notice. The court entered a judgment of dismissal as to Yeager on June 10, 2016, and a separate judgment of dismissal as to CPM on July 15, 2016.

Plaintiffs filed a motion to set aside the judgments under section 473(b). Plaintiffs argued that their failure to timely file

an amended complaint was due to counsel's mistakes of fact and law. Specifically, they claimed counsel "made a mistake of fact when he misunderstood the Court and believed that the FAC that was filed on March 8, 2016 was an operative pleading. Plaintiffs' misunderstanding was furthered by Defendants' subsequent actions, which also gave the appearance that they also believed the March 8, 2016 filing was operative." Plaintiffs further claimed counsel made a mistake of law: "Since Yeager's demurrer was filed on December 12, 2015, or before C.C.P. § 430.41(a)(2) was implemented. [*Sic*] Accordingly, Yeager was not required to, and did not meet and confer with Plaintiffs prior to filing the demurrer, nor was Yeager required to. Because Yeager's demurrer was filed in 2015, Plaintiff's [*sic*] counsel believed that the old law still applied and that it was still allowable to file a FAC after the time for opposing a demurrer had passed. Accordingly, Plaintiffs' counsel did not know that the FAC filed on March 8, 2016 was stricken."[3]

Plaintiffs contended these mistakes were excusable and warranted relief under the discretionary prong of section 473(b). In the alternative, they argued that even if the mistakes were inexcusable, the court was required to grant relief under the

---

[3] Section 430.41 was added to the Code of Civil Procedure by the same legislation that amended section 472. It provides in relevant part that a party intending to file a demurrer must meet and confer "with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (§ 430.41, subd. (a).) As discussed *post*, counsel did not mention section 472 specifically in his declaration but appeared to encompass it within his discussion of "the old law."

mandatory, "attorney fault" portion of section 473(b). Their motion was accompanied by a declaration from their counsel. In it, he stated that, at the first demurrer hearing, he "informed the Court that I had filed a FAC the previous day and [the court] told me that she had not yet received a copy. . . . I believed that the FAC that was filed on March 8, 2016 was the operative pleading. I also do not believe that notice was waived." Counsel further averred that he "either misunderstood or did not hear the Court state that the FAC had been stricken and that I would need to file the FAC again"; that he relied upon the notice of ruling and opposing counsel's email, which did not mention the March 8th complaint was stricken; and that the responsive pleadings and discovery requests sent by defendants led him to believe the March 8th complaint was operative. Counsel attributed his failure to timely file an amended complaint, and the resultant dismissal of plaintiffs' case, to his errors.

Both defendants filed oppositions to plaintiffs' section 473(b) motion. In his opposition, Yeager asserted for the first time that he had filed his second demurrer "[o]ut of an abundance of caution, due to Plaintiffs [*sic*] improper filing of its [*sic*] purported FAC, and despite its being stricken by the Court." Yeager did not otherwise argue that the mistakes made by plaintiffs' counsel were inexcusable; his opposition focused on alleged procedural defects with plaintiffs' section 473(b) motion. In its opposition, CPM argued that the mistakes were inexcusable because plaintiffs' counsel was present at the March 9, 2016 hearing and the minute order documenting that hearing "clearly stated" the March 8th complaint was stricken, such that counsel "was well aware that the Court struck Plaintiffs[']amended complaint filed on March 8, 2016 . . . ." CPM did not

acknowledge and offered no explanation for its answer to the stricken complaint, nor its continued engagement in discovery while no complaint was pending.

All counsel attended the hearing on the section 473(b) motion. The court began the hearing by observing that plaintiffs' counsel's declaration "isn't consistent with what actually happened at the [demurrer] hearing[,] and that's a concern to the court." In the court's recollection—and as reflected in the minute order documenting the demurrer hearing—plaintiffs' counsel had stated he filed the March 8th complaint "at some point earlier in the week[,] you didn't know when," not "the previous day" as stated in counsel's declaration. The court further noted that plaintiffs' counsel did not bring a conformed copy of the March 8th complaint to the demurrer hearing, such that there "was no proof, none[,] that you had filed the first amended complaint." The court continued, "So because there was no proof you filed it, the court couldn't deem it filed or whatnot. So it's clear that the first amended complaint was not filed in conformity with state law. So you know the court struck it. You were here when the court did that, and I even said I'm giving plaintiff leave to amend. I said you could file the same complaint you said you filed but there was no proof you filed. I gave you a chance to do that. You understood and you waived notice. You didn't have to waive notice. It was the defense's demurrer." The court further remarked, "there's a minute order of all this. If there's any ambiguity that somehow defense counsel misled you by an e-mail, and I'm not sure if that's what you're contending they did, our minute orders are online. They're all there."

Plaintiffs' counsel conceded he did not access or read the minute order until June, when he saw the court's tentative ruling

indicating an intent to take Yeager's second demurrer off calendar. He explained that he did not refile the March 8th complaint because he "believed that it was already done"—"I thought it was the filing that was done before the demurrer." He also acknowledged that he should have brought a courtesy copy of the March 8th complaint to the demurrer hearing. Counsel further explained that he did not realize that the new version of section 472 would apply "because the demurrer was filed in 2015 before the law had changed." Counsel apologized for either not hearing or misunderstanding that the March 8th complaint was stricken.

Defense counsel urged the court to deny the motion. Counsel for Yeager argued that plaintiffs' counsel's declaration was "completely inadequate . . . in that counsel is still even at this point in time blaming the court, blaming me for the situation that has occurred and refusing to take the blame himself." He also argued that the attorney fault provision of section 473(b) did not apply, because it only applies to dismissals that are akin to a default, and counsel in this case opposed the dismissal requests. Counsel for CPM echoed these arguments. He also added that plaintiffs did not assert attorney neglect or excusable error in opposition to the dismissal requests.

The court denied the motion. On the record at the hearing, the court ruled as follows: "The court finds that counsel's declaration is willfully inadequate and does not meet the standards of CCP section 473. It significantly does not accurately reflect what actually happened at the March 9 hearing. Also, the declaration at paragraph 3(e) counsel is claiming ignorance of the law apparently. He's saying he did not know that CCP section 430.41(a)(2) applied. But, again, the court did not apply that

statute. That has to do with the filing of a demurrer in a meet and confer. The first amended complaint was untimely filed under CCP section 472. 472 is not even addressed in the motion. It's not addressed in the declaration of counsel. Counsel does not state under penalty of perjury that he believed 472 of the Code of Civil Procedure did not apply. In any event, 473 relates to excusable neglect, and ignorance of the law . . . the legislators['] overhaul to the demurrer statutes was very widely publicized. This was not a demurrer heard on January 2nd. It was a demurrer heard on March 9th. The declaration does not even address counsel's ignorance apparently of CCP section 472. That alone is fatal to it. Further, even if addressed, . . . CCP section 472, you know, it was clearly in effect at the time of the March 9th hearing. Counsel does not indicate he was ignorant of it. And, again, ignorance of the law is not an excuse. . . . It's not reasonable. Counsel appeared at the March 9th hearing with no proof it was filed. We looked for it. No one saw any evidence of it. Counsel did not bring a conformed copy with him. . . . And now I have a declaration of counsel saying he didn't understand that the court was striking it. He either misunderstood or did not hear the court. It's a very vague declaration, paragraph 3(f). Furthermore, counsel waived notice. He indicates I also do not believe notice was waived. That's not clear. Notice was waived by plaintiff. It was defendant's demurrer. So none of the facts set forth in his declaration are good cause to set aside the orders of the court."

Plaintiffs timely appealed. They later dismissed the appeal as to Yeager; CPM is the only respondent.

DISCUSSION

Section 473(b) provides two avenues for parties to seek

relief from certain orders entered against them. The first portion of the provision vests in the trial court discretion to, "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." (§ 473(b).) The second portion of section 473(b) occasionally is referred to as the "attorney fault" provision. (See, e.g., *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1147; *Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 26 & fn. 3.) It states: "Notwithstanding any other requirements of this section, the court shall, whenever an application is made no more than six months after entry of judgment, in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. 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." (§ 473(b).) Relief is mandatory if all the statutory criteria are met, but the scope of the provision is narrower than the discretionary one: it applies only to defaults or dismissals procedurally equivalent to them. (See *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 616, 619-620.)

The standards a party must meet under the two provisions are different. A party seeking relief under the discretionary first

portion of section 473(b) because of attorney error must demonstrate that a mistake or inadvertence of counsel was excusable. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258 (*Zamora*).) Under the mandatory attorney fault portion, however, "there is no requirement that the attorney's mistake or inadvertence be excusable." (*Hossain v. Hossain* (2007) 157 Cal.App.4th 454, 457.) The statute is cabined instead by its narrow scope.

In determining whether an asserted error was excusable, the court evaluates the conduct under the reasonably prudent person—not attorney—standard. "In other words, the discretionary relief provision of section 473 only permits relief from attorney error 'fairly imputable to the client, i.e., mistakes anyone could have made.' [Citation.] 'Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.' [Citation.]" (*Zamora*, *supra*, 28 Cal.4th at p. 258.)

Plaintiffs sought relief under both provisions. They contend the court erred in denying relief under the discretionary provision because counsel's factual error regarding the status of the March 8th complaint was excusable. They also contend the factual misunderstanding "was also rooted in an excusable mistake of law that constituted an independent ground for discretionary relief," counsel's unawareness of the updates to section 472 that shortened the time to file an amended complaint in response to a demurrer. Even if both errors were inexcusable, they further argue, they satisfied the requirements to obtain

mandatory relief under the attorney fault provision, and the trial court did not make the requisite finding that the dismissal was not caused by attorney error.

We review the court's decision whether to grant relief under the first portion of section 473(b) for abuse of discretion. (*Zamora*, *supra*, at p. 257.) However, because the law strongly favors resolution of cases on their merits, section 473(b) is liberally construed, and "a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 (*Elston*); see also *Zamora*, *supra*, 28 Cal.4th at p. 256.) The trial court's discretion, while wide, is not unlimited; it must be exercised in accordance with the spirit of the law and """in a manner to subserve and not to impede or defeat the ends of substantial justice."' [Citation.]" (*Elston*, *supra*, 38 Cal.3d at p. 233.) The applicability of the mandatory relief provision of section 473(b) is a question of law subject to de novo review; the trial court does not have discretion to deny the motion if the statutory criteria are met. (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1418; *Leader v. Health Industries of America, Inc.*, *supra*, 89 Cal.App.4th at p. 612.)

We begin and end with an examination of the discretionary portion of section 473(b). The trial court ruled that counsel's foundational mistake of law was inexcusable. This was not an abuse of discretion. "An honest mistake of law is a valid ground for relief when the legal problem posed "'is complex and debatable."' [Citation.]" (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 611.) "Mistake is not a ground for relief under section 473, subdivision (b), when 'the court finds that the "mistake" is simply a result of professional

incompetence, general ignorance of the law, or unjustifiable negligence in discovering the law . . . .' (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 155, p. 749.)" (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.) "The controlling factors in determining whether a mistake of law is excusable are the reasonableness of the misconception and the justifiability of the failure to determine the correct law." (*Pietak*, *supra*, 90 Cal.App.4th at p. 611.)

The mistake of law in this case was counsel's failure to recognize that section 472 had changed some two months after the provision's effective date.[4] The trial court's conclusion that such unawareness was unreasonable was not an abuse of discretion. Ascertaining a filing deadline is not a complex or debatable legal problem; it can be accomplished by a quick check of a statute or rule. The trial court also noted that the statutory change had been "very widely publicized," further supporting its conclusion that counsel's lack of awareness was inexcusable in

---

[4] CPM points out, accurately, and plaintiffs concede that counsel's declaration accompanying plaintiffs' section 473(b) motion did not mention section 472. Instead, counsel averred, "Because Yeager's demurrer had been filed in December 2015 and Yeager did not (and was not required to) meet and confer prior to filing the demurrer, I did not know that C.C.P. § 430.41(a)(2), which became effective January 1, 2016, applied and that filing the FAC prior to the time to file an opposition to the demurrer had passed was improper." Although counsel invoked the incorrect statutory provision, the nature of the error he described, an untimely filing, was placed before the trial court with sufficient particularity to allow the court to address its substance. We too address the merits rather than find a forfeiture due to counsel's imprecise declaration.

this case.

However, the resultant mistake of fact regarding the continued validity of the March 8th complaint was, on the unusual facts of this case, excusable. A mistake of fact sufficient to vacate a dismissal may be found where a party acts or fails to act due to an excusable misapprehension. (See *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1369.) The misapprehension here was that the untimely filed March 8th complaint was operative upon confirmation of its filing after the demurrer hearing. This misapprehension evidently was shared by all parties. No counsel present at the hearing appeared to understand that the March 8th complaint had been stricken. Yeager's counsel did not mention the stricken complaint in the notice of ruling he prepared. Nor did he indicate in his email to plaintiff's counsel an understanding that the March 8th complaint was stricken. Instead, he noted "the court essentially granted you leave to file a FAC, ex post facto, yesterday," and stated "If you have accomplished that [compliance with the court's order to file an amended complaint by March 18] by filing the pleading I received yesterday, then you have complied with the court's order." Both he and counsel for CPM both responded to the March 8th complaint, and CPM engaged in discovery with plaintiffs. CPM's active litigation of the March 8th complaint undermines its claim below that it would be "severely prejudiced, for obvious reasons" if the section 473(b) motion were granted.

"Reversal is particularly appropriate where relieving the default will not seriously prejudice the opposing party." (*Elston*, *supra*, 38 Cal.3d at p. 235.) Accordingly, where there is minimal prejudice to the opposing party, "very slight evidence is required to justify relief" under the discretionary portion of section 473(b).

(*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343.) That slight evidence here was the mutual nature of the factual misapprehension, which the trial court overlooked. Multiple reasonable people misunderstood the status of the March 8th complaint. Yet the court penalized plaintiffs exclusively, and harshly, for the joint error that had no material effect on the forward progression of the case—plaintiffs wanted to stand on their March 8th complaint, and both defendants substantively responded to it. As a result of the court's elevation of form over substance, plaintiffs lost the opportunity to litigate the merits of their claims, while defendants gained a windfall despite their counsels' similar errors. The law strongly favors resolution of cases on their merits, and the court abused its discretion by depriving plaintiffs of that opportunity here.

CPM argues that the order rests upon credibility determinations that we may not review on appeal, namely the court's finding that plaintiffs' counsel's declaration did not "accurately reflect" what occurred at the March 9 hearing. The court's factual findings indeed are entitled to deference. (*Huh v. Wang*, *supra*, 158 Cal.App.4th at p. 1425.) The entire premise of the motion, however, was that counsel misapprehended what happened at the hearing: his declaration documenting his understanding of the proceedings accordingly would not accurately reflect them. Moreover, the primary inaccuracy relied upon by the court was counsel's assertion that he told the court he filed the March 8th complaint "the previous day" rather than "earlier in the week." That discrepancy was not material to the asserted error in question, counsel's misunderstanding regarding the status of the March 8th complaint. Even accepting the court's conclusion that counsel's declaration was not credible, the

actions taken by opposing counsel in response to the March 9 ruling confirm that all counsel in fact misunderstood the court's ruling.

CPM also contends that plaintiffs were not diligent in seeking discretionary relief under section 473(b).[5] It asserts that plaintiffs unreasonably "delayed six weeks after the trial court granted Respondent's *ex parte* application to dismiss on June 10, 2016 until they filed their §473(b) motion." We disagree.

Motions for discretionary relief under section 473(b) must be "made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (§ 473(b).) What constitutes a reasonable time depends on the circumstances of each case, and whether a party has acted diligently is a question of fact for the trial court. (*Huh v. Wang*, *supra*, 158 Cal.App.4th at p. 1420.) The trial court did not make any findings regarding the timeliness of plaintiffs' motion. The record demonstrates, however, that it was promptly filed. Despite CPM's claim that plaintiffs waited six weeks before filing the motion, the record indicates that judgment in CPM's favor was entered on July 15, 2016. CPM gave notice of that judgment on July 19, and plaintiffs filed their motion one week later, on July 26.[6] CPM has not pointed to any cases holding that a one-week lapse of time between a judgment of dismissal and a motion seeking relief for that dismissal is unreasonable, and we are not

---

[5] Though it may be equally "debatable," and CPM argued below that plaintiffs did not sufficiently comply with the statutory requirement that they attach a copy of their amended pleading to the section 473(b) motion, CPM expressly states that it "will not be addressing this issue" on appeal.

[6] CPM appears to be relying on the date judgment was entered against Yeager, June 10, 2016.

persuaded that a one-week turnaround time was unreasonable here.

Because we conclude that the court abused its discretion in finding counsel's factual mistake inexcusable, we need not address plaintiffs' alternative arguments regarding the applicability of the attorney fault provision.

DISPOSITION

The order denying plaintiffs' motion for relief under section 473(b) is reversed and the matter is remanded for further proceedings. Plaintiffs are to recover costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.