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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WASSERMAN, COMDEN,  
CASSELMAN & PEARSON,  
LLP,

Plaintiff and Respondent,

v.

DERMOT GIVENS,

Defendant and Appellant.

B268664

(Los Angeles County  
Super. Ct. No. BC340196)

APPEAL from an order of the Superior Court of Los Angeles County, Mark Borenstein, Judge. Affirmed.

Dermot Givens, in pro. per., for Defendant and Appellant.

Herzlich & Blum, Allan Herzlich and Jerome J. Blum, for Plaintiff and Respondent.

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Respondent Wasserman, Comden, Casselman & Pearson, LLP (WCCP) alleged in this action, filed in September 2005, that after the firm successfully sued Marion “Suge” Knight and Death Row Records on behalf of label co-owner Lydia Harris, appellant Dermot Givens conspired with Harris and Knight to deprive WCCP of its contractual and lien rights to attorney fees by brokering a secret out-of-court settlement. In April 2008, the superior court found Givens liable and entered judgment against him. Nearly seven years later, in February 2015, Givens filed a motion to set aside the judgment as void under Code of Civil Procedure section 473, subdivision (d),<sup>1</sup> which the superior court denied.

On appeal, Givens argues the judgment against him was void on two grounds related to Harris’s then-pending bankruptcy proceedings: (1) the retainer agreement between WCCP and Harris was invalid because the underlying claims were pre-petition assets of Harris’s bankruptcy estate; and (2) WCCP filed its lien for attorney fees while an automatic stay was in effect. Givens cannot establish the court lacked jurisdiction on these grounds. We therefore affirm the order denying his motion to set aside the judgment as void.

### **FACTUAL AND PROCEDURAL SUMMARY**

In May 1996, Harris filed a voluntary petition for bankruptcy relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court, Central District of California. At that time, Harris apparently was a 50 percent shareholder in Death Row Records but failed to

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<sup>1</sup> All further section references are to the Code of Civil Procedure.

list this asset in her schedules. Harris was denied a bankruptcy discharge and the case was closed, without administration of any assets, in December 1999.

In January 2002, Harris retained WCCP under a written contingent fee agreement to sue Knight, Death Row Records, and related parties. WCCP prosecuted the action through March 2005, when the Los Angeles Superior Court entered judgment in favor of Harris in the sum of \$107 million after striking defendants' answer and entering a default. Givens asserts he was one of the lawyers retained by Knight to set aside the default or settle. Harris terminated WCCP in May 2005, and the firm immediately filed a notice of attorney lien for 40 percent of payments received by Harris on the \$107 million judgment.

In September 2005, WCCP filed a complaint in the action before us against Harris, Knight, Givens, and others—alleging defendants conspired to deprive the firm of its contracted 40 percent contingency fee and unreimbursed costs through a secret out-of-court settlement. The complaint also alleged Givens intentionally interfered with WCCP's contractual and lien rights by making payments to Harris pursuant to the judgment without notice to WCCP and without satisfying any portion of the firm's lien.

By March 2007, WCCP had settled its claims with Harris, and its claims against other defendants were severed due to pending bankruptcy proceedings—leaving Givens as the sole remaining defendant. A bench trial was held in July 2007. In its trial brief, WCCP argued Givens was liable for intentional interference with prospective economic advantage and inducing breach of contract by paying Harris \$1 million in partial settlement of the judgment despite his actual knowledge of

Harris's contract with WCCP and the firm's lien. In his trial brief, Givens admitted issuing Harris a cashier's check for \$10,000 and delivering a separate \$990,000 cashier's check to her at the direction of his client. The superior court found Givens liable, and a bench trial to determine the amount of punitive damages was scheduled for December 2007.

In June 2007, the trustee of Harris's bankruptcy estate moved to reopen bankruptcy proceedings after becoming aware of the \$107 million judgment and determining that it may be based on Harris's prepetition legal interests in property and therefore belonged to the bankruptcy estate. The bankruptcy court granted the motion in August 2007 and reopened Harris's Chapter 7 proceedings. A month later, WCCP initiated an adversary proceeding in the bankruptcy court by filing a complaint against Harris, Knight, Death Row Records, Givens, and other parties.

Givens removed this action brought against him by WCCP to bankruptcy court, but the case was remanded in November 2007. Following a bench trial on punitive damages, the superior court issued its intended decision in January 2008, finding Givens liable for \$805,752 in compensatory damages and \$250,000 in punitive damages. Givens attempted to remove the case to bankruptcy court again, but it was remanded for a second time. Givens then filed a motion for a new trial, which was denied. In April 2008, the court adopted its intended decision as the statement of decision and entered judgment against Givens in the sum of \$1,055,752.

In August 2008, Harris's bankruptcy trustee initiated adversary proceedings in bankruptcy court to recover the \$1 million paid to Harris by Knight on the ground that the funds

were property of the bankruptcy estate. In September 2009, the bankruptcy court entered a default judgment against Harris in favor of the trustee.

In February 2015, Givens moved to set aside the judgment against him in this action under section 473, subdivision (d). He argued the judgment was void because (1) the automatic stay in Harris's bankruptcy proceedings deprived the superior court of jurisdiction over this action; and (2) the court lacked jurisdiction because the contract between WCCP and Harris was invalid as it was based on a prepetition asset of the bankruptcy estate. In May 2015, the superior court denied the motion to set aside the judgment as void, and Givens filed a motion to reconsider. The motion for reconsideration was denied following a hearing in September 2015.

Givens filed a notice of appeal from the May 2015 order denying his motion to set aside the April 2008 judgment.

## **DISCUSSION**

Section 473, subdivision (d), authorizes a court to set aside any void judgment or order. However, "[o]nce six months have elapsed since the entry of a judgment, 'a trial court may grant a motion to set aside that judgment as void only if the judgment is void on its face.'" (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 496 (*Cruz*), quoting *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441 (*Dill*).) Givens filed his motion to set aside the judgment as void nearly seven years after it was entered, and therefore must satisfy the demanding burden of showing that the judgment was void on its face. This is an issue of law subject to de novo review. (*Cruz*, at pp. 495-496.)

A judgment is void “[w]hen a court lacks jurisdiction in a fundamental sense.” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660.) A judgment is “void as a matter of law, for example, because the court lacked subject matter jurisdiction, or because the summons and complaint were not properly served, so that the court lacked personal jurisdiction over a defendant, or otherwise because the judgment or order violated a party’s due process rights to notice and an opportunity to be heard. [Citations.]” (*Brown v. Williams* (2000) 78 Cal.App.4th 182, 186-187, fn. 4 (*Brown*).) “A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.’ [Citation.]” (*Dill, supra*, 24 Cal.App.4th at p. 1441; see also *Cruz, supra*, 146 Cal.App.4th at p. 496; § 670, subd. (b) [the judgment roll includes, *inter alia*, the pleadings, the court’s statement of decision, and a copy of the judgment].)

Under these principles, Givens must demonstrate—based solely on the pleadings, statement of decision, and judgment—that the court either lacked personal or subject matter jurisdiction, or that his due process rights were violated. (See *Brown, supra*, 78 Cal.App.4th at p. 186, fn. 4; *Dill, supra*, 24 Cal.App.4th at p. 1441.) Our inquiry is limited by Givens’s failure to include the court’s statement of decision in the record, even though he has the burden of providing an adequate record for review. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) Nor are we aided by WCCP’s brief on appeal, which is virtually identical to the six-page memorandum submitted in opposition to

the motion below.<sup>2</sup> Nonetheless, as we next discuss, Givens has failed to demonstrate the judgment is void on its face.

Givens first contends the judgment is void because the court lacked jurisdiction over an allegedly invalid contract between WCCP and Harris. He argues that the retainer agreement was “void or voidable” because Harris’s underlying claims were prepetition assets of her bankruptcy estate and therefore only the trustee had standing to prosecute the action against the Knight defendants.

Givens correctly notes that prepetition claims are legal interests in property that belong to the bankruptcy estate and may not be pursued by the debtor. (See *Smith v. Arthur Andersen LLP* (9th Cir. 2005) 421 F.3d 989, 1002; *Parker v. Wendy’s Int’l., Inc.* (11th Cir. 2004) 365 F.3d 1268, 1272.) Rather, the “trustee, as the representative of the bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate once the bankruptcy petition has been filed.” (*Kane v. National Union Fire Ins. Co.* (5th Cir. 2008) 535 F.3d 380, 385; see generally 5 Collier on Bankruptcy (16th ed. 2010) § 541.07, pp. 41-44.)

But even were we to assume, for the sake of discussion, that Harris lacked standing to sue the Knight defendants in the underlying action which resulted in the \$107 million judgment, we could only infer that the court lacked jurisdiction in that action. (See *Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501 [lack of standing is a jurisdictional defect requiring

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<sup>2</sup> WCCP’s largely citationless brief omitted a statement of facts, did not address issues of appealability or the appropriate legal standards, and did not respond to legal arguments presented by Givens.

dismissal].) In the action before us, on the other hand, Harris was not a plaintiff and the claims brought by WCCP did not belong to Harris and therefore were never part of the bankruptcy estate. The bankruptcy rules restricting the standing of debtors simply do not apply here.

And even assuming the WCCP–Harris contract was void or voidable, that does not constitute a jurisdictional defect in the action before us. Of course, the superior court has subject matter jurisdiction in a breach of contract action even if the contract is later alleged to be void or voidable. Givens does not argue that the court otherwise lacked personal jurisdiction or somehow deprived him of due process. (See *Brown, supra*, 78 Cal.App.4th at p. 186, fn. 4.) Instead, he is effectively asking for a second bite at the apple with respect to the question of liability. This issue should have been raised on direct appeal, which Givens apparently did not pursue.

Givens also argues that because WCCP filed its lien for attorney fees while an automatic stay was in effect, the lien and resulting judgment against him are void. He notes that the filing of a bankruptcy petition triggers an automatic stay under Title 11 United States Code section 362(a), which generally prevents creditors and other parties from taking most actions against property of the bankruptcy estate, the debtor, and debtor's property. (*In re Fitzpatrick* (Bankr. C.D. Cal. 2012) 468 B.R. 391, 394.) However, the automatic stay that may have provided protection to Harris does not apply to Givens; he is not the one who filed for bankruptcy. The existence of the automatic stay has no bearing on the superior court's jurisdiction over WCCP's claims against Givens.



**DISPOSITION**

The order is affirmed. The parties shall bear their own costs on appeal.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.