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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

ANOTHER TIME, INC., et al., Plaintiffs and Respondents, v. RESOLUTION ENTERTAINMENT, LLC, et al., Defendants, COACHELLA VALLEY COLLECTION SERVICE, Claimant and Appellant.	B284268 (Los Angeles County Super. Ct. No. BC552715)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed in part; reversed in part.

The Law Offices of John D. Gallegos and John D. Gallegos for Claimant and Appellant.

Wolf, Rifkin, Shapiro, Schulman & Rabkin and Simon Aron for Plaintiffs and Respondents.

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Lien claimant Coachella Valley Collection Service (Coachella) appeals from the trial court's order denying its motion to enforce its lien in this case and imposing attorney fees as sanctions. The record on appeal is inadequate for our review of the trial court's ruling on the motion to enforce the lien. However, the trial court's order concerning sanctions does not comply with statutory requirements. As a result, we affirm the trial court's order denying the motion to enforce, and we reverse the sanctions award. We see no merit to Coachella's claim that it should be awarded attorney fees as a sanction for the conduct of plaintiffs and their attorneys.

BACKGROUND

In February 2009, PGA West Fairways Association obtained a default judgment against Jeff Franklin (Franklin) in the amount of $23,027.52 in case No. INC07966 in Riverside County.

On July 24, 2014, Franklin and Another Time, Inc. (ATI) (collectively plaintiffs), filed a complaint in this case in Los Angeles County Superior Court against Resolution Entertainment, LLC (Resolution).

On November 25, 2014, Coachella filed a notice of lien pursuant to Code of Civil Procedure[1] section 708.410 in the present case, based on the judgment in the Riverside case. Coachella listed itself on the notice of lien form as "the judgment creditor or person who obtained the right to attach."[2] On December 4, 2014, Coachella filed a request for special notice in this case, seeking notice prior to "any compromise, dismissal, settlement, or satisfaction of this action or proceeding."

On October 8, 2015, the court entered a default judgment in this case in favor of Franklin and ATI. The judgment directed Resolution to "pay plaintiff on the complaint" in the amount of $859,108.05.

On June 1, 2017, Coachella filed a motion in this case to enforce collection of its lien against Franklin. On June 12, 2017, attorneys at the firm that represented both ATI and Franklin (plaintiffs' attorneys) sent a letter to Coachella's counsel asserting that Coachella's motion was not supported by case or statutory law and was frivolous, and could subject Coachella and its attorneys to sanctions if not withdrawn. Plaintiffs asserted their attorneys' lien had priority and that in any event the relief which Coachella sought was not authorized by law. They also attached a copy of the complaint and claimed that ATI was the "beneficial owner of all of the proceeds of the judgment in . . . this action." Coachella did not withdraw its motion.

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[1] Further undesignated statutory references are to the Code of Civil Procedure.

[2] The record does not include any written document assigning the right to attach (or the judgment) to Coachella. Plaintiffs do not raise the issue of Coachella's standing on appeal and so we do not consider that issue.

On July 11, 2017, the trial court held a hearing on Coachella's motion. There is no transcript of the hearing in the record on appeal. The minute order for that date states: "MOTION TO ENFORCE COLLECTION ON CASE NO.: INC079666 [¶] Motion to enforce collection is denied. [¶] Attorney's fees are granted. An additional $225 has been added for a total of $3,667.50. [¶] C[o]unsel is ordered to prepare order and give notice."

The order prepared by plaintiffs' attorneys states: "Plaintiffs' request for sanctions is granted in the amount of $3892.00 against Coachella Valley Collection Services and its attorney John D. Gallegos, jointly and [severally]. Said sanctions to be payable to Plaintiffs' Counsel, Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP within twenty (20) days from the entry of this Order."

Coachella filed its notice of appeal on August 2, 2017.

DISCUSSION

1. The Inadequate Record Requires Affirmance of the Trial Court's Ruling on Coachella's Motion to Enforce Its Lien.

Coachella contends the judgment in this matter awarded damages to Franklin as well as ATI, and that the trial court abused its discretion in denying Coachella's motion to enforce its lien based on the Riverside County judgment against Franklin. Plaintiffs contend Coachella has failed to provide an adequate record to permit this court to review its claims. We agree that the record is inadequate.

a. An Appellant Has a Duty to Provide an Adequate Record on Appeal.

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.)

The presumption of correctness " 'has special significance when . . . the appeal is based upon the clerk's transcript.' [Citation.] 'It is elementary and fundamental that on a clerk's transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings . . . .' " (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521–522.) Our review is limited to determining whether any error "appears on the face of the record." (*Id.* at p. 521; see Cal. Rules of Court, rule 8.163.)[3]

Unless an error appears on the face of the record, an appellant's " '[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust*

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[3] California Rules of Court, rule 8.163 provides: "The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record."

v. San Jose Construction Co., Inc. (2011) 198 Cal.App.4th 181, 186–188; see *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion."].)

b. The Record Is Inadequate to Overcome the Presumption of Correctness; No Error Appears on the Face of the Record.

There is no reporter's transcript or settled statement of the hearing on the motion to enforce, and the clerk's transcript lacks a number of documents relating to the entry of judgment in this matter. Coachella contends the state of the record does not prevent appellate review because the trial court abused its discretion as a matter of law in denying Coachella's motion to enforce its lien, and so we can decide the issue based solely on the filings before the trial court. (See *Chodos v. Cole* (2012) 210 Cal.App.4th 692, 699) We do not agree.

The judgment specifies that it is for plaintiffs ATI and Franklin. However, under paragraph 6, "Amount," there is simply a check next to subparagraph a. The form language of that subparagraph states: "Defendant named in item 5a above must pay plaintiff on the complaint. . . ." Five additional subdivisions list the type and amount of money to be paid. The judgment does not spell out the plaintiff(s) to be paid.

Coachella argues, in effect, that the lack of a named plaintiff in paragraph 6 reflects the trial court's decision not to apportion damages and thus to award the damages jointly and severally to both plaintiffs. Coachella maintains that this decision cannot be "re-litigated" after the entry of the judgment.

Thus, in Coachella's view, the trial court had no possible basis to deny Coachella's motion to enforce its lien against Franklin's share of the judgment.

While more clarity would be helpful, the judgment does instruct Resolution to "pay plaintiff on the complaint." Although there is some ambiguity in the complaint, the allegations show that all the damages in this case were suffered by ATI. Paragraph 7 of the complaint alleges that under the settlement agreement Resolution "was supposed to pay Plaintiff, ATI, a one-time severance payment in the aggregate amount of" $150,000. Paragraph 9 alleges that under that same agreement Resolution "was supposed to pay Plaintiff, ATI, a purchase price of" $1 million for all "units" previously owned by ATI. Neither paragraph refers to Franklin. The complaint is for breach of a settlement agreement, and the attached agreement shows that these amounts were indeed owed solely to ATI.

The judgment is by default, and the default is based on "plaintiff's written declaration." Coachella has not included in the record on appeal that declaration or any other supporting document related to the taking of the default. Thus, there is nothing to indicate that plaintiffs deviated from the allegations of the complaint and sought damages for Franklin in their declaration, or that the trial court accommodated any such request.

Coachella has provided an incomplete and inadequate record for us to determine that the judgment reflects a decision by the trial court to award damages to both ATI and Franklin in contravention of the allegations of the complaint. Absent some showing that Franklin was entitled to monies under the judgment, we cannot conclude that the trial court abused its

discretion in denying Coachella's motion to collect against that judgment.[4] Even assuming the judgment is unclear in its reference to paying "plaintiff on the complaint," Coachella has not cited any relevant legal authority that would bar the court from issuing an order clarifying that damages were awarded solely to ATI in accordance with the complaint and, if necessary, ordering the judgment amended to reflect that fact. In short, Coachella has not overcome the presumption that the trial court properly denied its motion to enforce the lien, and Coachella has not shown an abuse of discretion as a matter of law.

2. The Lack of a Written Recitation of the Basis for the Sanctions Award Requires Reversal.

Coachella contends that it is undisputed that the trial court abused its discretion by failing to provide a written recitation of the reasons for the award as required by statute. (See § 128.5, subd. (c) [order imposing sanctions "shall be in writing and shall recite in detail the action or tactic or circumstances justifying the order"].) We agree that a sanctions order cannot be affirmed in the absence of a written recitation of reasons. (See, e.g., *First City Properties v. MacAdam* (1996) 49 Cal.App.4th 507, 514–517; *Childs v. PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 996–997.) There is nothing in the record to indicate that such written recitation was prepared in this case.

The trial court's minute order awarding sanctions does not include a written recitation detailing the circumstances justifying sanctions. The minute order directs plaintiffs' counsel "to

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[4] We do not reach plaintiffs' claims that the trial court could properly have denied Coachella's motion on a number of other grounds.

prepare [an] order and give notice." An order prepared by counsel at the direction of the court can be an adequate substitute for a written recitation by the trial court. (See *Childs v. PaineWebber Incorporated, supra,* 29 Cal.App.4th at pp. 995–996.) Here, however, the order prepared by counsel simply states: "Plaintiffs' request for sanctions is granted in the amount of $3892.00 against Coachella Valley Collection Services and its attorney John D. Gallegos, jointly and [severally]. Said sanctions to be payable to Plaintiffs' Counsel, Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP within twenty (20) days from the entry of this Order."[5] This does not satisfy section 128.5.

In the absence of a written recitation of reasons, we reverse the sanctions award. (See *First City Properties v. MacAdam, supra,* 49 Cal.App.4th at p. 517 [reversing sanctions orders on ground that both minute order and order prepared by counsel failed to set forth the basis for sanctions and so the order violated due process].) We decline plaintiffs' suggestion that we remand the matter to permit the trial court to prepare a written recitation of the basis for the sanctions order. The trial court directed plaintiffs to prepare a written order concerning sanctions, and plaintiffs failed to prepare an adequate one. There is no reason to give plaintiffs yet another chance to prepare a proper order, especially since we see nothing in the record before us that supports an award of sanctions against Coachella.

"Sanctions under Code of Civil Procedure section 128.5 are awardable for bad faith actions or tactics that are frivolous or

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[5] Plaintiffs state that this order is not included in the clerk's transcript on appeal. While technically true, the order is attached to the civil case information statement filed in this matter.

solely intended to cause unnecessary delay. 'Frivolous' is defined as either 'totally and completely without merit' or 'for the sole purpose of harassing an opposing party.' (Code Civ. Proc., § 128.5, subd. (b)(2).) The weight of authority requires a showing not only of a meritless or frivolous action or tactic but also of a bad faith taking of the action or tactic." (*Childs v. PaineWebber Incorporated, supra,* 29 Cal.App.4th at p. 997.)

The three main bases identified in plaintiffs' opposition are (1) no money is owed to Franklin under the judgment; (2) plaintiffs' attorneys' lien takes priority and has not yet been satisfied; and (3) the relief sought by Coachella is not authorized by statute.

The judgment in favor of both Franklin and ATI states only that damages are to be paid to "plaintiff on the complaint." There are some ambiguities in that complaint.[6] Plaintiffs did not offer to seek amendment of the judgment to clarify that the damages were awarded to ATI alone. Thus, it does not appear to have been frivolous for Coachella to seek a judicial determination of whether Franklin had an interest in or right to the proceeds of the judgment.

The priority of an attorney lien is based on the date of its creation, generally the date the fee agreement is executed. (See *Waltrip v. Kimberlin* (2008) 164 Cal.App.4th 517, 525.) Plaintiffs did not provide any indication of the creation date until they filed their opposition to Coachella's motion, and even then did not

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[6] For example, paragraph 9 alleges that Resolution agreed to pay ATI a purchase price of $1 million for ATI's "units" of ownership in Resolution. Paragraph 10 alleges that the first installment payment from Resolution "was made to Plaintiffs." The plural term necessarily includes Franklin.

clearly indicate the date of the written fee agreement. In any event, "[e]quitable considerations and public policy may also determine the priority of an attorney lien." (*Id.* at p. 527.) Here, it appears that amounts paid by Resolution toward satisfaction of the judgment were disbursed to ATI before the attorney lien was fully satisfied. Coachella could reasonably make an equitable argument that its lien should be given priority in such a situation. (See *Brown v. Superior Court* (2004) 116 Cal.App.4th 320, 335–336 [noting that an attorney cannot hold a judgment "hostage" against a judgment lien by deferring without good cause an action on the attorney's lien claim].)

The relief Coachella sought is authorized by statute. Although Coachella's motion and supporting documents appears to contain run-on sentences (and possibly missing some words), taken as a whole, Coachella's request for relief is most reasonably understood as seeking an order that Franklin's rights to money under the judgment be applied to satisfy Coachella's lien. This is clearly authorized by section 708.470, subdivision (a).

3. The Conduct of ATI and Plaintiffs' Attorneys Does Not Warrant Sanctions

Coachella argues that plaintiffs' attorneys improperly attempted to assert their attorney lien in this case and improperly filed documents on behalf of suspended or unregistered corporation ATI; Coachella also argues that ATI improperly collected monies under the judgment. Coachella maintains it should be awarded attorney fees as sanctions for this misconduct.

The record before us does not show that any documents were filed by plaintiffs' attorneys on their own behalf, asserting

their own interests or seeking to adjudicate or enforce the attorney lien. Rather, plaintiffs appear to have made arguments on behalf of their attorneys, arguing the attorney lien should have priority. This is permissible. (See *Brown v. Superior Court*, *supra*, 116 Cal.App.4th at p. 334 [noting that an attorney could effectively appear to oppose lien enforcement by filing an opposition on behalf of his client].) To the extent that Coachella complains that the trial court should not have considered the amount of that lien regardless of the source of its information, Coachella has not shown that the trial court engaged in such consideration.

Coachella raised the issue of ATI's corporate status in the trial court. Coachella argued there, as it does on appeal, that ATI is either a suspended California corporation or a Nevada corporation which has not qualified to do business in California. In either case, Coachella contends that ATI was barred from litigating Coachella's motion to enforce its lien, ATI's attorneys should not have filed documents or made arguments on ATI's behalf, and that those briefs and arguments should have been stricken. We presume that this issue was considered by the trial court and decided in favor of ATI and its attorneys. The inadequate record provided by Coachella is insufficient to overcome this presumption.[7]

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[7] Assuming for the sake of argument that Coachella is correct about ATI's corporate status, that would not alter the outcome of this appeal. In both the trial court and on appeal, Franklin and ATI have been represented by the same attorneys and have filed joint briefs in this matter. Franklin is an individual and is unaffected by ATI's corporate status. Coachella has offered no argument or legal authority showing that Franklin alone could not have opposed Coachella's motion in the trial court

As for ATI's collection of monies, such action would only be improper if Franklin had some interest in payments under the judgment. As we have explained, the trial court could have found that Franklin had no such interest.

For all of the foregoing reasons, we reject Coachella's claim that the trial court should have awarded attorney fees to *it* as a sanction for plaintiffs' attorneys' conduct, or that we should make such an award on appeal.

DISPOSITION

The trial court's order denying appellant Coachella's motion to enforce its lien is affirmed. The trial court's order awarding sanctions against Coachella is reversed. Parties to bear their own costs on appeal.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J. GRIMES, J.

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and responded to Coachella's brief on appeal. Thus, even if we struck ATI's name from all pleadings in this matter, it would not assist Coachella.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.