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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

INTERCOL COLLECTIONS & INVESTIGATIONS, INC., Plaintiff and Appellant, v. EVA CINDY MENEN et al., Defendants; VAHE MALEK ALLAHVERDI, Objector and Respondent.	B265843 Los Angeles County Super. Ct. No. BC084186

APPEAL from an order of the Superior Court of Los Angeles County, Suzanne G. Bruguera, Judge. Affirmed.

Law Offices of David Blake Chatfield and David Blake Chatfield for Plaintiff and Appellant.

Grebow & Rubin, Arthur Grebow and Julie H. Rubin for Objector and Respondent.

INTRODUCTION

Plaintiff Intercol Collections & Investigations, Inc. (Intercol) appeals from the trial court's denial with prejudice of its second motion to amend a 20-year-old judgment against Michael Verde to allow it to collect the debt from objector and respondent Vahe Malek Allahverdi (Allahverdi).[1] Because Intercol, after 20 years, twice failed to prove that Verde and Allahverdi are the same person, we hold the court did not abuse its discretion in denying the second motion with prejudice. We therefore affirm the post-judgment order.

PROCEDURAL BACKGROUND

In 1994, Intercol obtained a $18,775.20 civil judgment against Eva Cindy Menen, Eva Cindy Menen DBA Capital Cars of California, Michael Verde, and Michael Verde DBA Capital Cars of California.[2] In 2010, assignee Creditors Specialty Service Inc. (Creditors) began trying to collect the debt from Allahverdi.[3]

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[1] To the extent Intercol also challenges the court's award of $4,725 in attorney's fees to Allahverdi, it has forfeited the issue by failing to support it with any citation to authority. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.)

[2] As the record does not contain documents from the original proceeding or any explanation of what the case was about, the nature of the underlying action is a mystery. The record also fails to reveal the stage of the proceedings at which the judgment was obtained and the type of judgment that was entered.

[3] It appears the judgment may have been assigned to Creditors in 2001. The assignee doesn't appear to have participated in these proceedings, however, and it is not obvious that Intercol has standing to appeal on the assignee's behalf—but because Allahverdi does not raise the issue, we do not address it.

When Allahverdi refused to pay, Creditors placed a lien on his property. But Allahverdi insisted the debt—which by then had ballooned to $74,774.26—wasn't his.

1. The First Motion to Amend

On June 18, 2014—20 years after entry of judgment in the case—Intercol moved to amend the judgment to change judgment debtors Michael Verde and Michael Verde DBA Capital Cars of California to "Vahe Malek Allahverde, Ind. & DBA Capital Cars of California." Intercol did not file a supporting memorandum or proof of service, however, and offered no evidence that Michael Verde and Allahverdi were the same person. The sole support for the motion was counsel's statement that the "judgment Debtor has used both names since 1994. The true name(s) of the Judgment Debtor(s): Vahe Malek Allahverde, Ind. & DBA Capital Cars of California." (*Sic*.)

On September 22, 2014, Allahverdi demanded the release of the judgment lien on his property. On September 24, 2014, he filed an opposing memorandum and a declaration in which he stated that (1) he was not Michael Verde; (2) he had never used the name Michael Verde; (3) he had never done business as Capital Cars of California; (4) he had never been married to Eva Menen; and (5) he had not participated in or received notice of either the underlying suit or the suit referenced in Intercol's declaration.

On September 25, 2014, the court denied Intercol's motion without prejudice. The court reasoned: "Plaintiff did not submit proof of service showing *Vahe Malek Allahverde, Ind. & DBA Capital Cars* was timely and properly served with the instant motion. In addition, Plaintiff did not comply with CRC 3.1112 and 3.1113. Plaintiff's motion is not accompanied by a supporting

memorandum in violation of CRC 3.1112(a)(3) and 3.1113(b). Also, Plaintiff did not submit *admissible evidence* showing Judgment Debtor has used both names since 1994. Plaintiff's counsel's conclusory declaration is insufficient."

2. The Second Motion to Amend

On October 23, 2014, Intercol filed a second motion to amend. That motion also failed to include a supporting memorandum, but did include a declaration attaching pleadings from a *different* 1994 case (No. 93C02235), in which "Vahed Malek Allahverdi aka Mike Allahverdi, individually and dba Capital Cars of California" appeared on various caption pages. For each of the six documents, the declaration simply stated: "This pleading indicates Vahed Malek Allahverdi is aka Mike Verdi." But the documents did not name Mike Verdi, and neither the documents nor the declaration connected Mike Allahverdi or Mike Verdi to Mike Verde or Michael Verde (the original judgment debtor).

In response, Allahverdi filed a comprehensive opposing memorandum, evidentiary objections, and a declaration—supported by 39 pages of exhibits—in which he detailed Creditors's efforts to collect the debt from him. Allahverdi swore that he had not participated in or received notice of either the underlying action in this case or the suit referenced in Intercol's declaration, and again declared that he was not and had never been Michael Verde.

On June 1, 2015, the court held a hearing on the motion. Intercol did not appear. After the hearing, the court adopted its tentative ruling in part: "Plaintiff did not comply with CRC 3.1112 and 3.1113. Plaintiff's motion is not accompanied by a proper memorandum in violation of CRC 3.1112(a)(3) and

3.1113(b). Also, Plaintiff did not submit *admissible evidence* showing Judgment Debtor is also known as Vahe Malek Allahverdi." The court then denied the motion "with prejudice as plaintiff has been given numerous opportunities" and awarded $4,725 in attorney's fees to Allahverdi under section 697.660, subdivision (d), of the Code of Civil Procedure.[4]

Intercol filed a timely notice of appeal. (See *Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1071 [denial of motion to amend judgment to add alter ego judgment debtor appealable as post-judgment order].)

DISCUSSION

Intercol contends we should reverse the court's post-judgment order because it "was only given two opportunities [to add Allahverdi to the judgment], both [were] found to be procedurally deficient, there is nothing in the record to reflect that the court considered any evidence, and future evidence may emerge which confirms Allahverde [*sic*] and Verde are interchangeable." We disagree.

1. Legal Principles and Standard of Review

Under section 187, a trial court may amend a judgment to add additional judgment debtors. (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.) "This is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. [Citations.]" (*Ibid.*) To prevail on a motion to amend a judgment to change a judgment debtor's name, the

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[4] All undesignated statutory references are to the Code of Civil Procedure.

moving party must show that the party to be added was in fact an original defendant in the action. (*Burlingame v. Justice's Court* (1934) 1 Cal.2d 71, 72–73.) In addition, the moving party must have acted with due diligence in seeking to amend the judgment. (*Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 48 (*Alexander*).) The moving party has the burden of proving the facts essential to the granting of the motion by a preponderance of the evidence. (*Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1017.) But the "decision to grant an amendment lies in the sound discretion of the trial court. [Citation.]" (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 815.)

On appeal, the trial court's express or implied factual findings are reviewed for substantial evidence. (*Wollersheim v. Church of Scientology*, *supra*, 69 Cal.App.4th at p. 1017.) The court's ruling is presumed correct, and the appellate court indulges all intendments and presumptions to support the ruling on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

2. The court had discretion to deny the motion on procedural grounds.

In light of Intercol's failure to comply with the California Rules of Court—twice—the court had discretion to deny the second motion to amend on procedural grounds alone. Posttrial motions must be supported by memoranda containing statements of facts, law, evidence, and arguments. (Cal. Rules of Court, rule 3.1113; *Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 932–934 (*Quantum Cooking*) [posttrial motions properly denied based on inadequate memoranda].) These are not mere technical requirements. They

are important rules of procedure designed to alleviate the burden on the court—and on other litigants—by requiring the parties to present their case systematically. (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.) Orderly procedure demands reasonable enforcement of these rules.

It follows that the "court may construe the absence of a memorandum as an admission that the motion … is not meritorious and cause for its denial … ." (Cal. Rules of Court, rule 3.1113(a).) "Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide. On the record in this case, the trial court was justified in declining to look beyond that failure." (*Quantum Cooking*, *supra*, 197 Cal.App.4th at p. 934.) But while the court properly denied the motion on procedural grounds, it also appears to have denied the motion on the merits.

3. We presume the court denied the motion on the merits.

Contrary to Intercol's claim that it "was never given a hearing on the merits due to procedural errors in the motions," the record reveals the court in fact held a hearing on the second motion to amend the judgment—and Intercol did not appear. We cannot know precisely what transpired at that hearing, but absent a reporter's transcript or other record to support Intercol's claim of error, we presume the court properly performed its official duties. (Evid. Code, § 664; *People v. Martinez* (2000) 22 Cal.4th 106, 125 [presumption applies to trial judges]; *Olivia v. Suglio* (1956) 139 Cal.App.2d 7, 9 ["If the invalidity does not appear on the face of the record, it will be presumed that what

ought to have been done was not only done but rightly done."].) The record here supports that presumption.

As discussed, the court awarded Allahverdi $4,725 in attorney's fees under section 697.660, subdivision (d), and ordered Intercol to release the lien on his property under subdivision (c). But those remedies are available only when a property owner "present[s] evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment … ." (§ 697.660, subd. (c).) The court's ruling, therefore, indicates it also denied Intercol's second motion to amend on the merits.

The record supports that ruling. Certainly, the record contains no evidence that Allahverdi and Michael Verde are the same person. Even assuming caption pages prepared by a third party in a different 1994 lawsuit could constitute relevant, admissible evidence, neither those caption pages nor the attached declaration make the required connections between Allahverdi and the original judgment debtor. The caption pages refer to "Vahed Malek Allahverdi aka Mike Allahverdi, individually and dba Capital Cars of California." For each of the six documents, the declaration then asserts: "This pleading indicates Vahed Malek Allahverdi is aka Mike Verdi."

As an initial matter, Mike Allahverdi, the alternate name on the caption pages, is not the same as Mike Verdi, the alternate name in the declaration. And in any event, Intercol was not seeking to amend a judgment against either **Mike Allah**verd**i** or **Mike** Verd**i**. It was seeking to amend a judgment against **Michael** Verd**e**. Likewise, it was not seeking to amend the judgment to add Vahe**d** Malek Allahverd**i**. It wanted to add Vah**e**

Malek Allahverd**e**.[5] Put another way, to amend the judgment, Intercol needed to prove that Allahverdi and Michael Verde were the same person. The most these documents proved was that 20 years ago, a third party in another matter alleged Vahed Malek Allahverdi and Mike Allahverdi were the same person.

4. Intercol failed to act with due diligence in amending the judgment to include Allahverdi.

Apparently recognizing that both of its motions were procedurally deficient and unsupported, Intercol attempts to resurrect the second motion using the following logic (as best we understand it). Section 187 authorizes the court to amend a judgment to correct a judgment debtor's name.[6] Section 187 does not contain a statute of limitations. (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 286–287.) Therefore, the judgment creditor may move to amend the judgment debtor's name at any time. Since the judgment creditor may move to amend any time, the court can never deny any *individual* motion with prejudice—no matter how unsupported or defective it may be—because the denial would prevent the judgment creditor from moving to amend any time. Intercol's cited authorities do not support this premise, and

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[5] Or at least, that was what the first motion to amend tried to do. The second motion sought only to "Amend name of Defendant Michael Verdi," who, unlike Michael Verde, was not a defendant or a judgment debtor, without specifying what it wanted to amend it to.

[6] Though Intercol also relies on section 116.560, that statute was enacted as part of The Small Claims Act (§ 116.110 et seq.), and does not apply to general jurisdiction cases like this one. (See § 32.5 [jurisdictional classifications].)

Intercol's logic fails on a host of grounds. But fundamentally, Intercol fails to recognize that it must exercise due diligence, even without an absolute time bar.

As noted, to justify the addition of a new defendant to a judgment, the plaintiff must have acted with due diligence. (*Alexander*, *supra*, 104 Cal.App.3d at p. 48.) "It is blackletter law that an unjust judgment or order by itself is not enough to grant relief under equitable principles. In order to succeed, the aggrieved party in addition must show a satisfactory excuse for not having made his claim or defense in the original action and diligence in seeking relief after discovery of the facts. [Citations.]" (*DeMello v. Souza* (1973) 36 Cal.App.3d 79, 85, italics omitted.)

Intercol complains that it is "unable to collect on the judgment after twenty years because the named judgment debtor, apparently, does not exist and is an 'aka' as demonstrated by the evidence that plaintiff attempted to submit to the trial court." As discussed above, however, the evidence does not establish what Intercol claims—and even if it did, that evidence is 20 years old. Yet Intercol's evidence does clarify one matter: though Intercol knew about or suspected a connection between Allahverdi and Michael Verde in 1994, it did not seek to amend the judgment until 2014—a fact Intercol does not explain and we are at a loss to understand. In light of this 20-year delay, we find that Intercol failed to act with due diligence in seeking to amend the judgment to include Allahverdi.

In sum, based on the record before us, "[t]his is not an action where [Allahverdi] was sued under a false or fictitious name or has been sued by an inaccurate designation of his own name; but it is an action wherein he was never sued at all, was not sought to be sued and no attempt was made to bring him into

the case until long after the entry of the judgment … ." (*Burlingame v. Justice's Court*, *supra*, 1 Cal.2d at p. 73.) We conclude the court did not abuse its discretion in denying with prejudice Intercol's second motion to amend or in awarding attorney's fees to Allahverdi under section 697.660.

DISPOSITION

The post-judgment order is affirmed. Objector and Respondent to recover his costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, J.*

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