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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD MARKOWICZ et al., Plaintiffs and Appellants, v. JPMORGAN CHASE BANK, N.A., Defendant and Respondent.	B253347 (Los Angeles County Super. Ct. No. BC418153)

APPEAL from an order of the Superior Court of Los Angeles County. Ronald M. Sohigian, Judge. Affirmed.

Law Offices of Motaz M. Gerges, Motaz M. Gerges; Champ & Associates and Michael W. Champ for Plaintiffs and Appellants.

AlvaradoSmith, Theodore E. Bacon, Mikel A. Glavinovich; Parker Ibrahim & Berg and John M. Sorich for Defendant and Respondent.

Plaintiffs and appellants Richard and Jolanta Markowicz challenge a trial court order denying their request to enforce a default judgment against JPMorgan Chase Bank, N.A., an unknown entity. Although their appellate brief is difficult to discern, it seems that they contend that there are multiple "JPMorgan Chase" entities and even though one successfully obtained judgment against appellants, appellants are entitled to a default judgment against this other entity because they established their damages.[1]

We affirm.

FACTUAL[2] AND PROCEDURAL BACKGROUND

Appellants brought suit against several defendants, including Washington Mutual, Inc., and defendant and respondent JPMorgan Chase Bank, N.A. According to respondent's brief, because Washington Mutual, Inc., was no longer operating when the case was filed, respondent appeared as "Acquirer of Certain Assets and Liabilities of Washington Mutual Bank from the Federal Deposition Insurance Corporation ('FDIC') Acting as Receiver." The suit was based upon alleged fraud in connection with the origination of loans that appellants secured from Washington Mutual Bank. Judgment was entered in favor of respondent, and an appeal followed. On August 29, 2012, we affirmed the judgment. (*Markowicz v. JPMorgan Chase Bank, N.A.* (Aug. 29, 2012, B233602) [nonpub. opn.].)

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1 To the extent appellants suggest that they are entitled to a default judgment against other named defendants, we deem this argument abandoned for failing to raise it sufficiently in their opening brief. (*Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 753, fn. 2; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

2 The appellate record is woefully inadequate. (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1320–1321.) For context, we set forth the factual and procedural background, relying, where noted, upon representations in the parties' appellate briefs, mindful that counsel's statements in the parties' briefs are not evidence. (See *Westoil Terminals Co., Inc. v. Industrial Indemnity Co.* (2003) 110 Cal.App.4th 139, 152; *In re Zeth S.* (2003) 31 Cal.4th 396, 413–414.)

Meanwhile, appellants filed a request for entry of default against JPMorgan Chase Bank, N.A., an unknown entity. On the form, the clerk noted: "Per attorney, [j]udgment on 5-4-11 is not for JP Morgan Chase Bank." The clerk entered the default on September 26, 2011. Then, appellants filed a request for entry of default judgment against JPMorgan Chase Bank, N.A., an unknown entity, seeking $25 million. Again, appellants' attorney represented to the trial court that "JPMorgan Chase Bank, N.A." was distinct from "JPMorgan Chase Bank, N.A., as Acquirer of Certain Assets and Liabilities of Washington Mutual Bank from the Federal Deposit Insurance Corporation Acting as Receiver." (Italics omitted.)

After multiple continuances and a lengthy hearing, the trial court determined that appellants were "not entitled to any further relief from the remaining Defendants as to any cause of action." The case was dismissed, and this timely appeal ensued.

DISCUSSION

I. Standard of Review

We review the trial court's order denying enforcement of a default judgment for abuse of discretion. (*Blumenthal v. Superior Court* (2006) 137 Cal.App.4th 672, 678–679.)

II. The Trial Court Did Not Err

On September 25, 2008, the Office of Thrift Supervision closed Washington Mutual Bank and appointed the FDIC as its receiver. When the FDIC is appointed as receiver, it succeeds to "all rights, titles, powers and privileges of" the failed institution, and may "take over the assets of and operate" the failed institution with all of the powers thereof. (12 U.S.C. § 1821(d)(2)(A)(i), (d)(2)(B)(i).)

On the same day that the FDIC was appointed as receiver, Washington Mutual Bank's assets were transferred to respondent, pursuant to the Purchase and Assumption Agreement (P&A Agreement). More specifically, the bulk of Washington Mutual Bank's assets were transferred to respondent, pursuant to the P&A Agreement between FDIC-Receiver, the FDIC in its corporate capacity, and respondent. These assets included Washington Mutual Bank's interest in appellants' loans. Thus, when appellants

filed their initial complaint against Washington Mutual Bank and respondent, respondent appeared as an "Acquirer of Certain Assets and Liabilities of Washington Mutual Bank from the FDIC Acting as Receiver." Washington Mutual Bank could not have appeared in this matter as it had been closed before this lawsuit was filed.

Moreover, pursuant to the P&A Agreement between the FDIC and respondent, respondent did not assume the potential liabilities of Washington Mutual Bank associated with claims of its borrowers; that potential liability, if any, remained with the FDIC. Thus, the trial court sustained respondent's demurrer; judgment was entered; and we affirmed the judgment. (*Markowicz v. JPMorgan Chase Bank, N.A., supra*, B233602.)

It follows that appellants could not seek, and the trial court could not enforce, a default judgment against respondent or Washington Mutual Bank. Regarding respondent, it had appeared in the action, for itself and as an acquirer of Washington Mutual Bank's assets. Appellants had no evidence or justification for presuming that there were separate "JPMorgan" or "Washington Mutual" entities.

At oral argument, newly substituted counsel for appellants focused on defendants other than respondent, specifically naming Stacey Eagle and the Historical Real Estate & Finance Company. As mentioned above, appellants did not meet their burden in their appellate opening brief regarding these other defendants. For the sake of completeness, and because counsel highlighted this issue, we briefly note the following: In their opening brief, appellants did not set forth the elements of each cause of action alleged against these other defendants. And, they did not direct us to the evidence that supposedly supports each element of these causes of action. Instead, appellants focus on their multi-million dollar damage request, continuing to assert that this case has become one of personal injury. According to appellants, because they complied with all statutory requirements (Code Civ. Proc., §§ 425.10 & 425.11) for a default judgment in a personal injury action, they are entitled to judgment. We cannot agree. Appellants have not demonstrated that the trial court erred.

In addition, in urging us to reverse, appellants raise various arguments on appeal. We reject each in turn. First, they suggest that "JPMorgan" is somehow a different entity

from "Chase." There is no evidence to support this supposition. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Second, they claim that "JPMorgan Chase Bank, N.A., an acquirer of certain assets and liabilities of Washington Mutual Bank from the FDIC acting as receiver" is a fictional entity. (Italics omitted.) Again, there is no evidence to support this proposition. Third, throughout their lengthy appellate brief, appellants argue that they proved their damages; thus, they are entitled to a default judgment. We need not look at the actual damages that may or may not have been proven—the bottom line is that there is no defendant against whom judgment can be entered. Fourth, appellants contend that the defaults against various entities were properly entered. Regardless of whether those defaults were properly entered, appellants were still required to prove that they were entitled to judgment. As the trial court correctly found, they did not do so. Fifth, appellants assert that a Washington Mutual entity could be subject to a default judgment. But, for the reasons set forth above, no valid cause of action was stated against it. Sixth, appellants attempt to reargue the merits of the first appeal. They cannot do so. Seventh, appellants claim that if any errors below occurred as a result of their conduct, it was because they were representing themselves and they lack legal expertise. This contention offers no basis for reversal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.) Finally, while we ignore appellants' use of this appeal to launch an offensive, inflammatory assault on the trial court, we do not take it lightly. (*In re S.C.* (2006) 138 Cal.App.4th 396, 412.)

DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT