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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

JANG KIL YI et al., Plaintiffs and Respondents, v. JAQUELINE JOE et al., Defendants and Appellants.	B294248 (Los Angeles County Super. Ct. No. BC627773)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barbara A. Meiers, Judge. Affirmed.

David S. Kim & Associates, David S. Kim and Todd A. Fuson for Defendants and Appellants.

The Milner Firm and Timothy V. Milner for Plaintiffs and Respondents.

Defendants and appellants Jaqueline Joe, Win Realty, Abraham Kim, SNK Management, Inc., and Everyday Rich, LLC (appellants) appeal from the default judgment entered against them. On appeal, appellants challenge only the trial court's order striking their second amended answer to the third amended complaint of plaintiffs and respondents Jang Kil Yi, The Yi Family Limited Partnership, and The Yi Family Trust (respondents). Appellants argue the trial court abused its discretion in striking their answer without leave to amend and allowing respondents to proceed by way of default. As discussed below, we recognize the severity of the trial court's order but under the circumstances of this case find no abuse of discretion. Accordingly, we affirm.[1]

BACKGROUND

The underlying lawsuit began in July 2016 and concerns allegations of a real estate transaction gone wrong, complete with fraudulent deeds of trust and clouded title. The particulars of the

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[1] In July 2019, while this appeal was pending, respondents filed a motion to dismiss the appeal based on the doctrine of disentitlement. Respondents argued we should dismiss the appeal because appellants have failed to comply with postjudgment discovery and sanction orders entered by the trial court in June 2019. In connection with the motion to dismiss, respondents also filed a request for judicial notice, asking us to take judicial notice of the relevant trial court orders. Appellants filed no opposition to the motion to dismiss or to the request for judicial notice. The parties have not briefed us on the status of appellants' compliance or noncompliance with those postjudgment orders. In any event, those orders are not before us in this appeal. While we grant the request for judicial notice, we deny the motion to dismiss the appeal.

alleged wrongdoing are not relevant to this appeal and we do not recite them here.

1. The First Three Complaints

Respondents filed their initial complaint against appellants[2] on July 21, 2016, alleging negligence, fraud, fraud in the inducement, and unjust enrichment. After the trial court sustained appellants' demurrer to the initial complaint with leave to amend, respondents filed a first amended complaint. The first amended complaint alleged causes of action for fraud, negligence, and elder abuse. The trial court again sustained with leave to amend appellants' demurrer to the amended complaint. Thus, respondents filed a second amended complaint, again alleging fraud, negligence, and elder abuse, to which appellants again demurred.

2. The Operable Third Amended Complaint

In July 2017, before the trial court ruled on appellants' demurrer to the second amended complaint, respondents successfully moved to file a third amended complaint. In addition to causes of action for fraud, negligence, and elder abuse, the third amended complaint also included a quiet title cause of action. The third amended complaint is the operable complaint (complaint).

3. Answers, Cross-complaints, and Respondents' Motions to Strike

a. *Answer, First Amended Answer, Cross-complaint, and First Amended Cross-complaint*

In March 2018, almost eight months after the complaint was filed, appellants filed a verified answer to the complaint.

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[2] Respondents added appellant Everyday Rich, LLC as a defendant in the third amended complaint.

The answer was confusing and for almost every paragraph of the 50-paragraph complaint stated the appellants "lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in paragraph . . . [of the complaint]." Similarly, for almost every paragraph of the complaint, the answer simply repeated the phrase: "ANSWERING DEFENDANTS admit the existence of [appellants] SNK Management, Inc., Abraham Kim, Jaqueline Joe, Everyday Rich, LLC, Win Realty, and [respondent] Jang Kil Yi, and the fact that [respondent] Yi failed or refused to comply with the July 26, 2017, court order that Everyday Rich, LLC, be served within five court days." The answer also attached a six-page form listing a variety of affirmative defenses, many of which had been checked off.

The same day appellants filed their first answer, appellant Joe also filed a cross-complaint and soon after a first amended cross-complaint against respondents, both alleging a cause of action for breach of contract.

On May 4, 2018, respondents filed a motion to strike the entire answer and for sanctions. Counsel for respondents acknowledged the unusual nature of requesting the entire answer be struck, but stated he was "at a loss as to what else to do in this case." In the motion to strike, respondents listed a number of deficiencies in the answer, including its inconsistent pagination and paragraph numbering. Respondents also explained many of the affirmative defenses simply had no application to the case as they included defenses to causes of action not at issue (such as breach of contract). Similarly, respondents noted the affirmative defenses were directed toward "18 causes of action" when the complaint alleged only four causes

of action, the answer repeated irrelevant phrases throughout, and appellant's counsel had verified the answer despite its blatant inaccuracies. Respondents also filed a demurrer to appellant Joe's first amended cross-complaint.

A few weeks later, on May 29, 2018, appellants filed an amended answer. Although the amended answer fixed some formatting issues, added an "Introduction," and deleted the erroneous reference to 18 causes of action, the amended answer was almost exactly the same as the original answer. Appellants' attorney again verified the amended answer on behalf of his clients. At some point, respondents filed a motion to strike the amended answer, which motion is not in the record on appeal.

On June 12, 2018, the trial court held a hearing on respondents' motion to strike the amended answer and respondents' demurrer to the first amended cross-complaint.[3] The trial court granted respondents' motion to strike the amended answer. As reflected in the minute order from the hearing, the court ruled, "[appellants are] to file what we will call [the] Third [*sic*] Amended Answer to the Complaint without the ream of surplusage now included . . . in the pending Answer, without non-responsive immaterial affirmative defenses and with facts pled in support of and with every affirmative defense where the law calls for the inclusion of facts." The trial court also sustained the demurrer to the amended cross-complaint "with leave to amend one last time within 15 days." The court noted significant substantive issues with the cross-complaint. The court ordered the amended papers "to be served and filed within

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[3] The record on appeal does not include a reporter's transcript of proceedings; there does not appear to have been a court reporter at the June 12 hearing.

15 days, and if they are not the pertinent Cross-Complaint and Answers [*sic*] will be stricken." Finally, the court denied respondents' motion for sanctions "without prejudice to its renewal should the conduct now in issue be repeated since defense counsel has been, inter alia, unable to make any offer of proof to repair the pleadings to justify the relief now given."

b. *Second Amended Answer and Second Amended Cross-complaint*

On July 2, 2018, after the court-ordered 15 days had expired, appellants filed a second amended answer verified by their attorney and appellant Joe filed a second amended cross-complaint for breach of contract. The second amended answer deleted the confusing phrase previously repeated throughout: "and the fact that [respondent] Yi failed or refused to comply with the July 26, 2017, court order that Everyday Rich, LLC, be served within five court days." However, the second amended answer still stated in response to almost every paragraph in the complaint that appellants admitted the existence of themselves and respondent Yi but otherwise "lack[ed] knowledge or information sufficient to form a belief about the truth of" each paragraph of the complaint. In addition, the amended answer's Introduction in large part addressed an earlier discovery ruling and included block quotes from the Evidence Code. The second amended answer dispensed with the form affirmative defenses and instead specified the following nine affirmative defenses: breach of contract, waiver, estoppel, prevention of performance, laches, lack of privity, failure to mitigate, unclean hands, and assumption of risk.

In response to appellants' second amended answer, respondents filed another motion to strike. Relying on Code of

Civil Procedure sections 435 and 436,[4] respondents urged the trial court to strike the second amended answer in its entirety, noting appellants "have had multiple opportunities to comply with this Court's Orders and file an intelligible Answer. They have failed to do so." In the alternative, respondents argued the court should strike the specified portions of the second amended answer which were most of the introduction and all of the affirmative defenses. Respondents claimed the second amended answer violated the trial court's June 2018 order in two ways. First, the second amended answer was untimely. The June 2018 order required the amended answer be filed no later than June 27, 2018, but it was filed five days late on July 2, 2018. Second, respondents argued the second amended answer failed to correct the deficiencies identified by the trial court in its June 2018 order. The trial court had ordered appellants to file an amended answer "without the ream of surplusage now included [and] without non-responsive immaterial affirmative defenses and with facts pled in support of and with every affirmative defense where the law calls for the inclusion of facts." Respondents stated the second amended answer included immaterial language and the affirmative defenses were irrelevant and undecipherable.

Respondents also filed a demurrer to the second amended cross-complaint. In both the motion to strike and the demurrer, respondents also moved for sanctions.

Appellants did not file opposition to either the motion to strike, the demurrer, or requests for sanctions.

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

c. *Ruling on Motion to Strike*

Following August 23 and 27, 2018 hearings, the trial court issued a minute order ruling on respondents' motion to strike, demurrer, and requests for sanctions.[5] According to the minute order, appellants were represented by new counsel, who sought ex parte relief either for an extension of time to file further amended pleadings or for an order setting a hearing on a motion for relief from default under section 473. The trial court denied the ex parte request without prejudice, stating there was no emergency requiring ex parte relief and appellants could file "whatever they wish subsequently."

The trial court granted respondents' motion to strike the second amended answer in its entirety, stating in its minute order, "the Answer in issue inter alia again containing a plethora of inappropriate and inapplicable materials." The court ordered, the "Answer having been stricken, [respondents] may proceed as if by default submitting evidence by Declaration."

The trial court also granted respondents' demurrer to the second amended cross-complaint without leave to amend. The court's minute order indicated the court's ruling was based on "all the reasons stated in the demurrer papers, not the least of which is that the filing of the Amended Cross-Complaint pursuant to the written order of June 12, 2018 was untimely and remained unintelligible."

Finally, the trial court denied without prejudice respondents' requests for sanctions. However, after further briefing, the court awarded respondents $3,000 in sanctions to be paid by appellants and their counsel jointly and severally.

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[5] There does not appear to have been a court reporter at either the August 23 or August 27 hearing.

4. Default Judgment

On October 18, 2018, after reviewing respondents' default judgment package, the trial court entered judgment in favor of respondents and against appellants. In addition to quieting title to the real estate at issue, the court awarded respondents over $100,000 in total damages, plus costs and attorney fees.

5. Appeal

Appellants filed a notice of appeal from the October 18, 2018 default judgment.

DISCUSSION

On appeal from the default judgment, appellants challenge only the trial court's order striking their second amended answer. They do not challenge the court's order sustaining without leave to amend respondents' demurrer to the second amended cross-complaint or the trial court's sanctions order.

Appellants argue the trial court abused its discretion when it struck the second amended answer in its entirety. Appellants admit the answer was insufficient in some respects, but claim the trial court should have used other options short of striking the entire answer, such as striking only specified portions of the answer. As explained below, given the unique circumstances of this case, we conclude the trial court did not abuse its discretion.

1. Applicable Law and Standard of Review

Section 436 permits a court on its own motion or on motion by a party to "[s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (§ 436, subd. (b).) Section 435 permits and governs a party's motion to strike a complaint or pleading.

We review the trial court's order striking all or part of a pleading for an abuse of discretion. (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1497; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.) Under that standard of review, we will not substitute our opinion for that of the trial court unless a showing of a " ' "clear case of abuse" ' " and a " ' "miscarriage of justice" ' " is shown. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) " 'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered.' " (*Denham*, *supra*, at p. 566.)

2. No Abuse of Discretion

We do not disagree with appellants' summary of the relevant law. "Preventing parties from presenting their cases on the merits is a drastic measure; terminating sanctions should only be ordered when there has been previous noncompliance with a rule or order and it appears a less severe sanction would not be effective. [Citations.] Terminating sanctions should not be ordered as a first response when noncompliance is through no fault of the party." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) We do disagree, however, that the trial court ran afoul of that law in this case.

Appellants had three chances to file an acceptable answer. As noted above, appellants' initial and first amended answers contained nonsensical phrases and statements repeated throughout as well as wholly inapplicable defenses. In its minute order striking the first amended answer, the trial court gave appellants another chance to file an answer, ordering the

amended answer to be filed "without the ream of surplusage now included . . . in the pending Answer, without non-responsive immaterial affirmative defenses and with facts pled in support of and with every affirmative defense where the law calls for the inclusion of facts." Moreover, the trial court ordered appellants to file the second amended answer within 15 days and warned, if they did not, the court would strike the answer.

Although their second amended and final answer was improved, it still failed to address specific issues identified by the trial court and violated the court's orders. First, the second amended answer was filed after the court-ordered deadline, a violation of which the court stated would result in the amended answer being stricken. Second, contrary to the court's order the amended answer again included surplusage (such as block quotes of portions of the Evidence Code). Third, the amended answer again included irrelevant and confusing affirmative defenses such as "breach of contract." Thus, despite the trial court's orders and guidance, appellants simply were unable to file an acceptable and compliant answer.

Appellants argue that, in respondents' motion to strike the second amended answer, the only ground respondents argued "for striking the *entire* Answer was that it was filed five days later than ordered by the Court." This is not entirely accurate. Respondents certainly argued the answer should be struck in its entirety because it was untimely. But respondents also argued the answer should be struck in its entirety because "[Appellants] have had multiple opportunities to comply with this Court's Orders and file an intelligible Answer. They have failed to do so." Only as an alternative to striking the entire answer, respondents argued the trial court should strike identified portions of the

answer. In their briefing on appeal, appellants also compare the trial court's "broader" statements in sustaining respondents' demurrer to the amended cross-complaint with the court's statements in ruling on the motion to strike. We do not find this comparison dispositive of the issue presented.

The decision to strike an answer and proceed by default is undoubtedly a harsh decision, but it is one permitted by law when called for by the circumstances. (§ 436.) Had the trial court struck appellant's first answer without leave to amend, that more likely would have been an abuse of discretion. However, on the record before us, we are not convinced the trial court " 'exceed[ed] the bounds of reason, all of the circumstances before it being considered' " or that a miscarriage of justice occurred. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566.) Finally, although the trial court expressed an openness to appellants moving to set aside default or to vacate the default judgment (an additional avenue to seek relief from the court's orders), it appears appellants did not file any such motions.

DISPOSITION

The October 18, 2018 judgment is affirmed. Respondents are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3), (5).)

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.