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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ASHOK BEHL,

Plaintiff and Respondent,

v.

ALEJANDRA JACKSON et al.,

Defendants and Appellants.

B270829

(Los Angeles County  
Super. Ct. No. SC124182)

APPEAL from an order of the Superior Court of Los Angeles County. Lisa Hart Cole, Judge. Affirmed.

Lieber & Galperin, LLP, Stanley P. Lieber and Yury Galperin for Defendants and Appellants.

Williams & Kilkowski and James M. Kilkowski for Plaintiff and Respondent.

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Ashok Behl brought an unlawful detainer action against Alejandra Jackson and her adult children, Donte, Jaffar, Genevieve, and Randall Franchesco<sup>1</sup> for failure to pay rent. The Jacksons signed a stipulated judgment which required them to pay \$116,693.82 in holdover damages, but later moved to set aside the judgment on the ground of mistake or inadvertence pursuant to Code of Civil Procedure section 473, subdivision (b).<sup>2</sup> That motion was denied. We affirm.

### **FACTS**

In 2013, I.D. Production, LLC (I.D. Production) leased a large home in Malibu from Behl, with the intent to produce a reality television program featuring the Jacksons. The lease agreement required I.D. Production to pay rent in the amount of \$15,500 per month and named Alejandra and her children as the occupants of the property. I.D. Production stopped paying rent by October 2014. Behl initiated legal action and ultimately received a default judgment against I.D. Production.

The Jacksons remained on the property despite I.D. Production's failure to pay rent and even after the lease between I.D. Production and Behl expired on December 31, 2014. The lease was not amended to include the Jacksons as lessees and they did not pay any rent during their stay.

Behl filed an unlawful detainer action against Alejandra on May 15, 2015, which was subsequently amended to name all of the adult Jacksons as defendants. He alleged unpaid rent from

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<sup>1</sup> For ease of reference, we will refer to appellants by their first names, but collectively as "the Jacksons."

<sup>2</sup> All further section references are to the Code of Civil Procedure unless otherwise specified.

October 1, 2014, to May 1, 2015, in the amount of \$124,000. Trial was scheduled for August 17, 2015. Several days prior to trial, the Jacksons each served a notice of limited scope representation naming Gary Saunders as the attorney to represent them at trial.

On the day of trial, Alejandra and Genevieve appeared with Linda Rahimi, an attorney Saunders had arranged to represent the Jacksons. Rahimi attempted to negotiate a settlement with Behl's attorney, requesting a stay of the eviction for 30 days and a discount on holdover damages. Behl's attorney agreed to the 30-day stay, but rejected any attempt to lower the amount of damages. He told Rahimi he was ready to try the case and presented Rahimi with a pre-prepared form of judgment showing holdover damages of \$116,693.82.<sup>3</sup>

After Rahimi conferred with Alejandra and Genevieve, she told Behl's attorney that they would agree to pay \$116,693.82 and to immediate entry of the stipulated judgment. She then placed a call to the Jackson defendants who were not present and advised Behl's attorney that they would also agree to the stipulated judgment. The attorneys then changed the pre-prepared judgment to reflect the agreement, initialed the changes, and presented it to the trial court.

The trial court asked Rahimi whether she had obtained the agreement of all of the defendants to all of the terms of the stipulated judgment. She told the court she had. The trial court then signed and entered the judgment. Notice of entry of judgment was mailed to each of the Jacksons at their home

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<sup>3</sup> According to Behl, this amount equaled the rent that would have been charged from January 1, 2015, after the lease between I.D. Production and Behl ended, to August 17, 2015, the day of trial.

address and to Rahimi the following day, on August 18, 2015. The Jacksons vacated the property within 30 days.

On December 11, 2015, the Jacksons submitted a substitution of attorney and moved to set the judgment aside for mistake or inadvertence under section 473, subdivision (b). The Jacksons asserted in their declarations supporting the motion that they only entered into the stipulated judgment because it allowed them 30 days to find a different home, but they did not understand they would be liable for \$116,693.82 in holdover damages since they were not on the lease. In particular, Alejandra submitted a declaration which stated she was not advised she would owe Behl “any money whatsoever” and she only agreed to the stipulated judgment to avoid trial and imminent eviction. No attorney affidavit of fault was submitted with the motion to set aside the judgment.

The trial court denied the motion to set aside the judgment, finding no reasonable mistake or excusable neglect had been demonstrated. The trial court noted the Jacksons were represented by counsel at all relevant times and that Rahimi’s failure to inform the Jacksons of a material term of the stipulation was not excusable. Thus, discretionary relief was unavailable. Additionally, the trial court found the Jacksons failed to seek relief within a reasonable time.

The Jacksons appealed the order.

### **DISCUSSION**

The Jacksons do not dispute they entered into a settlement with Behl, but assert they were unaware they would owe \$116,693.82 as a result. They also contend Rahimi led them to believe they would be immediately evicted if they did not agree to the settlement. However, neither argument explains why the

Jacksons waited almost four months to seek relief from a judgment to which they claim they did not agree. In any case, the trial court did not abuse its discretion in denying the motion because the facts support a finding of no mistake or surprise.

**A. The Jacksons Waited Almost Four Months to Seek Relief**

The trial court found the Jacksons failed to seek relief from the stipulated judgment within a reasonable time, as required by section 473, subdivision (b). We agree.

To qualify for discretionary relief under subdivision (b) of section 473, the application for relief “shall be made within a reasonable time, in no case exceeding six months, after the judgment . . . was taken.” (§ 473, subd. (b); *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1419 (*Huh*).) “Whether a party has acted diligently is a factual question for the trial court.” (*Huh, supra*, at p. 1420.)

In *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523 (*Benjamin*), the corporate defendant’s president failed to forward a summons and complaint to its attorney and a default judgment was taken against the defendant. The California Supreme Court reasoned the president’s inadvertence was a sufficient ground to set aside the default. The high court, however, found the defendant’s section 473 motion was not filed within a reasonable time. The defendant’s attorney took no action for more than three months even after he learned of the default judgment and provided no explanation for the delay. Thus, the high court found the trial court abused its discretion when it overlooked the unexplained delay and set aside the default judgment. (*Id.* at pp. 531-532.) Later cases have also denied relief where a section 473 motion was filed more than three months after entry of

judgment with no explanation for the delay. (*Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1183-84 [discussing cases which have adopted an “unofficial” three month standard]; see also *Huh, supra*, 158 Cal.App.4th at p. 1421.)

Here, the parties stipulated to the judgment on August 17, 2015. Notice of entry of judgment was mailed to each of the Jacksons and their attorney on August 18, 2015. The Jacksons did not file the motion to set aside the judgment until almost four months later, on December 11, 2015. They provided no explanation for the delay below. Instead, the Jacksons argue any delay was reasonable because their present counsel did not become attorney of record until December 11, 2015, the day the motion was filed. That is insufficient explanation for a four-month delay. The Jacksons do not contend, for example, they experienced difficulty in retaining an attorney. Nor do they assert they somehow failed to receive notice of the stipulated judgment, even though it was mailed to them. Courts do not act as guardians for “ ‘parties who are grossly careless as to their own affairs.’ ” (*Beall v. Munson* (1962) 204 Cal.App.2d 396, 400.) Under the standard articulated in *Benjamin*, *Stafford*, and *Huh*, the Jacksons’ delay in seeking relief from the stipulated judgment was unreasonable. The trial court did not abuse its discretion in denying the motion to set aside the judgment on this basis.

**B. There Was No Mistake, Inadvertence, Surprise, or Excusable Neglect**

Even if we were to overlook their unreasonable delay in seeking relief, we find the Jacksons have failed to show mistake, inadvertence, surprise, or excusable neglect. The Jacksons contend Rahimi, the attorney who represented them at trial,

failed to tell them of the \$116,693.82 holdover damages under the stipulated judgment and misinformed them that they would be immediately evicted if they did not agree to the judgment. According to the Jacksons, Rahimi's misinformation entitles them to relief under section 473, subdivision (b), for mistake and surprise. The facts support a finding otherwise.

### **1. Standard of Review**

A court has discretion to relieve a party or his or her attorney from a judgment taken through his or her "mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b).) The complaining party has the burden of establishing entitlement to relief under section 473, subdivision (b), by a preponderance of the evidence. (*Huh, supra*, 158 Cal.App.4th at p. 1423.)

A trial court's determination of a motion to set aside a judgment under section 473 will not be disturbed on appeal absent a clear showing of abuse of discretion. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*).) Under this standard, the trial court's factual findings are entitled to deference. (*Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003, 1007.) "The burden is on the complaining party to establish abuse of discretion, and the showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion." (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118.) As a result, " "[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citations.]" (*Ibid.*)

## 2. Analysis

Here, it is undisputed Rahimi represented the Jacksons at trial and negotiated a settlement with Behl's counsel. Rahimi attempted to obtain a discount of the holdover damages, but was unsuccessful. However, she successfully negotiated a 30-day window to allow the Jacksons time to find a new home. Alejandra and Genevieve appeared in court on the day the stipulated judgment was entered and conferred with Rahimi about the stipulated judgment. Rahimi represented to the trial court that she had obtained agreement from all of the Jacksons to all of the terms of the stipulated judgment. From these facts, it was reasonable for the trial court to find there was no mistake or surprise as to the terms of the stipulated judgment. We defer to its finding.

The Jacksons have provided no evidence to contradict this version of events beyond their own self-serving declarations. Indeed, the trial court sustained hearsay objections to Alejandra's and Genevieve's declarations indicating Rahimi warned them that they would be evicted within five days. It also sustained objections to the remaining Jacksons' declarations regarding their knowledge of the lease and what Rahimi told them. The trial court was entitled to disbelieve the Jacksons' declarations. (See *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925.)

Even were we to accept the Jacksons' assertion they were misinformed by Rahimi, however, we find they are not entitled to relief from the stipulated judgment. Discretionary relief from an attorney's negligence or mistake is only available for " 'mistakes anyone could have made.' 'Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable.' " (*Zamora*,



*supra*, 28 Cal.4th at p. 258.) Rahimi's purported failures are not excusable. (See Rules Prof. Conduct, rule 3-510(A)(2) [attorney must promptly communicate all amounts, terms, and conditions of settlement offer to client].) Thus, the Jacksons are not entitled to relief based on Rahimi's purported failures.

**DISPOSITION**

The order denying the motion to set aside the judgment is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.