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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CITY OF PALMDALE, Plaintiff and Respondent, v. PALMDALE LODGING, LLC et al., Defendants and Appellants; FRANK A. WEISER, Objector and Appellant.	B282995 (Los Angeles County Super. Ct. No. MC026853)

APPEALS from orders of the Superior Court of Los Angeles County. James C. Chalfant and Maureen Duffy-Lewis, Judges. Appeal from the May 19, 2017 receivership order dismissed; the June 6, 2017 fee order affirmed.

Frank A. Weiser for Defendants and Appellants and Objector and Appellant.

Matthew Ditzhazy, City Attorney, City of Palmdale, Noel Doran, Assistant City Attorney, City of Palmdale, Silver & Wright LLP, Matthew R. Silver, and John M. Fujii for Plaintiff and Respondent.

Respondent City of Palmdale (City) initiated this lawsuit in an effort to abate years of serious safety and health hazards at a motel operated in Palmdale (property). Defendants and appellants Palmdale Lodging, LLC, Hospitality Franchise Services, Inc., and William Herrera (collectively, appellants) challenge the trial court's order appointing a receiver over the property. In addition, appellants' attorney, Frank Weiser, has appealed the trial court's separate order awarding the City its attorney fees and costs mandated by Code of Civil Procedure, section 473, subdivision (b) (section 473).

As discussed below, we dismiss as moot appellants' appeal from the order appointing a receiver. We affirm the trial court's order awarding attorney fees and costs under section 473.

BACKGROUND

On January 30, 2017, after appellants failed to correct hundreds of documented health and safety violations at the property, the City filed a complaint against appellants alleging causes of action for nuisance abatement and receivership. The complaint alleged years of health and safety hazards at the property, which was located on a busy road close to other businesses, residences, and an elementary school. The hazards

present at the property included extensive water damage that undermined the building's structural integrity, substantial unpermitted construction (including plumbing and electrical work), a significant accumulation of trash and debris, as well as electrical, plumbing, and mechanical issues. The property also attracted and was the source of significant criminal activity.

1. Receivership Order

In March 2017, the City moved ex parte for an order appointing a health and safety receiver. The trial court denied the ex parte request but construed the City's papers as a noticed motion to be heard at a later date. The trial court also appointed a court expert to report on the conditions at the property and to make a recommendation to the court.

On May 19, 2017, the trial court granted the City's motion and appointed the previously appointed court expert as the health and safety receiver for the property (receivership order). The evidence before the court included expert reports, photographs, inspector reports, and law enforcement records. The trial court found appellant Herrera's expert's report unpersuasive and contradicted by the court-appointed expert. The evidence overwhelmingly demonstrated the property was in serious disrepair with several health and safety dangers and concerns, of which appellants were aware but had not adequately addressed.

Appellants appealed from the May 19, 2017 receivership order.

2. Default, Relief from Default, and Fee Order

In April 2017, prior to the receivership order, defaults were entered against appellants for failure to respond to the complaint within the agreed upon time frame. Later that month, appellants

moved ex parte to set aside those defaults. Appellants sought mandatory relief from default under the "attorney fault" provision of section 473, stating the defaults were entered as a result of Attorney Weiser's inadvertence and mistake. In a declaration supporting the requested relief, Weiser explained, "The entry of defaults against [appellants] was my fault and my mistake and not the [appellants'] fault and was entered due to my inadvertence and mistake and without the [appellants'] knowing participation," and "I accept any statutory sanctions imposed by law as a result of my mistake."

Although the City opposed appellants' requested relief from default, the City noted if the trial court granted the relief, section 473 required the court to award the City its costs and attorney fees. The City requested an award of $7,632.20 in costs and fees. In its brief on appeal, the City states it served appellants in person with its opposition and supporting declaration at the hearing on appellants' ex parte motion. Appellants do not claim they did not receive the City's opposition papers.

On April 28, 2017, the trial court granted appellants' request to set aside their defaults based on Weiser's declaration of fault under section 473.

Approximately two weeks later, on May 9, 2017, the City filed a declaration "in support of the City's mandatory attorneys fees and costs pursuant to Code of Civil Procedure section 473(b)" as well as a proposed order. Both the declaration and proposed order reflected a revised costs and fees request of $8,480.89. To support its requested amount of costs and fees, the City stated, in full, "As a result of [appellants'] failure to timely respond to the Complaint, the City incurred attorneys' fees and costs in obtaining the entries of default for each [appellant],

communicating with Mr. Weiser, reviewing and analyzing [appellants'] Application, drafting and filing an opposition to the Application, appearing at the ex parte hearing on April 28, 2017 for the Application, and preparing this Declaration and Proposed Order filed concurrently with this declaration. In all, the City has reasonably incurred attorneys' fees and costs in the amount of $8,480.89." In its declaration, the City "request[ed] that the Court order an award of the City's attorneys' fees and costs as mandated and required by Code of Civil Procedure section 473(b)." The City did not file a noticed motion or request a hearing on the issue of its mandatory costs and attorney fees. Although served with the declaration and proposed order, appellants did not file a response to them.

One month later, in a June 6, 2017 order (fee order), the trial court awarded the City "its reasonable legal fees and costs in the amount of $8,480.89 pursuant to Code of Civil Procedure section 473(b)." The fee order states, "The City is entitled to a mandatory award of its legal fees and costs pursuant to Code of Civil Procedure section 473(b). [¶] . . . The City reasonably incurred $8,480.89 in legal fees and costs as a result of [appellants'] failure to timely file answers or any other responsive pleading to the Complaint." The fee order does not specify who must pay the costs and attorney fees awarded.

Weiser appealed from the June 6, 2017 fee order.

DISCUSSION

1. Appeal from May 19, 2017 Receivership Order

While this appeal was pending, the City filed both a motion to dismiss as moot appellants' appeal from the receivership order and a request for judicial notice. The City argues appellants' appeal from the receivership order is moot because the property has been sold, the trial court has discharged the receiver, and judgment has been entered below. The City sought judicial notice of the sale documents, the trial court's order discharging the receiver, the judgment, and the amended judgment. We grant the City's motion for judicial notice.

Appellants oppose the motion to dismiss. Appellants argue their appeal from the receivership order is not moot because while this appeal was pending, they appealed the judgment entered October 1, 2019. (B302538) Appellants claim their appeal from the judgment has stayed the order discharging the receiver.

We take no position on the status or merits of appellants' appeal from the judgment below. However, we conclude that appeal does not save appellants' instant appeal from the receivership order. An order appointing a receiver such as that at issue here is not automatically stayed on appeal. Rather, Code of Civil Procedure, section 917.5 requires the posting of a bond to stay such an order pending appeal from that order.[1] Appellants

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[1] "The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from appoints a receiver, unless an undertaking in a sum fixed by the trial court is given on condition that if the judgment or order is affirmed or the appeal is withdrawn, or dismissed, the appellant will pay all damages which the

do not claim, and the record does not reveal, that they posted an undertaking or bond to stay the receivership order pending appeal. Accordingly, "[b]ecause the receivership proceedings were not automatically stayed by [the instant] appeal . . . , the receiver was fully authorized to proceed with attempts to rehabilitate the property and, failing that . . . , apply for authorization to sell the property. Likewise, because no valid stay was in effect, the trial court could properly make appropriate orders respecting the property." (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682 (*Horspool*).)

As the court in *Horspool* stated when confronted with a similar procedural scenario, "At this point, [the appellant's] failure to obtain a stay by undertaking or bond on appeal has left us unable to fashion any meaningful relief from the order appointing the receiver. The trial court had continuing jurisdiction to grant the receiver's request for approval to sell the blighted property and, in fact, that property was sold. An order appointing a receiver is not subject to appellate review after the receiver has settled accounts and been discharged because, at that point, the receiver and the court no longer have control of the subject matter of the receivership." (*Horspool*, *supra*, 223 Cal.App.4th at p. 682.) We are not persuaded by appellants attempt to distinguish *Horspool*. Even if the trial court's order here discharging the receiver will be considered on appeal from the judgment, the property has been sold and there is no effective or practical relief we can order in *this* appeal. Accordingly, we dismiss as moot appellants' appeal from the receivership order.

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respondent may sustain by reason of the stay in the enforcement of the judgment." (Code Civ. Proc., § 917.5.)

In any event, even if we did not dismiss the appeal from the receivership order as moot, we nonetheless would affirm that order based on appellants' insufficient briefing on appeal. As the City correctly points out, appellants' briefing as to their appeal from the receivership order is so insufficient, they have forfeited their arguments. Most notably, appellant's opening brief does not include the required factual summary (Cal. Rules of Court, rule 8.204(a)(2)(C)), and although appellants mention a few facts in their argument section, appellants neither include nor address the abundant facts supporting the receivership order. "[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

2. Appeal from June 6, 2017 Fee Order

In his appeal from the trial court's fee order, Weiser makes three arguments. First, he claims the fee order is defective because it does not state who is responsible for paying the attorney fees and costs awarded. Second, he claims the fee order violates his right to procedural due process because, when the trial court granted appellants' request for relief from default, there was "no mention of awarding attorney's fees or that the City should file an application for fees," the City did not file a noticed motion for costs and attorney fees but filed only a declaration requesting such fees, the trial court did not order Weiser or appellants to respond to the requested costs and fees, and no hearing was held on the matter. Third, Weiser argues the costs and fees awarded were excessive. We are not persuaded.

a. *Applicable Law and Standard of Review*

Section 473 provides in pertinent part, "The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." (§ 473, subd. (b).) Thus, in a case such as this, where the trial court grants relief from default based on an attorney's declaration of fault, section 473 requires the trial court to order the attorney at fault to compensate the opposing counsel or parties their reasonable attorney fees and costs.

"We review attorney fee awards on an abuse of discretion standard. 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' [Citation.] 'Fees approved by the trial court are presumed to be reasonable, and the objectors must show error in the award.' " (*Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 488 (*Laffitte*).)

b. *No Error*

As an initial matter, and as the City points out, neither appellants nor Weiser objected below to the City's requested award or amount of mandatory attorney fees and costs. Weiser does not argue he was unaware of the City's request for fees and costs. Nor does Weiser dispute he knew section 473 mandated an award of fees and costs in attorney fault cases such as this. Because no objection was made below, the City argues Weiser has waived any right to object to the trial court's fee order on appeal. Weiser and appellants did not file a reply brief on appeal and, therefore, did not respond to this argument. We agree with the

City and conclude Weiser has waived his right to challenge the fee order on appeal. " 'An appellate court will not consider procedural defects or erroneous rulings where an objection could have been, but was not, raised in the court below.' " (*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 776.)

In any event, even in the absence of such a waiver, Weiser's arguments on appeal are unpersuasive. First, it is frivolous to claim the fee order is "defective" because it does not state who is to pay the awarded attorney fees and costs. As Weiser himself recognizes in his brief on appeal, section 473 expressly and clearly mandates the attorney—here, Weiser—is to pay the fees and costs. (§ 473, subd. (b).)

Second, it is disingenuous to claim procedural deficiencies when Weiser not only was first to note the possibility of statutory sanctions in his request for relief from default but also agreed to "accept" any such "sanctions." Moreover, before the court entered its fee order, the City repeatedly noted and requested its mandatory section 473 fees and costs and stated the amount it sought. Weiser does not claim he was unaware of or did not receive the City's filings. In his brief on appeal, Weiser presents an extended discussion of the right to due process, in particular a person's right to notice prior to a deprivation of his or her property. However, none of the cases cited is particularly relevant to this case for the simple reason Weiser was fully aware of both the section 473 mandate to award attorney fees and costs as well as the amount requested by the City. It is undisputed section 473 mandated the trial court to award costs and attorney fees, Weiser was aware of that mandate, Weiser was served with the City's two declarations addressing the amount of its

requested attorney fees and costs, and Weiser had several weeks to respond to the City's filings.

We are similarly unconvinced by Weiser's related claim that reversal is required because the City allegedly violated rule 3.1702 of the California Rules of Court. That rule states, "[e]xcept as otherwise provided by statute, this rule applies in civil cases to claims for statutory attorney's fees" and in such cases a "notice of motion to claim attorney's fees" must be filed within a specified time frame. (Cal. Rules of Court, rule 3.1702(a) & (b)(1).) Again, however, Weiser not only was aware of the mandated fees but had four weeks to object or otherwise respond to the City's second declaration in which the City explained the amount of fees and costs requested. Thus, although the City did not file a noticed motion and a hearing was not held, Weiser cannot reasonably argue his right to procedural due process was violated or he was blindsided by the trial court's fee order.

Finally, we are not persuaded by Weiser's argument, unsupported by legal citation, that the attorney fees and costs awarded were excessive. To the contrary, we conclude the trial court did not abuse its discretion in awarding the City its requested $8,480.89 in section 473 fees and costs. As noted above, the trial court is in the best position to determine the reasonableness of the fees and costs, having presided over the proceedings that generated those fees and costs. (*Laffitte*, *supra*, 1 Cal.5th at p. 488.) Undoubtedly the City could have included more detail in its declarations supporting the amount of its fees and costs. However, the declaration was made under penalty of perjury and described the legal work that had generated the requested fees and costs. "The trial court could make its own

evaluation of the reasonable worth of the work done in light of the nature of the case, and of the credibility of counsel's declaration unsubstantiated by time records and billing statements. Although a fee request ordinarily should be documented in great detail, it cannot be said in this particular case that the absence of time records and billing statements deprived the trial court of substantial evidence to support an award; we do not reweigh the evidence." (*Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.) Thus, although the City submitted a bare-bones declaration supporting the amount of its fees and costs, we conclude the evidence before the trial court was not so insufficient to require a reversal and remand to determine the amount of mandatory section 473 attorney fees and costs awarded.

DISPOSITION

The appeal from the May 19, 2017 receivership order is dismissed. The June 6, 2017 fee order is affirmed. The City of Palmdale is awarded its 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.