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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ASLAM SHAW,

Plaintiff and Appellant,

v.

RICHARD M. MOSS III, et al.,

Defendants and Respondents.

B268942

(Los Angeles County
Super. Ct. No. VC062975)

APPEAL from a judgment of the Superior Court of the
County of Los Angeles, Roger Ito, Judge. Affirmed.

Aslam Shaw, in pro per., for Plaintiff and Appellant.

The Law Office of Richard M. Moss III, Richard M. Moss
III, for Defendants and Respondents.

This is the fourth appeal filed by plaintiff Aslam Shaw stemming from his 2013 complaint that alleged a spectrum of wrongs against more than 25 defendants. We previously dismissed portions of plaintiff's first three appeals as to the current defendants and affirmed the balance as to other defendants. (*Shaw v. Nations Title Co.* (April 24, 2015, B251553, consolidated with B252789 [nonpub. opn.] (*Shaw I*); *Shaw v. Nations Title Co.* (Sept. 3, 2015, B255799 [nonpub. opn.] (*Shaw II*).)

On September 22, 2015, the trial court signed an order of dismissal in favor of the current defendants—Nayyar Munir Afshar (Afshar);¹ Siddiq Khawaja (Khawaja); La Palma Urgent Care (La Palma); Scanasar; and their attorneys, Richard M. Moss, III, and the Law Office of Richard M. Moss III (collectively, defendants). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Afshar initiated marital dissolution proceedings against plaintiff and, at some point, she was represented by the Moss defendants. On March 14, 2013, years after the dissolution proceedings ended, plaintiff, representing himself, commenced this lawsuit for “Fraud and Deceit, Conspiracy and Collusion, Breach of Contract, Breach of Fiduciary Duty, Negligence, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Abuse of Judicial Process, Fraud Upon the Court, Violations of Escrow and Other Laws and Court Orders.”

¹ Afshar is sometimes referred to in the record as Dr. Shah. She is plaintiff's former spouse, and La Palma was her business. Khawaja is her current husband; Scanasar was a business he operated.

Defendants in the original complaint were escrow entities and the individuals involved with them, including Nations Financial Holding Group (NFHG); Afshar; Khawaja; La Palma; Scanasar; plaintiff's former attorneys in the dissolution action; and Afshar's dissolution attorneys, i.e., the Moss defendants.

Plaintiff's first amended complaint (FAC) was filed April 16, 2013. La Palma, Scanasar, and NFHG failed to respond to the FAC, and their defaults were entered. Most defendants, including Afshar, Khawaja, and the Moss defendants, filed demurrers. The demurrers were heard over a series of dates. Each was sustained with leave to amend. To avoid confusion arising from the various hearing dates, the trial court ordered plaintiff to file a second amended complaint (SAC) by a date certain, August 12, 2013.

Plaintiff did not timely file the SAC. Instead, on the due date, August 12, 2013, he noticed a motion to extend the filing date for a SAC. The motion, which did not seek relief under Code of Civil Procedure section 473,² was denied. Most defendants proceeded to obtain signed orders of dismissal from the trial court pursuant to section 581, subdivision (f)(2).³ The Moss defendants and their clients, Afshar and Khawaja, did not.

² All statutory references are to the Code of Civil Procedure.

³ Section 581, subdivision (f)(2) provides, "The court may dismiss the complaint as to that defendant when: [¶] . . . [¶] (2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal."

After the August 12, 2013 deadline passed, NFHG moved to set aside its default and quash service of summons of the FAC. Along with the motion, it submitted a proposed demurrer to the FAC. The motions were granted, and NFHG's demurrer was calendared for hearing. On November 26, 2013, NFHG's demurrer to the FAC was sustained with leave to amend. The SAC was timely filed on December 24, 2013. At the time the SAC was filed, NFHG was the only viable defendant. The SAC was a significantly truncated version of the FAC, with charging allegations only as to NFHG.

On December 10, 2013, before the SAC was filed, La Palma and Scanasar moved to set aside their defaults pursuant to section 473. The motions were argued and granted on January 9, 2014. By that time, the SAC had been filed; and the trial court gave La Palma and Scanasar five days to respond to the SAC.

La Palma and Scanasar filed demurrers to the SAC on the basis there were no charging allegations as to them. Plaintiff essentially conceded that was case, noting the SAC was filed as the result of NFHG's demurrer and charging allegations were limited to that defendant. Plaintiff's written opposition "respectfully request[ed] that he should be granted leave to amend and to file Second Amended Complaint No. 2 (SAC-2) [i.e., a third amended complaint] against" La Palma and Scanasar. Plaintiff did not suggest in his opposition how he might amend to state causes of action against La Palma or Scanasar. The February 24, 2014 hearing on these demurrers was not reported. In the order sustaining the demurrers without leave to amend, the trial court observed, "Plaintiff has been unable to articulate a viable theory of liability against [La Palma

and Scanasar]. His request to further amend the pleading is denied.”

In the meantime, by the end of 2013, plaintiff filed the first two notices of appeal. This court consolidated those appeals. The third notice of appeal was filed in April 2014.

In *Shaw I*, we dismissed plaintiff’s appeal from the orders sustaining demurrers by Afshar, Khawaja, and the Moss defendants because no appealable judgment had yet been entered in their favor. We affirmed the trial court’s judgments in favor of two defendants whose special motions to strike had been granted and the other successfully demurring defendants. As to the latter group of defendants, we found no abuse of discretion in the trial court’s refusal to extend the time within which an SAC could be filed.

In *Shaw II*, we dismissed plaintiff’s appeal from the trial court’s orders setting aside the defaults of La Palma and Scanasar on the basis they were not appealable orders. We also affirmed the judgment in favor of NFHG after its demurer to the SAC was sustained without leave to amend.

Defendants finally obtained a signed order of dismissal on September 22, 2015, after this court’s two previous opinions were issued. The September 22, 2015 order of dismissal constitutes an appealable judgment (§ 581d); plaintiff timely appealed.

DISCUSSION

A. Appeal as to Afshar, Khawaja, and Moss Defendants

In 2013, these defendants filed demurrers to the FAC; and the trial court sustained them with leave to amend. Plaintiff failed to timely amend, but these defendants did not obtain a signed order of dismissal until September 22, 2015. (§ 581, subd. (f)(2); see fn. 2, *ante*.) Accordingly, as noted above, plaintiff's initial appeal from the orders sustaining the demurrers as to these defendants, as well as the trial court's refusal to extend the time for leave to file the SAC, was dismissed. (*Shaw I*.)

Our rationale in *Shaw I* for affirming the judgments in favor of the other demurring defendants applies here and we reproduce our analysis verbatim: "A plaintiff's failure to file an amended complaint within the time specified by the trial court after a demurrer is sustained with leave to amend subjects the action to dismissal 'in the court's discretion under section 581, subdivision (f)(2).' (*Leader v. Health Industries of America, Inc.* [2001] 89 Cal.App.4th [603,] 613.) 'The decision to dismiss an action under section 581, subdivision (f)(2) rests in the sound discretion of the trial court and a reviewing court will not disturb the ruling unless the trial court has abused its discretion. [Citation.] It is appellant's burden to establish an abuse of discretion. [Citation.]" (*Gitmed v. General Motors Corp.* (1994) 26 Cal.App.4th 824, 827.) "Discretion is abused only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.' . . . [¶] As noted above, the trial court denied plaintiff's motion to extend time and instead entered the dismissal orders because, at the time the

court ruled on the motion to extend time, the time within which plaintiff could have amended his complaint had expired. [fn.] Thus, the trial court concluded that plaintiff was required to file a motion for relief from default pursuant to . . . section 473, subdivision (a) so that the court could ‘evaluate the merits of the proposed pleading, as well as the other factors relevant under the statute, to determine whether a [second amended complaint] should be considered.’ [¶] We conclude that the trial court did not act arbitrarily when it determined that because the time to amend plaintiff’s pleading had lapsed well prior to the hearing on his request to extend that time, plaintiff was required to file an appropriate motion to be relieved from that default under the authority of . . . section 473, subdivision (a) prior to extending the time within which plaintiff could amend. (See e.g., *Leader v. Health Industries of America, Inc.*, *supra*, 89 Cal.App.4th at p. 613.) Because plaintiff did not make such a motion, the trial court did not abuse its discretion by denying the motion to extend time and granting the ex parte applications of certain of the demurring defendants to dismiss the first amended complaint under . . . section 581, subdivision (f)(2). Those dismissal orders are therefore affirmed.” (*Shaw I*, *supra*, 2015 Cal. Unpub. LEXIS 2903, *14-16.)

We do note, as to the Moss defendants, the trial court’s September 22, 2015 dismissal order incorrectly provided that plaintiff’s second amended complaint did “not state[] a claim against the Moss defendants—despite having been given three opportunities to do so—[therefore] the dismissal is also granted as to the Moss defendants.” The record is clear the judgment in favor of the Moss defendants was based on plaintiff’s failure to timely amend the FAC after having been given leave to do so.

Regardless of the wording in the signed order, the trial court did not abuse its discretion in granting the Moss defendants' dismissal motion pursuant to section 581, subdivision (f)(2).

B. Appeal as to La Palma and Scanasar

After setting aside the defaults of these two defendants, the trial court sustained their demurrers to the SAC without leave to amend. While we agree with plaintiff that the SAC was designed to, and did, concern only NFHG, that does not relieve plaintiff of his obligation to demonstrate how the SAC could be amended to state causes of actions against La Palma and Scanasar.

The Court of Appeal in *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39 explained what a plaintiff must do: "[P]laintiff may make this showing for the first time on appeal. [Citations.] [¶] To satisfy that burden, . . . plaintiff must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.] [¶] The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend." (*Id.* at pp. 43-44.)

Plaintiff has failed to offer any proposed factual allegations or legal authority to support leave to amend as to La Palma or Scanasar. Nor has Plaintiff referred this court to any substantive allegations against these defendants in the FAC. Our independent examination of that superseded pleading persuades us none exists. Accordingly, we agree the trial court properly sustained La Palma's and Scanasar's demurrers without leave to amend.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.