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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GARY SALZMAN,

Plaintiff and Appellant,

v.

LISA WATSON, as Personal
Representative, etc.,

Defendant and
Respondent.

B284969

(Los Angeles County
Super. Ct. No. MC026679)

APPEAL from a judgment of the Superior Court of Los Angeles County, Randolph Rogers, Judge. Affirmed.

Gary Salzman, in pro. per., for Plaintiff and Appellant.

Adrienne K. Miller for Defendant and Respondent.

Frederick R. Bennett, Court Counsel, for the Los Angeles Superior Court as Amicus Curiae.

Gary Salzman appeals from a judgment entered in favor of his former attorney, Gary Moll,¹ in this action for breach of fiduciary duty and other causes of action. After entering default against Moll and affording Salzman an opportunity to present evidence supporting his request for judgment, the trial court found Salzman was not entitled to recover damages against Moll. Finding no error, we affirm.

BACKGROUND

On October 24, 2016, Salzman, in pro. per., filed this action against Moll, asserting causes of action for fraud, intentional infliction of emotional distress, violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.), and breach of fiduciary duty. These causes of action arise from Moll's legal representation of Salzman in civil litigation against Salzman's former girlfriend, Dawn Phillips.²

¹ Gary Moll died after Salzman filed his notice of appeal in this matter. We granted Salzman's motion to substitute as defendant and respondent Lisa Watson, as personal representative of the Estate of Gary E. Moll.

² This is not the first action Salzman filed against Moll arising out of the same facts. In April 2015, while Moll was still representing Salzman in litigation against Phillips, Salzman sued Moll for legal malpractice (LASC case No. MC025431). Thereafter, Moll declared bankruptcy and filed a notice of stay in the malpractice action. The superior court dismissed the action without prejudice after the parties failed to appear at an order to show cause hearing regarding dismissal pending relief from the automatic stay. Salzman filed an adversary proceeding in the bankruptcy case in February 2016. Moll was discharged from bankruptcy in March 2016 and the case was closed. On October 6, 2016, after reopening the bankruptcy case, the bankruptcy court granted Salzman's unopposed motion for relief from the

Litigation Against Phillips

In 2012, Salzman claimed Phillips stole \$49,352.54 from his retirement account at a credit union without his authorization by fraudulently obtaining a debit card and making withdrawals. In May 2012, Salzman retained Moll to file a civil action against Phillips. Salzman also reported the theft to his credit union and the Los Angeles County Sheriff's Department. Eventually, criminal charges were filed against Phillips.

On June 13, 2012, Moll filed on behalf of Salzman a form complaint against Phillips for intentional tort, fraud, and common counts, seeking return of the \$49,352.54, plus punitive damages (LASC case No. MC023536). In January 2013, the superior court entered default against Phillips, and thereafter judgment in favor of Salzman in the amount of \$49,747.54 (the amount allegedly stolen plus costs).

More than a year later, in March 2014, Phillips filed a motion to vacate and set aside default and default judgment and to quash service of summons on the ground she was in Australia at the time the summons and complaint were purportedly served on her by personal service in Lancaster, California. After Salzman filed an opposition, the superior court granted Phillips's motion, finding the evidence demonstrated she was in Australia and could not have been personally served in accordance with the proof of service filed by Moll's office.

In June 2014, before the superior court ruled on Phillips's motion to vacate and set aside default, etc., Moll filed on behalf of

automatic stay so he could pursue his malpractice action (which the superior court already had dismissed) in lieu of the adversary proceeding. Salzman filed the present, new action against Moll on October 24, 2016.

Salzman another action against Phillips, this one to quiet title to real property in Lancaster (LASC case No. MC024673). The complaint alleged Phillips purchased the real property with the money she withdrew from Salzman's retirement account without his authorization.

On July 1, 2014, a notice of lis pendens was recorded against Phillips's real property. Salzman claims the lis pendens was erroneous because it referenced LASC case No. MC023536 instead of LASC case No. MC024673 (the quiet title action).

In March 2015, Salzman dismissed his second action against Phillips (the quiet title action) without prejudice, after the superior court rejected his request for default judgment based on a faulty proof of service and failure to file notice of the related case (LASC case No. MC023536).

In or about June 2015, Moll ceased representing Salzman in the civil action still pending against Phillips (LASC case No. MC023536). On June 15, 2015, Salzman substituted into the case in pro. per. He continued to litigate the matter and, in December 2015, obtained a default judgment against Phillips in the amount of \$67,882.18 (the amount allegedly stolen, plus interest and costs). In March 2016, the judgment amount was increased to \$75,332.18, after Salzman successfully moved for attorney fees against Phillips.

Salzman's credit union reimbursed him \$19,246.63. In early 2017, after Phillips pleaded guilty to grand theft, the criminal court ordered her to pay restitution to Salzman in the amount of \$38,307.38.³

³ Apparently the criminal court started with the \$49,352.54 amount Salzman claimed Phillips stole, then added a few additional unauthorized bank withdrawals and subtracted

Thus, Phillips was ordered to pay Salzman a total of \$132,886.19.

Judgment in the Present Action

Moll failed to respond to Salzman's complaint in the present action, and the trial court entered his default on February 16, 2017. Salzman requested judgment against Moll in the amount of \$797,260: \$158,260 in special damages, \$600,000 in general damages, \$35,000 in punitive damages, and \$4,000 in costs.

On February 27, 2017, Salzman filed a verified statement, seeking disqualification of the trial judge under Code of Civil Procedure section 170.3, subdivision (c)(1), arguing the judge was biased because the same court presided over his action against Phillips. The trial court struck the statement of disqualification as unmeritorious. This court summarily denied Salzman's petition for writ of mandate challenging that order (appellate case No. B281882).⁴

In support of his request for judgment, Salzman submitted exhibits related to the underlying litigation Moll filed on his behalf against Phillips.⁵ He also submitted a 10-page

\$12,000 the court believed was double-counted, to arrive at the \$38,307.38 restitution amount.

⁴ We see no evidence of court bias in the record before us. The reason we address these facts is because Court Counsel for the Los Angeles County Superior Court filed a letter brief as *amicus curiae*, setting forth these facts and arguing the issue has "already been determined and rejected on the merits."

⁵ Salzman also attached to his complaint in this action notice of disciplinary charges filed against Moll before the State Bar Court in September 2016 that are unrelated to Moll's representation of Salzman.

declaration, dated April 5, 2017. Therein, Salzman faulted Moll for failing to have Phillips served with the summons and complaint during the three years he represented Salzman in that action; misleading Salzman about the fact Phillips had not been served; requesting default against Phillips when she had not been served; requiring Salzman himself to serve Phillips in Australia after she successfully moved to set aside the first default judgment; failing to move the case along while Phillips sold her assets; filing a second action against Phillips (the quiet title action), which Salzman claims was unnecessary and caused Salzman to incur additional legal fees; filing an erroneous notice of lis pendens using LASC case No. MC023536 instead of LASC case No. MC024673 (the quiet title action); failing to file a notice of related case in the quiet title action; failing to appear at court hearings, meet with Salzman, and show him documents before filing them; and failing to provide Salzman with billing statements for legal services.

In his declaration, Salzman set forth categories and amounts of damages he was claiming against Moll, but did not submit supporting documents. For example, he stated he was seeking \$600,000 in “general damages” for “suffering thru 5 years of needless litigation in this courthouse and federal bankruptcy court, for pain and suffering, inconvenience, loss of consortium, humiliation, and intentional infliction of emotional distress and civil conspiracy damages for [Moll]’s intentional and reckless and dishonest behavior throughout all times mentioned in [his] verified complaint.” He also stated he was seeking \$158,260 in “special damages” for “time off work, doctor’s visits and future damages for same,” without any supporting documents or explanation of the nature of his alleged time off work and doctor

visits. Salzman further stated he was seeking reimbursement of \$35,000 he paid Moll “in cash” between 2012 and 2015. This claim is inconsistent with the allegation in his complaint in this action that he paid Moll about \$12,000 in attorney fees, which is further inconsistent with a January 13, 2016 email from Moll that Salzman referenced in his complaint and declaration, stating Salzman had paid him only \$3,000.

On June 1, 2017, Moll filed a motion to set aside the default, stating health issues prevented him from defending himself in this case. Salzman opposed the motion.

Also on June 1, 2017, the trial court filed a 26-page proposed statement of decision on Salzman’s request for judgment against Moll. The court concluded Salzman was not entitled to recover damages against Moll (for reasons set forth below).

Salzman filed additional briefing, a supplemental declaration, and other exhibits in support of his request for judgment against Moll.⁶

On August 8, 2017, the trial court filed its (final) 37-page statement of decision and judgment in favor of Moll. The court concluded: (1) this action is barred by the one-year statute of limitations for legal malpractice actions; (2) this action is barred by the doctrine of unclean hands because Salzman was not forthright with the courts about the amounts he recovered for his loss and the amounts he paid Moll in attorney fees; and (3) Salzman has not demonstrated he sustained damages as a result of Moll’s conduct.

⁶ A summary of these documents is not necessary to our resolution of this appeal.

DISCUSSION

Salzman contends the trial court erred in (1) analyzing this action as one for legal malpractice only and failing to address his causes of action for fraud, intentional infliction of emotional distress, and unfair competition; (2) finding his claim that he paid Moll \$35,000 in cash for legal services was not credible; (3) conducting independent investigation regarding the criminal case against Phillips;⁷ (4) ignoring the automatic bankruptcy stay in analyzing the statute of limitations issues; and (5) failing to award him damages for “loss of use of his monies, interest lost, pain and suffering, humiliation, anxiety and depression, lost ability to support his family, intense emotional distress to [him] and his small family.”

We conclude the judgment in favor of Moll is proper because Salzman has not demonstrated he is entitled to recover any damages against Moll.

After entry of default, a trial court “shall render judgment in the plaintiff’s favor for that relief . . . as appears . . . to be just.” (Code Civ. Proc., § 585, subd. (b).) A plaintiff in a default judgment proceeding must prove he or she is entitled to the damages claimed. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288.) “[I]t is up to plaintiff to ‘prove up’ the right to relief, by introducing sufficient evidence to support his or her claim. Without such evidence, the court may refuse to grant a default judgment for any amount, notwithstanding defendant’s

⁷ We grant Salzman’s July 18, 2018 motion to augment the record with reporter’s transcripts from the August 11, 2015 preliminary hearing and January 26, 2016 restitution hearing in the criminal case against Phillips.

default.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial, ¶ 5:201, p. 5-49 (rev. # 1, 2006).)

Salzman’s recovery against Phillips was more than he claimed in the civil litigation Moll filed on his behalf. Salzman cannot show he would have fared better in the litigation if Moll had not committed the acts of which he complains.

Salzman did not demonstrate that delay in litigating the case, caused by Moll’s actions, resulted in him being in a worse position to collect on the judgment. His mere assertions to the contrary are not evidence.

Salzman makes conclusory claims of pain and suffering, emotional distress, and loss of consortium, but he has not supported these claims with evidence.

Given Salzman’s inconsistent allegations and statements, the trial court found his claim regarding the amount of attorney fees he paid Moll to be not credible. We have no cause to disturb the trial court’s finding, which is supported by substantial evidence.⁸

“ ‘ “When the plaintiff has had a full and fair opportunity to present the case, and the evidence is insufficient as a matter of law to support plaintiff’s cause of action, a judgment for defendant is required.” ’ ” (*Kim v. Westmoore Partners, Inc.*, *supra*, 201 Cal.App.4th at p. 289.) In its proposed statement of decision, the trial court gave Salzman notice that it found the evidence supporting his damages claims to be insufficient, and the court provided Salzman an opportunity to submit additional

⁸ Salzman does not dispute the judgment against Phillips includes an award of attorney fees, and he has not presented sufficient evidence showing he incurred attorney fees over and above that amount.

evidence. Salzman did not submit sufficient evidence entitling him to relief.

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.