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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ADNAN KHATIB,

Plaintiff and Respondent,

v.

IQBAL MAHMOOD,

Defendant and Appellant.

B232657

(Los Angeles County
Super. Ct. No. VC009450)

APPEAL from an order of the Superior Court of Los Angeles County.

Raul A. Sahagun, Judge. Affirmed.

Rutan & Tucker, Lisa N. Neal, Hengameh S. Safaei, Hanni Pichel for Defendant
and Appellant.

Borchard & Callahan, Thomas J. Borchard, Janelle M. Dease for Plaintiff and
Respondent.

Appellant contends that the trial court improperly allowed respondent to renew a void judgment. We find that appellant's argument is not well taken, and accordingly we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The first amended complaint in this action, filed on September 14, 1992, contained four causes of action, labeled as follows: (1) set-aside of fraudulent conveyances; (2) breach of contract; (3) fraud; (4) conspiracy. A default judgment was entered in favor of plaintiff and respondent Adnan Khatib on July 25, 1994, on the fraudulent conveyance and breach of contract causes of action against defendant and appellant Iqbal Mahmood, as well as other defendants not party to this appeal. On October 9, 1996, we affirmed the judgment as to the fraudulent conveyance cause of action, but reversed for a new determination of monetary damages in connection with the breach of contract cause of action.

On remand, after determining the damages awardable to plaintiff, the trial court entered a new default judgment on April 30, 1997, with an effective date of July 25, 1994, the date of the original judgment. This judgment was again appealed. In an opinion issued October 19, 1998, we affirmed the judgment, but modified it "to reflect that the award of monetary damages is premised on the second cause of action for breach of the settlement agreement, and not on the third cause of action for fraud." A remittitur indicating that the judgment was "affirmed with modifications" was issued on December 23, 1998. Apparently, this remittitur was never noted by the clerk of the superior court, because the remittitur does not appear in the superior court docket for the case.

On July 22, 2004, Khatib filed an application for and renewal of judgment. The application sought renewal of the April 1997 judgment, and calculated the amount owing with interest as \$1,256,537.37. The second page of the application stated that the "terms of the judgment" were that judgment was granted in favor of Khatib on the "third cause of action." The judgment was renewed without any objection.

On October 4, 2010, Khatib filed another application for and renewal of judgment. This application again sought renewal of the April 1997 judgment, and calculated the amount owing with interest as \$2,029,423.50. The terms of the judgment were not described in any manner in this application.

Following service of notice of the 2010 renewal, Mahmood filed a motion to vacate renewal of the judgment. In his papers, Mahmood argued that Khatib never renewed the final judgment in the case. According to Khatib, following remittitur of the second appeal, Mahmood should have sought to have a new judgment entered that conformed with the terms of our opinion. Mahmood argued that the April 1997 judgment was significantly modified by our opinion, and that the trial court's April 1997 judgment was therefore void and could not be renewed. Furthermore, the July 2004 renewal, which described judgment as being entered on the "third cause of action" (which was for fraud), rather than the second cause of action (which was for breach of contract), showed that the wrong judgment had been renewed.

After receiving opposition and reply papers, the trial court ruled on the motion to vacate. It denied the motion, finding that the earlier renewal's reference to the third cause of action was "nothing more than harmless error." It further held that the notices of renewal were effective, and "[t]o find otherwise would result in a windfall to defendant, who failed to serve any objection to the July 2004 renewal."¹

DISCUSSION

Mahmood now appeals the trial court's order denying the motion to vacate. He makes a similar argument to the one he made below. According to Mahmood, the April 1997 judgment "became void and ceased to exist as an independent judgment when the Court of Appeal modified it and issued the Remittitur." Mahmood contends that Khatib

¹ The trial court also found that the motion to vacate was untimely with respect to the October 2010 renewal. It is acknowledged by both parties on appeal that the motion actually was timely and the trial court's order was incorrect in this respect.

should have renewed this “modified judgment” instead of the April 1997 judgment.² Instead, Khatib renewed the April 1997 judgment, and in his July 2004 renewal, he stated that judgment was based on the third cause of action. Mahmood argues that he will suffer embarrassment and damage to his reputation and financial credit, and possibly face difficulties in bankruptcy, if the renewal is allowed to stand because it is premised on fraud, rather than a breach of contract cause of action.

Mahmood’s argument is meritless. The Court of Appeal may affirm, reverse, or modify a judgment, or may direct that a proper judgment be entered. (Code Civ. Proc., § 43.) In our October 1998 decision, we affirmed the April 1997 judgment, while modifying it to reflect that the award of monetary damages was premised on the second (not the third) cause of action. We did not go any further. We did not reverse the April 1997 judgment, we did not order that it be vacated, and we did not direct the trial court to enter a new judgment. “Whenever an appellate court may make a final determination of the rights of the parties from the record on appeal, it may, in order to avoid subjecting the parties to any further delay or expense, modify the judgment and affirm it, rather than remand for a new determination.” (*Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, 1170.) What remained following our disposition was still a single judgment, embodied in the trial court’s April 1997 judgment, as modified by this Court.

To the extent that Khatib’s renewals perhaps could have been more clear and referenced our October 1998 modification, that is of no moment. Mahmood does not quarrel with the damages calculations in the applications for renewal, and the amount of damages is at this point the substantive component of the renewal.

Further, as correctly found by the trial court, the 2004 renewal application’s reference to the “third cause of action” was harmless error. First, Mahmood never objected to the 2004 renewal, and the 30-day period in which he could have sought to

² Mahmood does not explicitly explain how this should have been done. Implicitly, it appears that Mahmood would deem our October 1998 decision to be a judgment in itself that Khatib should have sought to renew.

vacate the renewal ran many years ago. (See Code Civ. Proc., § 683.170, subd. (b).) Second, Code of Civil Procedure section 683.170, subdivision (a), provides that a renewal of a judgment “may be vacated on any ground that would be a defense to an action on the judgment.” Mahmood has not identified a defense to an action on the judgment. A sloppy reference to the “third cause of action” instead of the “second cause of action” in an application for renewal is not a valid defense to an action on the judgment, and even if it were, Mahmood forfeited the defense when he failed to object to the earlier renewal. Third, Mahmood’s argument that he could suffer grievous consequences because of the 2004 application’s reference to the “third cause of action” is specious. The word “fraud” did not appear in the 2004 renewal application. In order to discover that the “third cause of action” was premised on fraud, a person with knowledge of the 2004 renewal application would likely have to dredge up the first amended complaint in the case, which was filed in September 1992. It is highly unlikely that anyone would bother to do so.

In any event, the terms of the operative judgment are clear. They are stated in the April 30, 1997 judgment, as modified by this Court on October 19, 1998, “to reflect that the award of monetary damages is premised on the second cause of action for breach of the settlement agreement, and not on the third cause of action for fraud.” Khatib’s renewals have only had the effect of renewing the judgment as modified.

DISPOSTION

The order denying Mahmood’s motion to vacate renewal of the judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.