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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

JOSE FLORES,

Plaintiff and Appellant,

v.

B&C LUXURY AUTO LTD.,

Defendant and Respondent.

B279034

Los Angeles County

Super. Ct. No. LC101979

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Dismissed.

Law Offices of Mark R. McKinniss and Mark R. McKinniss
for Plaintiff and Appellant.

Miles L. Kavaller for Defendant and Respondent.

INTRODUCTION

Following a two-day bench trial, the court entered judgment in favor of defendant and respondent B&C Luxury Auto Ltd. (defendant) on plaintiff and appellant Jose Flores's complaint for negligence and related tortious conduct. Although Flores appeals from the judgment rendered after the trial, he challenges only the court's order vacating an earlier default judgment in his favor. Because the order vacating the default judgment was itself appealable, it is not reviewable in this appeal. (Code Civ. Proc., § 906.)¹ And as Flores raises no other issues, we dismiss the appeal.

FACTS AND PROCEDURAL BACKGROUND

According to the operative complaint, Flores and defendant entered into a business arrangement concerning the export of three motor vehicles.² Flores filed the present negligence action against defendant in August 2014. The complaint asserts three causes of action, all generally alleging defendant damaged the vehicles. The complaint does not allege a specific amount of monetary damages suffered by Flores.

Defendant did not file an answer or otherwise respond to the complaint. In October 2014, Flores asked the court to enter defendant's default, which it did. At the prove-up hearing in January 2015, Sergio Bejenari, a representative of defendant, appeared in court. The court advised Bejenari that defendant had

¹ All undesignated statutory references are to the Code of Civil Procedure.

² We rely on the allegations of the complaint for general background purposes only.

defaulted and recommended he obtain counsel, which he did. Defendant filed a motion to set aside the default under section 473, subdivision (b). The motion was supported by a declaration by Bejenari, who averred that he was the owner of defendant company, had no legal training, was not a native English speaker, and had no knowledge of California law as his place of business was in New Jersey. The court denied the motion and set an order to show cause regarding default judgment for June 2, 2015.

Flores, who initially represented himself in the proceedings below, obtained counsel and submitted a request for default judgment seeking damages of approximately \$50,000, including approximately \$27,000 in punitive damages. On August 25, 2015, the court entered a default judgment in Flores's favor in the amount of \$51,115. The court amended the judgment on October 14, 2015, to reflect a variation in defendant's name (from B&C Luxury Auto Ltd. to B&C Luxury Auto Ltd., a Corporation) and issued a writ of execution which the Sheriff's Department moved to enforce.

Defendant moved to vacate the default judgment and sought an order barring Flores from receiving the monies collected by the Sheriff's Department. In a signed order dated January 7, 2016, the court granted defendant's motion, set aside the default judgment, and ordered defendant to file an answer to the complaint.

A two-day bench trial took place in October 2016. Flores testified and the parties stipulated to the admission of approximately 35 exhibits. The court found insufficient evidence to support plaintiff's allegations and ordered judgment to be

entered in defendant's favor. Flores timely appeals from the judgment.³

DISCUSSION

In the present appeal from the judgment entered after a bench trial, Flores challenges only the court's order setting aside a prior default judgment in his favor. We are unable to review that order because it was independently appealable as an order after judgment.⁴ (§§ 904.1, subd. (a)(2), 906.)

Section 906 provides that in an appeal from a judgment, we may review any "intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party" Presumably, Flores seeks to invoke this statutory provision here, inasmuch as he appeals from the November 8, 2016 judgment but the only error he identifies relates to the court's January 7, 2016 order vacating the default judgment entered August 25, 2015, and amended October 14, 2015.

Section 906 contains an important caveat, however: "The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken." And here, the court's January 7, 2016 order vacating

³ Flores filed his notice of appeal after the court stated it would enter judgment for the defendant but prior to entry of the final judgment. We treat Flores's premature notice of appeal as timely filed immediately after entry of the judgment. (Cal. Rules of Court, rule 8.104(d)(1).)

⁴ We requested and received supplemental briefing from the parties on this issue. (Gov. Code, § 68081.)

the default judgment was appealable. (§ 904.1, subd. (a)(2) [appeal may be taken from an order made after an appealable judgment]; see *Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1137 [a postjudgment grant or denial of relief from judgment after default “is a special order after judgment on a statutory motion to set aside the judgment, and as such is appealable”]; *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1195 “[t]he posttrial order granting reconsideration and vacating a portion of an appealable judgment is itself appealable”]; *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 628 “[i]t is well established that a direct appeal may be taken from an order granting a statutory motion to set aside a default judgment [citation] so long as the underlying judgment sought to be vacated is an appealable final judgment [citation] and is not conditioned on a second order unconditionally vacating the judgment”]; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 194, p. 271 [“If the court grants a motion to vacate under either [Code Civ. Proc., §§] 473 or 663 [citation], the prior judgment is nullified, and the only way to review the vacating order is by a direct appeal from it. Hence, it is treated as an order after final judgment, and is appealable.”].) Accordingly, we cannot consider Flores’s challenge to that order.

Apart from his impermissible attempt to challenge the order setting aside the default judgment in his favor, Flores makes no claim of error by the court below. Accordingly, we treat the appeal as abandoned and dismiss it. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, fn. 8 [“[a] ‘reviewing court has inherent power, on motion or its own motion, to dismiss an appeal which it cannot or should not hear and determine’ ”]; *In re Sade C.* (1996) 13 Cal.4th 952, 994.)

DISPOSITION

The appeal is dismissed. Respondent to recover its costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

KALRA, J.*

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