Filed 8/1/12 XTC Investments v. Bluenose Trading CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

XTC INVESTMENTS, INC., Plaintiff and Respondent, v. BLUENOSE TRADING, INC., Defendant and Appellant.	B232729 (Los Angeles County Super. Ct. No. BC432624)

APPEAL from an order of the Superior Court of Los Angeles County, Daniel J. Buckley, Judge. Affirmed.

Dan Hogue for Defendant and Appellant.

John C. Torjesen for Plaintiff and Respondent.

Defendant Bluenose Trading, Inc. (Bluenose) appeals from a default judgment entered against it and a subsequent order denying relief from default and default judgment. We affirm.

STATEMENT OF FACTS AND OF THE CASE

I. Prior Litigation Between the Parties

Plaintiff XTC Investments, LLC (XTC) made a series of loans to Fortuna Investment, Inc. (Fortuna), which Sanford Gaum (Gaum) personally guaranteed. The loans were not repaid, and XTC obtained a default judgment in federal district court against Gaum and Fortuna for $612,207. XTC then initiated an action in state court (the prior action) in September 2007 against Gaum and Bluenose, asserting that Gaum created and used Bluenose to conceal his assets from creditors. After a three-day bench trial, the trial court entered judgment for XTC and against defendants for $318,551 in general damages and $318,551 in punitive damages, for a total of $637,102 plus statutory interest. (*XTC Investments, LLC v. Bluenose Trading, Inc., et al.* (June 21, 2011, B226104 [at pp. 2, 5, 7] [nonpub. opn.].) Gaum and Bluenose appealed, and we affirmed the judgment in its entirety. (*Id.* [at p. 15].)

At the time of trial of the prior action, Bluenose's shareholders were Michael J. (Mike) Irwin, Fred Jacobson, and Nova Gold, a corporation owned entirely by Gaum. (*XTC Investments, LLC*, *supra*, B226104 [at p. 3].) Bluenose's officers were Gaum (chief financial officer and property manager), Jacobson (president), and Irwin (secretary). (*Id.* [at p. 4].)

II. The Present Complaint

XTC filed the present action on February 25, 2010, against Bluenose and 8600 S.V., Inc. (8600) for fraudulent conveyance, tortious interference with business, willful misconduct, and constructive trust. The operative complaint alleges as follows:

Bluenose is a Delaware corporation and the record owner of real property located at 6620 to 6708 El Paseo Plaza in Pico Rivera (the Pico Rivera properties). 8600 is a Delaware corporation and the record owner of real property located at 1205 Corona Drive in Glendale (the Glendale property). When XTC filed the prior action, Bluenose's Pico Rivera properties were encumbered by a single deed of trust for $800,000 in favor of Zion II, Inc. (Zion), and 8600's Glendale property was encumbered by a single deed of trust for $505,000 in favor of Zion. Zion was controlled by Jonica Stingle (Stingle), who had a close personal relationship with Gaum. Gaum controlled both Bluenose and 8600.

Trial in the prior action commenced on October 29, 2008, and the court announced its decision in favor of XTC and against Bluenose on January 29, 2009. On April 1, 2009, Bluenose transferred $505,000 to 8600 and gave Zion a new deed of trust for $1,305,000 against Bluenose's Pico Rivera properties. The new deed replaced the $800,000 deed Zion had held against that property and the $505,000 deed Zion had held against 8600's Glendale property. XTC's judgment against Bluenose in the prior action has never been paid.

III. The Default and Default Judgment

On April 12 and 13, 2010, XTC served the summons and complaint in the present action on Fred Jacobson, Bluenose's president. On June 22, 2010, XTC served a statement of damages on Michael J. Irwin, Bluenose's secretary and registered agent for service of process. Neither Bluenose nor 8600 answered the complaint or otherwise appeared in the action.

XTC filed a request for entry of default on July 16, 2010. The default request was served on Michael Irwin.

The court entered Bluenose's and 8600's default on August 11 and 12, 2010. On November 2, 2010, after a prove-up hearing, the court entered a default judgment against Bluenose and 8600 in the amount of $586,473.41, and imposed a constructive trust and judicial lien on the Glendale property. XTC served notice of entry of the default judgment on Michael Irwin on November 23, 2010.

IV. Bluenose's Motion for Relief From Default

Bluenose filed a motion for relief from default and default judgment on February 10, 2011. Bluenose asserted: (1) XTC served the complaint on Bluenose's chief executive officer, rather than its registered agent for service of process; (2) XTC served the request for entry of default on Bluenose's registered agent, Michael Irwin, but at his work address, rather than his home address, and Irwin never received it; (3) XTC did not provide a copy of either the complaint or request for entry of default to Bluenose's counsel in the prior action; (4) because of the ongoing litigation in the prior action, Jacobson and Irwin reasonably believed the documents they received were part of that litigation and forwarded them to Gaum; (5) Bluenose has a meritorious defense to this action; and (6) XTC lacked standing to sue Bluenose or serve it with process because XTC is a revoked Nevada limited liability company that has never registered in California.

In support of the motion for relief from default, Bluenose submitted the declarations of Michael Irwin and Fred Jacobson. Michael Irwin's declaration stated that at all times relevant to the litigation, he owned shares equal to 2.4 percent of Bluenose's stock, and his former wife, Mary Irwin, owned 4.8 percent of Bluenose's stock. During the past several years, Irwin learned that litigation was ongoing between XTC and Gaum; in December 2010, he learned that litigation relevant to his interest in Bluenose was also pending. He further stated:

"10. Since February 2010, I have been agent for service of process for BLUENOSE — at my home address. . . . I have never conducted personal or BLUENOSE business at my place of employment.

"11. Relevant to this case, I recall being personally served at my place of employment with the document involving a case of 'XTC v. 8600 S.V. et al.' Because I then understood that Mr. Gaum was in litigation with XTC, I presumed that this document was relevant to him and forwarded it to him for whatever action he deemed appropriate. At that time, I was unaware that BLUENOSE was a party to any litigation.

"12. Subsequent to this event (described in the prior paragraph) I heard nothing further and saw nothing further concerning this matter until mid-January 2011. Although I am now informed that a Request for Entry of Default was mailed [to] me at the Offices of the Los Angeles City Attorney, I did not receive a Request for Entry of Default concerning this or any other personal matter at my office.

"13. The processing of mail at the Office of the City Attorney can be challenging at times, even for the official business of the City Attorney. The receipt of any document unrelated to any matter being handled by the City Attorney is almost certainly destined to go undelivered. This is almost certainly what happened in this instance."

Fred Jacobson's declaration stated that at all relevant times, he and his wife owned 11.6 percent of Bluenose's stock. Further:

"8. Over the course of the past several years I had informally learned that litigation between [XTC], the plaintiff in this matter, and Sanford Gaum was ongoing but unrelated to my interest in BLUENOSE. Specifically, I recall giving deposition and trial testimony in a dispute between XTC and Sanford Gaum several years earlier. Despite my testimony in that matter, I was unaware that the entity BLUENOSE was a party in that litigation.

"9. Beginning in December 2010, I have learned that extensive litigation, including the suit in which I gave testimony as well as this suit, has been ongoing. Beginning in December 2010, I have learned that these matters do affect my interest and the interest of other shareholders in BLUENOSE.

"10. Relevant to this case, I recall being personally served at my home with a legal document involving a case of 'XTC v. 8600 S.V.' I now believe that that document was probably the Summons and Complaint in this matter. Because I then understood that Mr. Gaum was in litigation with XTC, I presumed that this document was relevant to his litigation with XTC and forwarded it to him for whatever action he deemed appropriate. At the time of this action I did not understand that BLUENOSE was a party to this litigation. Additionally, at the time of this action, I understood that Sanford Gaum had

legal counsel defending the XTC litigation. I am now informed[] that Sanford Gaum did not forward documents concerning this case to his legal counsel and that no action was taken to defend this case.

"11. Subsequent to this event (described in the prior paragraph) I heard nothing further and saw nothing further concerning this matter until mid-January 2011.

"12. Since January 2011, I and the other minority shareholders described above have retained counsel to investigate this and other BLUENOSE related litigation. We are now informed that [N]ova Gold, Inc. was solely owned by Errol Gaum, the brother of Sanford Gaum[,] and that Sanford Gaum has controlled Nova Gold, Inc. shares by reason of a limited power of attorney.

"13. All known shareholders of BLUENOSE stock (including Errol Gaum[,] the apparent sole owner of Nova Gold, Inc. and Jonica Stingle) have executed a resolution of shareholders agreeing to retain above captioned counsel to defend this litigation and assert the appropriate defenses for BLUENOSE."

V. XTC's Opposition to Motion for Relief From Default

XTC opposed the motion for relief from default. XTC noted that both Irwin and Jacobson acknowledged that they had received documents relevant to the present litigation and turned those documents over to Gaum. Gaum had them reviewed by two attorneys, who participated in mediation and requested additional time to respond to the complaint. Thus, XTC asserted, Bluenose had actual knowledge of the lawsuit many months before its default was entered.

In support of its opposition, XTC submitted the following:

(1) The declaration of Victoria McClure, who stated that she personally served XTC's statement of damages on Michael Irwin at the city attorney's office.

(2) A copy of a letter from Bluenose's attorney, Michael FitzGerald, to XTC's counsel, John Torjesen, dated April 30, 2010, which references the present case and "confirm[s] that the mediation shall go forward at 12 noon . . . on May 21, 2010," and

that "we will have a reasonable period of time to respond to the complaint identified above."

(3) The declaration of Attorney John Torjesen, which states that the mediation referenced in Fitzgerald's letter went forward, with Sanford Gaum and Attorney Michael FitzGerald present for Bluenose and Torjesen present for XTC. The mediation "lasted several hours and was unsuccessful."

(4) A copy of a letter from FitzGerald to Torjesen, dated May 26, 2010, which references the present case and states: "This serves to confirm our recent telephone conversation whereby all of the defendants in the above-entitled matter shall have up to and including June 4, 2010 to respond to the outstanding complaint."

(5) A copy of a letter from FitzGerald to Torjesen, dated June 2, 2010, which states as follow: "I . . . have . . . confirmed with you on today's date the following. I have learned that my principal contact has been hospitalized (gallbladder surgery) and as such, simply is not in a position to respond to the complaint [in the present case] on or before June 4, 2010. Please consider this confirmation to have an answer date of June 11, 2010. This is further done with the understanding that none of the defendants have ever actually been served and the complaint was forwarded to me through a third party. Accordingly, based on this stipulation we shall not challenge service."

(6) A copy of a letter from Attorney Jai Chung of the Menke Law Firm to Torjesen, dated June 11, 2010, which states as follows: "This letter is to confirm our telephone conversation which occurred earlier today. During that conversation I explained that our office is currently in the process of being retained by [Bluenose] Trading, Inc., and 8600 S.V., Inc., for representation in the above referenced matter. Our office was contacted by the authorized agent for both entities late last evening to discuss retaining our office for representation in the above matter. [¶] Currently, the authorized agent for both entities . . . resides in Nevada, and has made arrangements to travel to our office in the coming week in order to execute a legal services agreement with our office. [¶] I confirmed that your office gave an extension to both entities to file an answer by today, June 11, 2010. However, given the circumstances, I requested your cooperation in

managing the filing of a responsive pleading by both entities. [¶] We agreed that I would give your office a call on Monday . . . and thereafter schedule a reasonable extension date for a responsive pleading. Furthermore, you confirmed that you would not be taking a default against [Bluenose] and [8600] for failure to file a responsive pleading by today."

(7) A letter from Torjesen to Chung, dated June 11, 2010, which notes that XTC had given Bluenose two prior extensions to answer the complaint and "my clients are upset and adamant against any further extensions. . . . [¶] . . . [¶] If no appearance is made in this case by the end of the day on Monday, I will pursue all avenues of seeking a default on this case."

VI. Bluenose's Supplemental Brief in Support of Motion for Relief From Default

With the permission of the trial court, Bluenose filed a supplemental brief in support of its motion for relief from default. The supplemental brief attached the declaration of Sanford Gaum, which stated as follows:

"2. In late May or early June, 2010, I received from Fred Jacobs[o]n, who was the President of Bluenose Trading, Inc., a copy of a complaint filed by XTC Investments, LLC against Bluenose Trading, Inc. and 8600 S.V., Inc., Case No. BC 432 624. At the time, I was the Chief Financial Officer of both companies. I contacted the President of [8600], Darryl Ellis, by telephone and asked him to arrange for the retention of legal counsel to represent and defend both Bluenose and 8600 S.V. in that action. After a few days, Mr. Ellis contacted me and asked me to fax the Complaint to Bruce Menke, Esq. at the Menke Law Firm, which I did. I also deposited $15,000 into Mr. Ellis' bank account at Bank of America, with the understanding that he would deliver the money to the Menke Law Firm as a retainer to represent and defend Bluenose, 8600 S.V., as well as my brother, Errol Gaum, in a separate action which XTC had filed against him. It was my understanding that the $15,000 figure was determined because there were three defendants which the Menke Law Firm would represent: Bluenose, 8600 S.V., and my brother.

"3. I subsequently had conversations with Darryl Ellis which led me to believe that the Menke Law Firm had received the money and that both Bluenose and 8600 S.V. were being defended by that firm. At no time did Darryl Ellis, or anyone from the Menke Law Firm, indicate otherwise to me. During that time, I assumed that the case was being defended because my check for $15,000 had been negotiated.

"4. In or about February, 2011, I attended a meeting in Pasadena at which counsel for the two groups of remaining shareholders of Bluenose were present: Daniel Hogue and Steven Kerekes. At that time, I learned that Bluenose and 8600 S.V. had not been represented, but had default judgments entered against each of them."

The supplemental brief also attached the declaration of Attorney Bruce Menke, which stated as follows:

"2. On June 10, 2010 my office was contacted by an individual identified as Darrell Ellis for the stated purpose of seeking joint defense representation for two defendants—8600 S.V., Inc., and Bluenose Trading, Inc.

"3. On June 11, 2010, believing that my firm was in the process of being retained for the possible defense of both defendants, I instructed my associate Jai Chung to seek an extension of time to respond. . . .

"4. Thereafter I met with Mr. Ellis and concluded that he had no direct interest in Bluenose Trading, and that neither my firm nor I would represent Bluenose Trading. After further discussions it was also determined that neither my firm nor I would represent 8600 S.V.

"5. My files do not reflect that I ever learned the identity of the agent for service of process of Bluenose Trading. I did not send any letter or other notice to Bluenose Trading."

Menke's declaration attached a letter from Jai Chung to Attorney Steven Kerekes, dated March 25, 2011. That letter states in pertinent part as follows:

"On June 21, 2010, Mr. Ellis[] came in for an office conference with Bruce Menke. During that office conference, Mr. Ellis explained that he only had authority to retain counsel for 8600 S.V., Inc. After reviewing the paperwork provided by Mr. Ellis,

it was determined that our office[’s] sole involvement would be to make a special appearance on behalf of 8600 S.V., Inc., at the June 25, 2010, Case Management Conference. No legal service agreement was executed to represent either 8600 S.V. Inc., nor [Bluenose] Trading, Inc.

“Bruce Menke at our office made a special appearance on behalf of 8600 S.V., Inc., at the June 25, 2010 Case Management Conference. Subsequently thereafter, on July 8, 2010, Mr. Ellis instructed our office to take no further action on the matter. Our office sent out a close out letter on July 13, 2010.

“Given the above, I fail to see any attorney error on the part of our office and as such, we will not be providing a declaration of attorney error.”

VII. Order and Appeal

The court denied the motion for relief from default on April 26, 2011, noting that the supplemental declarations submitted by Bluenose “do not raise any facts which demonstrate excusable neglect.” On April 29, 2011, Bluenose filed a notice of appeal from the default judgment and order denying the motion for relief from default and default judgment.

DISCUSSION

Code of Civil Procedure section 473, subdivision (b)[1] permits a court to grant relief from default in appropriate circumstances. The statute provides for both mandatory and discretionary relief. (§ 473, subd. (b); *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 608 (*Pietak*).)

Bluenose contends that the trial court erred in denying relief from default under both the mandatory and discretionary provisions of section 473, subdivision (b). For the following reasons, we do not agree.

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[1] All further statutory references are to the Code of Civil Procedure.

I. Mandatory Relief

The mandatory relief provision of section 473, subdivision (b) provides that the court "*shall*, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (Italics added.)

Relief under the attorney fault provision of section 473 "is mandatory when a complying affidavit is filed, even if the attorney's neglect was inexcusable." (*Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1033.)[2] Where the applicability of the mandatory relief provision does not turn on disputed facts and presents a pure question of law, our review is de novo. (*SJP Limited Partnership v. City of Los Angeles* (2006) 136 Cal.App.4th 511, 516.)

For a client to be entitled to mandatory relief under this section, its attorney must submit a "straightforward admission of fault." (*Pietak*, *supra*, 90 Cal.App.4th at p. 610; see also *Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 916 [no entitlement to mandatory relief under section 473 where counsel's declaration "did not unequivocally admit error"].) Absent such an admission by counsel, the client "cannot obtain relief under the mandatory provision of section 473." (*Pietak*, *supra*, at p. 610.)

The court addressed the need for an unambiguous attorney admission of fault in *Pietak*, *supra*, 90 Cal.App.4th 600. There, the defendant appealed from a trial court ruling denying his motion under section 473 to reinstate an interpleader action.

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[2] Bluenose contends that the trial court erred in requiring it to demonstrate excusable neglect. Although Bluenose is correct that a defendant need not show excusable neglect under the mandatory relief provision of section 473, any error in this regard is not prejudicial because, as we now discuss, Bluenose failed to submit an attorney affidavit of fault as required by that provision.

Defendant contended, among other things, that he was entitled to relief under the mandatory provision of section 473. The court disagreed, explaining as follows:

"Relief under the mandatory provision of section 473, subdivision (b), is available only when the application is accompanied by 'an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect,' which resulted in a dismissal or default being taken against the attorney's client. (§ 473, subd. (b).) This indispensable admission by counsel for the moving party that his error resulted in the entry of a default or dismissal from which relief is sought is commonly referred to as an 'attorney affidavit of fault.' [Citations.]

"No such affidavit was filed by Pietak's attorney, Ireijo. Except for its purported avowal of the contents of the memorandum of points and authorities, Ireijo's first declaration chiefly authenticates documents filed in support of Pietak's motion. The second declaration states only that counsel lacked authority to dismiss on Pietak's behalf affirmative claims that *were not then on file in the instant proceeding*. Counsel's argument seems to be that, because he stipulated to dismissal of the interpleader action and because the result of that dismissal was his inability to pursue claims that he did not have authority not to pursue, defendant is entitled to relief. That is, counsel's inadvertence in agreeing to the dismissal of the interpleader action was the 'dismissal' that resulted in his inability to pursue claims his client did not want abandoned. But neither declaration contains any sworn admission of mistake, inadvertence, surprise, or error that resulted in a dismissal of claims." (*Pietak, supra*, 90 Cal.App.4th at pp. 608-609.)

Further, the court said, the attorney's submission to the court "contains no real concession of error on his part. Indeed, the memorandum states, 'Ireijo submits that this [is] not a case of neglect on his part.' The memorandum argues that counsel's interpretation of [the statute] was correct . . . . Absent a straightforward admission of fault by Ireijo, Pietak cannot obtain relief under the mandatory provision of section 473." (*Pietak, supra*, 90 Cal.App.4th at pp. 609-610, fn. omitted.)

The present case is analogous. Although Bluenose submitted an attorney affidavit, it did not concede fault. To the contrary, Attorney Menke stated in his declaration that Bluenose never retained him or his firm and, indeed, that the individual who contacted him with regard to the litigation was not a Bluenose principal. Moreover, Menke's declaration attached a letter from his associate, Jai Chung, to Attorney Steven Kerekes, which stated that "[n]o legal service agreement was executed to represent either 8600 S.V., Inc., nor [Bluenose] Trading, Inc." and, after Menke made a special appearance on behalf of 8600, Ellis instructed his office to take no further action on the matter. The letter concluded: "Given the above, I fail to see any attorney error on the part of our office and as such, we will not be providing a declaration of attorney error."

The submission by Attorney Menke does not concede that attorney fault caused the default; to the contrary, it asserts (through Chung's letter) that there was *no* attorney error. As in *Pietak*, therefore, the trial court did not err in denying the motion for relief from default pursuant to the mandatory provision of section 473.

II. Discretionary Relief

Bluenose contends that the trial court erred in denying its motion to vacate the default and default judgment under the discretionary provision of section 473. That section provides that a court may "upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Application for this relief "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (§ 473, subd. (b).)

Section 473's "'broad remedial provisions' (*Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 803) are to be 'liberally applied to carry out the policy of permitting trial on the merits' (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in the Trial Court, § 144, p. 736). The party seeking relief, however, bears the burden of proof in

establishing a right to relief. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1205.) The burden is a '"'double'"' one: the moving party '"'must show a satisfactory excuse for his default, and he must show diligence in making the motion after discovery of the default.'"' (*Huh v. Wang* [(2007)] 158 Cal.App.4th 1406, 1420.) Whether the moving party has successfully carried this burden is a question entrusted in the first instance to the discretion of the trial court; its ruling will not be disturbed in the absence of a demonstrated abuse of that discretion. (*Rodriguez v. Henard* (2009) 174 Cal.App.4th 529, 534-535; *Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1139-1140.)" (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.)

Bluenose contends the trial court abused its discretion in determining that Bluenose received notice of the default proceedings because Michael Irwin declared that he did not receive the request to enter default and XTC did not serve the request to enter default on counsel retained by Bluenose in a companion case. But even if we assume the trial court accepted Irwin's representation that he did not receive the request to enter default, the nonreceipt is not legally relevant. Under section 587, "[a]n application by a plaintiff for entry of default . . . shall include an affidavit stating that a copy of the application has been mailed to the defendant's attorney of record or, if none, to the defendant at his or her last known address and the date on which the copy was mailed." However, "nonreceipt of the notice *shall not invalidate or constitute ground for setting aside any judgment*." (Italics added; see also *Rodriguez v. Henard*, *supra*, 174 Cal.App.4th at p. 537 ["[S]ection 587 expressly provides that *nonreceipt* of the notice is not, by itself, a ground for setting aside a default judgment."].) It is undisputed that XTC's application for entry of default included the required affidavit of service; Bluenose's asserted failure to receive the application thus "shall not" constitute a ground for setting aside the default judgment. The trial court did not err in so concluding.

Bluenose also claims it was prejudiced by Attorney Menke's excusable neglect—specifically, Menke's asserted failure to "take 'reasonable stops to avoid foreseeable prejudice' to" its rights before "withdrawing" from employment. Such steps, Bluenose says, include "advising the client concerning upcoming dates and deadlines in the client's

matter (document filing dates, hearing dates, trial dates, etc.), [and] ensuring return of the client's files and papers." The flaw in Bluenose's analysis, however, is that there is no evidence that Bluenose ever engaged Menke. To the contrary, Menke's declaration states that Bluenose did *not* engage him, and no declaration submitted for Bluenose suggests otherwise. Thus, there is no evidence that Bluenose was ever Menke's client or that Menke ever "withdr[ew]" from Bluenose's representation.

Bluenose next asserts that although XTC served Bluenose's president, Fred Jacobson, with the summons and complaint, it did not serve Michael Irwin, Bluenose's registered agent for service of process. Further, Jacobson "expressly declared that he was unaware of the need to separately respond to the suit in this matter[,] believing that it was part of the then active XTC v. Gaum litigation." Bluenose cites no authority to suggest that either manner in which service was effectuated or Jacobson's misapprehension of the need to respond to the summons and complaint supports a motion for relief from default. Moreover, "'[t]o warrant relief under section 473 a litigant's neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief. [Citations.] It is the duty of every party desiring to resist an action or to participate in a judicial proceeding to take timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment. Unless in arranging for his defense he shows that he has exercised such reasonable diligence as a man of ordinary prudence usually bestows upon important business his motion for relief under section 473 will be denied. [Citation.] Courts neither act as guardians for incompetent parties nor for those who are grossly careless of their own affairs. . . . The only occasion for the application of section 473 is where a party is unexpectedly placed in a situation to his injury without fault or negligence of his own and against which ordinary prudence could not have guarded.' (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513.)" (*Hearn v. Howard*, *supra*, 177 Cal.App.4th at p. 1206.) In the present case, the trial court did not abuse its discretion in concluding that Jacobson's unsupported belief that the complaint with which he was served did not concern Bluenose

(notwithstanding its caption, which plainly identified Bluenose as a defendant), coupled with Jacobson's failure to take *any* steps to verify that the complaint did not require any action on his part, failed to demonstrate mistake, inadvertence, surprise, or excusable neglect. (See *ibid*.)

Bluenose contends finally that it is entitled to relief from default because (1) allowing XTC to collect payment on both judgments would permit an improper double recovery, and (2) XTC lacks standing to sue because it was not qualified to do business in Nevada. Whatever the merits of these contentions, Bluenose cites no authority for the proposition that either is a proper basis for granting relief from a default or default judgment. We thus do not consider them. (E.g., *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1300 [appellate contentions forfeited where appellant failed to provide any reasoned legal analysis or authority supporting them].)[3]

DISPOSITION

The order denying relief from default and default judgment is affirmed. XTC shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J. WILLHITE, J.

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[3] Bluenose made an additional contention at oral argument that service of the notice of entry of default was invalid because it was effected at Irwin's work address, rather than his home address listed on Bluenose's filing with the Secretary of State. Bluenose cites no authority for the proposition that service under these circumstances mandates a grant of relief from entry of default. The contention therefore is forfeited.