Filed 12/13/18 Collins v. Gonzalez CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

OLUFEMI S. COLLINS, Plaintiff and Appellant, v. MARK GONZALEZ et al., Defendants and Respondents.	B283599 (Los Angeles County Super. Ct. No. KC068894)

APPEAL from orders of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Dismissed and affirmed.

Olufemi S. Collins, in pro. per., for Plaintiff and Appellant.

The Bravo Law Firm, Nicholas A. Bravo, for Defendant and Respondent Mark Gonzalez.

Kevin H. Mello for Defendants and Respondents Century Quality Management, Inc. and Miracle Mile Properties, LP.

In 2015, plaintiff and appellant Olufemi Collins's (plaintiff's) car was towed from its assigned spot at Pacific Villas Senior Apartment Complex (Pacific Villas) and impounded. Plaintiff sued defendants and respondents Mark Gonzalez dba ASAP Towing (Gonzalez), the owner of the company that towed his car, Century Quality Management, Inc. (Century), the lessor named on his apartment lease, and Menlo, Sam Trustee[1] dba Miracle Mile Properties, LP (Miracle Mile), the landlord and owner of the complex. Gonzalez and Miracle Mile did not timely respond to the complaint, the clerk of court entered their defaults, and plaintiff sought default judgments. Century filed a demurrer, which the trial court sustained without leave to amend. Plaintiff now appeals from the ruling sustaining Century's demurrer and from the trial court's refusal to enter a default judgment against the other two defendants because the court concluded plaintiff's complaint did not state a valid cause of action against either.

I. BACKGROUND

Because this appeal is taken from trial court orders made at the pleading stage, we assume the truth of all facts properly pled in the operative complaint and accept as true all facts that may be implied or inferred from those expressly alleged. (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 633, fn. 3.) In addition, we consider all evidentiary facts found in the exhibits

---

[1] Without citation to the record, respondent Miracle Mile maintains it is not a "dba" for Sam Menlo. Because the point does not affect the outcome of the appeal, we do not resolve the issue.

attached to the complaint (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 375) as well as matters properly subject to judicial notice (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081).[2]

A. Pacific Villas

In 2013, plaintiff and his wife rented an apartment at Pacific Villas. Century was identified as the "Lessor" on the rental agreement. Pursuant to that agreement, plaintiff and his wife were assigned a parking space.

In April 2016, Miracle Mile and Century gave tenants notice of a change in ownership and management indicating Century had assigned all its rights and interests in the tenants' leases to Miracle Mile, and Miracle Mile had become both the owner and manager of Pacific Villas.

B. The Parking Policy and Impoundment of Plaintiff's Car

In November 2015, Pacific Villas adopted a new parking policy requiring cars to display parking permits. Miracle Mile issued a notice to tenants stating, among other things, parking

---

[2] The record is silent on whether the trial court took judicial notice of certain documents plaintiff submitted with his opposition to Century's demurrer. We infer from that silence that judicial notice was taken (Evid. Code, § 456 ["If the trial court denies a request to take judicial notice of any matter, the court shall at the earliest practicable time so advise the parties and indicate for the record that it has denied the request"]; *Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910, 918-919), and we rely on the documents in describing the background of this case.

permit stickers must be obtained by Saturday, November 21, 2015, at 11:00 am. The notice also stated AAA Parking Enforcement would be enforcing the parking policy and that if a tenant violated any parking rules, his or her vehicle would be subject to towing at his or her expense.

Plaintiff's car was towed from its assigned parking space in the early morning hours on November 24, 2015, because it did not have a parking sticker displayed. Plaintiff, not yet aware his car had been towed, obtained a parking sticker from the Pacific Villas management office that same day. After plaintiff discovered his car was missing, he called the police and was informed it had been towed by ASAP Towing.

Plaintiff called ASAP Towing and Gonzalez admitted he had towed plaintiff's car from its assigned parking space because it lacked a parking sticker. Gonzalez demanded plaintiff pay $250 to retrieve the vehicle from impound and threatened to conduct a lien sale of the vehicle if plaintiff delayed in paying that amount. Plaintiff objected and demanded the unconditional release of his vehicle. Plaintiff then sent two letters to defendants seeking the return of his car and the personal property inside. Plaintiff also opposed Gonzalez's lien sale and pursued other, ultimately unsuccessful, means of resolution.

C. The Complaint

Plaintiff filed this action in November 2016. The complaint alleges three causes of action: extortion, fraud, and intentional infliction of emotional distress. The thrust of the extortion and fraud causes of action is that defendants conspired to extort money from plaintiff by "orchestrating the unexpected requirements for parking stickers . . . to justify removal of [his]

vehicle[ ] and propert[y] without authorization and demanding fees for redemption of [his] propert[y]." In support of the fraud cause of action, plaintiff alleged the lien attached to his vehicle was "fraudulent" and the parking policy was a "fraudulent scheme." The intentional infliction of emotional distress cause of action alleged plaintiff "has been and is still dealing with anguish hoping and wishing that his properties would be returned to him unconditionally after being deprived for so long." Plaintiff's prayer for relief sought, among other things, an order directing defendants to return plaintiff's property to him or, in the alternative, to pay him $27,000.

D. Trial Court Proceedings

In January 2017, plaintiff requested entry of default against all defendants. The trial court denied entry of default as to Century because it had demurred to the complaint. Miracle Mile and Gonzalez, however, had not responded to the complaint, and the clerk therefore entered Miracle Mile and Gonzalez's default. Plaintiff then filed applications to have the court enter a default judgment against Miracle Mile and Gonzalez.

The trial court held a hearing on Century's demurrer and the applications for default judgment.[3] The court sustained Century's demurrer without leave to amend on all causes of action. As to the cause of action for extortion, the trial court found the complaint failed to identify either any demand by Century for money or any payment of money made to Century. As to the cause of action for fraud, the trial court found plaintiff

---

[3] The record on appeal does not include a transcript of the hearing.

admitted he was notified via correspondence and signage that he needed to display a sticker on his car, and he further failed to allege other requisite elements of a fraud claim, i.e., a misrepresentation, Century's knowledge of falsity, and plaintiff's reliance. As to the intentional infliction of emotional distress cause of action, the trial court found the complaint did not allege any outrageous conduct justifying emotional distress damages. Century served a Notice of Ruling regarding the trial court's order on March 8, 2017.

The trial court also denied plaintiff's applications for entry of a default judgment against Miracle Mile and Gonzalez. The court found "[t]he Complaint and supporting evidence do not establish a prima facie case for Extortion, Fraud and Intentional Infliction of Emotional Distress."

Plaintiff thereafter sought reconsideration of the trial court's rulings sustaining Century's demurrer and denying plaintiff's applications for entry of default judgment against Miracle Mile and Gonzalez. The trial court denied the reconsideration motion on May 30, 2017. Plaintiff subsequently submitted an "Order After Hearing on Defendant Century Quality Management, Inc[.'s] Demurrer to Plaintiff's Complaint" (the Order After Hearing) that recited the trial court's rulings. The trial court signed and entered the Order After Hearing on June 20, 2017, and plaintiff gave notice of the order three days later. Plaintiff filed his notice of appeal on June 26, 2017.

II. DISCUSSION

Plaintiff's appeal is procedurally defective for two reasons. As to the appeal of the order denying his application for entry of a default judgment against Miracle Mile and Gonzalez, the order is

not appealable because the order is interlocutory and no statute authorizes an appeal from such an order. We will therefore dismiss the appeal as to Gonzalez and Miracle Mile. With regard to the appeal of the order sustaining Century's demurrer, plaintiff has not affirmatively demonstrated reversal is warranted: Beyond a request for de novo review and conclusory assertions that the trial court erred, plaintiff's appellate briefing contains no substantive argument indicating why the trial court should not have sustained the demurrer or should have granted leave to amend. We will therefore affirm the order on the demurrer.

A. Appealability of the Order Denying the Application for Default Judgment

"The existence of an appealable judgment is a jurisdictional prerequisite to an appeal. A reviewing court must raise the issue on its own initiative whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1."[4] (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.)

"The right to appeal is wholly statutory. [Citation.] Code of Civil Procedure section 904.1 lists appealable judgments and orders. Chief among them is a 'judgment' that is not interlocutory, e.g., a final judgment. A judgment is the final determination of the rights of the parties (Code Civ. Proc., § 577) ""when it terminates the litigation between the parties on the

---

[4] We solicited letter briefs from the parties concerning the appealability of the order denying plaintiff's application for entry of a default judgment against Miracle Mile and Gonzalez.

merits of the case and leaves nothing to be done but to enforce by execution what has been determined."" [Citation.] "'It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.'" [Citation.]" (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5, italics omitted.)

The denial of an application for default judgment is not listed as an appealable order in Code of Civil Procedure section 904.1, subdivision (a), nor have we identified any other statute that makes such a denial appealable. Looking to the "substance and effect of the adjudication," we further conclude the denial of plaintiff's applications to enter default judgment was an interlocutory order, not a final judgment. The trial court's ruling on the applications was not made with prejudice, and it did not dismiss the case as to Miracle Mile and Gonzalez. Though the substance of the ruling indicates plaintiff could not have simply corrected some procedural error in his application, nothing in the order prevented him from seeking to file an amended complaint as to either party.

The court's execution of plaintiff's "Order After Hearing" did not transform the ruling into an appealable order as to Gonzalez or Miracle Mile either. Notwithstanding some relatively broad language in the order, the trial court's ruling on

the applications to enter default judgment neither dismissed the causes of action as to Gonzalez or Miracle Mile nor expressed any intention to do so.[5] The order constitutes neither a judgment as to those defendants nor an order dismissing them from the case.

Because the trial court's denial of default judgment against Gonzalez and Miracle Mile was not a final decision as to either party, it was not an appealable order. We therefore dismiss the appeal as to Gonzalez and Miracle Mile.

B. The Appeal from the Demurrer Order Is Timely but Meritless

Generally, "a notice of appeal must be filed on or before the earliest of: [¶] . . . [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment." (Cal. Rules of Court, rule 8.104(a)(1).) "'[J]udgment' includes an appealable order if the appeal is from an appealable order." (Cal. Rules of Court, rule 8.104(e).)

---

[5] Documents submitted by Gonzalez in his respondent's appendix indicate he moved for and was granted relief from default in May 2017. Thus, the Order After Hearing obviously cannot be construed as a final judgment as to Gonzalez, who continued litigating the substance of the matter through November 2017.

Century contends plaintiff's appeal is untimely, arguing his notice of appeal was filed more than sixty days after the trial court sustained the demurrer without leave to amend and Century filed and served a notice of ruling. Century is wrong about this.

An order sustaining a demurrer is not itself an appealable order. (*Singhania v. Uttarwar* (2006) 136 Cal.App.4th 416, 425 ["[a]n appeal does not lie from an order sustaining a demurrer without leave to amend"]; *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695 ["Orders sustaining demurrers are not appealable"]; see also Code Civ. Proc., § 904.1.) Where a demurrer is sustained without leave to amend, an appeal generally lies not from that order, but from the judgment or order of dismissal. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1032, fn. 1.) The trial court's minute order sustaining Century's demurrer, which was not signed,[6] made no reference to dismissal of the case as to Century. Nor does the record reflect Century ever submitted an order or judgment dismissing it from the case. Thus, neither the court's entry of the minute order nor the mailing or service of the notice of ruling started the clock on plaintiff's deadline to appeal.

In light of our earlier discussion of appealability, however, we still must address whether plaintiff has appealed from an

---

[6] An order dismissing a case must be signed by the trial court to properly constitute a final order of dismissal pursuant to Code of Civil Procedure section 581d. (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1578 [lack of written order of dismissal signed by trial court meant there was no final judgment that could serve as a basis for appellate jurisdiction].)

appealable order. There is no judgment or order of dismissal dismissing the case against Century in the record. The Order After Hearing, however, recited that the trial court sustained Century's demurrer without leave to amend as to all three causes of action and stated plaintiff's "causes of action are denied and deemed dismissed." Where "'the trial court has sustained a demurrer to all of the complaint's causes of action, appellate courts may deem the order to incorporate a judgment of dismissal, since all that is left to make the order appealable is the formality of the entry of a dismissal order or judgment.' [Citation.]" (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 527-528 & fn. 1.) We follow that course here and proceed to address plaintiff's contentions (such as they are) regarding the appealed demurrer ruling.

"An appealed judgment or challenged ruling is presumed correct." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 (*Bullock*).) Thus, the "appellant has the burden to show error." (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80.) "An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority." (*Bullock*, *supra*, at p. 685.) "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) Appellate courts are "not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument . . . allows [a] court to treat the contentions as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; see also *Mansell v. Board of Administration* (1994) 30

Cal.App.4th 539, 545 [reviewing court need not consider an issue when the appellant "has presented no intelligible legal argument"].)

Plaintiff argues the trial court erred by sustaining Century's demurrer without leave to amend and dismissing the causes of action against Century. Other than asking for de novo review, however, plaintiff presents little in the way of argument. Plaintiff "contends sufficient facts establishing causes of action were alleged" and that the trial court "erred and prejudiced [him] by sustaining Century's Demurrer without leave to amend and dismissing all Plaintiff's causes of action as against Century." Plaintiff does not specify the causes of action he contends were sufficiently alleged, he does not identify the elements of any of his causes of action, and he does not detail any of the "sufficient facts" he contends were alleged by the complaint that would suffice to state the causes of action. Nor does plaintiff request leave to amend the complaint or demonstrate how it could be amended to state a valid claim. This is insufficient to warrant reversal. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879-880 ["To establish that he adequately pleaded even one of his causes of action, Cantu must show that he pleaded facts sufficient to establish *every element of that cause of action*"].)

DISPOSITION

The appeal as to Gonzalez and Miracle Mile is dismissed. The order of dismissal as to Century is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.