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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LEGENDARY INVESTORS GROUP  
NO. 1, LLC,

Plaintiff and Appellant,

v.

DB NPI CENTURY CITY, LLC,

Defendant and Respondent.

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B244646

(Los Angeles Country  
Super. Ct. No. BC435774)

APPEAL from an order of the Superior Court of Los Angeles Country,  
Susan Bryant-Deason, Judge. Affirmed.

The Soni Law Firm, M. Danton Richardson and Leo E. Lundberg, Jr., for Plaintiff  
and Appellant.

Zimmerman, Axelrad, Meyer, Stern & Wise, Brian W. Zimmerman (*pro hac vice*),  
Law Office of Ernesto F. Aldover, Ernesto F. Aldover, for Defendant and Respondent.

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Legendary Investors Group No. 1, LLC, appeals from a judgment in favor of respondent DB NPI Century City, LLC. Appellant argues the judgment is too broad and should be modified. We disagree and affirm.

### **PROCEDURAL SUMMARY**

In April 2010, appellant filed a complaint for breach of contract and breach of guaranty agreements against several defendants. Respondent was included as a defendant only in the cause of action for breach of contract. The complaint alleged that in 2007 respondent obtained a construction loan for over \$9 million from East West Bank, secured by a deed of trust. The other defendants executed commercial guarantees. Respondent defaulted. The loan was assigned to appellant, which sold the real property collateral at a non-judicial foreclosure sale in November 2009. The foreclosure sale left a deficiency of over \$4 million that remained unpaid.

Respondent moved for judgment on the pleadings on two grounds: (1) that the breach of contract cause of action against it was barred by the three-month statute of limitation in Code of Civil Procedure section 580a,<sup>1</sup> and (2) that section 580d prohibits deficiency judgments after a non-judicial foreclosure sale of real property security. Appellant did not oppose the motion, and at the hearing its attorney advised the court that appellant had been willing to stipulate to respondent's dismissal from the action. The court granted the unopposed motion.

Respondent offered a proposed judgment "pursuant to order granting judgment on the pleadings" that stated, "The Court having granted Defendant DB NPI Century City, LLC's Motion for Judgment on the Pleadings on March 1, 2012 [¶] IT IS HEREBY ADJUDGED, ORDERED AND DECREED, [¶] That Judgment is entered for defendant DB NPI Century, LLC and against Plaintiff Legendary Investors Group, No. 1, LLC." Appellant objected that the language of the judgment was too broad and proposed adding to it a "finding that Plaintiff may not recover any deficiency judgment against Defendant

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<sup>1</sup> All statutory references are to the Code of Civil Procedure.

DB NPI Century City, LLC, under the Deed of Trust after Non-Judicial Disclosure [*sic*].” Appellant suggested respondent was “anxious” to have judgment entered in its favor in this case in order to prevent appellant’s enforcement of its security interest in personal property under a commercial security agreement as to proceeds of a settlement between respondent and East West Bank in a related case.

The court entered respondent’s proposed judgment without change. This appeal followed. In May 2013, we denied appellant’s request for judicial notice of records in related actions.

## **DISCUSSION**

The parties agree that the only question before us is whether judgment was entered “in accordance with the granting of” respondent’s motion. Appellant argues that “the judgment, on its face, goes beyond the issues raised” in that motion. In light of “the existence of other disputes between the same parties,” appellant urges us to order that the judgment be modified by adding the proposed express finding that appellant may not recover a deficiency against respondent under the deed of trust after a non-judicial foreclosure. Respondent argues that appellant seeks an improper advisory opinion on the scope and effect of the judgment as to claims not subject to this appeal.

“The form of the judgment is of no consequence so long as it may be ascertained therefrom what rights, if any, of the respective parties in the action have been determined by the court. The test of its sufficiency must rest in its substance rather than its form. [Citations.]’ [Citations.]” (*Pista v. Resetar* (1928) 205 Cal. 197, 200.) Appellant acknowledges that a judgment is interpreted under the rules governing interpretation of writings generally. The document is construed as a whole, and in case of an ambiguity, the court may examine the entire record to determine its scope and effect. (*In re Marriage of Richardson* (2002) 102 Cal.App.4th 941, 948–949.)

After granting a motion for judgment on the pleadings, the court must enter judgment “in accordance with the motion granting judgment to the moving party.” (§ 438, subd.(h)(3).) The judgment in this case is prefaced by a recital referencing the

order granting respondent's motion for judgment on the pleadings. By its own terms, the judgment was granted pursuant to that motion and is to be construed in accordance with the motion and, therefore, is not unlimited or uncertain. That the judgment does not expressly recite the substance of the motion is not fatal since the motion is part of the record and its substance is easily ascertainable. There is no need to modify the judgment with appellant's proposed language under these circumstances. We express no opinion about the judgment's preclusive effect on any remaining disputes between the parties since those disputes are not properly before us.

Respondent moves for sanctions under rule 8.276(b) of the California Rules of Court on the ground that the appeal is frivolous. We decline to impose sanctions. Issues that are arguably correct even though unlikely to win on appeal may be without merit but are not necessarily frivolous. (*Johnson v. Lewis* (2004) 120 Cal.App.4th 443, 457, citing *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) Appellant's request that the judgment be clarified to reflect the court's determination of the parties' rights on its face, rather than by reference to respondent's motion, is understandable even though not well taken in light of appellant's concern that the judgment may be misused in the future.

### **DISPOSITION**

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

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.