Filed 10/31/17 Sacramento v. Razon-Chua CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOHN JAMES SACRAMENTO, Plaintiff and Appellant, v. LOURDES RAZON-CHUA et al., Defendants and Respondents.	B276978 (Los Angeles County Super. Ct. No. BC515464)

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

Law Office of Herb Fox, Herb Fox; and Kaleb Liao for Plaintiff and Appellant.

Barrington Legal, Inc., Eamon Jafari and Jacob R. Gould for Defendants and Respondents.

John James Sacramento appeals from the trial court's order vacating default and default judgment against respondents Lourdes Razon-Chua and Patrick Aguiluz. The trial court exercised its inherent equitable power to grant relief from default based on the misconduct of respondents' attorney. The trial court also concluded the default judgment had been improperly entered and was void. On appeal, appellant argues the trial court abused its discretion in granting equitable relief because the evidence demonstrated respondents purposely defaulted and remained in default while the case went to trial against other defendants. Appellant also argues the default judgment was not void and should not have been vacated on that ground.

We conclude the trial court properly exercised its inherent equitable power to vacate the default and default judgment. Therefore, we affirm.

BACKGROUND

1. July 2013: Appellant Files Complaint

In July 2013, appellant filed a defamation action against respondents and three other defendants. The complaint concerned comments the defendants allegedly had made in an online forum. In September 2013, appellant filed a substantially similar first amended complaint, but named only respondents and two other individuals (the Tagocs) as defendants. Appellant sought compensatory, general and punitive damages, but did not specify amounts for any of his alleged damages. Although the Tagocs filed an answer to the first amended complaint, respondents did not. In November 2013, respondents retained Abraham A. Sanchez Siqueiros to represent them.

In November and December 2013, appellant filed four unsuccessful requests for entry of default against respondents.

In October 2014, after almost a year of no reported activity in the case, appellant again unsuccessfully requested that default be entered against respondents.

2. November 2014: Clerk Enters Default Against Respondents

Finally, in November 2014, appellant requested and the clerk entered default against respondents. In connection with his successful request for default, appellant included a statement of damages, stating he would be seeking $100,000 in punitive damages against respondents. Although the document was addressed to both respondents, the attached proof of service showed service on Aguiluz only. Appellant did not include a statement of damages as to his claimed compensatory or general damages.[1]

3. February–March 2015: Trial

Over the course of six days in February and March 2015, the trial court held a bench trial on appellant's claims against the Tagocs. Although the Tagocs previously had been self-represented, Siqueiros substituted in as their attorney on the first day of trial.

The Tagocs requested to call respondents (who were ostensibly in default at the time) as witnesses to testify on their (the Tagocs) behalf. Following briefing and a hearing on the matter, the trial court ruled respondents could testify at trial provided appellant had an opportunity to depose respondents. However, because appellant determined it was too expensive to

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[1] As discussed below, after a bench trial was held on appellant's claims against the Tagocs, the trial court determined and the parties agreed the November 2014 default against respondents was improper. Eventually, that default was vacated.

depose respondents, the trial court permitted respondents to testify at trial on behalf of the Tagocs without first being deposed. It is unclear whether appellant or the trial court knew Siqueiros represented both the Tagocs and respondents.[2]

On March 20, 2015, the bench trial concluded and the court took the matter under submission.

4. March 30, 2015: Trial Court Issues Tentative Ruling

On March 30, 2015, the trial court issued its tentative ruling. The court found in favor of the Tagocs and against appellant.

With respect to respondents, however, the trial court stated, "By defaulting in the lawsuit, [respondents] are deemed to have admitted the material allegations of the complaint, including that the statements [they] made were false." Nonetheless, the court determined it could not enter a default judgment against respondents because, although appellant had filed a statement of damages as to alleged punitive damages, he had not presented evidence of respondents' financial condition, which is required for an award of punitive damages on default, nor had he filed the required statement of damages as to alleged compensatory or general damages.

5. June 2015: Clerk Again Enters Default Against Respondents

Following the trial court's tentative decision, appellant sought and the trial court granted ex parte relief for leave to serve a proper statement of damages. Thus, in April 2015, appellant served on Razon-Chua a statement of damages with

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[2] Had respondents been deposed, it is possible some issues now on appeal may have been brought to light.

respect to appellant's claimed compensatory and general damages. And in May 2015, appellant served the same on Aguiluz.

In June 2015, the clerk granted appellant's requests to enter default against Razon-Chua and Aguiluz.

6. August 19, 2015: Judgment and Default Judgment

In July 2015, appellant moved for default judgment against respondents. Appellant sought damages in the amount of $277,878.99, which amount included $100,000 in punitive damages. Appellant included in his default prove-up package proof that he had served on both respondents a statement of damages with respect to his claimed compensatory and general damages. On July 15, 2015, the trial court entered default judgment in favor of appellant and against respondents in the amount of $150,945. The court did not award punitive damages.

On August 19, 2015, the trial court entered final judgment, incorporating the default judgment against respondents and the court's decision in favor of the Tagocs.

7. April 28, 2016: Respondents' Motion to Vacate Default and Default Judgment

On April 28, 2016, approximately nine months after the trial court had entered default judgment and eight months after the final judgment was entered, respondents, through their new attorney, filed a motion to vacate the default and default judgment. In their motion to vacate, respondents claimed their former attorney's positive misconduct led to the default judgment being entered against them. Because the statutory time for filing a motion to vacate a default judgment had passed, respondents invoked the trial court's equitable power to grant relief from

default. The facts as alleged in respondents' motion to vacate are summarized below.

a. Over the course of approximately 15 months, respondents sign three retainer agreements with Siqueiros.

In November 2013, about two months after appellant had filed his first amended complaint and more than a year before the trial was held, respondents retained Siqueiros to represent them in this action.[3] Their retainer agreement stated Siqueiros would defend respondents against the lawsuit appellant filed (including filing demurrers) as well as file a cross-complaint against appellant. Respondents paid Siqueiros approximately $2,500 in connection with that retainer agreement.

In early December 2013, after receiving a notice of default from appellant, Razon-Chua e-mailed Siqueiros asking what should be done about it. Siqueiros told her not to worry about the notice because appellant had not followed proper default procedures. In January 2014, Siqueiros sent Razon-Chua an invoice indicating he had been working on their case.

For approximately 10 months, there was no reported activity in the case from either side. Then, a few days after the clerk entered default against respondents in November 2014, respondents executed a new retainer agreement with Siqueiros. That agreement stated Siqueiros would defend respondents against appellant's lawsuit, including filing a motion to vacate the default, and indicated respondents already had paid Siqueiros $1,697.50. A few weeks after signing that second

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[3] As noted above, in February 2015 on the first day of trial, Siqueiros also substituted in as counsel for the Tagocs.

retainer agreement, Razon-Chua e-mailed Siqueiros, asking if he had filed the motion to vacate default. Siqueiros responded he would file the motion the next day. A couple weeks later, however, Siqueiros told respondents that, although he had finished the motion to vacate default, he had not yet filed it. He said he needed some documents from respondents before he could file the motion.

Finally, in February or March 2015 (which would have been in the middle of trial), respondents signed a third retainer agreement with Siqueiros. That agreement explained Siqueiros might defend respondents against appellant's lawsuit "by proxy" or, in other words, by winning the case for the Tagocs. The agreement stated, "Defense of you in this matter may be by proxy in that this office will defense the Tagoc[s], and winning the case for them, while using your testimony, will actually mean winning [the] case for you too." The agreement also stated, however, "If judgment is not for the defense, or it is for the defense but for some reason the court enters a judgment against you, this office will represent you in setting that judgment aside, since you are in default at this time." The third retainer agreement indicated respondents already had paid Siqueiros $2,197.50.

b. While trial is pending, Siqueiros threatens to terminate his representation of respondents.

In March 2015, soon after signing the third retainer agreement, respondents asked Siqueiros in a series of e-mails why they had been in default and why he had not filed anything with the court on their behalf.[4] They felt Siqueiros had not done anything for them and asked to see copies of documents he

[4] These e-mails are heavily redacted.

purportedly had completed on their behalf. Siqueiros became defensive, refused to provide copies of documents, and threatened not only to terminate his representation of respondents but also to refuse to argue on their behalf "at the crucial moment" when the trial court considered entering judgment in the case. Siqueiros also threatened to terminate his representation of Razon-Chua in other legal matters.

Eventually, however, respondents decided to stop demanding proof of Siqueiros's work and to continue as his clients. Razon-Chua explained she "backed off" on her demands because Siqueiros not only was in the midst of trial in the instant case, but also because he represented her in multiple other legal matters. Respondents also explained they do not have a legal background, assumed Siqueiros was competent and representing their best interests, and did not want to jeopardize their position in the lawsuit. They paid the remaining balance of their legal fees, which by that time totaled $5,000, and Siqueiros continued to represent them.

A few weeks later, after the trial court had issued its March 30, 2015 tentative decision following trial, Siqueiros e-mailed respondents and the Tagocs, stating, "We Won!" The next day, Siqueiros e-mailed again, stating respondents were not liable because appellant had not proved damages.[5]

c. Despite his repeated assurances, Siqueiros never files the promised motion requesting relief from default and default judgment.

However, beginning in April 2015, after appellant successfully sought ex parte relief to file a new request for default

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[5] These e-mails also are heavily redacted.

against respondents, Siqueiros began assuring respondents he was drafting, and soon would be filing, a motion to set aside the default. Over the course of approximately 10 months after the trial court issued its tentative decision, respondents e-mailed Siqueiros seven times, inquiring about the motion to vacate default he had said he would file. Siqueiros repeatedly told respondents he had reserved hearing dates (one in June 2015, and another in February 2016) and was just about to file the motion. And twice, Siqueiros sent respondents a draft motion to vacate default and default judgment. Until February 2016, respondents trusted Siqueiros and believed he was working on the motion.

d. Respondents discover Siqueiros's misconduct, retain new counsel, and obtain relief from default.

Finally, in mid-February 2016, respondents discovered no motion had been filed and no hearing was set. By late March 2016, respondents had retained new counsel, who filed the successful motion to vacate default and default judgment that is the subject of this appeal. In light of Siqueiros's conduct described above, respondents argued Siqueiros engaged in positive misconduct, effectively abandoning them, which resulted in the default judgment entered against them.

8. Opposition to Motion to Vacate

In opposition to respondents' motion to vacate default and default judgment, appellant argued the trial court should not exercise its equitable power because respondents' prolonged default was a strategic legal decision and should not be condoned. Appellant noted respondents had been in default since November 2014, long before trial began and well-after trial concluded. He

argued the evidence respondents submitted showed, if anything, that they chose to be in default and, in any event, the e-mails they submitted were so heavily redacted as to be meaningless and unreliable.

9. Hearing and Ruling on Motion to Vacate

The hearing on respondents' motion to vacate was held June 14, 2016. Although the proceedings were not reported, the parties have submitted an agreed statement of those proceedings for the record on appeal. At the hearing, the trial court noted Siqueiros had broken his many promises to file documents on behalf of respondents. Although appellant's counsel objected to the redacted e-mails respondents submitted in support of their motion, claiming they were not helpful, the trial court understood respondents had redacted the e-mails to protect attorney-client communications. The court believed appellant had failed to serve a proper statement of damages on respondents prior to the default being entered. Although appellant's counsel agreed the November 2014 defaults were void, he explained appellant had served new statements of damages on respondents and, therefore, the June 2015 defaults and subsequent default judgment were proper.

The trial court granted respondents' motion to vacate the default and default judgment. The court ruled the default judgment was void because appellant did not serve respondents with a statement of damages. The court also ruled there had been attorney misconduct based on extrinsic fraud and mistake by respondents' former attorney, Siqueiros. Appellant appealed.

DISCUSSION

1. Standard of Review

We review the trial court's order granting equitable relief from default for an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 (*Weitz*); *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503 (*Cruz*).) A court abuses its discretion if it "exceeded the bounds of reason in light of the circumstances before the court." (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230.) The trial court's discretion " ' "is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." ' " (*Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 898 (*Carroll*).) On appeal, we will not reverse a trial court's reasonable exercise of its discretion simply because another reasonable conclusion exists. " 'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

2. Applicable Law

Whenever possible, the law favors a hearing on the merits, "and appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand and it appears that a substantial defense could be made. Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party,

who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." (*Weitz*, *supra*, 63 Cal.2d at pp. 854–855.)

When statutory relief from default is not available, the trial court may use its inherent equitable power to vacate a default judgment. (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470 (*Kulchar*); *Cruz*, *supra*, 146 Cal.App.4th at p. 502.) "This power, however, can only be exercised when the circumstances of the case are sufficient to overcome the strong policy favoring the finality of judgments." (*Kulchar*, at p. 470.) A court may exercise its equitable power and relieve a party from default upon a showing that extrinsic fraud or extrinsic mistake—i.e., circumstances outside of the litigation—deprived the defaulted party of a fair hearing. (*Weitz*, *supra*, 63 Cal.2d at p. 855; *Cruz*, at p. 502.) "Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has been 'deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.'" (*Kulchar*, at p. 471.) And extrinsic mistake "is not so much the fraud or other misconduct of one of the parties as it is the excusable neglect of the defaulting party to appear and present his claim or defense." (*Cruz*, at p. 503.)

Before a court will award equitable relief from default, the defaulted party must demonstrate: (1) a meritorious defense, (2) a satisfactory excuse for not defending the original action, and (3) diligence in seeking to set aside the default once discovered. (*Cruz*, *supra*, 146 Cal.App.4th at p. 503.) A court will not grant equitable relief, however, when either the defaulted party had been given notice of the action and was not prevented from participating in it, or the defaulted party contributed to the fraud

or mistake giving rise to the default judgment. (*Kulchar*, *supra*, 1 Cal.3d at pp. 472–473.) If the defaulted party " 'was guilty of negligence in permitting the fraud to be practiced or the mistake to occur equity will deny relief.' " (*Id.* at p. 473.) Similarly, courts will deny relief when the default resulted from the defaulted party's counsel's inexcusable neglect. "[A]s a general rule an attorney's inexcusable neglect is chargeable to the client," and "[t]he client's redress for inexcusable neglect by counsel is, of course, an action for malpractice." (*Carroll*, *supra*, 32 Cal.3d at pp. 895, 898.)

However, when an attorney's neglect is so extreme as to constitute positive misconduct, courts will not impute the attorney's misconduct to the client but will grant him or her relief from default. " '[E]xcepted from the rule are those instances where the attorney's neglect is of that extreme degree amounting to *positive misconduct*, and the person seeking relief is relatively free from negligence. [Citations omitted.] The exception is premised upon the concept the attorney's conduct, in effect, *obliterates the existence of the attorney-client relationship*, and for this reason his negligence should not be imputed to the client.' (Italics added [by *Carroll*].) [Citations.] Courts applying that exception have emphasized that '[a]n attorney's authority to bind his client does not permit him to impair or destroy the client's cause of action or defense.' " (*Carroll*, *supra*, 32 Cal.3d at p. 898.) "Positive misconduct is found where there is a total failure on the part of counsel to represent his client." (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 739 (*Aldrich*).) "The client in such a case has representation only in a nominal and technical sense." (*Ibid.*)

3. The trial court did not abuse its discretion.

In setting aside the default and default judgment here, the trial court relied in part on its inherent equitable power. In seeking equitable relief from default, respondents demonstrated the three requirements for such relief: (1) a meritorious defense, (2) a satisfactory excuse for not defending the original action, and (3) diligence in seeking to set aside the default once discovered. (*Cruz*, *supra*, 146 Cal.App.4th at p. 503.) Thus, despite appellant's claims to the contrary, we conclude the trial court did not abuse its discretion in granting respondents equitable relief from default.

First, respondents demonstrated a meritorious defense. In their declarations in support of their motion to vacate default and default judgment, both Razon-Chua and Aguiluz stated they believed the statements they made about appellant were true. If credited by the trier of fact, the truth of respondents' statements would be a complete defense to appellant's defamation action against them. (*ZL Technologies, Inc. v. Does 1–7* (2017) 13 Cal.App.5th 603, 624; *Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1180.)

Second, respondents demonstrated a satisfactory excuse for not defending against appellant's lawsuit, namely their attorney's positive misconduct. Respondents retained legal counsel (i.e., Siqueiros) soon after appellant filed his first amended complaint. Respondents reasonably relied on Siqueiros to act in a professional manner as well as to file the very documents they hired and paid him to file. Respondents detailed not only their trust in Siqueiros and their consistent efforts to confirm he had filed documents on their behalf but also Siqueiros's repeated confirmations that he had indeed filed or would soon be filing the

promised documents. Thus, unbeknownst to respondents and despite their reasonable efforts to understand and confirm purported work being done, Siqueiros was not acting in their best interests, did not file any document on their behalf, and had all but abandoned their case. Under these circumstances, it was reasonable to conclude respondents demonstrated their attorney's positive misconduct resulted in the default entered against them and that they were relatively free from negligence. "[A] client should not be required to act as a 'hawklike inquisitor' of his own counsel, nor perform incessant checking on counsel." (*Aldrich*, *supra*, 170 Cal.App.3d at p. 740.) As such, Siqueiros's neglect should not be imputed to respondents. (*Carroll*, *supra*, 32 Cal.3d at p. 898; *Aldrich*, at p. 739; *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353–354 (*Orange Empire*).)

Finally, once respondents discovered Siqueiros's misconduct, respondents diligently sought to set aside the default and default judgment. Respondents discovered Siqueiros's positive misconduct in mid-February 2016. Less than two months later, respondents had retained new counsel, who then filed their motion to vacate default and default judgment within one month of being retained. Again, under these circumstances, it was reasonable to conclude respondents acted diligently in correcting the problems caused by their former counsel. (See *Orange Empire*, *supra*, 259 Cal.App.2d at pp. 354–355.)

Related to respondents' diligence is the issue of prejudice to appellant. "Prejudice is one of the factors the trial court may properly consider in determining whether the moving party acted diligently." (*Aldrich*, *supra*, 170 Cal.App.3d at p. 740.) "Ordinarily, prejudice to the responding party is only important in determining whether the moving party acted diligently in

filing his motion for relief from default." (*Orange Empire*, *supra*, 259 Cal.App.2d at p. 355.) Here, we have already concluded respondents acted diligently in seeking relief from default once they discovered their attorney's positive misconduct. Nonetheless, appellant argues he will be prejudiced if the default judgment is vacated because he has spent an unspecified amount of "time and money" enforcing the judgment. Although appellant's unspecified expenditures certainly could be considered prejudicial, we conclude they are not so prejudicial as to outweigh the trial court's equitable finding that respondents should have their day in court.

4. Appellant's arguments do not show an abuse of discretion.

a. "Gaming the System"

Appellant argues respondents connived with Siqueiros to "game the system" by not appearing in the action and instead proceeding "by proxy" through Siqueiros's representation of the Tagocs. That is not entirely accurate. First, the record shows Siqueiros inserted that strategy into the third retainer agreement, which respondents signed either at the start of or midway through trial. There is no evidence respondents or even Siqueiros sought that strategy from the start of the case. Indeed, the evidence is to the contrary. Respondents first hired Siqueiros to file a cross-complaint and demurrers. Next, Siqueiros was to file a motion to vacate default and to defend respondents at trial. It was after more than a year had passed and Siqueiros had failed to provide any of the services promised that Siqueiros proposed his "proxy" strategy.

Second, to the extent respondents acquiesced in Siqueiros's ill-advised strategy to proceed "by proxy," they explained they

had no legal background and trusted Siqueiros was acting competently and in their best interests. Indeed, in late 2013 soon after respondents had hired Siqueiros and before any default had been entered, Razon-Chua asked Siqueiros how to handle a default notice she had received. Siqueiros responded she should ignore it. In addition, after default was entered in November 2014 but prior to trial, respondents signed their second retainer agreement with Siqueiros, which indicated he would file a motion to vacate the default. Respondents followed up with him and inquired as to the status of that motion, to which Siqueiros responded he had finished the motion and would be filing it. He never did. Similarly, after signing the third retainer agreement, respondents sought answers and advice from Siqueiros, asking why they were in default and why he had not filed anything on their behalf. This history indicates respondents neither understood Siqueiros's strategy nor purposely choose to "game the system," as appellant argues. Rather, it is reasonable to conclude Siqueiros sought a losing strategy, while misleading his clients into believing he was actively filing documents on their behalf and otherwise competently representing them. In effect, however, he did next to nothing for them.

b. Representation in Unrelated Lawsuit

Appellant also points out Siqueiros represented Razon-Chua in an unrelated lawsuit during the pendency of the instant litigation.[6] Appellant argues Siqueiros could not have abandoned Razon-Chua in the instant action because he was

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[6] On June 21, 2017, we granted appellant's request to take judicial notice of documents (including a demurrer and an answer) Siqueiros filed on behalf of Razon-Chua in the unrelated lawsuit.

"simultaneously and effectively" representing her in another lawsuit. We do not agree. It is not a foregone conclusion that Siqueiros necessarily effectively represented respondents in the instant action simply because he simultaneously represented Razon-Chua in a separate case. Moreover, it is reasonable to conclude Siqueiros's concurrent representation of Razon-Chua in the unrelated case actually bolstered the trust and confidence respondents expressed in Siqueiros.

Appellant also claims respondents sought to "perpetrate a fraud on the court" because at trial they did not disclose to the court that Siqueiros represented them as well as the Tagocs, and they never revealed to the trial court that Siqueiros simultaneously represented Razon-Chua in an unrelated action. However, appellant does not explain how or when respondents—as opposed to their attorney—would have communicated with the trial court; and any lack of candor by their attorney Siqueiros with the court supports respondents' position that he also lied to and abandoned them.

c. Redacted E-mails

Finally, in his reply brief on appeal, appellant argues the attorney-client privilege does not apply to the redacted e-mails respondents submitted in support of their motion to vacate default, and it was improper for the trial court to rely on those redacted e-mails. As explained below, appellant has waived this argument and, in any event, we are not persuaded.

In opposition to respondents' motion to vacate default, appellant argued respondents' e-mails were unreliable because they were heavily redacted. He cited no legal authority for his position. He made a similar argument at the hearing on the motion to vacate default. And although in his opening brief on

appeal appellant references Evidence Code section 912, which addresses waiver of the attorney-client privilege, he does so in a conclusory one-sentence footnote in the procedural history section of his opening brief. Appellant makes no other argument with respect to the redacted e-mails in his opening brief. In his reply brief on appeal, however, appellant argues for the first time and with citation to legal authority both that, by disclosing portions of the e-mails, respondents waived the attorney-client privilege with respect to the entirety of the e-mails, and that some of the e-mails simply were not privileged because they were sent to third parties. Appellant claims, therefore, it was improper for the e-mails to be redacted at all. Also in his reply brief, appellant requests that, if we do not simply reverse the order granting relief from default, we reverse and remand to the trial court with directions to consider the full text of the e-mails.

As an initial matter, because appellant did not raise his attorney-client privilege argument below, he has waived the argument on appeal. (*Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 92, fn. 2 [issue raised for first time in reply brief on appeal was "doubly waived"].) Moreover, even assuming it was error for the trial court to consider the redacted e-mails, it was harmless error and, therefore, not grounds for reversal. In addition to the e-mails, respondents submitted declarations in support of their motion to vacate default and default judgment, each of which supported their claims that, despite their own diligence and trust in Siqueiros, he lied to them and eventually abandoned them in this case. Trial court error does not require automatic reversal. We reverse only for prejudicial error. (Cal. Const., art. VI, § 13; *Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 697 ["improperly admitted evidence only requires reversal or

modification when it is reasonably probable a result more favorable to the complaining party would have been reached absent the error"].)

Because we conclude the trial court did not abuse its discretion in granting respondents equitable relief from default, we need not and do not address the parties' arguments with respect to the whether the trial court properly vacated the default judgment because it was void. (See *People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584–585, fn. 4.)

DISPOSITION

The order is affirmed. Respondents are entitled to their costs on appeal.

Pursuant to California Code of Judicial Ethics, canon 3D(2), we hereby report Attorney Abraham A. Sanchez Siqueiros, former counsel for respondents, to the State Bar of California to investigate his conduct during the pendency of this matter. The clerk of this court is directed to send copies of this opinion to the State Bar of California and to Mr. Siqueiros at his address listed by the State Bar.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.