Filed 11/10/25 Creditors Adjustment Bureau v. Schofield 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CREDITORS ADJUSTMENT BUREAU, INC., Plaintiff and Respondent, v. BRIAN SCHOFIELD et al., Defendants and Appellants.	B342783 (Los Angeles County Super. Ct. No. 23VECV05661)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Reversed and remanded.

The Alvarez Firm and David A. Shaneyfelt for Defendants and Appellants.

Law Offices of Kenneth J. Freed, Kenneth J. Freed and Anna Landa for Plaintiff and Respondent.

In the trial court, defendants Brian Schofield and Aecon Global Security, Inc., filed a motion under Code of Civil Procedure section 473, subdivision (d), to set aside their defaults and a default judgment that they believed the court had entered by mistake.[1] After the trial court concluded the judgment was not void and denied the motion, Schofield and Aecon filed a new motion for relief from their defaults and the default judgment under section 473, subdivision (b), based on their own mistake or excusable neglect. The trial court denied the second motion because it failed to meet the requirements for reconsideration or renewal under section 1008. On appeal, Schofield and Aecon contend their motion under section 473, subdivision (b), was not a motion for reconsideration of the prior order subject to the requirements of section 1008. We conclude that although both motions sought the same relief, they were not applications for the same order under section 1008 because they were based on different legal and factual predicates. Therefore, we reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A. Complaint, Entry of Defaults, and Default Judgment

On December 21, 2023, plaintiff and respondent Creditors Adjustment Bureau, Inc. (Creditors), filed a complaint against "Brian Schofield AKA Brian Richard Schofield DBA Aecon Global Security Solutions ADBA Aecon Global Security Consultants

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

ADBA Aecon Global" (Schofield) and "Aecon Global Security Inc." (Aecon) for breach of contract, open book account, account stated, and reasonable value of goods delivered or services rendered based on unpaid insurance premiums assigned to Creditors for collection.

A case management conference was initially set for April 19, 2024.

On February 6, 2024, and on March 15, 2024, Creditors filed identical proofs of service stating Aecon had been personally served by a registered process server with the summons and complaint on January 23, 2024, through Aecon's registered agent, Legalzoom.com, Inc., by giving the documents to "Angie R."

On March 18, 2024, Creditors filed a proof of service showing the summons and complaint were served by a registered process server on Schofield on February 1, 2024, by substituted service at a United Parcel Service (UPS) store location in Reseda by leaving the documents with Briza Tellez, described as a UPS store clerk and "person apparently in charge." A declaration of diligence stated after due and diligent effort, the process server had been unable to effect personal service on Schofield. Schofield's home address was listed as the UPS location. There was one attempt at service, and the declaration noted the address was a private commercial mail receiving agency, Schofield was not present at the time of service, and the recipient was instructed to deliver the documents to Schofield.

That same day, Creditors filed two separate requests for entry of default. The request for entry of default against Schofield was entered by the court clerk as requested. The appellate record does not contain a copy of the request for entry of default against Aecon, but the court clerk served a notice of

rejection on Creditors as to the request for entry of Aecon's default. The clerk's notice stated that the proof of service on Aecon was defective because it did not give the full name or at least five physical descriptors of Angie R., the person served.

An entry in the case register for March 18, 2024, shows the default was not entered as to Aecon. The next entry for March 18, 2024, states that default was entered as to Schofield. The next entry for March 18, 2024, states, "Updated – Request for Entry of Default / Judgment: Status changed from Filed to Rejected" but does not specify which default request was rejected. The next entry for March 18, 2024, states, "Updated – Notice of Rejection Default/Clerk's Judgment: Status Date changed from 3/18/2024 to 3/18/2024 [*sic*]." Another entry for March 18, 2024, states "Notice of Rejection Default/Clerk's Judgment Filed by: Clerk."

Creditors filed a case management statement on March 28, 2024. On April 5, 2024, on the trial court's own motion, the case management conference was rescheduled to May 21, 2024.

On April 19, 2024, Schofield and Aecon retained The Alvarez Firm. Attorney David Shaneyfelt reviewed the court file and saw the case management conference scheduled for May 21, 2024.

On May 6, 2024, Creditors filed a proof of service showing the summons and complaint had been served on Aecon on April 5, 2024, through Legalzoom.com, Inc., by handing the documents to Sandra Menjivar.

On May 15, 2024, Creditors filed a second request for entry of default as to Aecon, which the court clerk entered that day.

On Friday, May 17, 2024, Shaneyfelt, on behalf of Schofield and Aecon, filed an answer to the complaint and a case

management statement. Shaneyfelt served the documents on Creditor's counsel by email at 5:40 p.m. that same day and by regular mail.

On Monday, May 20, 2024, Creditors filed a third request for entry of default against Aecon and for a court judgment against Schofield and Aecon. The court denied the request for entry of default because Aecon's default had been entered already.

A case management conference was held on May 21, 2024. No reporter's transcript has been included in the appellate record. The minute order reflects that Shaneyfelt appeared for Schofield and Aecon. The trial court's minute order stated the case was "at issue," scheduled a subsequent trial setting conference, and ordered counsel to meet and confer on certain issues prior to the trial setting conference. The defendants were ordered to give notice of the court's orders.

On May 24, 2024, the trial court entered a default judgment against Schofield and Aecon in the amount of $177,827.55. On May 30, 2024, Creditors sent notice of the entry of judgment to the defendants.

B. Motion to Set Aside Defaults and Default Judgment

On June 11, 2024, Schofield and Aecon filed a motion pursuant to section 473, subdivision (d), to set aside the default judgment and entries of default, on the ground that the judgment appeared to have been entered in error, as the defendants had an answer on file and were present at the case management conference setting the trial date.

Schofield and Aecon submitted Shaneyfelt's declaration in support of the motion. Shaneyfelt stated that after filing the complaint against the defendants, Creditors "attempted substituted service on Defendants, which Defendants reserve the right to contest as ineffective." The trial court continued the case management conference to May 21, 2024, and Shaneyfelt filed pleadings on May 17, 2024, which were served on Creditors' counsel by email and regular mail. Creditors knew the defendants were represented by counsel, but did not serve Creditors' request for default judgment on defendants' counsel by email or regular mail. When Shaneyfelt appeared at the case management conference on May 21, 2024, he had no knowledge of the defaults and the trial court did not mention the request for a default judgment. In fact, the court asked Shaneyfelt to give notice of the case management conference because Creditors' counsel had claimed to have technical difficulties participating in the hearing. Creditors' counsel sent a notice of entry of judgment by email on May 30, 2024, which was the first notice Shaneyfelt had of the default judgment.

Creditors opposed the motion to set aside the judgment on the ground that, at all relevant times and prior to Shaneyfelt's participation in the case, both defendants were in default. As a result, the defendants had no right to participate in the case until the defaults were set aside. Creditors argued that relief could not be granted under section 473, subdivision (d), because there was no evidence of extrinsic fraud or mistake. Creditors noted that the defendants had not requested relief under section 473, subdivision (b), and there was no declaration showing mistake, inadvertence, surprise, or excusable neglect.

The defendants filed a reply arguing that section 473, subdivision (d), is not limited to judgments entered through extrinsic fraud or mistake, but also applies to void judgments and allows the trial court to set aside a judgment entered inadvertently. They noted that any discussion of section 473, subdivision (b), was irrelevant because the defendants were not seeking relief under that section.

A hearing was held on July 11, 2024. No reporter's transcript has been included in the appellate record. The trial court's tentative ruling had been to grant defendants' motion, but after hearing oral argument, the court took the matter under submission and, on July 15, 2024, denied the motion to set aside the defaults and default judgment. Once the defendants' defaults were entered, they had no right to be in court. Their answer was improperly filed and erroneously accepted by the court. There was no legal authority stating that when an answer is improperly filed, a default judgment entered following that answer is void. The defendants' answer was subject to an order to strike, as there was no basis to accept the answer after the default was entered.

There was also no legal authority that the plaintiff waives any rights when the defendants appear in court and the court conducts a hearing without knowing the defendants' defaults have been entered. After the defaults were entered, the defendants were not entitled to any additional notice. There was no "technical defect" as a result of the entry of defaults and default judgment. Neither defendant had contested service.

Because all of the conditions to enter a default were met for both defendants as of May 15, 2024, the answer and the case management statement filed on May 17, 2024, had no legal effect. The defendants did not have a right to appear or participate at

the case management hearing on May 21, 2024. The only affirmative action they could take was to file a motion to set aside their defaults, which they did not do. The judgment was not void, nor was there extrinsic mistake under section 473, subdivision (d).

In addition, the motion to set aside the default judgment did not provide any valid reason why the defendants failed to appear before their defaults were entered. There was no evidence of mistake, fraud, or excusable neglect under section 473, subdivision (b), and no evidence explaining why no timely response was filed. There was no explanation for why Schofield waited three months between March and June 2024, to ask the court to set aside his default.

In the absence of any factual or legal basis for relief, the trial court denied the motion to set aside the defaults and default judgment.

C. Second Motion to Set Aside Defaults and Default Judgment

Within six months of the entry of the defaults, on September 5, 2024, Schofield and Aecon filed a second motion to set aside the defaults and the default judgment entered against them. The defendants argued pursuant to section 473, subdivision (b), that: (1) they had been defectively served by substituted service, (2) the defaults and default judgments were the result of Schofield and Aecon's mistake, inadvertence, surprise, or excusable neglect, and (3) Creditors induced the defendants to believe they were not in default. Although Schofield regularly checked for mail at the UPS location, he did

not receive the summons and complaint until March 20, 2024. He noticed the hearing date set on April 19, 2024, and believed he had time to hire counsel to appear at the hearing. On March 27, 2024, he learned the hearing was continued on the court's own motion to May 21, 2024. Schofield believed he had more time to file a response as a result, but he still retained counsel by April 19, 2024. The defendants argued that Schofield's mistaken belief that he had additional time to respond was a reasonable misunderstanding for a layperson.

The defendants submitted Schofield's declaration in support of the motion. Schofield stated that Aecon is a closely-held company and he is Aecon's agent for service of process. He provided the street address of his residence in Reseda. He stated that he keeps a mailbox for Aecon at a UPS store location in Reseda, which he checks approximately three times per week. On March 20, 2024, he received a copy of the summons and complaint, which was his first knowledge of the litigation, and consequently Aecon's first knowledge of the litigation. The complaint was never served on Schofield at his residence, and he is not aware of any attempted service on him at his residence. After he received the complaint, he sought legal representation for himself and the company, retaining The Alvarez Firm on April 19, 2024, to defend them.

The defendants also submitted Shaneyfelt's declaration. Shaneyfelt confirmed that his law firm was retained on April 19, 2024. He reviewed the court file and saw the case management conference scheduled for May 21, 2024. On Friday, May 17, 2024, he filed an answer and a case management statement on behalf of the defendants. He served Creditors' counsel by email and by regular mail on that date. Unknown to him, on Monday, May 20,

2024, Creditors filed a request for entry of default and court judgment, with supporting declarations. Although Creditors' counsel was aware Shaneyfelt represented the defendants and had been served with the defendants' pleadings, Creditors' counsel did not serve the request for entry of default and default judgment on Shaneyfelt by email or regular mail.

The following day, May 21, 2024, Shaneyfelt appeared on behalf of the defendants at the case management hearing via LA CourtConnect. Creditors' counsel also appeared by LA CourtConnect, but claimed to have audio problems. The trial court noted that the defendants had filed their answer and a case management statement. The court scheduled a trial setting conference and asked Shaneyfelt to give notice of the conference. Neither Creditors' counsel, nor the trial court mentioned any default had been entered against his clients, nor was Shaneyfelt aware of any default. In fact, on May 23, 2024, Creditor's counsel sent a set of discovery requests to Shaneyfelt by email.

On May 30, 2024, Creditor's counsel sent a notice of entry of judgment to Shaneyfelt by email, enclosing a copy of the default judgment that had been entered against his clients on May 24, 2024. Shaneyfelt had no notice of Creditor's request for entry of default and court judgment on May 20, 2024, or that judgment had been entered against his client. In other words, Creditors' counsel sent him the notice of entry of judgment, but not its own request for entry of judgment.

Creditors opposed the motion to set aside the default judgment and entries of default. Creditors argued that the motion failed to meet the requirements of section 1008 for a renewed motion. At oral argument before this appellate court, Creditors conceded that the defendants had not brought a prior

motion pursuant to section 473, subdivision (b); rather, Creditors believe the defendants' request for relief under section 473, subdivision (b), had to be included in the prior motion.

In addition, Creditors argued that it was inexcusable neglect to have been confused between the date of the case management conference and the deadline to file a responsive pleading. In addition, service on Aecon was proper, because LegalZoom is Aecon's agent for service of process, and Schofield had actual knowledge of the complaint. Service on Schofield was proper, because based on the information provided by the insurance company and Creditors' tracing efforts, the best address to serve Schofield was the UPS address, which was his usual mailing address and the undisputed address of Aecon.

Creditors submitted the declaration of attorney George Aposhian in support of the opposition. LegalZoom was Aecon's agent for service of process and was personally served. The process server was instructed to serve Schofield at the UPS store address, which Creditors determined was the best possible address to serve him based on information from the insurance company and Creditors' tracing efforts. The process server handed the documents to Tellez, the clerk at the UPS store, and mailed the same materials to Schofield at the same address, which materials were not returned.

When no responsive pleadings were filed, on March 18, 2024, Creditors filed and served each defendant with a request for entry of default, one envelope provided to Schofield through substituted service and one envelope provided to Aecon in care of its agent for service of process.

On Monday, May 20, 2024, at 9:43 a.m., Creditors filed and served each defendant with the default judgment packet.

Creditors did not know the defendants had retained counsel, who had emailed a courtesy copy of the defendants' proposed answer and case management statement on Friday, May 17, 2024, after business hours at 5:40 p.m. Creditors did not receive the mailed copy of the documents until after the default judgment packed had been filed and served, when the mail was delivered on Monday, May 20, 2024.

Schofield and Aecon filed a reply. They argued that the motion was not one for reconsideration, but rather sought relief under a different subdivision of section 473, which courts applied liberally in favor of resolution on the merits and resolving doubts in favor of the moving party. The prior motion had been under subdivision (d), which allowed courts to correct clerical mistakes to conform to the judgment.

They argued Schofield's explanation was credible and his neglect was excusable. He saw the summons and complaint for the first time on March 20, 2024. Creditors did not dispute that service on Aecon was not even effective until April 5, 2024. The paperwork said a response was due in 30 days and showed a hearing date of April 19, 2024. A week later, he saw that the trial court had continued to May 21, 2024. He obtained counsel and the defendants filed an answer and case management statement on May 17, 2024, in advance of the hearing. The defendants' counsel appeared at the hearing without knowing defaults had been entered. Creditors could have advised of the defaults, but elected not to. They argued Schofield's neglect was excusable and Creditors was not prejudiced by the defendants' filing.

D. Trial Court Ruling

On October 29, 2024, a hearing was held on the second motion to set aside the defaults and default judgment. No reporter's transcript has been included in the appellate record. The trial court found that because the court had previously ruled on a request for the same relief, the motion was one for reconsideration or renewal under section 1008, subdivisions (a) and (b). The second motion did not meet the requirements for reconsideration under section 1008, subdivision (a), because it was not filed within ten days, and failed to meet the requirements for renewal section 1008, subdivision (b), because the defendants failed to present any explanation for why information about defective service was not presented at the prior hearing. The second motion also failed to comply with the requirements of section 1008 to submit an affidavit describing the prior order and the new or different material being claimed. Therefore, the court denied the motion. The defendants filed a timely notice of appeal from the October 29, 2024 order.

DISCUSSION

A. Standard of Review

"It is well settled that the interpretation and application of a statutory scheme to an undisputed set of facts is a question of law [citation] which is subject to de novo review on appeal. [Citation.] Accordingly, we are not bound by the trial court's interpretation. [Citation.]" (*Rudd v. California Casualty Gen.*

Ins. Co. (1990) 219 Cal.App.3d 948, 951–952.) An appellate court is free to draw its own conclusions of law from the undisputed facts presented on appeal. (*Pueblos Del Rio South v. City of San Diego* (1989) 209 Cal.App.3d 893, 899.)

In this case, the determination whether section 1008 applies to a second motion for relief from default because it sought "the same order" as the first motion is a question of law based on undisputed facts that we review de novo. If section 1008 applies, the trial court's ruling on a motion under section 1008 is reviewed for an abuse of discretion. (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 42 (*Virga*).)

B. Section 473

Section 473, subdivision (b), encompasses two separate provisions for relief from default. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838 (*Even Zohar*).) The first provision is discretionary and applies broadly: "The 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." (§ 473, subd. (b).) Any application for relief under this provision must be made within six months after the judgment, dismissal, or order, with a copy of the pleading proposed to be filed. (*Ibid.*)

The second provision provides for mandatory relief from defaults and default judgments based on an attorney's affidavit of fault as follows: "Notwithstanding any other requirements of this

section, 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." (§ 473, subd. (b).) If relief is granted based on an attorney's affidavit of fault, the court must order the attorney to pay attorney fees and costs to opposing counsel or parties. (*Ibid*.)

The policy underlying section 473, subdivision (b), favors adjudication of legal controversies on their merits. (*Even Zohar*, *supra*, 61 Cal.4th at p. 839; *Berman v. Klassman* (1971) 17 Cal.App.3d 900, 909 (*Berman*).) As a remedial measure, the provisions of section 473 are to be liberally construed, and any doubts resolved in favor of the party seeking relief and a trial on the merits. (*Berman*, *supra*, at p. 910; *Riskin v. Towers* (1944) 24 Cal.2d 274, 279.) "The additional, more specific purposes of section 473(b)'s provision for relief based on attorney fault is to 'relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.' [Citations.]" (*Even Zohar*, *supra*, 61 Cal.4th at p. 839.)

In contrast, section 473, subdivision (d), provides that the trial court "may, on motion of either party after notice to the other party, set aside any void judgment or order."

C. Section 1008

"[S]ection 1008 imposes special requirements on renewed applications for orders a court has previously refused." (*Even Zohar, supra*, 61 Cal.4th at p. 833.) A party may apply "to reconsider the matter and modify, amend, or revoke the prior order" within 10 days after the party is served with written notice of entry of the previously denied order. (§ 1008, subd. (a).) "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law[.]" (§ 1008, subd. (b).) The motion must include an affidavit stating, "what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (§ 1008, subds. (a), (b).) The affidavit must also "show diligence with a satisfactory explanation for not presenting the new or different information earlier [citations]." (*Even Zohar*, *supra*, at p. 833.)

"Section 1008's purpose is ' "to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider." ' (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1067 (2011–2012 Reg. Sess.), as amended Apr. 25, 2011, p. 4.)" (*Even Zohar*, *supra*, 61 Cal.4th at pp. 839–840.)

D. Relevant Case Law

In *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 877 (*Standard Microsystems*), disapproved in part by *Even Zohar*, *supra*, 61 Cal.4th at pp. 843–844, the defendants filed motions under section 473, subdivision (b), to set aside a default based on defective service of the complaint, or if not defective, based on mistake, surprise, or excusable neglect for having believed the service was defective. (*Standard Microsystems*, at pp. 877–879.) The trial court concluded no mistake, inadvertence, surprise, or excusable neglect had been shown, and the defendants' attorney had not submitted an affidavit of fault, so the court denied the motions. (*Id.* at p. 879.) The defendants retained a new attorney, who filed a motion for mandatory relief from the default and default judgment under section 473, subdivision (b), submitting an affidavit of fault by the prior attorney acknowledging his responsibility for the defendants' failure to respond. (*Id.* at p. 880.) The trial court denied the second motion on the ground that it was an improper motion for reconsideration that did not comply with section 1008. (*Id.* at p. 884.)

The appellate court reversed, concluding that the second motion was not a motion for reconsideration of a prior order. (*Standard Microsystems*, *supra*, 179 Cal.App.4th at p. 890.) The second motion relied on the mandatory provisions of section 473, subdivision (b), and did not seek reconsideration of the prior order concerning the discretionary provisions of the statute. (*Id.* at p. 891.) In fact, "[t]he second motion rested on an entirely different legal theory, invoked a different statutory ground, and

relied in very substantial part on markedly different facts. It neither asked for, nor sought by sly evasion, a determination contrary to any determination made in the first order. On the contrary, it cited that order as part of the series of events that entitled defendants to relief from the judgment." (*Ibid*.) The court concluded that although both motions sought to set aside the default, they did not seek "the same order" because they rested on entirely distinct factual and legal predicates. (*Ibid*.)

The *Standard Microsystems* court went on to state, however, that even assuming, without deciding, that section 1008 applied to the second motion, the statutory provisions of section 1008 and 473 were in direct conflict, and under principles of statutory construction, section 473 took precedence. (*Standard Microsystems*, *supra*, 179 Cal.App.4th at pp. 893–895.) The court noted, however, "this is not a case where a party invokes the mandatory provisions of section 473(b) unsuccessfully, and then seeks to invoke them again. We doubt that any categorical rule could govern such situations, for in some cases the second motion may be only a rehash of the first, while in others it might assert attorney mistakes directly involved in *bringing about the first denial*." (*Id.* at p. 895.)

Thereafter, in *Virga, supra*, the appellate court concluded motions for attorney fees brought different legal theories, but based on the same factual predicate, sought "the same order" and were subject to section 1008. (*Virga*, *supra*, 181 Cal.App.4th at pp. 43–44.) The defendants in *Virga* filed a motion for attorney fees under a state statute, which the trial court denied on the ground that the statute did not apply. (*Id.* at p. 35.) The defendants then filed a motion seeking the same amount of attorney fees under a federal statute, which the trial court denied

as an improper motion for reconsideration of the prior order under section 1008. (*Id.* at pp. 35–36.)

On appeal, the defendants argued the second motion for attorney fees under the federal statute was not seeking "the same order" because the first motion was brought pursuant to a state statute with different substantive and procedural requirements. (*Virga*, *supra*, 181 Cal.App.4th at p. 43.) The appellate court held, "An 'order' is defined as a 'direction of a court or judge, made or entered in writing, and not included in a judgment.' (§ 1003.) Whether appellants' motions relied on two different grounds, the fact remains that both sought an order from the court directing respondents to pay their attorney fees. (§ 1003.) ' " The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words." ' [Citation.] We conclude that appellants' second motion for attorney fees was a motion for 'the same order' (§ 1008, subd. (b)) as they sought in their first motion, because they sought *identical relief* in both motions." (*Virga*, *supra*, at p. 43.)

The *Virga* court distinguished the holding of *Standard Microsystems* on the ground that the second motion in *Standard Mircrosystems* was not only brought under a different provision of section 473, subdivision (b), but also on a different factual predicate, relying on an assertion of attorney fault. (*Virga*, *supra*, 181 Cal.App.4th at pp. 43–44.)

In *Even Zohar*, the California Supreme Court concluded that section 1008 applies to renewed applications under section 473, subdivision (b), for mandatory relief from default based on an attorney affidavit. (*Even Zohar*, *supra*, 61 Cal.4th at p. 833.) After a default judgment was entered against the defendants in

Even Zohar, they filed a motion for mandatory relief from default under section 473, subdivision (b), based on their attorney's affidavit of fault. (*Id.* at p. 834.) The trial court concluded the attorney's affidavit was insufficient and denied the motion. (*Id.* at p. 835.) The defendants filed a second motion for mandatory relief under section 473, subdivision (b), with an attorney affidavit containing a different explanation for the failure to file a responsive pleading. (*Ibid.*) The trial court found the second motion failed to comply with section 1008, but felt compelled to follow statements in *Standard Microsystems* that section 473, subdivision (b), takes precedence over section 1008. (*Id.* at p. 836.)

The California Supreme Court explained, however, that there is no conflict between the provisions of section 473, subdivision (b), and section 1008. (*Even Zohar*, *supra*, 61 Cal.4th at p. 840.) A renewed application for relief from default under the mandatory attorney fault provision of section 473, subdivision (b), must comply with the requirements of section 1008. (*Id.* at p. 837.)

The Supreme Court characterized the analysis in *Standard Microsystems* as follows: "[The Court of Appeal's statement that motions under section 473(b) need not comply with section 1008 was dictum or at most an alternative ground of decision. The court's only clear *holding* was that section 1008 did not apply to the defendants' application for *mandatory* relief under section 473(b) because the application did not seek reconsideration or renewal of the defendants' earlier, failed application for *discretionary* relief. (See *Standard Microsystems*, at pp. 889–893 ['this is not a case where a party invokes the mandatory provisions of section 473(b) unsuccessfully, and then seeks to

invoke them again'].) After announcing that holding, the court went on unnecessarily to suggest that, "[i]nsofar as . . . a conflict actually exists [between sections 473(b) and 1008], it must be resolved in favor of allowing relief under section 473(b), not denying it under section 1008." (*Standard Microsystems*, at p. 894.) The court proposed to resolve the posited conflict by giving preference to section 473(b) as more specific than section 1008, and also as remedial and thus entitled to broad interpretation. (*Standard Microsystems*, at pp. 894–895.) To apply these tiebreaking principles of statutory construction was unnecessary, as we have explained, because no conflict between section 473(b) and section 1008 exists." (*Even Zohar*, *supra*, 61 Cal.4th at pp. 843–844.) The Supreme Court disapproved *Standard Microsystems* to the extent it was inconsistent with their opinion in *Even Zohar*. (*Id.* at p. 844.)

E. Application

In this case, Schofield and Aecon filed a motion to set aside a void judgment under section 473, subdivision (d), and when the trial court determined that the default judgment was not void, they filed a motion for relief from the defaults and default judgment under the discretionary provision of section 473, subdivision (b). Seeking discretionary relief from the defaults and default judgment under Code of Civil Procedure section 473, subdivision (b), was not the same as seeking reconsideration of the trial court's order denying the motion to set aside a void judgment under a different subdivision of the same statute. Although the defendants' motions both sought to vacate the default judgment, the motions were based on entirely different

legal and factual predicates. This conclusion is consistent with the policy underlying section 473, subdivision (b), favoring adjudication of cases on the merits. The October 29, 2024 order denying the motion for relief under section 473, subdivision (b), for failing to comply with section 1008 must be reversed and remanded to allow the trial court to exercise its discretion under section 473, subdivision (b).

DISPOSITION

The October 29, 2024 order denying the motion for relief under section 473, subdivision (b), is reversed, and the matter is remanded for further proceedings on the motion for relief under section 473, subdivision (b). Appellants Brian Schofield and Aecon Global Security, Inc., are awarded their costs on appeal.

NOT TO BE PUBLISHED.

MOOR, J.

WE CONCUR:

HOFFSTADT, P. J.

KIM (D.), J.