IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Thursday, May 17, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. **YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.**
2. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case	Title / Nature of Case

9:00

LINE: 1

16-CIV-02945 PETER TU VS. TSAI-LUAN HO, ET AL.

PETER TU	JEFFREY S GOODFRIED
TSAI-LUAN HO	JEFFREY G. HURON

MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

Plaintiff's motion submits only summaries of the number of hours incurred. The Court cannot determine whether the number of hours reflect attorney work that is recoverable under the attorney's fee clause. The hearing of this matter is continued to June 8, 2018.

No later than nine court days before the hearing, Plaintiff shall file and serve authenticated evidence (e.g., billing statements or other similar documentation) detailing the amount and nature of attorney time incurred that is reflected in paragraph 12 of the Corrected Declaration of Thompson. Service shall be by personal or electronic service.

Defendant may file and serve a Supplemental Opposing Points and Authorities of no more than five pages, no later than five court days before the hearing, addressing Plaintiff's evidence. The Supplemental Opposition may be accompanied by testimony or documentary evidence. Service shall be by personal or electronic service.

No other papers shall be filed by any party.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 2

17-CIV-02547 DERRICK BURNS, ET AL. VS. SUNEET SINGAL, ET AL.

DERRICK BURNS	ADAM M. FOREST
SUNEET SINGAL	JOSHUA D. BRINEN

MOTION FOR ISSUE AND MONETARY SANCTION

TENTATIVE RULING:

Parties are ordered to appear at 9:30 am on May 17, 2018, in the Law and Motion Department, Department 3, for a discovery conference.

9:00

LINE: 3

17-CIV-02547 DERRICK BURNS, ET AL. VS. SUNEET SINGAL, ET AL.

DERRICK BURNS	ADAM M. FOREST
SUNEET SINGAL	JOSHUA D. BRINEN

MOTION FOR ORDER

TENTATIVE RULING:

Parties are ordered to appear at 9:30 am on May 17, 2018, in the Law and Motion Department, Department 3, for a discovery conference.

9:00

LINE: 4

18-CIV-00784 BGG ATTORNEY SEARCH, INC. VS. SIMPSON, GARRITY, INNES & JACUZZI

BGG ATTORNEY SEARCH, INC.	LAUREN VALENTE
SIMPSON, GARRITY, INNES & JACUZZI	KURT E. WILSON

MOTION TO STRIKE

TENTATIVE RULING:

The Motion of Plaintiff BCG Attorney Search, Inc. ("Plaintiff") to Strike or Tax Costs is DENIED as untimely. A motion to strike or tax costs must be served and filed 15 days after service of the cost memorandum, with extra time under C.C.P. section 1013 if the cost memorandum is served by mail. (CRC Rule 3.1700(b)(1).) Here, Defendant's Memorandum of Costs was filed and served by mail on March 26, 2018. Thus, Plaintiff had until April 16, 2018 to file and serve this motion. Although it appears Plaintiff timely served this motion on Defendant on April 12, 2018, it was not filed with the court until April 24, 2018. (See *Alan S., Jr. v. Superior Court* (2009) 172 Cal.App.4th 238, 260 (as modified April 2, 2009 and April 15, 2009) [CRC Rule 3.1700(b)(4) provides that "After the time has passed for a motion to strike or tax costs or for a determination of that motion, the clerk *must* immediately enter the costs on the judgment." (italics added)].)

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 5

18-UDL-00287 CONSUELO CERVANTES LLC VS. MICHAEL J. HAAG, ET AL.

CONSUELO CERVANTES LLC	JOANNA KOZUBAL
MICHAEL J. HAAG	STEVE S. GOHARI

HEARING ON DEMURRER

TENTATIVE RULING:

Defendant Michael Haag's Demurrer to Plaintiff Consuelo Cervantes LLC's 3-21-18 Complaint for unlawful detainer is OVERRULED. Code Civ. Proc. Sect. 1161c, cited by Defendant, applies to tenants. Defendant Haag is not a tenant; he is a previous owner who lost the property in a foreclosure sale.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 6

18-UDL-00333 BENITA FERNANDEZ VS. MICAELA ROSAS

BENITA FERNANDEZ	PRO/per
MICAELA ROSAS	JULIET M. BRODIE

HEARING ON DEMURRER
TENTATIVE RULING:

The demurrer is sustained without leave to amend. The complaint alleges service of a 30-day notice of termination rather than the 60-day notice required by Civil Code §1946.1.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00
LINE: 7
CIV535707 ROBERT HARTWELL VS. MAUNEL CHAVEZ, ET AL.

ROBERT HARTWELL RICHARD J. PALENCHAR
MANUEL CHAVEZ

MOTION TO SET ASIDE DEFAULT/JUDGMENT
TENTATIVE RULING:

The Motion for Order Setting Aside Default and Judgment and for Return of Levied Funds is DENIED. Plaintiff Robert Hartwell's request for sanctions is DENIED.

Procedural History. This case was filed on October 6, 2015. It initially named only defendant "Manuel Chavez individually and dba RG Construction, Co…" as well as Does 1-20. About a week after the initial complaint was filed, Plaintiff filed an "Amendment to Complaint" on a local San Mateo County form substituting defendant Raul Bravo Gonzales ("Raul") into this case as "Doe 11." Thereafter, Raul was personally served with a copy of the summons, complaint, *and the "Amendment to Complaint,"* as well as other documents on October 26, 2015. The notice on the summons specifically identified that the Raul was sued under the fictitious name of "Doe 11." See Proof of Service of Summons (f: 01/06/16). Default was entered against Raul on July 15, 2016. A default judgment by court was entered on July 24, 2016. A Writ of Execution issued in December 2017, and Raul filed a Claim of Exemption on January 31, 2018. The Court denied that Claim of Exemption on March 15, 2018. Thereafter, Raul filed the instant motion to set aside the default and default judgment, as well as to return the levied funds, on April 19, 2018. Plaintiff opposed.

Raul expressly states that the instant motion is not brought pursuant to C.C.P. § 473(b). Accordingly, the Court declines to address any of the merits of that statute—including the time limit imposed in that subsection, the statutory grounds provided in that subsection (mistake, inadvertence, surprise, or excusable neglect)—and declines to award sanctions to the extent Plaintiff is requesting them under that subsection.

Request to Set Aside Void Judgment Under C.C.P. § 473(d). Subsection (d) of C.C.P. § 473 allows a court to set aside a judgment where the underlying judgment is *void*. Unlike Subsection (b) of that statute, Subdivision (d) it is not bound by any time limit. C.C.P. § 473(d).

To establish that the judgment at issue is void, Raul argues that the judgment was rendered in excess of this Court's jurisdiction. Specifically, in entering a default judgment there are certain

strictures that limit what a court can award. Those strictures are set forth in C.C.P. § 580, which is excerpted below:

> (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint…; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and **embraced within the issue**. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles…

(Bold added.) Here, Raul was added as a "doe" defendant and served with notice. Raul claims that he was added as a "doe" "by addendum to (not amendment of) the complaint" and that he "was not even served with the addendum to the complaint naming him as Doe no. 11." Motion (f: 04//19/18), p. 2:20-24. The history of the case file disproves Raul's assertions.

First, Raul was added via a document entitled "Amendment to Complaint," which was filed on Oct 14, 2015. The "Amendment to Complaint" is a local San Mateo Superior Court form (CV-1), so it is not clear what Raul's basis is for claiming that this form is an "addendum" rather than an "amendment."

Second, the Proof of Service of Summons filed Jan 06, 2016 identifies that Raul was personally served with the summons, complaint, *and the amendment to complaint*, among other documents. Proof of Service of Summons (f: 01/06/16), Item 2f. Moreover, it indicates that the party served was "Raul Bravo Gonzalez sued herein as Doe 11" and states that the "Notice to Person Served" (on the summons) was completed as follows: "as the person sued under the fictitious name of (*specify):* Doe 11. Proof of Service of Summons (f: 01/06/16), Items 3a and 6b. These procedural details meet the statutory requirements for a "doe" amendment, which are set forth in C.C.P. § 474. As such, Raul was a properly served "doe" defendant.

Raul also argues that the complaint did not give him notice of the claims against him. For this argument, he notes that the allegations of the Complaint specifically state that: "on or about… June 5, 2015 a … written… agreement was made between … Robert Hartwell and Manuel Chavez." Complaint (f: 10/06/15), p. 3, Item BC-1. Raul's name is not to be found in this contractual allegation. For that matter, Raul's name does not appear in the supplemental attachment alleging conversion. Complaint (f: 10/06/15), p. 7. Based upon this, Raul is arguing that claims of breach of contract and/or conversion *against him* are not "embraced within the issue" (i.e. not within the four corners of the complaint) as required under C.C.P. § 580. The policy behind C.C.P. § 580 has been set forth as follows:

> It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. (U.S. Const., art. XIV; *Mullane v. Central Hanover Bank* (1950) 339 U.S. 306,

313-315, 70 S.Ct. 652, 656-657, 94 L.Ed. 865.) California satisfies these due process requirements in default cases through section 580.

…

It is fundamental to the concept of due process that a defendant be given **notice of the existence of a lawsuit** and **notice of the specific relief** which is sought in the complaint served upon him. The logic underlying this principle is simple: a defendant who has been served with a lawsuit has the right, in view of the relief which the complainant is seeking from him, to decide not to appear and defend. However, a defendant is not in a position to make such a decision if he or she has not been given full notice. The instant case is a prime example of the foregoing; the petition which was served on Ronald sought no monetary relief from him. Therefore, there was no incentive for Ronald to appear and defend.

In re Marriage of Lippel (1990) 51 Cal.3d 1160, 1166 (bold added). Unlike *Marriage of Lippel*, which involved an issue of the *amount* of potential exposure to liability as set forth in the operative complaint, the issue in the instant case is not about the *amount* or *type* of award but rather about the nature of the allegations against Raul. Specifically, Raul takes the position that the allegations only state a contract between Plaintiff and Manuel—not Raul. Viewed in context, however, the complaint at issue is a relatively simple one—it has only two causes of action and it is on a simple Judicial Council form. Raul was added to these claims as a "doe" defendant. Given that Raul was served with the summons, complaint, and amendment, Raul had "notice of the existence of a lawsuit." Likewise, as the Complaint specifies damages in the amount of $27K, Raul had "notice of the specific relief" which was being sought via the Complaint. While Raul may dispute the particulars of the claim—i.e. Raul may believe the Complaint fails to state a claim because it does not name him as a party to the alleged contract—those are substantive arguments that Raul was free to bring via demurrer or answer. Thus, the Court finds that the default judgment awarded against Raul was "embraced within the issue[s]" set forth in the Complaint and therefore did not run afoul of C.C.P. § 580. Therefore, the judgment is not void and cannot be set aside under the "void" clause of C.C.P. § 473(d).

Request to Set Aside Under Equitable Principles. "Apart from any statutory authority, a court has inherent, equitable power to set aside a judgment on the ground of extrinsic fraud or mistake." Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group, 2017) ¶ 5:435, citing *Olivera v. Grace* (1942) 19 Cal.2d 570, 576-578, also citing *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300, also citing *Bae v. T.D. Service Co.* (2016) 245 Cal.App.4th 89, 97. This relief may be granted at any time. Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group, 2017) ¶ 5:281 ("**At any time:** Equitable relief from a default judgment can be sought at any time on the ground of 'extrinsic fraud or mistake'").

There are three essential requirements to obtain relief. The party in default must

show:

- a *meritorious* defense;

- a *satisfactory excuse* for not presenting a defense to the original action; and

- *diligence* in seeking to set aside the default once it was discovered.

Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group, 2017) ¶ 5:435, citing *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982, also citing *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300 (emphasis in original).

With regard to a meritorious defense, Raul is arguing that the Complaint does not state a breach of contract claim against him because it states that the contract was between Plaintiff and Manuel only and that allegation is *verified*. While that might be a meritorious ground for demurrer or defense to the Complaint as alleged, the declaration in support of the default prove-up sets forth that the contract was between Plaintiff, Manuel, *and* Raul. Request for Court Judgment (f: 07/15/16), attached Decl. of Hartwell, ¶ 3 ("… I entered into a contract ***with defendants*** to do electrical, plumbing, and other construction and finish work on my home.") (emphasis added); see also Motion (f: 04/19/18), p. 3:8-9 (Raul admitting that "Plaintiff… obtained a default judgment… based on a declaration of [Plaintiff] that he contracted with BOTH Manuel… and Raul…") (caps in original). In addition, Plaintiff sued Manuel claiming that he uses the fictitious business name of "RG Construction, Co."—initials which match Raul's name. Indeed, in the title of the moving papers for the instant motion, Raul identifies himself as "Raul Gonzalez individually *and dba RG Construction*…" Motion (f: 04/19/18), p. 1 (emphasis added). Raul also expressly claims that an investigation revealed that Manuel had been using Raul's contractor's license. Taken together, it appears that Plaintiff could easily amend the operative pleading to state that he entered into an agreement with Raul, such that the merits of the defense Raul is referencing are not particularly strong in terms of the overall chance of success. On the other hand, without more information, there is no way of knowing what defenses Raul might successfully raise (i.e. Manuel may have been using Raul's license number without Raul's knowledge, or the two may have been in communication the whole time with Manuel acting as Raul's agent—it is impossible to meaningfully analyze this factor at this stage of the litigation). For these reasons, the "meritorious defense" element is not particularly clear in the context of the instant case.

With regard to a satisfactory excuse for not presenting a defense to the original action, Raul is arguing that he did not need to defend against the lawsuit because the facts alleged within the four corners of the Complaint did not state a claim against him. That is not a satisfactory excuse for not *presenting* a defense—i.e. for not raising the issue via demurrer or answer. In other words, just because Raul had a defense does not mean that he did not need to come to court and *present* that defense—at least, not if he wanted to avoid a default judgment. As such, Raul has not made a

sufficient showing of this element to have the judgment set aside on equitable grounds.

With regard to diligence in seeking to set aside the default once it was discovered, Raul knew about this lawsuit all along. The basis upon which he made the decision to not make an appearance in the lawsuit is some combination of "not understand[ing] from reading the complaint that I had done anything wrong" and being told by an Investigating Officer of the Contractors' State License Board that the Investigating Officer "had… contacted [Plaintiff] and explained the situation to him and… confirmed that [Plaintiff] was not seeking any relief from me." Motion (f: 04/19/18) p. 8, ¶ 4. The facts available do not make clear when Raul became aware of the default. As a preliminary matter, Raul is the moving party with the burden of establishing the elements for obtaining the equitable relief he seeks, so the lack of facts to determine when Raul became aware *of the default* weighs against setting aside the judgment. Moreover, equitable relief from a judgment requires "extrinsic" mistake:

> **Compare—ignorance of law NOT ground for relief:** 'Extrinsic mistake' does not extend to situations where defendant was simply *ignorant* of the law and therefore failed to file a timely answer.

Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group, 2017) ¶ 5:461, citing *Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1148-1149. Essentially, Raul is arguing that he knew he had been sued, but based on his lack of understanding he did not appear in the action and raise a defense. A lack of familiarity with legal procedure is not a basis for showing "extrinsic mistake" and Raul has not made a satisfactory showing as to: (1) when he discovered the default, and (2) why he was diligent in moving to set aside the default. Moreover, even after receiving the levy of his bank account in December 2017, Raul waited over three months (until Apr 19, 2018) to file the instant motion to set aside—preferring instead to attempt to side-step the judgment via a Claim of Exemption. Indeed, Raul admits that he did not obtain a lawyer until Apr 16, 2018. As such, Raul has not made a sufficient showing of the element of diligence to have the judgment set aside on equitable grounds.

Sanctions. In his opposition, Plaintiff requests sanctions under C.C.P. § 473(b). As Raul is not bringing the instant motion under that statutory authority, sanctions should not be awarded under that statutory subsection.

Plaintiff also requests sanctions under C.C.P. § 473(c). That subsection authorizes sanctions "[w]henever the court *grants* relief from a default, default judgment, or dismissal based on any of the provisions of this section…" C.C.P. § 473(c) (emphasis added). Since the instant motion is not being granted, there is no basis for awarding sanctions under this provision.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the

parties.

9:00

LINE: 8

CLJ535894 AMERICAN EXPRESS CENTURION BANK VS. HAYA KHARMA, ET AL.

AMERICAN EXPRESS CENTURION BANK	MARTIN HOFFMANN
HAYA KHARMA	CROSBY S. CONNOLLY

MOTION FOR JUDGMENT
TENTATIVE RULING:

The unopposed motion for entry of judgment is granted. Judgement shall entered for plaintiff in the amount of $1,363.57. Plaintiff may seek an award of costs through applicable post judgment procedures.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

POSTED: 3:00 PM