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Newcases of Business Litigation Interest

Orange County Bar Association • Business Litigation Section

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STATE

Appeal—Money Judgment—Stays—Consent

Under section 917.1 of the Code of Civil Procedure, a defendant is required to post a bond to stay enforcement of a money judgment. Section 918 gives a trial court limited powers to grant a stay without requiring a bond, but in the case of a money judgment section 918 states that a trial court "shall not have power, *without the consent of the adverse party*, to stay the enforcement [of a money judgment without requiring a bond] pursuant to this section for a period which extends for more than 10 days beyond the last day on which a notice of appeal could be filed." (Emphasis added.) In *Sharifpour v. Le*, 223 Cal.App.4th 730, 167 Cal.Rptr.3d 422 (2014), the trial court held that a plaintiff's failure to oppose a motion requesting a stay pending determination of setoffs and to allow the defendant time to investigate obtaining a bond operated as consent to a stay pending appeal without a bond. The court of appeal reversed. It held that since the defendants had not asked for stay pending appeal without requiring a bond—but only time to look for a bond—"there is not even an arguable basis for concluding that the failure to file an opposition to a request that was never made should be construed as consent to that never-made request."

Litigation—Attorneys' Fees—Findings

In a 2001 case, *Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro*, 91 Cal.App.4th 859 (2001), the court of appeal judicially created a

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requirement that in awarding fees under the Fair Employment and Housing Act, a trial court was required to make express written findings. In *Robert v. Stanford University*, 224 Cal.App.4th 67, 168 Cal.Rptr.3d 539 (2014), an unsuccessful plaintiff in a FEHA case argued that an award of attorneys' fees in favor of defendant had to be set aside because the trial court did not comply with *Rosenman*'s express written findings requirement. The court of appeal declined to state whether it agreed with that requirement or not, but it did reject *Rosenman*'s holding that absence of such findings *automatically* compelled reversal. The *Roberts* court, citing Article VI, section 13 of the state constitution, held that reversal is required only for prejudicial error and since the trial court had *orally* stated its reasons for making the award, the plaintiff could not demonstrate prejudice by the absence of written findings. The oral statement, the court of appeal said, adequately showed that the trial court applied proper legal standards in making the award.

Litigation—Judges—Disclosure—Peremptory Challenge

A trial judge has no duty to disclose his or her ownership interests in insurance-related companies in order to allow a party to exercise a peremptory challenge, even though any potential judgment would be paid by an insurance company. That was the holding in *Brown v. American Bicycle Group, LLC*, 224 Cal.App.4th 665, 168 Cal.Rptr.3d 850 (2014). There, appellant challenged a judgment on the ground that the trial court failed to disclose his ownership interest in several insurance-related companies, asserting that she would have filed a peremptory challenge to the trial judge if the judge had disclosed those interests. The court of appeal held that since none of the companies in which the judge held an interest was a party to the case or a carrier of one of the parties, those interests would not subject the judge to disqualification for cause. The court further held that the California Code of Judicial Ethics only requires disclosure of information relevant to a judge's disqualification for cause. Appellant's claim that "the trial judge failed to disclose adequate information to allow her to exercise a peremptory challenge pursuant to section 170.6 is therefore without merit."

Litigation—Money Judgment—Fraudulent Transfer

When a debtor transfers property with the intent to hinder, delay, or defraud a creditor, the creditor may void the transfer under the Uniform Fraudulent Transfer Act and may obtain a money judgment against "the person for whose benefit the transfer was made." In *Renda v. Nevarez*, 223 Cal.App.4th 1231, 167 Cal.Rptr.3d 874 (2014), the court was presented "an issue of first impression in California"—whether the debtor who made the fraudulent transfer is a "person for whose benefit the transfer was made" and against whom a money judgment may be entered. After obtaining an $800,000 judgment against Nevarez for fraud, breach of contract, and negligence, Renda sued Nevarez under the UFTA alleging various fraudulent transfers. A jury found that Nevarez had fraudulently transferred $450,000 with the intent to hinder, delay, or defraud Renda. The trial court entered a judgment voiding the $450,000 in fraudulent transfers, but refused to enter a money judgment in Renda's favor for that amount. The court of appeal affirmed, holding that "because Renda obtained a judgment in the prior action for the damages Nevarez caused him, the principle against double recovery for the same harm bars him from obtaining a second judgment against [Nevarez] under the UFTA for a portion of those same damages."

Real Property—Vendor and Purchaser

Miscalendaring a date can lead to devastating results for your client, and Code of Civil Procedure section 473 may not offer relief from such a mistake. That is the lesson from *Noceti v. Whorton*, 224 Cal.App.4th 1062, 169 Cal.Rptr.3d 251 (2014). There, despite being properly notified of a trial date, plaintiffs failed to appear because their attorney had miscalendared the date. On the appointed day, the trial court reviewed the file and entered judgment in favor of the defendant; it later denied plaintiffs' request for mandatory relief based on attorney mistake under section 473(b). The court of appeal affirmed because mandatory relief is available under section 473 only where an attorney's mistake results in a default, default judgment, or dismissal against the attorneys' client. Where a party fails to appear for a trial, the resulting judgment is not a "dismissal," but a judgment after an uncontested trial and mandatory relief is, therefore, not available. In so holding, the court disagreed with an earlier decision from the Second

District, which on nearly identical facts held that a judgment entered after a nonappearance "was analogous to a default . . . ." The only possible solace for the client in *Noceti* is that the court of appeal remanded for the trial court to consider whether to grant *discretionary* relief under section 473(b).

Torts—Fraud—Actionable Misrepresentations

Do borrowers have an actionable fraud claim against a lender who allegedly misrepresented to the borrowers that their home would continue to appreciate so that they would be able to sell or refinance before having to make the higher loan payments on an adjustable rate mortgage? Not according to the decision in *Cansino v. Bank of America*, 224 Cal.App.4th 1462, 169 Cal.Rptr.3d 619 (2014). There, the court explained that "actionable misrepresentations must pertain to past or existing material facts." Alleged representations that plaintiffs' property "would continue to appreciate in the future and that plaintiffs could then sell or refinance their home based on this forecasted future appreciation" were simply "forecasts of future events and not actionable misrepresentations."

Supreme Court Action

The Supreme Court has granted review in *F.P. v. Monier*, 222 Cal.App.4th 1087, 166 Cal.Rptr.3d 551 (2014) (February-March issue), which held that a trial court's failure to provide a timely-requested statement of decision was not reversible per se.