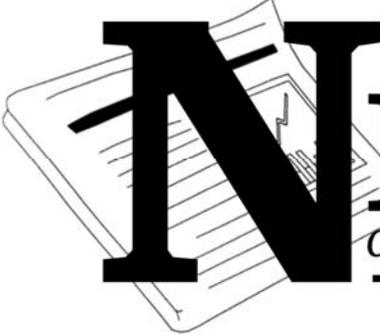


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NEWcases

of BUSINESS LITIGATION INTEREST

Orange County Bar Association • Business Litigation Section

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S T A T E

Appealability—Ruling on Disqualification of Judge Reviewable by Writ

Dumas v. Los Angeles Cty. Bd. of Supervisors, 45 Cal.App.5th 348 (2020) reminds us that an order rejecting an attempt to disqualify a trial judge is reviewable only by writ. After several unfavorable rulings, Dumas, a self-represented plaintiff, filed a statement of disqualification against his trial court judge, alleging the judge was biased against him and in favor of the defendant. The trial court struck that statement under CCP section 170.4(b) as untimely and facially disclosing no legal grounds for disqualification. Dumas did not petition for writ of mandate to challenge the ruling. After Dumas failed to comply with the court's discovery orders and failed to appear at the subsequent order to show cause, the court dismissed the case without prejudice. Dumas appealed, claiming he never received notice of the judge's ruling. The court of appeal rejected this claim, noting Dumas "exhibited familiarity with disqualification procedures, including the requirement that the challenged judge respond to the statement in some way within 10 days, and the suspension of the judge's power to act in the case until the question of disqualification has been determined." Because Dumas did not deny he received the court's order to show cause, which was issued 10 days after Dumas's statement of disqualification, he should have been aware the trial court had stricken his statement. Dumas's failure to challenge the ruling by writ was thus fatal to his appeal.

Debt Collection—Third-Party
Action Against Suspended
Company’s Debtors

It is well established that a suspended corporation lacks legal capacity to prosecute or defend a civil action during its suspension and, therefore, lacks the ability to collect certain debts. But what if the suspended corporation is also a judgment debtor? Does its corporate suspension prevent the judgment creditor from bringing suit against a third party to collect a debt owed to the suspended corporation? No. *Wanke, Industrial, Commercial, Residential, Inc. v. AV Builder Corp.*, 45 Cal.App.5th 466 (2020). Wanke obtained a \$1.1 million judgment against WP Solutions. After WP Solutions dissolved, Wanke learned that AVB owed WP Solutions more than \$100,000 on a contract. Wanke filed a creditor’s suit against AVB and obtained a money judgment. On appeal, AVB argued that Wanke effectively stood in WP Solutions’ shoes and because WP Solutions had no right to payment on the contract, Wanke could not collect the money on WP Solutions’ behalf. The court of appeal disagreed citing Code of Civil Procedure section 708.210, which confers standing on a “judgment creditor” to bring a creditor’s suit against a “third person [who] has possession or control of property in which the judgment debtor has an interest or [who] is indebted to the judgment debtor.” The court held that “[b]y its plain language,” this statute “considers solely whether the judgment debtor has an ‘interest’ in property held by the third person or is owed a debt by the third person. There is no requirement for the judgment debtor to have present *capacity* to collect against the third person.” (Emphasis in original).

Litigation—Default Judgment—
Trial Court’s Authority to Issue
Terminating Sanctions—Right of
Defaulting Party to File New
Trial Motion

The Second District’s decision in *Siry Investment, L.P. v. Farkhondehpour*, 45 Cal.App.5th 1098 (2020) addresses two important questions regarding default judgments: “(1) May a trial court issue terminating sanctions when the discovery a party contumaciously refuses to provide encompasses fewer than all the issues in a case; (2) May a party in default file a motion for new trial raising ‘[e]rror[s] in law’ . . . ?” The court answered the first question “yes.” The court acknowledged that “some cases contain language that arguably supports” an “issue-based limitation” on discovery sanctions. The court rejected this limitation, however, holding the law gives trial courts “broad” discretion to consider “the totality of the circumstances” to determine appropriate sanctions including, but not limited to, the breadth of the issues involved in the discovery. The court also answered the

second question “‘yes,’ at least when the party is seeking to move for a new trial on the ground that the court made an ‘error in law’ in calculating damages.” The court reasoned that “[a]lthough the entry of default precludes the defaulting defendant from further participation in the proceedings,” it “does not entirely render a defaulting defendant persona non grata.” Even a defaulting defendant may appeal a default judgment on several grounds, including that the damages award is “contrary to law.” Notably, the court’s decision “respectfully part[s] ways” with several other decisions “holding that a defaulting defendant may not file a motion for new trial under any circumstances.” Finally, the *Siry* decision also creates a split in authority regarding the proper interpretation of Penal Code § 496(a), which makes it a crime to buy or receive “property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained” and provides treble damages to any person injured by a violation of that section. Disagreeing with courts that have adhered to the statute’s strict language, the court in *Siry* held this provision did not provide for treble damages “where the underlying conduct did not involve trafficking in stolen property, but rather the improper diversion of a limited partnership’s cash distributions through fraud, misrepresentation, and breach of fiduciary duty.”

Litigation—Fraudulent
Transfer—No Right to Jury Trial

Does a party have a right to a jury trial on a state law fraudulent transfer cause of action? In *Moofly Productions, LLC v. Favila*, 46 Cal.App.5th 1 (2020), the court of appeal held “no,” unless the plaintiff only seeks a “determinate sum of money.” Richard Corrales and Raleigh Souther co-owned a business. After Corrales died, Souther twice transferred the business’s assets to separate companies owned entirely by himself and his wife, eventually putting those assets in Moofly Productions. Corrales’s estate sued Moofly asserting, among other things, a cause of action for fraudulent transfer. After a bench trial, the trial court entered an injunction reversing the transfers and ordering restitution. On appeal, Moofly argued it was entitled to a jury trial on the fraudulent transfer claim. The court of appeal disagreed noting “[i]n most instances, courts have considered suits to reverse fraudulent transfers to be actions at equity.” The exception is where the plaintiff seeks only to recover a specific sum of money, in which

case a complete remedy is available at law. But Corrales’s estate sought to reverse the transfer of several types of property, including computer equipment, intellectual property, and profits from the fraudulently transferred business, which were “not a determinate sum, but rather required the equitable remedy of accounting” Thus, “the superior court was required to apply equitable doctrines,” and Moofly was not entitled to a jury trial.

Litigation—Specific Personal Jurisdiction—Statements Made Through Social Media

Part modern love story, part mystery, 100% civil procedure. In *Zehia v. Superior Court*, 45 Cal.App.5th 543 (2020), the court held California had personal jurisdiction over a nonresident who allegedly sent defamatory statements to a California resident through private online social media. After Nadhir and S.M. were introduced by their family, S.M. reached out to an extended family member, Zehia, for information about Nadhir. Soon after, Nadhir received social media messages from usernames he did not recognize encouraging him to leave S.M. alone. Over the next few weeks, Zehia told S.M. an anonymous user had given him warnings about Nadhir and forwarded sexually-explicit and derogatory messages purportedly written by Nadhir. Nadhir sued Zehia asserting Zehia was behind the scheme to disrupt his developing relationship. Zehia moved to quash service of summons, arguing he did not intentionally aim any conduct at California and at most knew it would harm a “limited number of Californians.” The trial court denied the motion, and Zehia petitioned for a writ of mandate. The court of appeal denied the petition, holding that “Zehia’s suit-related conduct created a substantial connection between Zehia and California.” First, Zehia’s targeted communications with California residents is “one type of conduct that can establish a purposeful available of the forum’s benefits.” Importantly, Zehia sent *private* social media messages aimed exclusively at a California audience. Second, the reputational effects of the alleged defamation connected Zehia to California as the injury “occurred only when the defamatory statements were transmitted to California residents.” Finally, the allegedly defamatory conversations “had a distinct California focus,” as some of the statements referenced conduct that allegedly took place in San Diego. Thus, Zehia must “reasonably anticipate being haled into” California court to answer for his conduct.