

Lee v An

11/19

Attorney Thomas Lee sued Ji Hae An for practicing law without a license and falsely conducting business under the name Lee Law Offices. An appeared in propria persona and filed an Answer to the complaint. A Notice of Case Management Conference was served by the court on Lee, advising that failure to file a statement or appear could result in sanctions, including dismissal of the case. The notice ordered Lee to serve this notice of hearing on all parties.

Lee did send notice to An, but it was not a copy of the court's notice. It provided the time and date of the hearing but did not give the detailed warnings about sanctions for failure to appear. An did not appear. The court set a further case management conference and ordered Lee to give notice, but he failed to do so. Meanwhile, An failed to appear for deposition and Lee filed a motion to compel the deposition. That motion was then consolidated with the further case management conference on a new date, and Lee did provide notice of the hearing on both matters to An.

The court denied the motion to compel the deposition. **Noting An's absence from the hearing, however, the court struck her Answer and entered her default for failure to appear.** Lee mailed a copy of the **request for entry of default judgment** to An, and ultimately a default judgment was entered for \$198,976.85.

More than three years later, An, now represented by counsel, **moved to set aside the default and default judgment.** She claimed her **due process rights** were violated because she did not receive notice that terminating sanctions could follow her failure to appear. **She claimed the default was invalid and the default judgment void.** An claimed that she moved to Richmond, Virginia, and had only recently discovered the judgment against her.

In opposition, Lee argued An was **not diligent** in seeking to set aside the judgment. He demonstrated through evidence that a collection effort had been initiated two years earlier and An had indicated she would dispute the validity of the debt. Thus, Lee contended An had **notice of the judgment** in April 2005 but waited until July 2007 to set it aside. The court denied An's motion and she appealed.

Code of Civil Procedure section 473(b) provides for relief based on mistake, inadvertence, surprise or excusable neglect, if sought within a reasonable time, not exceeding 6 months. The court denied An's motion on that basis and because she did not bring the motion **within 2 years, based on lack of notice in time to defend an action pursuant to CCP 473.5.** On appeal, An stated she did not seek relief under those statutes, but rather filed under **473(d) which provides:**

The court may, ...on motion of either party after notice to the other party, set aside any void judgment or order.

An claimed the judgment was **void** because the court struck her answer and entered her default without notice, in violation of her due process rights.

Subdivision (d) of section 473 allows a court to set aside a void judgment without mention of any time limit. (*Heidary v Yadollahi* (2002) 99 Cal.App.4th 857) When a court lacks jurisdiction to hear a case, or lacks authority over the subject matter or the parties, an ensuing judgment is **void**, and thus vulnerable to attack. (*Abelleira v District Court of Appeal* (1941) 17 Cal.2d 280) (*Barquis v Merchants Collection Assn.* (1972) 7 Cal.3d 94) For example, if a defendant is not served with a summons and complaint, the court lacks personal jurisdiction and a default judgment is subject to being set aside as **void**. (*Dill v Berquist Construction Co.* (1994) 24 Cal.App.4th 1426)

But when a court acts contrary to the authority conferred, the court exceeds its jurisdiction. (*People v American Contractors Indemnity Co.* (2004) 33 Cal.4th 653) Here, the Superior Court of Los Angeles County enacted local rule 7.13 authorizing sanctions for failure to comply with the rules, but only after giving a party notice and an opportunity to be heard. Here, the court notice provided such notice, but Lee failed to serve it upon An.

A court can lack jurisdiction over the subject matter, question presented, or party, making its judgment **void**, or can merely act in excess of its jurisdictional power, rendering the judgment **voidable**. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49) In this case, the court had fundamental jurisdiction over the parties and the subject matter, but acted in excess of its jurisdiction by imposing terminating sanctions without adequate prior notice. The resulting default and default judgment were thus **voidable**, not **void**.

The difference between a void judgment and voidable one is that a party seeking to set aside a voidable judgment or order must act to set aside the order or judgment before the matter becomes final. (*Christie v City of El Centro* (2006) 135 Cal.App.4th 767). Here, the court acted in excess of its defined power in the Local Rules, so the judgment was **voidable**. An failed to act before the judgment became final, waiting more than two years to set aside the judgment. Thus An was not entitled to relief under CCP section 473(d), the only basis for relief she asserted.

The trial court may **vacate a default on equitable grounds**, even where no statutory relief is available. One ground for such relief is **extrinsic mistake**-where circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits. But to qualify for such relief, a party must meet certain criteria, including **acting diligently to set aside the default once discovered**. (*Cruz v Fagor America, Inc.* (2007) 146 Cal.App.4th 488) Evidence presented in the trial court shows An waited over two years to seek relief, demonstrating a lack of diligence necessary for equitable relief.

The trial court order is affirmed.