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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JAMES N. MAYNARD,

Plaintiff and Respondent,

v.

LOUISE BRANDON et al.,

Defendants and Appellants.

E031430

(Super.Ct.No. RIC 331910)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge.

Reversed.

Law Offices of Rodger A. Maynes and Rodger A. Maynes for Defendants and Appellants.

Law Offices of James N. Maynard and James N. Maynard for Plaintiff and Respondent.

This appeal involves a dispute over legal fees for services rendered by plaintiff James N. Maynard (Maynard) to defendants Louise Brandon (Brandon), Satyananda Apaji Tagra also known as Frederick Saylor (Tagra), Lakoo Kriya Church, successor organization to The Joy Life Church, nonprofit corporations (JLC), and the Institute of

Spiritual Education and Evolution, a nonprofit corporation (ISEE, collectively Defendants). The dispute was arbitrated pursuant to Business and Professions Code section 6200 et seq., resulting in an award in favor of Maynard. Defendants claim that the trial court erred (1) in denying their Code of Civil Procedure section 473¹ motion for relief from filing a late rejection of the arbitration award; (2) in confirming, and subsequently entering, judgment based upon the arbitration award; (3) in denying their motion to vacate the judgment; and (4) in denying a postjudgment claim for exemption from levy. We agree that the trial court should have considered Defendants' request for relief under section 473 on its merits and therefore reverse the judgment.

FACTS AND PROCEDURAL HISTORY

Maynard filed a complaint against Defendants on August 23, 1999, alleging causes of action including breach of a written contract, aiding and abetting and conspiracy to breach a written contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, conversion, assault and battery, and intentional and negligent infliction of emotional distress. In his complaint, Maynard alleged that he and his daughter were members of a religious group headed by Tagra. Under Tagra's direction, Maynard resumed his long-abandoned legal career, providing services for Tagra and members of his group without remuneration. These services included obtaining IRS tax-exempt status for JLC, assisting Tagra in obtaining custody of his son,

¹ All further references to section 473 are to Code of Civil Procedure section 473.

obtaining social security benefits for member Tampoe, and assisting other members with various legal matters. Maynard estimated the value of the services at \$25,783.

On September 23, 1994, Maynard entered into a written “attorney client retainer agreement” with Brandon to provide her with legal representation in exchange for one-third of any recovery she might obtain. Maynard was able to obtain a settlement of \$500,000 for Brandon, paid to her in the form of grants to ISEE, which Tagra guided her to found. Maynard further alleged that Tagra directed Brandon to transfer funds from ISEE to JLC to finance the purchase of real property, thereby draining the ISEE account of the majority of its funds. Additional real property purchased by ISEE was sold and the proceeds used to benefit the JLC community. While the Brandon settlement was fully paid by January 3, 1998, Maynard had not received the \$166,667 one-third compensation due him under the retainer agreement.

Maynard and his daughter left the community in July 1997. Subsequent to leaving the group, Maynard discovered that it had the characteristics of a cult. Maynard made a formal request to Tagra, Brandon and other JLC members for the compensation that he believed was due him for his legal services. Maynard also alleged that Tagra declined to pay and instructed the group members to do likewise.

Defendants’ request that the claim for attorney fees be submitted to fee arbitration by a three-person panel of the Riverside County Bar Association was granted, and the action was stayed pending a decision. After a hearing on March 6, 2001, the arbitration panel rendered its decision and served it upon counsel on August 27, 2001. The panel

found that Maynard had agreed to restructure his fee agreement with respect to Brandon's claim, in order to facilitate the settlement. That restructuring worked as a novation between all parties, which replaced the original fee agreement between Maynard and Brandon. According to the new agreement, Maynard was entitled to total fees in the amount of \$120,000. That amount was reduced by \$19,000 for payments already received, resulting in a total due to Maynard under the new agreement of \$101,000. The panel also concluded that Maynard was not entitled to an additional \$45,286.46 in fees claimed for other services rendered as they were either included in the \$120,000 owed under the renegotiated agreement or were provided without any fee agreement in place.

On September 24, 2001, Defendants' attorney executed and served a notice of rejection of the arbitration award. However, it was not filed with the trial court until October 2, 2001. A petition to vacate the arbitration award was filed simultaneously, as was an opposition to Maynard's petition to confirm the arbitration award. The petition to confirm the award was rejected by the trial court as Maynard was advised by the court that he needed to file a noticed motion, which he did on November 2, 2001. Maynard opposed Defendants' papers on the ground that they failed to file a timely rejection of the arbitration award, and that they failed to set forth grounds for relief as required by Code of Civil Procedure section 1285.8.

Defendants then filed a section 473 motion for relief from their late filing of their rejection of the arbitration award, on the grounds of mistake, inadvertence and excusable neglect. They asserted that while the rejection had been prepared and served in a timely

fashion on September 24, 2001, it had not been filed due to their attorney's mistaken assumption that his secretary had filed it prior to a two-week absence due to a death in her family. On December 4, 2001, the trial court refused to consider Defendants' motion for relief as improperly noticed and confirmed the arbitration award since no timely rejection was filed.

On December 10, 2001, Defendants filed a motion for relief from the order confirming the arbitration award pursuant to section 473, based on the same grounds previously asserted. Defendants also filed a demurrer to and motion to strike the complaint. In response Maynard filed opposition and a request for leave to file a first amended complaint. The trial court sustained both the demurrer and the motion to strike with 20 days leave to amend. It also found that the Business and Professions Code section 6203 time limit for rejecting an arbitration award was jurisdictional and therefore concluded that no relief was available under Code of Civil Procedure section 473. At the time of the hearing, the trial court filed Maynard's first amended complaint.

On January 31, 2002, at an ex parte hearing seeking dismissal of all but the first cause of action in his first amended complaint, Maynard submitted, and the trial court executed, a judgment in conformity with the arbitration award that it had previously confirmed. It awarded Maynard the sum of \$101,000 from Defendants on the first amended complaint.

Shortly thereafter Defendants filed a motion to vacate the judgment pursuant to Code of Civil Procedure section 663 on the ground that the arbitrators had no jurisdiction

to enter judgment against Tagra, JLC and ISEE on the Brandon contract. Maynard opposed the motion. On March 19, 2002, the trial court denied Defendants' motion to vacate the judgment because it was not based upon proper grounds and Defendants did not meet their burden under Code of Civil Procedure section 1286.2.

In the meantime, on March 1, 2002, Tagra filed a claim of exemption on enforcement of the judgment on a bank account that Maynard attempted to levy against, on the ground that none of the funds in the account belonged to him, but constituted Social Security payments and gifts to Katay Kali (Kali). Kali also filed a third party claim of exemption. Maynard opposed the claim of exemption on the ground that Tagra had complete control over all funds in the account, regardless whether Kali's name also appeared on it, and filed an undertaking. On March 11, 2002, the trial court denied the claim of exemption because the account was maintained in Tagra's name and on his Social Security number, and ordered the levying officer to release funds in the account for payment on the judgment. This appeal followed.

DISCUSSION

The first question with which we must concern ourselves is whether the trial court erred when it determined that section 473 could not be invoked to relieve Defendants from their untimely rejection of the arbitration award because Business and Professions Code section 6203 acts as a statute of limitations, and therefore constitutes a jurisdictional limitation on the trial court's powers. Code of Civil Procedure section 473 provides, in pertinent part, that "[t]he 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.” (*Id.*, subd. (b).) However, section 473 does not provide relief from errors that result in the running of the applicable statute of limitations. (*Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1279; *Castro v. Sacramento County Fire Protection Dist.* (1996) 47 Cal.App.4th 927, 929, 934.)

Business and Professions Code section 6203 provides that “[e]ven if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after mailing of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. . . .” (*Id.*, subd. (b).) “If there is an action pending, the trial after arbitration shall be initiated by filing a rejection of arbitration award and request for trial after arbitration in that action within 30 days after mailing of notice of the award. . . .” (Bus. & Prof. Code, § 6204, subd. (b).)

The parties here do not dispute that the arbitration award was mailed on August 27, 2001, and that Defendants did not file their notice of rejection until October 2, 2001, some six days after the expiration of the 30-day period provided by Business and Professions Code sections 6203 and 6204. The question that we must answer then, is whether the 30-day period acts as a statute of limitations such that no relief can be had under Code of Civil Procedure section 473 for mistake, inadvertence or excusable neglect. This being a pure question of law, we review the trial court’s decision de novo.

(*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699; *Diamond Benefits Life Ins. Co. v. Troll* (1998) 66 Cal.App. 4th 1, 5.)

A statute of limitations prescribes the time period beyond which suit may not be brought. (*Utah Property & Casualty Ins. etc. Assn. v. United Services Auto. Assn.* (1991) 230 Cal.App.3d 1010, 1025.) Statutes of limitations are distinguished from procedural limits governing the time in which parties must do an act because they fix the time for commencing suit. (3 Witkin, *Cal. Procedure* (4th ed. 1996) Actions, § 418, p. 527.) The question we must consider, therefore, is whether, in this case, Business and Professions Code sections 6203 and 6204 fix the time in which a party may bring an action.

In *Simpson v. Williams* (1987) 192 Cal.App.3d 285, 290-291 (*Simpson*), the Fourth Appellate District, Division Three, determined that section 473 relief was indeed available with respect to Business and Professions Code sections 6203 and 6204. The *Simpson* court analogized attorney fee arbitration to judicial arbitration. Finding no justification for allowing Code of Civil Procedure section 473 relief in judicial arbitration and disallowing it in attorney fee arbitration, it concluded relief was available in both circumstances. (*Simpson, supra*, 192 Cal.App.3d at pp. 290-291.) It dismissed the distinguishing fact that the judicial arbitration rules provide specifically for section 473 relief, while Business and Professions Code sections 6203 and 6204 do not, by observing that “the [judicial arbitration] rules had to be amended to include [Code of Civil Procedure] section 473 relief because the only relief available was that specified [in those rules]. [Business and Professions Code s]ections 6203 and 6204 did not need to be

changed to reflect the availability of [Code of Civil Procedure] section 473 relief because it was never prohibited.” (*Simpson, supra*, 192 Cal.App.3d at pp. 290-291.)

This result was criticized by the court in *Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041 (*Shiver*), which held that section 473 relief was not available under Business and Professions Code sections 6203 and 6204. (*Shiver, supra*, at pp. 1047-1049.) The *Shiver* court found fault with *Simpson* for the same reason Maynard forwards here. In essence, Maynard argues, and the *Shiver* court found, that a request for a trial de novo after an arbitration pursuant to Business and Professions Code section 6200 et seq. is analogous to an appeal from an administrative hearing, for which no Code of Civil Procedure section 473 relief is available. (*Shiver, supra*, at pp. 1047-1049.) The *Shiver* court cited *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 835-837 (*Pressler*), as controlling. Of concern in *Pressler*, as in the majority of cases involving appeals from administrative decisions, was the jurisdiction of the court to which the appeal was directed. (*Pressler, supra*, 31 Cal.3d at pp. 835-837.) In *Pressler*, the appeal to the superior court from the labor commissioner’s decision was the original action in the superior court. Thus, the superior court had no jurisdiction over the case until the notice of appeal was filed. (*Pressler, supra*, at pp. 833-835.) Under such circumstances, the Supreme Court analogized an appeal from an administrative decision to any other appeal and found that the time limit for filing the appeal was jurisdictional and not subject to section 473 relief. (*Pressler, supra*, at pp. 835-837.)

We are not convinced that Defendants’ request for a trial de novo after arbitration

under Business and Professions Code sections 6203 and 6204 is more akin to an appeal from an administrative decision than it is to a request for trial de novo after a judicial arbitration. Neither Business and Professions Code section 6203 nor section 6204 provides a time limit for instituting an appeal in this case. Here, as in judicial arbitration and unlike in appeals from administrative decisions, the action was commenced in the trial court prior to the arbitration. Thus, jurisdiction had already vested in the trial court. As with a judicial arbitration, the trial court did not lose jurisdiction over the instant case while the fee dispute was being arbitrated but continued to monitor its progress, further distinguishing it from administrative review cases where the trial court has no jurisdiction until the appeal is filed. (*Nanfito v. Superior Court* (1991) 2 Cal.App.4th 315, 319.) In addition, in 1982 when *Pressler* was decided, California Rules of Court rule 1615, subdivision (d) had yet to be amended to specifically authorize Code of Civil Procedure section 473 relief for judicial arbitration. (See Historical Notes, 23 pt. 2 West's Ann. Codes, Rules (1996 ed.) foll. rule 1615, p. 607.) In light of these observations, unlike the court in *Shiver*, we are not certain that the *Pressler* reasoning applies under circumstances such as are here present. We are therefore not convinced that *Shiver's* criticism of the holding in *Simpson* is merited.

Thus, we conclude that the trial court erred when it found that no relief was available to the Defendants under section 473 because arbitration under Business and Professions Code section 6200 et seq. is seen as an administrative hearing. As pointed out in *Simpson, supra*, 192 Cal.App.3d at pp. 290-291, the arbitration under Business and

Professions Code section 6200 et seq. in this case was more akin to judicial arbitration, for which relief is available under Code of Civil Procedure section 473.

Contrary to Maynard’s assertion on appeal, it is clear that the trial court did not consider or rule upon the merits of Defendants’ section 473 motion. Consequently, we must reverse the judgment and remand this matter to the trial court in order that Defendants’ motion for relief under section 473 be considered on its merits. As our analysis of this issue requires a reversal of the judgment, we decline to consider the balance of the issues raised by the parties at the present time, but will consider them in a future appeal if it becomes necessary.

DISPOSITION

The judgment is reversed. The trial court is directed to consider Defendants’ motion for relief under Code of Civil Procedure section 473 on its merits and thereafter to proceed as its decision thereon requires. Defendants to recover their costs on appeal.

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RAMIREZ
P. J.

We concur:

McKINSTER J.
GAUT J.