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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JET SOURCE CHARTER, INC.,

Plaintiff and Respondent,

v.

BRIAN J. DOHERTY,

Defendant and Appellant.

D072247

(Super. Ct. No. GIN014623)

APPEAL from a postjudgment order of the Superior Court of San Diego County, Timothy M. Casserly. Affirmed.

Lightfoot & Northrup, Robert W. Northrup; Law Offices of Mary A. Lehman and Mary A. Lehman for Defendant and Appellant.

Nicholas & Tomasevic, Craig M. Nicholas and Shaun A. Markley for Plaintiff and Respondent.

Brian J. Doherty appeals an order denying his motion to vacate the renewal of a judgment in favor of Jet Source Charter, Inc. (Jet Source). Doherty contends Jet Source's

application to renew the judgment was untimely under Code of Civil Procedure section 683.020, subdivision (a).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 6, 2001, Jet Source sued Doherty, John P. Mouyos, Mach I, Inc. (Mach I), and Mach I Aircraft, Inc. (Mach I Aircraft) (Doherty, Mouyos, Mach I, Mach I Aircraft collectively Defendants). The matter proceeded to trial on February 9, 2004. On March 11, 2004, the jury returned a verdict in favor of Jet Source, finding Defendants liable for breach of fiduciary duty, fraud, negligent misrepresentation, and conversion. The jury also found Mach I and Mach I Aircraft liable for breaching a contract with Jet Source. The jury awarded compensatory damages as to each of these causes of action. In addition, the jury found, by clear and convincing evidence, that Defendants engaged in conduct with malice, oppression, and fraud, justifying an award of punitive damages. The jury thus awarded punitive damages against each of the defendants.

On April 12, 2004, the superior court entered judgment based on the jury's verdict (April 2004 Judgment). Among other damages, the April 2004 Judgment included punitive damages against Defendants as follows: (1) \$11,400,000 against Doherty; (2) \$7,600,000 against Mouyos; (3) \$3,800,000 against Mach I; and (4) \$3,800,000 against Mach I Aircraft.

On June 1, 2007, the superior court issued an amended order modifying the amounts of the punitive damages (June 2007 Order). In that amended order, the court

¹ Statutory references are to the Code of Civil Procedure unless otherwise specified.

crossed out the original amounts of punitive damages, and wrote, by hand, the new amounts and initialed the changes. The modified punitive damages became: (1) \$2,785,714 against Doherty; (2) \$1,857,143 against Mouyos; (3) \$928,571 against Mach I; and (4) \$928,571 against Mach I Aircraft.² Additionally, on the sign-in sheet for the June 1, 2007 hearing on this matter, a handwritten note appears at the bottom of the page stating: "Original order 4/12/04 -- amended order @ pages 8 and 9 today - to date back to original date of 4/12/04" and bearing the superior court judge's signature.

On June 1, 2007, Jet Source filed and served a pleading entitled "Notice of Entry of Amended Judgment."³ That pleading states, in part:

"PLEASE TAKE NOTICE that on June 1, 2007, the Court entered an Amended Judgment on Jury Verdict (the 'Judgment') in the above-captioned action. A true and correct copy of the entered Judgment is attached hereto as Exhibit A. Also, attached hereto as Exhibit B is a true and correct copy of the Court's Minutes dated June 1, 2007 reflecting that the amended Judgment relates back to the date of the original Judgment, April 12, 2004."

On September 16, 2015, Jet Source applied to renew its judgment against Defendants. On December 21, 2016, Doherty moved to vacate the renewed judgment on the grounds the application to renew the judgment was untimely. The court clerk entered notice of the request on January 8, 2016.

The court denied Doherty's motion finding Doherty's contention that the April 2004 Judgment was the operative judgment was unsupported. Following *Iloff v. Dustrud*

² There is no explanation in the record why the amounts of the punitive damages were modified.

³ The pleading bears a file stamp, but it is too faded in the record to read.

(2003) 107 Cal.App.4th 1201 (*Iloff*) and *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492 (*Wilcox*), the court determined the June 2007 Order amended the 2004 Judgment and became the "operative judgment for purposes of [Jet Source's] renewal efforts."

Doherty timely appealed.

DISCUSSION

Doherty's primary contention is that Jet Source's application for the renewal of judgment was untimely. Specifically, Doherty claims that the 10-year renewal period codified in section 683.130, subdivision (a) began to run from the date of the April 2004 Judgment and was not reset by the June 2007 Order. Doherty further argues that the June 2007 Order was issued nunc pro tunc, and as such, the entry of that order simply replaced the April 2004 Judgment, but did not provide a new date to begin the 10-year period in which a party must renew a judgment. We reject these contentions.

As set forth in section 683.020, "[e]xcept as otherwise provided by statute," a money judgment may not be enforced "upon the expiration of 10 years after the date" the judgment is entered. Section 683.130, subdivision (a) provides in relevant part that a lump sum money judgment may be extended by renewal of the judgment "at any time before the expiration of the 10-year period of enforceability prescribed by Section 683.020"

In *Iloff, supra*, 107 Cal.App.4th at page 1206, we considered whether the 10-year period of enforceability is restarted by the filing of an amended or modified judgment. There, an original judgment was entered in March 1991. The original judgment mentioned the prevailing parties' right to prejudgment interest, attorney fees and costs,

and punitive damages "as awarded" but did not specify amounts for those aspects of the judgment. An amended judgment was entered in May 1991. (*Id.* at p. 1205.) The amended judgment was identical to the original judgment except that it included amounts for prejudgment interest, attorney fees and costs, and punitive damages. (*Ibid.*) The plaintiff applied to renew the amended judgment in April 2001, more than 10 years after entry of the original judgment but less than 10 years after entry of the amended judgment. The superior court vacated the renewed judgment because the plaintiff filed the renewal application more than 10 years after entry of the original March 1991 judgment. (*Ibid.*) We reversed, concluding that the 10-year period ran from the entry of the amended judgment. (*Id.* at p. 1208.)

We determined the subject statutory language is "unambiguous" and "need[s] no judicial construction." (*Iliff, supra*, 107 Cal.App.4th at p. 1207.) Under the statutory scheme, the 10-year period commences upon the date of entry of a judgment "and not upon any other procedural or substantive event." (*Ibid.*) We explained, "[b]y the statute's plain terms this rule applies to any money judgment (or judgment for possession or sale of property) regardless of whether it be a modified or amended judgment, and without regard to finality." (*Ibid.*)

This court again addressed the effect of an amended judgment in *Wilcox, supra*, 124 Cal.App.4th 492. There, relying on *Iliff, supra*, 107 Cal.App.4th 1201, we stated: "When an amended judgment is entered, the 10-year period within which the judgment must be enforced or renewed commences upon the date of entry of the amended or modified judgment." (*Wilcox, supra*, at p. 502.) We concluded that a renewal of a

judgment was timely when sought within 10 years after entry of a modified judgment that added attorney fees, child support arrearages, and interest to an original judgment. (*Ibid.*)

Here, Doherty argues the holdings of *Iloff, supra*, 107 Cal.App.4th 1201 and *Wilcox, supra*, 124 Cal.App.4th 492 are not dispositive of the issues he raises. To this end, he asserts that the June 2007 Order was not an amended judgment, but instead, related back to the April 2004 Judgment. Essentially, he insists the court made a nunc pro tunc order to correct the April 2004 Judgment. As such, the order did not begin anew the 10-year period of section 683.130, subdivision (a).

We agree with the superior court that Doherty's argument is "unsupported." Indeed, we find almost no support for his position in the record whatsoever. At most, Doherty points to the handwritten notes of the sign-in sheet for the June 1, 2007 hearing in which the court wrote that amended order was "to date back to original date of 4/12/04." Because Doherty has the burden to show error on appeal (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), without more, Doherty cannot satisfy his burden.⁴

For example, Doherty has not shown that the June 2007 Order was nunc pro tunc. A court may use a nunc pro tunc judgment or order to correct an error or omission in the original judgment or order. (See *Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890; *Estate of Eckstrom* (1960) 54 Cal.2d 540, 544 ["A court can always correct a clerical, as

⁴ On appeal, the judgment of the trial court is presumed to be correct. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.) All intendments and presumptions are made to support the judgment on matters as to which the record is silent. (*Ibid.*) An appellant has the burden to provide an adequate record and affirmatively show reversible error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

distinguished from a judicial error which appears on the face of a decree by a *nunc pro tunc* order."].) Here, there is little in the record to explain the purpose of the June 2007 Order. Certainly, there is no indication that the court was correcting a clerical error.

Instead, it appears, by way of the June 2007 Order, the court substantially reduced the amount of punitive damages against Defendants and awarded to Jet Source. We conclude such changes to the original judgment are like the changes in the amended judgments we found in *Iloff, supra*, 107 Cal.App.4th 1201 and *Wilcox, supra*, 124 Cal.App.4th 492. Our conclusion is buttressed by the fact that after the June 2007 Order was signed by the court, Jet Source filed and served a notice of amended judgment, and there is no indication in the record that any party took issue with that reference to an amended judgment.

In summary, we find the operative judgment here is the amended judgment arising from the June 2007 Order. Accordingly, Jet Source timely sought to renew the judgment when it applied to do so on September 16, 2015.

DISPOSITION

The order is affirmed. Jet Source is entitled to its costs on appeal.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.