

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/21/12

DEPT. 1

HONORABLE CAROLYN B. KUHL

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE
10.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. ONEAL C.A.

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:00 am

BC363659

Plaintiff

TIMOTHY B. SOTTILE (X)

Counsel

THOMAS P. CACCIATORE (X)

JANICE M MCCLANAHAN

VS

Defendant

KEVIN MACNAMARA (X)

HAROLD MANSDORF ET AL

Counsel

PAUL ORLOFF (X)

NICOLE M. McLAUGHLIN (X)

NATURE OF PROCEEDINGS:

DEFENDANT HARRY MANSDORF'S MOTION TO SET ASIDE ALL VOID ORDERS AND JUDGMENTS IN CASE BASED UPON LACK OF JURISDICTION OF THE COURT AND PLAINTIFF'S EXTRINSIC FRAUD UPON THE COURT

Matter is called for hearing.

Counsel are provided with the court's tentative ruling; the matter is argued and the following order is made:

The court has reviewed Defendants Motion to Set Aside, Plaintiffs opposition and Defendants reply thereto. Defendant makes this motion in Department 1 pursuant to Local Rule 2.23, which permits applications to reconsider, modify or vacate an order where the judge who made the original order is not available. Judge Shook entered the judgment against Defendants on 1/28/08 and is no longer available. L.A. County Super. Ct. R 2.23.

Defendant argues that the judgment is void because jurisdiction is lacking due to defects in service. Defendant previously argued in his first motion to set aside previously heard and denied on 3/15/10 that service by publication was improper, albeit on different grounds. The Court of Appeal found that Defendants motion was untimely in that respect as

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the motion to vacate for improper service must have been filed within 2 years after entry of default or 180 days after service or of a written notice that default or default judgment was entered. CCP 473.5. Sottile Declaration, Ex. B, page 11.

Defendant next argues this motion may be made at any time since the judgment was void on the face of the record, citing Plotitsa v. Superior Court, (1983) 140 Cal. App.3d 755, 761. Defendant claims the judgment was facially invalid in that the judgment did not show that the court decided that it had subject matter jurisdiction. Motion 2:25-26. Defendant has not established that the courts decision to exercise jurisdiction must appear from the face of the record or the judgment is void. Defendant's case authority affirms the courts power to determine whether or not it has jurisdiction. Brown v. Desert Christian Center (2011) 193 Cal. App. 4th 733, 740.

Brown is inapposite as that case involved a jurisdictional defense that was raised and was required to be determined by the trial court. Brown at 740. Defendant defaulted in this action. No jurisdictional issue was raised for the courts determination. Since Defendant has not shown that the courts action was void, there is no merit to Defendants contention that the judge was, therefore, disqualified. Motion 4:2.

Defendant has not established that extrinsic fraud

MINUTES ENTERED 06/21/12 COUNTY CLERK

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06/21/12 09:00 AM

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occurred. In support of this argument, Defendant contends that Plaintiff and her counsel concealed information from the court, improperly named Harold Mansdorf as Trustee although he was not, and misled the court as to the true facts of the case, among other claims. This does not constitute "extrinsic fraud."

Extrinsic fraud pertains to matters outside the issues to be adjudicated, and involves a situation where a party is prevented from presenting his case to the court. *Olivera v. Grace* (1942) 19 Cal. 2d 570, 575.

Defendants arguments go to the merits of the prior proceeding, which is an allegation of intrinsic fraud. Intrinsic fraud is not a valid ground for setting aside a judgment where a party has been given notice and an opportunity to present the case. *In re Margarita D.* (1999) 72 Cal. App. 4th 1288, 1294-1295. Therefore, the motion is denied.

Counsel for plaintiff is to give notice.