CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE

Stop C-19, LLC v. Tooling Express, Inc., et al.; AOK Tooling Limited v. Stop C-19, LLC

Stop C-19 · No. B333153; B335674 · Decided May 30, 2025

SUMMARY

The California Court of Appeal addresses whether a trial court validly vacated a judgment under Code of Civil Procedure section 663 without simultaneously ordering entry of a new and different judgment. The court holds that the trial court's order was void because it failed to enter a new judgment within the 75-day period prescribed by section 663a, subdivision (b), and that a later nunc pro tunc order could not cure the defect. The court also affirms the trial court's rulings against Stop C-19 on its misrepresentation, trafficking, and conversion claims.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division One
WRITING FOR THE COURT	Justice Weingart; Acting Presiding Justice Bendix; Justice M. Kim
JURISDICTION	California Court of Appeal, Second Appellate District, Division One
DECIDED	May 30, 2025
DOCKET	B333153; B335674
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Stop C-19 appealed from judgments entered after a consolidated bench trial in two related actions. In appeal B333153, Stop challenged judgment in favor of the Tooling defendants on its stolen-goods, theft, and conversion claims. In appeal B335674, Stop challenged the trial court's nunc pro tunc amended judgment vacating an unjust-enrichment award in its favor against AOK.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Factual findings and competing inferences from undisputed facts are reviewed for substantial evidence. When the prevailing party below found that the appellant failed to carry its burden of proof, the appellate question is whether the evidence compels a finding for the appellant as a matter of law.

PRECEDENTIAL VALUE	Published in part; Discussion part B is unpublished
PARTIES	Stop C-19, LLC v. Tooling Express, Inc., et al., AOK Tooling Limited

TOPICS

statutory interpretation · appellate procedure · civil procedure · remedies · unjust enrichment

PRACTICE AREAS

civil procedure · appellate procedure · commercial litigation · contracts · remedies

QUESTIONS PRESENTED

1. Whether Code of Civil Procedure sections 663 and 663a require a trial court granting a motion to vacate a judgment to contemporaneously direct entry of a new and different judgment within the applicable 75-day period.
2. Whether the trial court could use a nunc pro tunc order to make a later-entered judgment timely under section 663a.
3. Whether the evidence compelled judgment for Stop on its intentional and negligent misrepresentation claims against AOK.
4. Whether Stop preserved its substantial-evidence challenge to the trial court's rejection of its stolen-goods and conversion claims against the Tooling defendants.

HOLDINGS

1. A trial court granting a section 663 motion must contemporaneously enter or direct entry of a new or amended judgment, and both the order vacating the original judgment and the new judgment must occur within section 663a's 75-day jurisdictional period. An order vacating the original judgment without directing entry of a new judgment is void.
2. A nunc pro tunc order could not cure the trial court's failure to timely direct entry of a new judgment because nunc pro tunc relief is limited to correcting clerical errors and cannot make an order now for then or extend section 663a's jurisdictional time limit.
3. The evidence did not compel a finding that AOK made an actionable intentional or negligent misrepresentation concerning NIOSH approval or that Stop justifiably relied on such a misrepresentation.
4. Stop forfeited appellate review of its substantial-evidence challenge because its opening brief failed to fairly summarize material evidence, including evidence concerning the parties' special agreement and whether title to the masks had passed to Stop.

KEY QUOTATIONS

> *"Trial courts have a duty under section 663 to enter a new or amended judgment contemporaneously when granting a motion to vacate and set aside the judgment. Otherwise, the trial court's order vacating the*

> *original judgment is void."* (at 14-15)

> *"Re-dating an order made at a later time to an earlier date is not a proper use of a nunc pro tunc order."* (at 15)

FACTUAL BACKGROUND

Stop contracted with AOK, a Chinese manufacturer, to purchase 50 million N95 masks with Stop's logo. AOK did not obtain the required NIOSH extension approval for adding Stop's logo, and some shipments were seized by U.S. Customs and Border Protection. After the parties' relationship deteriorated over payment, delivery, and market conditions, Tooling, AOK's affiliate, received and later shipped certain masks to Peru. Following a consolidated bench trial, the court found the masks nonconforming and worthless, rejected Stop's misrepresentation, theft, and conversion claims, but awarded Stop approximately $2.3 million on unjust enrichment against AOK.

PROCEDURAL HISTORY

Stop sued the Tooling defendants for trafficking in stolen goods, theft, and conversion. AOK separately sued Stop for breach of contract, and Stop cross-complained against AOK for, among other claims, misrepresentation and unjust enrichment. After a consolidated bench trial, the trial court entered judgment for Stop on unjust enrichment against AOK but ruled against Stop on its other claims. AOK moved under Code of Civil Procedure section 663 to vacate the unjust-enrichment judgment; the trial court granted the motion within the statutory period but did not contemporaneously direct entry of a new judgment, later attempting to cure the omission by nunc pro tunc order. The Court of Appeal affirmed B333153, vacated the November 17, 2023 judgment in B335674, and directed reinstatement of the July 25, 2023 judgment.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The judgment in case No. 21LBCV00320 was affirmed. The November 17, 2023 judgment in case No. 21STCV23918, entered nunc pro tunc as of October 19, 2023, was vacated. The trial court was directed to reinstate its July 25, 2023 judgment in case No. 21STCV23918. Each party was ordered to bear its own costs on appeal.

CASES CITED

- Fairbank et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2020) ¶ 18:499
- Reynosa v. Superior Court (2024) 101 Cal.App.5th 967, 983
- Prothero v. Superior Court (1925) 196 Cal. 439, 442-443
- 20th Century Ins. Co. v. Superior Court (2001) 90 Cal.App.4th 1247, 1260
- Ramirez v. Moran (1988) 201 Cal.App.3d 431, 435
- Dolan v. Superior Court (1920) 47 Cal.App. 235, 240-241

- Garibotti v. Hinkle (2015) 243 Cal.App.4th 470, 478-480
- Tuolumne Jobs & Small Business Alliance v. Superior Court (2014) 59 Cal.4th 1029, 1037
- Make UC a Good Neighbor v. Regents of University of California (2024) 16 Cal.5th 43, 55
- People v. Garcia (2006) 39 Cal.4th 1070, 1087-1088
- Estate of Eckstrom (1960) 54 Cal.2d 540, 544
- Matera v. McLeod (2006) 145 Cal.App.4th 44, 58
- Lazar v. Superior Court (1996) 12 Cal.4th 631, 638
- Borman v. Brown (2021) 59 Cal.App.5th 1048, 1060
- Axis Surplus Ins. Co. v. Glencoe Ins. Ltd. (2012) 204 Cal.App.4th 1214, 1222
- Garcia v. KND Development 52, LLC (2020) 58 Cal.App.5th 736, 744
- Estes v. Eaton Corp. (2020) 51 Cal.App.5th 636, 651
- Lee v. Hanley (2015) 61 Cal.4th 1225, 1240
- Fladeboe v. American Isuzu Motors Inc. (2007) 150 Cal.App.4th 42, 58-60
- Myers v. Trendwest Resorts, Inc. (2009) 178 Cal.App.4th 735, 739
- McCauley v. Howard Jarvis Taxpayers Assn. (1998) 68 Cal.App.4th 1255, 1266
- People v. Ashford University, LLC (2024) 100 Cal.App.5th 485, 503
- Vaughn v. Tesla, Inc. (2023) 87 Cal.App.5th 208, 228
