

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION EIGHT

Dollase v. Wanu Water Inc.

Dollase · No. B314900 · Decided July 28, 2023

SUMMARY

The California Court of Appeal reversed an order denying Wanu Water Inc.’s motion for mandatory relief under Code of Civil Procedure section 473(b). The court held that the motion was timely, substantially complied with the requirement to include a proposed pleading, and was supported by evidence that attorney neglect caused the default. The matter was remanded with directions to vacate the default and default judgment, recall the writ of execution, vacate the levy, and return funds collected from Wanu.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Eight
WRITING FOR THE COURT	Grimes, J.; Stratton, P. J.; Viramontes, J.
JURISDICTION	California
DECIDED	July 28, 2023
DOCKET	B314900
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wanu Water Inc. appealed from a postjudgment order denying its motion under California Code of Civil Procedure section 473, subdivision (b), to set aside its default and vacate a default judgment.
STANDARD OF REVIEW	The court applied the statutory requirements for mandatory relief under Code of Civil Procedure section 473(b) and reviewed whether substantial evidence supported a finding that the default was not caused by attorney mistake, inadvertence, surprise, or neglect.
PRECEDENTIAL VALUE	published and certified for publication
PARTIES	Wanu Water Inc. v. Steven Dollase

TOPICS

- default judgment
- default
- service of process
- statutory interpretation
- appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether Wanu's application for mandatory relief under Code of Civil Procedure section 473(b) was in proper form when it was accompanied by a proposed motion to quash service rather than a proposed answer.
2. Whether substantial evidence showed that Wanu, rather than its attorney, caused the entry of default, thereby permitting denial of mandatory relief under section 473(b).

HOLDINGS

1. A motion to quash service of process may qualify as the 'other pleading proposed to be filed' under Code of Civil Procedure section 473(b), and Wanu substantially complied with the statutory requirement despite the motion not being available in the trial court file at the hearing.
2. Mandatory relief was required because there was no substantial evidence that Wanu caused the entry of default, while the attorney-fault affidavit established attorney neglect as a cause of the default.

KEY QUOTATIONS

“Unlike the discretionary ground for relief, a motion based on attorney fault need not show diligence in seeking relief.” (9)

“The substantial compliance standard was met.” (13)

“In sum, there is no evidence defendant caused the entry of default, which occurred on August 2, 2019, before any of the e-mail correspondence plaintiff cites.” (15)

FACTUAL BACKGROUND

Dollase personally served Wanu's registered agent in Delaware and obtained entry of default after Wanu failed to respond. Wanu's chief legal officer, John Grbic, learned of the lawsuit in July 2019 but failed to investigate service or take action to prevent default, and submitted an affidavit accepting responsibility for the resulting default and judgment. After learning that a default judgment had been entered and that funds had been levied from Wanu's bank account, Wanu moved for mandatory relief under section 473(b), accompanied by the attorney-fault affidavit and a proposed motion to quash service. The motion was timely, and the appellate record showed substantial compliance with the requirement to submit a proposed pleading.

PROCEDURAL HISTORY

Dollase filed a complaint alleging breach of contract, fraud, and conversion. The trial court entered Wanu's default on August 2, 2019, entered a default judgment for \$702,526.91 on June 16, 2020, and issued a writ of execution. Wanu moved on December 7, 2020, to set aside the default and vacate the judgment under the mandatory attorney-fault provision of section 473(b), but the trial court denied the motion without stating a

reason. The Court of Appeal reversed and remanded with directions to grant relief, vacate the default and judgment, recall and quash the writ, vacate the levy, and order return of the funds collected.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the order denying relief; enter a new order granting Wanu's motion for relief; vacate the entry of default and the default judgment; recall and quash the writ of execution; vacate the levy; order return of \$63,739.79 to Wanu; and award Wanu its costs on appeal.

CASES CITED

- Younessi v. Woolf (2016) 244 Cal.App.4th 1137, 1147
- Milton v. Perceptual Development Corp. (1997) 53 Cal.App.4th 861, 868
- Rodriguez v. Brill (2015) 234 Cal.App.4th 715, 719-723, 733
- Hernandez v. FCA US LLC (2020) 50 Cal.App.5th 329, 336-337
- Carmel, Ltd. v. Tavoussi (2009) 175 Cal.App.4th 393, 401-403
- Job v. Farrington (1989) 209 Cal.App.3d 338, 340-341
- Goddard v. Pollock (1974) 37 Cal.App.3d 137, 141
- Lang v. Hochman (2000) 77 Cal.App.4th 1225, 1248, 1252
- SJP Limited Partnership v. City of Los Angeles (2006) 136 Cal.App.4th 511, 520
- Benedict v. Danner Press (2001) 87 Cal.App.4th 923, 928-930, 932
- Cowan v. Krayzman (2011) 196 Cal.App.4th 907, 915