

## CALIFORNIA COURT OF APPEAL

### **Rogers v. Hirschi, 190 Cal. Rptr. 575**

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#### OPINION

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Once a judgment is entered, there can be no summary amendment by the court itself no matter how wrong in law the decision may be. (Barry v. Superior Court (1891) 91 Cal. 486, 488, 27 P. 763; Stevens v. Superior Court (1936) 7 Cal.2d 110, 112, 59 P.2d 988; see 4 Witkin, Cal. Procedure (2d ed.)

Judgment, § 64 p. 3225 (and cases cited therein). The court has power after final judgment to correct clerical errors in its records and to "set aside any void judgment or order. [Emphasis added.]" (Code Civ.Proc., § 473; 4 Witkin, Cal. Procedure (2d ed) Judgments § 66 p. 3228; 5 Witkin, op. cit., Attack on Judgment in Trial Court, §§ 2 and 166, pp. 3585 and 3739 (and cases cited in those sections).)

[141 Cal.App.3d 851] In this case the court did not correct any clerical error nor did it "set aside any void judgment," but rather attempted to amend a final judgment. Defendant has not presented and we have been unable to find any legislative or judicial authority to empower the court so to act.

We therefore must reverse the order amending the judgment. While this is dispositive of this order on appeal, it leaves unanswered questions raised by the appeal which if left unanswered, would create uncertainty as to what further action, if any, the trial court may take. Page 577 The most critical question is whether or not the Judgment on Special Verdict entered in this case is a void judgment which may be set aside in whole or in part by the court that entered it or by other collateral attack long after it has become final.

Defendant contends this is a void judgment in that the court lacked jurisdiction to enter a judgment against the estate if a creditor's claim was not filed in the estate by the plaintiff as required by Probate Code section 707. Plaintiff contends the court did not lack jurisdiction but its act was an excess of jurisdiction and defendant cannot assert this jurisdictional claim after the judgment is final and time for appeal has run.

"The word "jurisdiction" (jus dicere ) is a term of large and comprehensive import, and embraces every kind of judicial action and hence every movement by a court is necessarily the exercise of jurisdiction. In the sense, however, in which the term ordinarily is used jurisdiction may be

concisely stated to be the right to adjudicate concerning the subject matter in a given case.' " (Harrington v. Superior Court (1924) 194 Cal. 185, 188, 228 P. 15.)

"The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment." (Code Civ.Proc., § 1917.) In this case it is not questioned but that the court had jurisdiction over the parties. It is clear that the court had subject matter jurisdiction, and was empowered to hear and determine the cause.

(Satterfield v. Garmire (1967) 65 Cal.2d 638, 56 Cal.Rptr. 102; Radar v. Rogers (1957) 49 Cal.2d 243, 317 P.2d 17; Katz v. A.J. Ruhlman & Co. (1945) 69 Cal.App.2d 541, 159 P.2d 426.) Any jurisdictional concept that may be involved in the cases holding the court is without power to grant a judgment against an estate when a creditor's claim [141 Cal.App.3d 852] has not been filed is not lack of jurisdiction of the cause but excess of jurisdiction.

(See Estate of Hinchon (1911) 159 Cal. 755, 760, 116 P. 47; Pearson v. Norton (1964) 230 Cal.App.2d 1, 16, 40 Cal.Rptr. 634.) When, as here, the court has jurisdiction of the subject, a party who by his conduct consents to or permits action which may be in excess of the court's power may be estopped to complain of the ensuing action in excess of jurisdiction.

(In re Griffin (1967) 67 Cal.2d 343, 347, 62 Cal.Rptr. 1, fastease --- Page Break --- Rogers v. Hirschi, 190 Cal.Rptr. 575, 141 Cal.App.3d 847 (Cal. App. 1983) 431 P.2d 625; City of Los Angeles v. Cole (1946) 28 Cal.2d 509, 515, 170 P.2d 928; see Harrington v. Superior Court, supra, 194 Cal. 185, 188, 228 P. 15.) 2 Whether a party shall be estopped from claiming an excess of jurisdiction depends on the importance of the irregularity not only to the parties but to the functioning of the courts and in some instances on other considerations of public policy.

(In re Griffin, supra, 67 Cal.2d 343, 348, 62 Cal.Rptr. 1, 431 P.2d 625; City of Los Angeles v. Cole, supra, 28 Cal.2d 509, 515, 170 P.2d 928.) In the present case, plaintiff filed his action before the expiration of the period within which a creditor's claim could have been filed.

In his answer, also filed before the expiration of the time for filing creditor's claims, defendant denied all material allegations of the complaint, alleged affirmative defenses of contributory negligence and assumption of risk, but did not mention the failure to file a creditor's claim.

The case proceeded its normal course through trial and verdict and at no time did defendant raise the issue of failure by plaintiff to file a creditor's claim. The trial was fairly conducted and the jury, properly instructed, returned a verdict for \$175,000. Even after entry of the judgment the defendant did not, by motion for new trial or by appeal, challenge the judgment as being in excess of the court's jurisdiction.

Had the issue of the failure to file the creditor's claim been raised by demurrer or by the answer, the plaintiff would still Page 578 have had time to file a claim before the period to do so had

expired. Further, defendant tacitly consented (there is nothing in the record to indicate anything else) to the entry of the judgment and its becoming final. These factors should estop defendant from attacking any excess of jurisdiction that may have resulted.

An additional consideration is the importance of not disturbing the action, purportedly in excess of jurisdiction, to the proper functioning of the courts. (In re Griffin, supra, 67 Cal.2d 343, 348, 62 Cal.Rptr. 1, 431 P.2d 625; City of Los Angeles v. Cole, supra, 28 Cal.2d 509, 515, 170 P.2d 928.)

The defendant permitted the case to consume the time and [141 Cal.App.3d 853] expense involved through a jury trial to final judgment, he should be estopped to now question the efficacy of such proceedings. "To hold otherwise would permit the parties to trifle with the courts.

The law should not and in our opinion does not countenance such action." (City of Los Angeles v. Cole, supra, at p. 515, 170 P.2d 928.) The important public policy that there must be an end to litigation which underlies the doctrine of finality of judgments (Jorgensen v. Jorgensen (1948) 32 Cal.2d 13, 18, 193 P.2d 728; Kachig v. Boothe (1971) 22 Cal.App.3d 626, 632, 99 Cal.Rptr.

393) is an additional consideration indicating defendant should be estopped from attacking the judgment. We conclude the judgment was not rendered by a court that lacked jurisdiction. At most the court acted in excess of jurisdiction in awarding judgment greater than the insurance coverage.

However, for all the reasons stated defendant is estopped to assert any such excess of jurisdiction. The orders amending and satisfying the judgment as amended are reversed. KAUFMAN, Acting P.J., and RICKLES, J., concur. \* Assigned by the Chairperson of the Judicial Council. 1 Judge Robert J. Timlin who heard the motion and signed the amended judgment was not the judge who tried the case and signed the original judgment and the subsequent orders.

However, counsel stipulated that he could hear and rule on the motion. --- Page Break --- Rogers v. Hirschi, 190 Cal.Rptr. 575, 141 Cal.App.3d 847 (Cal. App. 1983) 2 City of Los Angeles v. Cole, supra, 28 Cal.2d 509, 170 P.2d 928, was overruled on an unrelated issue in County of Los Angeles v. Faus (1957) 48 Cal.2d 672, 680, 312 P.2d 680. fast