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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MACON BANK, INC.,

Plaintiff and Respondent,

v.

CAROLYN CORNBUM et al.,

Defendants and Appellants.

A141698

(Alameda County
Super. Ct. No. RG13694456)

Carolyn Cornblum and Michael Cornblum appeal from an order denying their motion to vacate a judgment entered against them based on a sister state judgment issued in North Carolina. (See Code Civ. Proc., § 1710.10 et seq.) They contend the court erred because the underlying North Carolina judgment is unenforceable, in that it provides for recovery against “the Defendant” rather than “the Defendants” or either of them by name. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

A. North Carolina Consent Judgment

On April 23, 2012, a “Consent Judgment” was entered in a North Carolina state court action that had been commenced by respondent Macon Bank, Inc. (Macon Bank) against appellants Carolyn Cornblum and Michael Cornblum (the Cornblums). The Consent Judgment stated: “[I]t appearing to the Court that the Plaintiff and *Defendant* agree to the terms and conditions of this Judgment[;] [¶] NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover from *the*

Defendant the sum of Two Hundred Twenty Five Thousand and 00/100 Dollars (\$225,000.00).” (Italics added.) Beneath the judge’s signature and the words “We Consent” appear the signatures of Carolyn Cornblum, “Defendant,” and Michael Cornblum, “Defendant,” as well as Macon Bank’s counsel and the Cornblums’s counsel.

On July 2, 2013, the North Carolina court issued a writ of execution against the Cornblums based on the North Carolina Consent Judgment.

The Cornblums filed a motion to recall the writ of execution on August 8, 2013. They argued that the writ of execution, which was issued against Carolyn Cornblum and Michael Cornblum, had to be recalled because it did not conform to the Consent Judgment, which referred only to a singular “Defendant” and not to either of the Cornblums by name.

The North Carolina court denied the recall motion on September 20, 2013. The court concluded that the Consent Judgment should have referenced “the plural ‘Defendants,’ ” but no evidence was presented that this clerical error prejudiced the Cornblums or affected the validity of the judgment.

No appeal was taken, and the North Carolina Consent Judgment is final.

B. California Judgment

Meanwhile, on September 5, 2013, Macon Bank filed an application in California for entry of a judgment based on the North Carolina Consent Judgment. The application named “Carolyn Cornblum and Michael Cornblum” as the judgment debtors, attached a certified copy of the Consent Judgment, and sought entry of judgment in the amount of \$243,740.10 (\$225,000 principal plus filing fees and accrued interest).

The court clerk entered judgment in favor of Macon Bank and against the Cornblums as requested (California Judgment). Notice of entry of the California Judgment was served on Michael Cornblum in September 2013 and on Carolyn Cornblum in October 2013.

On October 10, 2013—after the North Carolina court had denied the motion to recall the writ of execution—the Cornblums filed a motion to vacate the California

Judgment under Code of Civil Procedure section 1710.40, contending among other things that the North Carolina Consent Judgment was unenforceable against them in North Carolina on the very ground already rejected by the North Carolina court. In support of their motion, the Cornblums requested judicial notice of their motion to recall the writ of execution and the North Carolina order denying that motion.

C. North Carolina Correction of Clerical Error

After the Cornblums filed their motion to vacate the California Judgment, but before the hearing on the motion, Macon Bank filed a motion in the North Carolina court to correct the clerical error in the North Carolina Consent Judgment. On December 16, 2013, the North Carolina court issued an order to correct the clerical error, finding the following: “The parties’ intent in executing the April 23, 2012 Consent Judgment, expressed through the attorneys representing those parties at the time, was to impose liability jointly on both Defendants”; Michael Cornblum and Carolyn Cornblum “each signed the Consent Judgment with the intention of agreeing that a judgment be entered against each and every one of them, jointly and severally, as set forth in the Consent Judgment”; the references to the singular “Defendant” were “clerical errors that do not affect any party’s substantive rights”; and neither of the Cornblums “suffered any prejudice as a result of said clerical errors.” The court determined that the North Carolina Consent Judgment need not be amended, since *the judgment “as written” applies to both Michael and Carolyn Cornblum*, and the clerical mistake does not affect the meaning or validity of the judgment; but nevertheless, “to prevent any future litigation on this matter,” the judgment was amended to replace all references to the singular “Defendant” with the plural “Defendants.” (Italics added.)

D. California Ruling on Motion to Vacate

On December 19, 2013, the California court heard the Cornblums’s motion to vacate the California Judgment. At the hearing, counsel for Macon Bank provided the court with a copy of the North Carolina court’s December 2013 order, which ruled that

the North Carolina Consent Judgment applied to both of the Cornblums and amended the word “Defendant” to “Defendants.”

In February 2014, the California court denied the Cornblums’s motion to vacate the California Judgment. The written order states: “The Motion of Defendants Carolyn Cornblum and Michael Cornblum (‘Defendants’) to Vacate Judgment is DENIED. Defendants have not established a basis for vacating the judgment. The court finds that the reference to ‘Defendant’ instead of ‘Defendants’ in the Consent Judgment appears to be a clerical error. Both Defendants were named in the underlying action, both Defendants signed the Consent Judgment and Defendants’ counsel signed the Consent Judgment. Further, Defendants failed to timely appeal the Consent Judgment and acknowledge that they are not seeking an appeal or stay of the Consent Judgment. Thus, it seems clear that the Consent Judgment is against both Defendants, and Defendants have not presented any evidence to the contrary.”

The Cornblums thereafter filed this appeal from the order denying the motion to vacate the judgment.

II. DISCUSSION

The Cornblums argue that the North Carolina Consent Judgment is not enforceable against them under North Carolina law, so the California Judgment should have been vacated under the full faith and credit clause (U.S. Const., art. IV, § 1). We begin with the law and then consider the Cornblums’s arguments.

A. Law

Article IV, section 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” Under this full faith and credit clause, the judgment of a state court should have the same credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced. (*Thomas v. Washington Gas Light Co.* (1980) 448 U.S. 261, 270.)

To this end, California permits a judgment creditor to apply for the entry of a California judgment based on a money judgment entered in another state. (Code Civ. Proc., §§ 1710.10, 1710.15; see *Conseco Marketing, LLC v. IFA & Ins. Services, Inc.* (2013) 221 Cal.App.4th 831, 837 (*Conseco*)). Based on this application, the court clerk enters the requested judgment. (Code Civ. Proc., § 1710.25.) A judgment debtor may then move to vacate the California judgment “on any ground which would be a defense to an action in this state on the sister state judgment.” (Code Civ. Proc., § 1710.40, subd. (a).) The party moving to vacate the judgment bears the burden of showing its entitlement to relief. (*Conseco, supra*, 221 Cal.App.4th at p. 841.)

On appeal, we view all factual matters most favorably to the prevailing party and reverse only for a clear abuse of discretion. (*Conseco, supra*, 221 Cal.App.4th at p. 841; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 88-89.)

B. Application

As mentioned, the Cornblums contend the North Carolina Consent Judgment is unenforceable against them in North Carolina because it only refers to recovery against “the Defendant.” And because it is unenforceable against them in North Carolina, they argue, under the full faith and credit clause it cannot be enforceable against them in California. Their arguments are meritless.

1. The North Carolina Consent Judgment Is Enforceable

For a judgment to be enforceable in North Carolina (or California), it must be sufficiently complete and certain so that it is reasonably clear what party is subject to the judgment. (*Morrow v. Morrow* (1989) 94 N.C.App. 187, 189 [judgments, including a consent judgment, must be complete and certain, indicating the decision of the court “with reasonable clearness”]; *Northwestern Bank v. Robertson* (1979) 39 N.C.App. 403, 411 [same]; see *Shriver v. Superior Court* (1920) 48 Cal.App. 576, 585 [“a judgment which does not show for and against whom it is entered will be void for uncertainty”];

Seaboard Surety Corp. v. Superior Court (1931) 112 Cal.App. 248, 249 [judgment may not be enforced against an unnamed person based on “et al.” appearing in the caption].)

Here, the court did not err in concluding that the North Carolina Consent Judgment was sufficiently certain for enforcement: as relevant here, the provision that Macon Bank shall recover from “the Defendant” is reasonably read to provide for recovery against “Defendant” Michael Cornblum *and* “Defendant” Carolyn Cornblum.

The North Carolina Consent Judgment states in its first paragraph that “the Plaintiff and *Defendant* agree to the terms and conditions of this Judgment.” There is no dispute, however, that both defendant Michael Cornblum *and* defendant Carolyn Cornblum consented to the judgment, and indeed they each signed their consent (as did the attorney representing both of them). It is plain, therefore, that “Defendant” was meant (or understood) in the first paragraph to refer to *both* Michael Cornblum and Carolyn Cornblum. Accordingly, when used in the second paragraph—providing that recovery shall be had against “the Defendant”—it also must be understood to refer to both Michael Cornblum and Carolyn Cornblum. Indeed, the only reasonable conclusion is that the North Carolina Consent Judgment provided recovery against both of the Cornblums, since the litigation was brought against both of them, and the record suggests no *other* resolution of the action against either of them.

Moreover, the Cornblums’s argument was expressly rejected by the North Carolina court by the time the California court denied their request to vacate the judgment. The North Carolina court refused to recall the North Carolina writ of execution, finding that the North Carolina Consent Judgment was enforceable against *both* of the Cornblums. Later, the North Carolina court found that the parties had intended the Consent Judgment to impose joint liability on both defendants, and the Consent Judgment “as written” applied to both of them. Under these circumstances, it cannot be said that the California court abused its discretion in this case.¹

¹ The parties do not address any possible res judicata or collateral estoppel effect of the North Carolina determination. We need not either.

The Cornblums argue that a judgment in North Carolina cannot be enforced against a party not named in the judgment, referring us to *Cornelius v. Albertson* (1956) 244 N.C. 265, 267 (*Cornelius*). As the North Carolina court stated in rejecting the Cornblums's motion to recall the writ of execution, however, *Cornelius* is inapposite because the writ in that case was issued against a stranger to the action. Here, by contrast, the Cornblums are not strangers to the action.

The Cornblums next point us to cases (decided in states other than North Carolina or California) asserting that, where there are two defendants in an action, and the judgment is against "the defendant" but fails to designate which one, the judgment is unenforceable because the face of the judgment does not indicate the party against whom it may be enforced. The cases on which the Cornblums rely for this proposition are plainly distinguishable, however, because they involved situations in which there was no way of ascertaining which of the defendants was the subject of the judgment. (*Holt v. Gridley* (1900) 7 Idaho 416, 419-420 [in an action against a husband and wife, judgment was entered against "one of the defendants, not designating which one"]; *Strauss v. Oppenheimer* (App.Div. 1921) 185 N.Y.S. 849 [in an action brought against a company and its president, judgment was entered "against the defendant"]; *Input/Output Marine Sys. v. Wilson Greatbatch Techs., Inc.* (La.App. 2010) 52 So.3d 909, 916 [in a case where there was confusion and inconsistency regarding the named defendants, the failure of the judgment to name the actual party subject to the judgment contributed to it being fatally defective].) Here, by contrast, we have a *consent judgment signed by both of the named defendants*, such that it can be concluded that the judgment was intended to be against both of the defendants. (See *Peare v. Griggs* (App.Div. 1959) 182 N.Y.S.2d 878, 881 [distinguishing *Strauss* and concluding "where there has been a clerical failure to enter the judgment against all defendants, but the record makes it quite clear that all were intended to be included, the judgment will bind all"].)

Because the North Carolina Consent Judgment is enforceable against both of the Cornblums, the court did not err in declining to vacate the California Judgment imposing liability against each of them.

2. The Full Faith and Credit Clause Requires Enforcement

The full faith and credit clause requires that a judgment be given the same effect in the state of the forum that it has in the state of its rendition. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 201-202.) Indeed, the Cornblums insist that the North Carolina Consent Judgment must be given full faith and credit in California, and the California court has no jurisdiction to modify, alter, or amend it. (Citing *Laughridge v. Lovejoy* (1951) 234 N.C. 663, 665.) But this argument only confirms that the Cornblums lose their appeal. According to North Carolina, the North Carolina Consent Judgment provides for recovery against *both* of the Cornblums. Under the full faith and credit clause, the California court has no authority to proclaim otherwise.

The Cornblums nonetheless argue that the California Judgment must be vacated because the North Carolina Consent Judgment did not impose personal liability on them. For this proposition, they rely on *Gilmer v. Spitalny* (1948) 84 Cal.App.2d 39 (*Gilmer*) and *Krofcheck v. Ensign Co.* (1980) 112 Cal.App.3d 558 (*Krofcheck*). Neither of these cases applies.

In *Gilmer*, an Arizona judgment imposed recovery on a husband and wife for a community debt. (*Gilmer, supra*, 84 Cal.App.2d at p. 40.) The plaintiffs thereafter filed an action in California to obtain a personal judgment against the wife for nonpayment of the Arizona judgment. (*Id.* at pp. 41-44.) The appellate court held that the language of the Arizona judgment disclosed an intent that it would be enforced only against the wife's interest in the community property and she would not be personally liable for the debt; under the full faith and credit clause, therefore, the California judgment would have to be restricted to her interest in the community property. (*Id.* at pp. 44-45.)

Gilmer is inapposite. There, the sister state judgment precluded liability on the defendant except as to her interest in community property. Here, the North Carolina Consent Judgment imposes unlimited personal liability on "Defendant," which must be construed to refer to defendant Michael Cornblum and defendant Carolyn Cornblum.

In *Krofcheck*, the plaintiff had obtained a Utah judgment against Ensign Company, a limited partnership, but not against Robert Ensign, its general partner. The plaintiff

thereafter obtained a California judgment based on the Utah judgment, but against both Ensign Company and Robert Ensign personally. The California judgment was properly vacated as to Robert Ensign because the Utah judgment was not a judgment against him personally. (*Krofcheck, supra*, 112 Cal.App.3d at pp. 560-561, 569.)

Krofcheck is also inapposite. This is not a situation where the sister state judgment was obtained against one party, and the California judgment was obtained against an additional party. The Consent Judgment’s reference to “the Defendant,” signed by “Defendant” Michael Cornblum and “Defendant” Carolyn Cornblum, was a judgment against both of the Cornblums personally.

Neither *Gilmer* nor *Krofcheck*—nor any other case cited by the Cornblums—stands for the proposition that a consent judgment is necessarily unenforceable as to a signatory of the judgment due solely to the use of the singular form of the word “Defendant” in the body of the judgment.

3. The Cornblums’s Other Arguments Are Meritless

The Cornblums argue that their signatures on the North Carolina Consent Judgment do not reflect an intent that both Cornblums would be *bound* by the judgment, but merely that they consented to the *form* of the judgment. Aside from the fact that the North Carolina court has expressly found to the contrary, we must indulge in all reasonable inferences supporting the court’s denial of the motion to vacate the California Judgment. The Cornblums have not established a prejudicial abuse of discretion.

The Cornblums also argue that the California court found “the reference to ‘Defendant’ instead of ‘Defendants’ in the Consent Judgment appears to be a clerical error,” and questions how the California court had jurisdiction to correct a clerical error in the North Carolina Consent Judgment. Obviously, however, the California court was not purporting to correct a clerical error in the North Carolina Consent Judgment. It was interpreting the North Carolina Consent Judgment, in a manner consistent with the North Carolina court’s interpretation.

The Cornblums further contend the California court should not have relied on the North Carolina court's December 2013 order, which corrected the clerical error and changed the word "Defendant" in the North Carolina Consent Judgment to the word "Defendants." They posit the California court's reliance was improper for two reasons: (1) the North Carolina order was erroneous because the change from "Defendant" to "Defendants" is a substantive change, imposing personal liability when none previously existed, which cannot be made under the guise of correcting a clerical mistake; and (2) the validity of the California Judgment depended on the enforceability of the North Carolina Consent Judgment as it existed in September 2013, when the California Judgment was entered. These arguments are without merit for several reasons.

First, in denying the Cornblums's motion to vacate the California judgment, the court in this case did *not* rely on the North Carolina court's December 2013 order. Rather, the court adopted its tentative ruling, which it had issued before it had even received the North Carolina order.

Second, the Cornblums are incorrect that the December 2013 North Carolina order was erroneous because it effected a substantive change. The North Carolina court specifically found that the North Carolina Consent Judgment was *intended* to provide for recovery against both of the Cornblums, and "as written" that is precisely what it did. Therefore, the change of the word "Defendant" to "Defendants" did not alter the substance or substantive effect of the original judgment, but confirmed it.

Third, the Cornblums are incorrect in arguing that the California court should not have considered the December 2013 North Carolina order because it was issued after the California Judgment in September 2013. The December 2013 order did not change the North Carolina Consent Judgment, but confirmed that it referred to both of the Cornblums "as written"—that is, as it existed before the California Judgment. Only "to prevent future litigation" was the North Carolina judgment deemed amended to replace all references to the singular "Defendant" with the plural "Defendants."

The Cornblums fail to establish error.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.