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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

BANK OF THE WEST,
Plaintiff and Respondent,

v.

MICHAEL A. BURRIS,
Defendant and Appellant.

A142304

(Contra Costa County
Super. Ct. No. MSC0800642)

Michael Burris has appealed from orders denying a claim of exemption from enforcement of a money judgment and a motion for reconsideration. The order denying his claim of exemption is supported by substantial evidence and his motion for reconsideration was not supported by new facts, so we affirm.

BACKGROUND

Burris defaulted on a commercial loan from Bank of the West (the Bank). The Bank obtained a judgment for \$102,520.08 against Burris, and on February 10, 2014 enforced it in part by levying \$7,807.76 on one of his business accounts at Wells Fargo Bank (Wells Fargo) under a writ of execution.

Burris told the Bank the levied funds were part of a \$33,392 deposit to a client trust account held under the name of his business, West American Insurance Brokers (West American). In support, he provided a letter from Wells Fargo business specialist Faen Rios verifying, based on Burris's representation, that the account ("account 5260") "was set up exclusively for Trust Purposes." Burris also provided the Bank with bank statements, records of the \$33,392 cash deposit made to account 5260 on the same day as

the Bank's levy, and copies of three checks drawn on a West American account payable to Wells Fargo.

Unconvinced that the levied funds were from an exempt trust account or traceable to a client, the Bank asked Burris for additional documentation to confirm his characterization and asked Wells Fargo's Mr. Rios for further information. After researching the bank's records, Rios reported the levied account, nicknamed " 'Trust Checking xxxxxx5260,' " "was not established as a client trust account but rather, set up as a regular business account, despite its name indicating it was a trust account." The Bank declined to return the levied funds.

Burris filed a claim that the funds in account 5260 were exempt from garnishment as escrow or trust funds. The Bank responded that Burris's documents did not show the levied monies were exempt trust or client funds. Rather, "the only evidence presented by Judgment Debtor is a cash deposit that cannot be traced to an exempt source, that was deposited into the Judgment Debtor's regular business checking account named 'Trust Checking', which his own bank verifies is not a client trust account."

The trial court ruled in favor of the Bank. Burris filed a motion for reconsideration "based on new information filed in response to Plaintiff, but also due in part to defendant's inability to find case in the court's online system, and a belief that defendant would be able to present facts on the day of court appearance." The motion was supported by correspondence, a bank statement and other documents Burris asserted proved that the \$33,932 deposit belonged to his client, Dr. Ferdinan Castillo, including Dr. Castillo's declaration that he had transferred the funds to Burris's West American account to pay for amendments to his commercial flood insurance policies. Shortly after he made the payment, Castillo added, the premium was reduced and West American refunded him \$23,000.

The Bank argued that Burris's bank statement showed the \$7,807.76 seized from his account did not come from Dr. Castillo's deposit. Burris had transferred \$8,100 from another account into account 5260 over the four days preceding the February 10 levy, bringing the account balance to \$8,040.22. "The chronological order of the deposits and

debit charges on the levied account #5260 . . . clearly evidences that the funds paid by the Judgment Debtor's bank towards Judgment Creditor's levy were taken from the balance of \$8,040.22, which existed in the levied Business Account #5260 *prior* to the subject \$33,392.00 cash deposit.” Thus, “the funds seized by Judgment Creditor's levy can clearly be traced to the \$8,040.22 balance that existed *prior* to the deposit of the alleged client funds . . . [and] to a source not claimed to be exempt. . . .” The Bank also argued the motion for reconsideration was improper because none of the additional information it provided was based on new or different facts, circumstances or law as required under Code of Civil Procedure section 1008.

The court denied the motion for reconsideration after a hearing “for the reasons stated in the opposition memorandum.” The Bank served Burris with notice of both orders on May 5. This appeal was timely filed.

DISCUSSION

I. Motion For Reconsideration

A motion for reconsideration must be based on “new or different facts, circumstances, or law” which the moving party could not, with reasonable diligence, have discovered and produced at the time of the prior motion. (Code Civ. Proc. § 1008, subd. (a)¹; *Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459, 1467.) “The moving party must provide the trial court with a satisfactory explanation as to why he or she failed to produce the evidence at an earlier time” (*Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1028), and the motion will be denied absent a strong showing of diligence. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690 (*Garcia*).

An order denying a motion for reconsideration is not a separately appealable order, but is reviewable on appeal from the underlying order. (§§ 1008, subd. (g); see § 703.600 [order granting or denying claim of exemption is appealable].) Our review is for abuse of discretion. (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.)

¹Unless otherwise noted, further statutory citations are to the Code of Civil Procedure.

There was no abuse of discretion here. Burris's motion was based on information that pre-existed his claim of exemption, and his only explanation for not providing it with his original claim was a professed difficulty navigating the court's online calendaring system and misunderstanding of court procedures. The court appropriately concluded this fell short of the "strict requirement of diligence" required by section 1008. (*Garcia, supra*, 58 Cal.App.4th at p. 690.)

II. Claim of Exemption

Financial Code Section 17410, subdivision (a) provides that "trust funds are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent." Burris's contention that the levied funds were client trust funds presented a factual issue on which he had the burden of proof, and we review it for substantial evidence. (§ 703.580, subd. (b); *Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 626 (*Schwartzman*)). "A judgment or order of the trial court is presumed correct, and must be upheld if it is supported by substantial evidence, no matter how slight it may be. [Citation.] Further, all evidence must be viewed in the light most favorable to the prevailing party, and all conflicts in evidence or in inferences must be resolved in favor of upholding the trial court's judgment or order. [Citations.] Where sufficiency of the evidence is questioned, the duty of an appellate court begins and ends with a determination that there is in the record evidence legally sufficient to support the judgment or order." (*Schwartzman, supra*, 50 Cal.App.4th at p. 626.)

Substantial evidence supports the court's order. Simply put, Burris proved neither that account 5260 was a client trust account nor that the levied funds were client funds. Wells Fargo was unable to verify whether the \$33,392 cash deposit consisted of client funds. Although Wells Fargo's Mr. Rios informed the Bank on February 13, 2014 that the account "was set up exclusively for Trust Purposes," after further investigation he clarified that the account was, in fact, "not established as a client trust account but rather, set up as a regular business account, despite its name indicating that it was a trust account." Nor do the minimal account records Burris provided reveal factual support for

his claim that the levied funds included any of Dr. Castillo's money. To the contrary, the bank statement he subsequently produced indicates, as the Bank argued, that the account balance was sufficient to satisfy the bank's levy independent of the \$33,932 cash deposit. This record presents no basis to disturb the trial court's ruling.

DISPOSITION

The orders are affirmed.²

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.

²The Bank's May 21, 2015 request to file a late request for oral argument is denied as moot.