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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOSE CASTANEDA,

Plaintiff and Appellant,

v.

THE LAW FIRM OF JACK K. CONWAY
et al.,

Defendants and Respondents.

B229512

(Los Angeles County
Super. Ct. No. GC045202)

APPEAL from a judgment of the Superior Court of Los Angeles County. Edward Simpson, Judge. Affirmed.

Jose Castaneda, in pro. per., for Plaintiff and Appellant.

Law Offices of Jack K. Conway and Jack K. Conway, in pro. per., for Defendants and Respondents.

Plaintiff Jose Castaneda filed this appeal after the trial court granted his former attorney's motion for judgment on the pleadings in this legal malpractice action. We affirm.

BACKGROUND

In May 2010, Castaneda filed this legal malpractice action against "The Law Firm of Jack K. Conway"¹ and attorney Jack K. Conway. (Hereafter, we will refer to these two defendants collectively as Conway.) In June 2010, Castaneda filed a first amended complaint, asserting causes of action labeled (1) "'intentional' legal malpractice," (2) "'intentional' negligence," (3) "fraud, to commit theft," (4) "violation of plaintiff's due process," (5) "conspiracy to violate rights," and (6) "perversion of justice." Castaneda alleges that Conway represented him in multiple actions. It is not clear from the allegations of the original complaint or the first amended complaint how Conway's conduct allegedly caused injury to Castaneda.

In July 2010, Conway filed an answer to the first amended complaint. In August 2010, Conway filed a motion for judgment on the pleadings arguing, among other things, that the complaint does not state facts sufficient to constitute a cause of action. Conway asserted that the first amended complaint is uncertain because it does not assert causes of action "recognized by law" and does not state "when the allegedly wrongful acts were committed, where they were committed, and how the wrongful acts caused damages to [Castaneda]."

Castaneda did not file any pleading indicating that he was opposing the motion for judgment on the pleadings on the merits. At the September 24, 2010 hearing on the motion, Castaneda informed the trial court that his "opposition" was a document he filed on September 20, 2010, labeled "Motion for Judgment to Plaintiff Based [on] Exhibits 1-6." In this document, Castaneda argued that the court should enter a "default" against Conway based on evidence purportedly showing that Castaneda did not receive "a fair

¹ This entity has indicated below and on appeal that its true name is "Law Offices of Jack K. Conway."

trial or hearing” in the cases in which Conway represented him. Castaneda did not present any argument opposing the merits of the motion for judgment on the pleadings.

On September 24, 2010, the trial court issued a minute order stating in pertinent part: “Motion for judgment on the pleadings is granted as unopposed for the reasons stated in the moving papers. Plaintiff is granted 10 days to amend; defendant 10 days thereafter to respond.”²

On September 27, 2010 and October 7, 2010, Castaneda filed motions to compel responses to interrogatories and requests for admissions he had propounded to Conway. In opposition, Conway demonstrated that he had served responses to Castaneda’s form interrogatories and three sets of requests for admissions, before Castaneda filed the first motion to compel. The trial court denied the first motion to compel on or about October 6, 2010. Castaneda requested that the trial court take the second motion to compel off calendar, and apparently it was not heard.³

On November 4, 2010—41 days after the trial court granted the motion for judgment on the pleadings—Conway filed a motion requesting that the court dismiss the action with prejudice because Castaneda had not filed an amended complaint. Castaneda did not file an opposition to this motion. On December 10, 2010—77 days after the trial

² Code of Civil Procedure section 438, subdivision (h)(2), provides that the trial “court shall grant 30 days to the party against whom the motion [for judgment on the pleadings] was granted to file an amended complaint.” Castaneda has not raised this issue on appeal and therefore has waived any claim of error. (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [issue not raised in opening appellate brief is deemed waived].) In any event, the record does not demonstrate that Castaneda was prejudiced by the order granting him 10 days to amend. Castaneda did not ask the trial court for additional time. As set forth below, the court did not enter judgment against him until 96 days after it granted the motion for judgment on the pleadings. Castaneda never indicated during this time that he intended to file an amended complaint.

³ We include these facts about discovery issues because Castaneda indicated in his notice of appeal that he intended to challenge Conway’s failure to respond to his discovery. Castaneda did not address any discovery issues in his appellate brief, however, and therefore has abandoned these issues. (*Paulus v. Bob Lynch Ford, Inc.*, *supra*, 139 Cal.App.4th at p. 685 [issues not addressed in opening appellate brief are deemed abandoned].)

court granted the motion for judgment on the pleadings—the court heard oral argument and granted Conway’s motion for a judgment of dismissal.

On December 10, 2010, Castaneda filed a notice of appeal, which we treat as a premature appeal from the judgment entered on December 29, 2010. (Cal. Rules of Court, rule 8.104(d).)

DISCUSSION

Conway’s appellate brief lists 20 “issues” on appeal. All of these issues relate to actions Conway took or failed to take while acting as Castaneda’s attorney. None of these issues address any claim of trial court error in this case. “‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Castaneda does not argue that the trial court erred in granting Conway’s motion for judgment on the pleadings, a motion that Castaneda did not oppose on the merits. A defendant may bring a motion for judgment on the pleadings—after the defendant has filed an answer and the time to demur to the complaint has expired—on grounds that the complaint fails to state facts sufficient to constitute a cause of action against the defendant. (Code Civ. Proc., § 438, subs. (c)(1)(B)(ii) & (f)(2).) Conway brought a proper motion for judgment on the pleadings. The first amended complaint does not state facts sufficient to constitute a cause of action against Conway. The allegations and legal theories asserted against Conway are unclear. For example, Castaneda does not explain how Conway’s conduct in representing Castaneda led to an outcome in which Castaneda was damaged.⁴

⁴ “A motion for judgment on the pleadings is analogous to a general demurrer. [Citation.] Like a general demurrer, it tests the sufficiency of the complaint. [Citation.] The scope of our review of a judgment on the pleadings is *de novo*, and we determine whether the complaint states a valid cause of action. [Citation.] In so doing, we accept as true the factual allegations the plaintiff makes and give them a liberal construction. [Citation.] On the other hand, we do not consider ‘conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts.’ [Citation.]”

Nor does Castaneda argue that the trial court erred in dismissing the action and entering judgment in favor of Conway after Castaneda failed to file an amended complaint as the court ordered. “Where a motion for judgment on the pleadings is granted with leave to amend” and the plaintiff fails to file an amended complaint, the defendant may “move for entry of judgment in its favor.” (Code. Civ. Proc., § 438, subd. (i)(1)(B).)⁵

The conclusion of Castaneda’s appellate brief, on pages 33 and 34, is the only place in the brief where Castaneda discusses the present legal malpractice action which is before this court. He questions why the trial court ordered him to amend his complaint when “Mr. Conway was already in Default.” Castaneda does not explain why he believes that Conway was in default in this action and there is no support in the record for this claim. Conway answered the first amended complaint. Therefore, Castaneda was not entitled to a default judgment under Code of Civil Procedure section 585.

DISPOSITION

The judgment is affirmed. Respondents are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

(*Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111, fn. omitted.)

⁵ Castaneda filed a second amended complaint on January 3, 2011, five days after the trial court entered judgment against him, and more than three months after the court granted the motion for judgment on the pleadings.