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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GREEN CENTURY DEVELOPMENT,  
LLC,

Plaintiff,

v.

JOHN YUAN,

Defendant and Appellant;

NORIKO KOMIYAMA,

Defendant and Respondent.

B230616

(Los Angeles County Super. Ct.  
No. KC058045)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Affirmed.

John Yuan, in pro.per., for Defendant and Appellant.

John M. Gantus & Associates, John M. Gantus and Nicole J. Abboud for  
Defendant and Respondent.

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Defendant and appellant John Yuan appeals from a judgment following an order granting summary judgment in favor of defendant and respondent Noriko Komiyama in this action to resolve claims to interplead funds. On appeal, Yuan contends that this appellate court should vacate the judgment on the grounds of mistake, excusable neglect and extrinsic fraud. However, Yuan did not raise these issues in the trial court. Therefore, we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

Yuan and Komiyama married on February 6, 1993. Janetech Group, Inc., was incorporated in California on March 26, 1993. Yuan was listed as the agent for service of process at an address in Walnut, California. Yuan and Komiyama held title to the Walnut property as joint tenants. However, in August 1997, Yuan and Komiyama filed a joint petition for dissolution of marriage stating there were no community assets or liabilities and neither party had an interest in any real property. A dissolution judgment was granted on March 2, 1998.

In September 2006, Green Century Development, LLC executed a promissory note in the amount of \$252,000 secured by a deed of trust in favor of Janetech. Payment was due on November 11, 2009.

On June 11, 2007, Komiyama filed a motion to set aside the dissolution judgment except as to dissolution of status. The motion was based on evidence of the grant deed to the Walnut property, records from the California Secretary of State's office, and a grant deed showing Janetech held an undivided 68 percent interest in real property in Imperial County. The dissolution judgment was vacated except as to status on July 20, 2007. On January 26, 2009, a judgment was entered in the dissolution action with orders respecting Yuan and Komiyama's property and debts. Yuan filed an appeal from the judgment.

On February 29, 2010, Green Century filed an interpleader action naming Yuan, Komiyama, Komiyama's parents Jun and Kumiko Komiyama, and Janetech as defendants. Yuan's attorney filed an answer on his behalf.

On October 19, 2010, Division Three of this appellate court affirmed the dissolution judgment that had been entered on January 26, 2009. On November 4, 2010, Komiyama and her parents filed an ex parte application for an order setting a motion for summary judgment less than 30 days prior to trial based on the appellate court's affirmance of the dissolution judgment. The Komiyamas' attorney filed a declaration stating that he had notified Yuan's attorney of the ex parte application. The trial court granted the motion.

The Komiyamas filed a request for judicial notice of certain exhibits, including the January 26, 2009 judgment of dissolution. The exhibits are not included in the transcript on appeal. On November 10, 2010, the Komiyamas filed a motion for summary judgment on the grounds that the dissolution judgment awarded all interest in Janetech, including the promissory note, to Komiyama, and Komiyama's parents had a judgment against Janetech for more than \$400,000, which they had assigned to Komiyama.

On December 2, 2010, Yuan filed a substitution of attorney that his attorney executed on November 30, 2010. Yuan proceeded in propria persona. On January 21, 2011, Yuan filed a five-page document, entitled "Short Statement of Case," with several exhibits attached. Yuan appeared at the hearing on the motion for summary judgment on January 24, 2011. The trial court found that there was no opposition to the motion for summary judgment and the Komiyamas had met their burden. Therefore, the court granted the motion. On February 2, 2011, the court entered its order granting the motion for summary judgment and entering judgment in favor of Komiyama. Yuan filed a notice of appeal from the ruling on January 24, 2011.

Although the notice of appeal in this matter states that Yuan is appealing from the nonappealable January 24, 2011 ruling, Komiyama does not contend on appeal that she was prejudiced by Yuan's premature notice of appeal. Therefore, we liberally construe the notice of appeal to encompass the February 2, 2011 judgment following the order granting summary judgment. (Cal. Rules of Court, rule 8.100(a)(2); *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 333, fn. 1.)

## DISCUSSION

### **Standard of Review**

We review orders granting motions for summary judgment de novo. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767; *Village Nurseries v. Greenbaum* (2002) 101 Cal.App.4th 26, 35.) A motion for summary judgment is properly granted if all the papers submitted establish there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (§ 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

### **Relief From the Judgment**

On appeal, Yuan does not contend the motion for summary judgment presents triable issues of fact. Instead, he contends the judgment against him should be vacated under Family Code section 2122, which allows a motion to set aside a judgment for actual fraud or failure to comply with disclosure requirements, or under Code of Civil Procedure section 473, which provides for relief from a judgment obtained by mistake, inadvertence, surprise, or excusable neglect, including a judgment resulting from extrinsic fraud.

However, Yuan never brought a motion in the trial court for relief under either of the statutory provisions or the court's equitable power. In general, we review a trial court's ruling on a motion to vacate the judgment based upon extrinsic equitable grounds or under Code of Civil Procedure section 473 for an abuse of discretion. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) Yuan never properly requested that the trial court vacate the judgment in this case, and as a result, there is nothing for this court to review on appeal. Even if a request to vacate the judgment could be raised for the first time on appeal, Yuan has not provided any evidence to this court or made any argument to justify vacating the judgment.

## DISPOSITION

The judgment is affirmed. Respondent Noriko Komiyama is awarded her costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.