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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

TOYIN DAWODU,

Plaintiff and Respondent,

v.

ADENIYI BAMIRO,

Defendant and Appellant.

E051489

(Super.Ct.Nos. CIVSS816505 &  
CIVSS813801)

OPINION

GUARANTY INVESTMENT  
CORPORATION,

Plaintiff and Respondent,

v.

ADENIYI BAMIRO,

Defendant and Appellant.

APPEAL from the Superior Court of San Bernardino County. Frank Gafkowski, Jr., Judge. (Retired judge of the former L.A. Mun. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

The Perry Law Firm, Christopher Perry; Adeniyi Bamiro, in pro. per.; Law Office of Alaba Ajetunmobi and Alaba S. Ajetunmobi for Defendant and Appellant.

Feinberg & Fitch and Michael S. Feinberg for Plaintiffs and Respondents.

The trial court entered a judgment in a civil action, determining that plaintiff, Toyin Dawodu, and defendant, Adeniyi Bamiro, owned equal interests in a film entitled, “Close Enemies.” The judgment following court trial resolved some but not all of the issues, and the parties were directed to attempt to resolve the remaining issues. When they could not reach an agreement, the court decided the remaining issues and a supplemental court judgment was entered. Defendant filed a motion to correct a clerical error in the supplemental judgment, and the trial court denied it. Defendant appealed from the postjudgment order denying his motion to correct a clerical error.

On appeal, defendant argues that the provisions of the supplemental judgment were not wholly congruent with the minute order or the transcript of the oral proceedings relating to the supplemental judgment. We affirm.

## BACKGROUND

The historical facts of the matters leading up to the litigation are not established by the record on appeal. Some factual assertions are included in the briefs, but are not supported by references to the record. The register of actions provides a history of the litigation, and the clerk’s transcript includes the postjudgment motions filed by defendant. What follows is our best attempt to figure out what happened in the lower court.

Plaintiff filed a civil action against defendant on which a court trial was conducted between August 24, 2009, and September 10, 2009. On October 22, 2009, the court signed a judgment in which it determined that interest in the film was determined to be 50/50 between plaintiff and defendant. The court reserved jurisdiction over issues related to the commercial exploitation, marketing and distribution of the film, and determined that plaintiff was the prevailing party for purposes of recovering statutory costs of suit and attorney's fees. On November 6, 2009, defendant filed a notice of intention to move for a new trial on various grounds.<sup>1</sup> The motion was denied on December 15, 2009.

On January 14, 2010, the matter was calendared for a hearing to review the issues relating to the film exploitation, but defendant did not appear. The matter was rescheduled for February 10, 2010, for an order to show cause re: sanctions for defendant's failure to appear, and for a posttrial status conference to determine whether the parties had a mutually agreeable basis upon which the film could be commercially exploited by the parties. Plaintiff's counsel informed the court that no agreement had been made regarding the commercial exploitation of the film.

The court (with the agreement of plaintiff's counsel) decided not to sanction defendant for his failure to appear. The court then delivered the disk containing the film to plaintiff's counsel on behalf of plaintiff, to hold in trust for plaintiff. The court

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<sup>1</sup> The notice of intent to file the motion for new trial refers to the statutory grounds on which it was based, but no points and authorities were included in the record, nor any other supporting information to flush out the bases for the motion.

admonished plaintiff's counsel that there is a fiduciary relationship between the parties and that defendant was to be notified of any and all decision made with respect to the utilization and exploitation of the disk as partners in good faith between themselves in any venture. The fiduciary obligation was deemed to be reciprocal between the parties.

The court ordered that plaintiff could exploit the film as he in his business sense felt was justified, however, he must keep defendant informed of any and all activities and accounting. All management decisions were reserved exclusively to plaintiff. The court determined that plaintiff was "basically the general partner and [defendant] is a limited partner," with passive participation. However, the court stated that did not mean plaintiff should not consult with defendant. The court also directed defendant to contact either plaintiff or plaintiff's counsel regarding the promotion of the film, and urged defendant to act in good faith to maximize the benefit of the film.

Regarding the language of the proposed order, the following colloquy took place:

"MR FEINBERG: Thank you. I will prepare an order confirming that the management decisions with respect to the exploitation of the film are to rest with Mr. Dawodu subject to his obligation to consult with Mr. Bamiro on those decisions.

"THE COURT: And he has a fiduciary relationship to protect your interest and not to do anything that would jeopardize your interest without it being a proper business decision. In other words, you are partners, you are partners. It just means that he is going to have the management position at this point and it would be incumbent upon him to participate and if you don't feel that he is properly representing your interest, then you

have to resort to litigation, sir, not this case but another case as if you were a partner from fresh and that will be the order.”

Plaintiff’s counsel prepared the supplemental court judgment following trial and filed it on March 3, 2010. Defendant filed an objection to the supplemental court judgment on March 5, 2010, but the supplemental judgment was filed on March 16, 2010, without any reference to the objections. On May 3, 2010, defendant filed a motion to correct a clerical error in the supplemental court judgment. Following a hearing, the court determined there was no error, and notice of the ruling denying the motion was filed on June 4, 2010. On August 3, 2010, defendant appealed the order after judgment.

#### DISCUSSION

Defendant argues, in various ways, that the trial court erred in not correcting the supplemental judgment to conform with the intention of the court as reflected in the minute order of February 10, 2010. We disagree.

Code of Civil Procedure section 473, subdivision (d), provides in pertinent part that the court may correct clerical mistakes in its judgment or orders as entered so as to conform to the judgment or order directed. Use of the word “may” in the statutory language speaks to the fact that a trial court retains discretion to grant or deny the motion. (See *Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146 [relating to the court’s discretion to set aside a void judgment pursuant to Code of Civil Procedure section 473, subdivision (d).] The court may correct a clerical mistake in its judgment, whether the mistake was made by the clerk, counsel or the court itself.

Code of Civil Procedure section 473 is addressed to the sound discretion of the trial court and the trial court's order will not be disturbed absent a showing of clear abuse of discretion. (*Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1035.) In reviewing a decision to deny relief under the discretionary provisions of a Code of Civil Procedure section 473 motion, we extend all legitimate and reasonable inferences to uphold the judgment. (*Yeap v. Leake* (1997) 60 Cal.App.4th 591, 598.)

Where the judgment as signed does not express the actual judicial intention of the court, but is contrary thereto, the signing of such a purported judgment is a clerical error rather than a judicial one. (*In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151; *Zisk v. City of Roseville* (1976) 56 Cal.App.3d 41, 47.) The term "clerical error" covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. (*Conservatorship of Tobias, supra*, 208 Cal.App.3d at p. 1035.) If an error, mistake, or omission is the result of inadvertence, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected. (*Ibid.*)

A minute entry is not the decision or judgment of the court. (*Bastajian v. Brown* (1941) 19 Cal.2d 209, 215.) An oral opinion by a trial judge, discussing and purporting to decide the issues is not itself the decision of the court or judgment. (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 77-78.) As applied to a conflict between a memorandum opinion on the one hand, and findings, judgments or orders contradicting that opinion on the other hand, the clearly expressed, intentionally made, order

supersedes the memorandum. (*Russell v. Superior Court* (1967) 252 Cal.App.2d 1, 6.) We apply the same reasoning to conflicts between the clerk's minutes and the formal judgment which has been signed by the judge.

The determination of whether the minutes or the written order were correct is a matter completely within the trial judge's own knowledge. (*Russell v. Superior Court, supra*, 252 Cal.App.2d at p. 7.) The judge knows whether a mistake has been made and how it has been made, and the judge's determination of that fact is conclusive. (*Ibid.*) Thus, the facts within the personal knowledge of the judge may be considered and in vacating or correcting a clerical error or mistake, the judge may give effect to his own recollection. (*Bastajian v. Brown, supra*, 19 Cal.2d at p. 215.)

Here, defendant's main complaint is that certain verbiage, specifically a reference to "production," appears in the formal judgment which was not uttered by the judge in making its oral ruling from the bench, nor included in the clerk's minutes. He does not point to any evidence in the record which would demonstrate how this language was inconsistent with the court's oral judgment, or that the judgment did not reflect the court's intention. The court expressly intended for plaintiff to handle all management decisions concerning the partnership to exploit the film. While the formal judgment does include additional verbiage, it is consistent with the court's findings and oral decision. In other words, it was not inconsistent with the court's intended judgment.

Defendant has cited no cases or statutes or rules of court requiring that the formal written judgment use the identical language of the court or the clerk's minutes. At the

hearing which preceded the supplemental judgment, the trial court made it clear it intended that plaintiff have total control over all management decisions concerning the film. The language imported into the formal supplemental judgment, which included reference to “production,” was implied or subsumed in the trial court’s blanket oral statement. At the hearing on defendant’s postjudgment motion to correct clerical error, the trial court made a determination that the formally prepared supplemental court judgment reflected its intended disposition of the case. The fact that the trial court determined that the formal judgment reflected the judge’s intentions is conclusive upon our decision. (*Bastajian v. Brown, supra*, 19 Cal.2d at p. 216.)

The denial of the motion to correct the judgment was not an abuse of discretion.

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to costs on appeal.

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RAMIREZ  
P.J.

We concur:

KING  
J.

MILLER  
J.