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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

JAMES S. DAVIS,

Plaintiff and Appellant,

v.

A UNITED, INC.,

Defendant and Respondent.

E062397

(Super.Ct.No. RIC1313946)

O P I N I O N

APPEAL from the Superior Court of Riverside County. David E. Gregory,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Litigation Logistics Group, Inc. and Boris Smyslov for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

**I. INTRODUCTION**

Following a default prove-up hearing, the court found that plaintiff and appellant, James S. Davis, failed to present sufficient evidence to prove his single cause of action against defendant and respondent, A United, Inc. (A United), for abuse of process, and

dismissed plaintiff's operative complaint, with prejudice. Plaintiff appeals the judgment of dismissal. He claims that, by failing to answer the complaint, A United admitted all of its well-pleaded factual allegations, including his claim that he suffered and was entitled to recover "up to" \$24 million in general, special, and punitive damages from A United. Plaintiff claims the court erroneously refused to enter a default judgment against A United for "up to" \$24 million in damages.

We affirm the judgment of dismissal. Plaintiff has not shown that he presented sufficient evidence to support his abuse of process claim, including that he suffered any resulting damages. (Code Civ. Proc., § 585, subd. (b); see *Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560.) The record on appeal contains no reporter's transcript or other record of the oral proceedings of the default prove-up hearing. (Cal. Rules of Court, rule 8.120(b).) The record consists of a clerk's transcript, including the complaint, defendant's declaration for default judgment, and various documents referenced in the complaint and declaration.<sup>1</sup> The complaint does not state a cause of action for abuse of process, and defendant's declaration is likewise insufficient to show that A United

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<sup>1</sup> Plaintiff claims he served A United with a statement of the nature and amount of the personal injury damages he suffered, and a statement of the punitive damages he was seeking, together with the summons and complaint, but the record on appeal does not include copies of either statement or proof of their service on A United. (Code Civ. Proc., §§ 425.11, subds. (b)- (d)(1) [statement of nature and amount of personal injury damages must be served on defendant in the same manner as a summons before the defendant's default may be taken], 425.115, subds. (b), (f) [statement of amount of punitive damages sought, by whom and against whom, must be served on defendant before the defendant's default may be taken].)

engaged in any unlawful activity, or that plaintiff suffered any resulting damages. Thus, the complaint was properly dismissed, with prejudice.

## II. ADDITIONAL BACKGROUND

### *A. Plaintiff's Verified Complaint and Other Evidence in the Appellate Record*

Plaintiff filed his verified first amended complaint against A United for abuse of process on January 17, 2014. A United did not answer the complaint, and the clerk entered its default on July 3, 2014.

The complaint alleged that A United engaged in abuse of process, first by unlawfully renewing and then interfering with plaintiff's attempts to collect a money judgment in the principal sum of \$6,025,000, that plaintiff obtained in a personal injury action and later assigned to A United for collection purposes. In addition to declaratory and injunctive relief, plaintiff sought "up to" \$6 million in general damages, "up to" \$6 million in special damages, and punitive damages according to proof, but not less than \$12 million.

The underlying judgment was entered on August 27, 2003, in Riverside County Superior Court case No. RIC349949, in favor of plaintiffs, Brenda Davis (Brenda) and James S. Davis, and against defendants, Aircraft Emporium, Inc. and Robert Cullen, doing business as Corona Aircraft Sales. The judgment was for personal injuries that plaintiff and Brenda suffered in an airplane crash. The record also indicates that there were two judgments: one for plaintiff in the principal sum of \$6,025,000, entered on

August 27, 2003, and one for Brenda in the principal sum of \$4.1 million, entered on August 22, 2003.

Plaintiff and Brenda assigned their judgments to A United pursuant to a written agreement.<sup>2</sup> Plaintiff later became dissatisfied with A United's efforts to collect the judgments, and filed a motion to (1) cancel the assignment of the judgments to A United, and (2) terminate the agreement assigning the judgments to A United. On January 23, 2012, the court in case No. RIC349949 issued an order confirming that "*Judgment Creditors Brenda K. Davis and James S. Davis have legally discharged A-United. As a result from the date of discharge forward A-United no longer has standing to collect on the Judgment Creditors Judgments. . . .*"<sup>3</sup> (Italics added.) The order cancelled the assignment of the judgments to A United, and included a finding that the assignment had no legal basis apart from the "Davis/A-United Written Agreement."<sup>4</sup>

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<sup>2</sup> The written agreement is not part of the record on appeal.

<sup>3</sup> The January 23, 2012, order stated that the court was not making "any decisions, rulings or orders on A-United Lien Claims or offsetting claims by the Davis Judgment Creditors," or on any breach of contract claims "under the Davis-A United Agreement." The order directed plaintiff James S. Davis to notify A United of any "future hearing or sale of Judgment Debtor real or personal property going to the satisfaction of the Davis Judgments."

<sup>4</sup> On June 17, 2013, the court in case No. RIC349949 issued an order pursuant to a stipulation "by and between SK JUDGMENT and James S. Davis, and their respective attorneys of record." The stipulation and order provided that (1) James S. Davis "does not dispute the right" of SK Judgment to enforce the judgment entered in the name of Brenda; (2) SK Judgment "does not dispute the right" of James S. Davis to enforce the judgment entered in the name of James S. Davis; (3) James S. Davis "does not object" to the issuance of the renewal of the judgment (and specific enforcement actions) in regards to the judgment in the name of Brenda; and (4) SK Judgment "does not object" to the

[footnote continued on next page]

The January 23, 2012, order indicated, however, that A United retained an interest in the judgments. The order stated that the court was not making “any decisions, rulings or orders on A-United Lien Claims or offsetting claims by the Davis Judgment Creditors,” or “on any Breach of Contract Issue under the Davis-A United Agreement,” and ordered plaintiff James S. Davis to give A United notice “as required by law of any future hearing or sale of Judgment Debtor real or personal property going to the satisfaction of the Davis Judgments.”

Notwithstanding the January 23, 2012, order discharging it as the assignee of the judgments, on August 23, 2013, A United filed an “Application for and Renewal of Judgment,” in case No. RIC349949, representing it was the “[a]ssignee of record” of the judgments in favor of plaintiff and Brenda. The application purported to renew *only plaintiff’s* judgment for \$12,033,523.15. The renewal amount comprised the principal sum of \$6,025,000, plus postjudgment interest of \$6,008,493.15, plus a \$30 filing fee for the application. The record contains only the first page of the two-page renewal

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*[footnote continued from previous page]*

issuance of the renewal of the judgment (and specific enforcement actions) in the name of James S. Davis.

A United was not a party to the June 17, 2013, stipulation and order. Nor is there any indication that A United was related to “SK Judgment.” It appears that SK Judgment was involved in collecting the two judgments belonging to plaintiff and Brenda but, pursuant to the stipulation and order, SK Judgment agreed to cease its efforts to collect the judgment in the name of plaintiff.

application, and it is unclear from the record whether plaintiff's judgment was, in fact, renewed pursuant to A United's application.<sup>5</sup>

In his declaration for default, filed on July 14, 2014, plaintiff explained that he discharged A United, and moved the court to terminate the assignment to A United, after A United "failed to conduct any collection activities against Cullen including no efforts to conduct a Sheriff Sale on Cullen's house." Plaintiff claimed that despite the order terminating the assignment, A United had "continued to interfere" in plaintiff's "efforts to collect on the judgment, including interfering in [his] Applications with the Los Angeles Superior Court to proceed with the Sheriff's Sale on [Cullen's] House in Claremont. It was always [plaintiff's] intention to bid on the house using [his] Judgment so [he] could take possession and control of the house[.] [¶] [Plaintiff] had also been trying to seize and sell Debtors['] many airplanes, [he] had served Writs of Execution on three of them at Chino Airport, but because of problems arising out of the Defendants['] interference Debtor has closed his business at Chino Airport and hidden the airplanes."

Under the heading "General Damages," the declaration explains that plaintiff's "personal and professional life was destroyed by the [a]irplane crash caused by Robert Cullen's [f]raud," and that plaintiff owed income taxes and other debts he could not pay because of the injuries he suffered in the crash. Plaintiff's debts were discharged in a chapter 7 "no asset" bankruptcy, in which plaintiff "turned over" to the bankruptcy

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<sup>5</sup> The record contains a proof of service, showing the application was served on the judgment debtors, Robert Cullen and Aircraft Emporium, Inc.

trustee over \$1 million in cash, but plaintiff kept his judgment because it was to compensate him for personal injuries. Plaintiff also claimed that the “years of delay and abuse of process” by A United was causing him “daily mental and emotional damages.” Before the crash, he was “a very successful [p]laintiff [c]lass [a]ction [w]age [a]ttorney,” and “made millions of dollars in fees,” but “[a]fter the crash [he] lost all of that.” Thus, he asked the court to award him “at least \$1 million dollars in [g]eneral [d]amages” against A United.

Under a heading “Special Damages,” plaintiff claimed that the postjudgment interest on his judgment, as he pleaded in his complaint, was \$1,644 per day. And, although A United had been “interfering with [his] collection efforts for more than two years, i.e. since January 14, 2012,” he was “limit[ing]” his request for special damages to “the loss of potential interest and increase in interest, due to the delay in collection on [his] judgment to just two years of increase in interest. So \$1,644.00 in interest times 730 days of interference equals \$1,200,120.00 in Special Damages.”

Plaintiff stated he was willing to deduct the \$1.2 million sum from the amount he was seeking from Cullen on his judgment. And, in the event the court did not enjoin A United from “trying to obstruct [his] sale rights,” he would ask for an additional \$6 million in damages from A United. In that event, plaintiff would “sell” his judgment to A United and “they can do with it as they wish.” Plaintiff claimed the judgment debtors had hidden at least \$1.5 million worth of airplanes, in foreign countries and elsewhere. Finally, plaintiff asked the court to award him \$1 million in punitive damages against

A United because its actions were “outrageous, malicious,” and violated the January 23, 2012, order terminating the assignment.

*B. The Trial Court’s Ruling*

At a default prove-up hearing on August 28, 2014, the court denied plaintiff’s application for a default judgment against A United and dismissed plaintiff’s complaint, with prejudice. The court’s minute order states that plaintiff “failed to present evidence sufficient to meet his burden of proof that [A United] has engaged in unlawful conduct of any kind, meriting relief to Plaintiff.”

*C. Plaintiff’s Motion for Reconsideration*

Plaintiff filed a motion for reconsideration. (Code Civ. Proc., § 1008.) The motion was denied following a hearing.<sup>6</sup> The motion was based on “new evidence” comprised of an opening brief plaintiff filed on August 25, 2014, in the Second District Court of Appeal, case No. B255250. In the appeal, plaintiff sought to overturn a default judgment entered against him in Los Angeles County Superior Court case No. KC061317.

In his opening brief in the appeal, plaintiff claimed he “made [an] application under Brenda’s judgment to conduct a sheriff’s sale of Judgment Debtor Robert Cullen’s house.” A United and another entity, U.S. Affiliated, “both filed claims and actions *claiming the house* and the matter resulted in a Default Judgment against [plaintiff].”

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<sup>6</sup> No reporter’s transcript or other record of the oral proceedings at the hearing on the motion for reconsideration is included in the record on appeal. (Cal. Rules of Court, rule 8.120(b).)

(Italics added.) Plaintiff claimed he suffered the default judgment because he was unable to attend the trial in the action, and he was unable to attend the trial because he was in federal custody from July 5, 2013, to October 4, 2013.

Plaintiff sought to overturn the default judgment on the ground that A United was not authorized to collect his or Brenda's judgments, based on the January 23, 2012, order of the Riverside County Superior Court, in case No. RIC349949, terminating A United's assignment of the judgments.<sup>7</sup> After A United's assignment was terminated, Brenda assigned her judgment to plaintiff, and plaintiff filed the application to sell Cullen's house, "first in the Central District of Los Angeles which was later moved by the Court to the East District, Pomona."<sup>8</sup> In essence, plaintiff claimed the default judgment against him was "void ab initio" because A United had no standing to interfere with plaintiff's attempt to sell Cullen's house, given that it was no longer authorized to collect plaintiff's or Brenda's judgments.

### III. ANALYSIS

Plaintiff claims the trial court in the present action erroneously refused to issue a default judgment against A United for *all of the relief* plaintiff prayed for in his operative verified first amended complaint, including "up to" a total of \$24 million in general,

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<sup>7</sup> The brief states Brenda's judgment was for \$4.1 million, and plaintiff's judgment was for \$6,025,000.

<sup>8</sup> Plaintiff acknowledged that Brenda's judgment was assigned to SK Judgment, but claimed that SK Judgment agreed to permit plaintiff to proceed with selling Cullen's house to partially satisfy Brenda's judgment. (See fn. 3, *ante*.)

special, and punitive damages. Plaintiff maintains that, in failing to answer the complaint, A United admitted *all* of its material factual allegations, including plaintiff's allegation that he suffered millions of dollars in damages as a result of A United's abuse of process, including its interference with his efforts to collect his judgment.

“Generally speaking, the party who makes default thereby confesses the material allegations of the complaint. [Citation.] It is also true that *where a cause of action is stated in the complaint and evidence is introduced to establish a prima facie case* the trial court may not disregard the same, but must hear the evidence offered by the plaintiff and must render judgment in his favor for such sum, not exceeding the amount stated in the complaint, or for such relief, not exceeding that demanded in the complaint, as appears from the evidence to be just. [Citations.]” (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361-362 [Fourth Dist., Div. Two], quoting *Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408-409, second italics added.)

As noted, the record on appeal does not include a reporter's transcript or other record of the oral proceedings at the default prove-up hearing, including the testimony plaintiff claims he gave at the hearing. Plaintiff has a duty to provide an adequate record on appeal to support his claim of error. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.) In the absence of an adequate record, the judgment is presumed correct. (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) “All intendments and presumptions are made to support the judgment on matters as to which the record is

silent.” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

Error must be affirmatively shown. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.)

Plaintiff would be entitled to a reversal of the judgment of dismissal, and a default judgment against A United for damages, only if the record affirmatively shows that, at the default prove-up hearing, plaintiff made a prima facie evidentiary showing that (1) A United committed an abuse of process, as pleaded, by wrongfully using the legal process to interfere with plaintiff’s right to collect, or efforts to collect, his judgment, and (2) plaintiff suffered resulting damages. The record on appeal does not affirmatively demonstrate that plaintiff made either of these prima facie evidentiary showings.

Plaintiff’s verified complaint alleged a single cause of action against A United for abuse of process. To establish a cause of action for abuse of process, the plaintiff must prove that the defendant used a legal process, or the machinery of the legal system for an ulterior motive, and in an unauthorized or wrongful manner. (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 792-793; *Trear v. Sills* (1999) 69 Cal.App.4th 1341, 1359.) As stated in *Coleman*, the plaintiff must show “that the defendant (1) entertained an ulterior motive in using the process and (2) committed a wilful act in a wrongful manner. [Citations.]” (*Coleman v. Gulf Ins. Group, supra*, at p. 792.)

On this record, plaintiff failed to establish his abuse of process claim. To be sure, in his complaint and declaration for default,<sup>9</sup> plaintiff showed that on August 23, 2013,

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<sup>9</sup> For purposes of our discussion, we assume that plaintiff submitted, and that the court considered, plaintiff’s verified complaint and declaration for default at the default prove-up hearing.

A United either attempted to renew or did renew plaintiff's judgment, for over \$12 million, including postjudgment interest, notwithstanding the January 23, 2012, order cancelling A United's right to collect the judgment. The record does not affirmatively show, however, that A United renewed the judgment for an ulterior or wrongful motive, *that its renewal of the judgment was a wrongful act*; or, in any event, that the renewal damaged plaintiff. (*Coleman v. Gulf Ins. Group, supra*, 41 Cal.3d at p. 792.)

As noted, the January 23, 2012, order cancelling A United's right to collect plaintiff's judgment plainly indicates that A United retained an interest in the judgment following the cancellation of its right to collect the judgment. The order expressly declined to make "any decisions, rulings or orders on A-United Lien Claims" against the judgment, or "on any Breach of Contract Issue under the Davis-A United Agreement," pursuant to which plaintiff assigned the judgment to A United for collection purposes. When A United renewed the judgment on August 23, 2013, the judgment was about to expire in only four days, because it was entered on August 27, 2003. Subject to statutory exceptions, none of which appear to apply here, a money judgment becomes unenforceable 10 years after the date of its entry, unless it is renewed before the expiration of the 10-year period. (Code Civ. Proc., §§ 683.020, 683.120, 683.130.) Thus, on this record, it may be that A United renewed the judgment for the sole purpose of preserving its legitimate lien claim against the judgment. Furthermore, plaintiff did not explain, in his complaint or declaration for default, how he was damaged by A United's mere act of renewing his judgment.

Plaintiff's claim that A United somehow "interfered" with his attempts to collect his judgment is too entirely vague and unspecific to support a finding that A United committed an abuse of the legal process. The record does not indicate that A United used *any legal process* with an ulterior motive or wrongful purpose, and in a wrongful manner, and thereby wrongfully interfered with plaintiff's attempts to collect his judgment. Indeed, plaintiff did not explain how A United interfered with his attempt to sell Robert Cullen's \$600,000 house in Claremont, or what legal process A United wrongfully used in interfering with that sale. In his motion for reconsideration, plaintiff represented that A United and another entity "both filed claims and actions *claiming the house* and the matter resulted in a Default Judgment against [plaintiff]." (Italics added.) But plaintiff did not explain what legal process A United wrongfully used to interfere with plaintiff's attempt to sell Cullen's house, or what legal process A United wrongfully used to interfere with plaintiff's attempt to "seize and sell" the judgment debtors' "many airplanes."

Lastly, the record does not support a finding that plaintiff suffered any damages as a result of any (unspecified) legal process that A United used regarding plaintiff's judgment. In his declaration for default, plaintiff complained at length about the damages he suffered as a result of the airplane crash and A United's failure to collect his judgment, but those are not damages resulting from any abuse of process committed by A United.

#### IV. DISPOSITION

The judgment of dismissal is affirmed. Plaintiff shall bear his costs on appeal.

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HOLLENHORST  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.