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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ABC MONEYTRANSACTIONS, INC.,

Plaintiff and Respondent,

v.

TRUC LY HA,

Defendant and Respondent;

FRANK BARILLA,

Objector and Appellant.

G045493

(Super. Ct. No. 06CC12658)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Gregory Munoz, Judge. Affirmed.

Law Offices of Frank Barilla, Frank Barilla; and Gerlinda L. Baca for  
Objector and Appellant.

Joey P. Moore for Plaintiff and Respondent.

No appearance for Defendant and Respondent.

\* \* \*

## INTRODUCTION

ABC MoneyTransactions, Inc. (ABC), obtained a default judgment against Truc Ly Ha. ABC located money belonging to Ha in the client trust account of attorney Frank Barilla; Barilla had represented Tom Vu in a separate action against Ha, in which Ha was the prevailing party. The trial court granted ABC's motion for an order authorizing a levy on Barilla's client trust account, and Barilla appeals.

We affirm. The motion for the levy order was properly and timely filed and served. ABC established its right to the money in Barilla's client trust account to satisfy its own judgment against Ha. Barilla's arguments to the contrary are unavailing.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

In December 2006, ABC sued Ha for breach of contract (the *ABC v. Ha* action). In May 2007, ABC obtained a default judgment against Ha.

Ha was also a defendant in another action filed in 2007, entitled *Vu v. Ha* (the *Vu v. Ha* action). In the *Vu v. Ha* action, Vu asserted causes of action against Ha, all arising out of a disagreement between them regarding an alleged real estate partnership. Although Ha held sole legal title to each of the properties in dispute, Vu claimed he had a 50 percent interest in the properties. Vu sought \$550,000 in damages, cancellation of the grant deeds identifying Ha as the sole legal owner of each property, and a declaration of Vu's interest in each of the properties.

After the *Vu v. Ha* action was filed, Vu and Ha agreed that the net proceeds from the sale of one of the properties in dispute—\$116,059.63—should be held in trust by Vu's attorney, Lauren M. Tran. Those funds were later transferred from Tran's client trust account to a single client trust account of attorney Barilla, who substituted in as Vu's attorney before trial.

In June 2009, after a bench trial, the trial court entered judgment in favor of Ha in the *Vu v. Ha* action. Barilla sent a cashier's check in the amount of \$58,029.82—one-half of the total amount held in his client trust account—to Ha's attorney, Douglas MacLeith. Barilla's cover letter instructed MacLeith to hold the money in MacLeith's client trust account "until all such legal matters between our respective clients have been resolved." Barilla retained the remainder of the disputed proceeds in his own client trust account. Vu, represented by Barilla, filed a notice of appeal from the judgment in the *Vu v. Ha* action; this court dismissed Vu's appeal.

In June 2010, ABC filed a notice of lien in the *Vu v. Ha* action, claiming an interest in Ha's rights to money or property obtained via the judgment in the *Vu v. Ha* action. As part of an effort to enforce its judgment against Ha, ABC conducted a third party examination of Barilla in September 2010. Barilla conceded that Ha had prevailed in the *Vu v. Ha* action, but contended that Vu was nevertheless entitled to the funds remaining in Barilla's single client trust account.

In May 2011, ABC filed a motion seeking an order authorizing a levy on Barilla's single client trust account, pursuant to Code of Civil Procedure section 700.160 (the Levy Motion). (All further statutory references are to the Code of Civil Procedure.) The Levy Motion was served by mail on May 19, 2011,<sup>1</sup> and the hearing was scheduled for June 16, 2011.

In his written, filed objection, Barilla contended that the Levy Motion was not timely or properly served, pursuant to section 1005, subdivision (b). The trial court continued the hearing on the Levy Motion "to allow Moving Party [(ABC)] an opportunity to file a Reply to the Opposition which was untimely filed and served."

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<sup>1</sup> On our own motion, we augment the record on appeal with the proofs of service for the Levy Motion, which was filed on May 19, 2011, in the case of *ABC MoneyTransactions, Inc. v. Truc Ly Ha*, Orange County Superior Court case No. 06CC12658. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

After the hearing, the trial court granted the Levy Motion, and issued an order authorizing “the levying officer . . . to levy on the single client trust account of Frank F. Barilla.” Barilla timely appealed from the court’s postjudgment order.

## DISCUSSION

### A.

#### *STANDARD OF REVIEW*

We review an order enforcing a judgment for abuse of discretion. (See *Lohman v. Lohman* (1946) 29 Cal.2d 144, 148-149.) “A trial court’s exercise of discretion is abused only when its ruling “““exceeds the bounds of reason, all of the circumstances before it being considered.””” [Citation.]” (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1604.)

### B.

#### *THE LEVY MOTION WAS PROPERLY AND TIMELY SERVED.*

Barilla argues the trial court abused its discretion in authorizing the levy because the Levy Motion was not properly and timely served. We disagree.

First, Barilla argues service of the Levy Motion by mail was improper and that “service should have been made on him personally since he had never generally appeared in the [*Vu v. Ha*] action nor was he ever a party to it as set forth in his declaration in support of the objection.” Barilla cites no authority that the Levy Motion should have been personally served on him. In this case, Barilla is merely the holder of money owned by a third party—Ha. All procedural requirements to obtain the levy order were complied with by ABC. As explained *post*, neither Barilla nor his client, Vu, has any legal interest in the funds in Barilla’s single client trust account.

Second, Barilla argues that the Levy Motion was not timely served. “Unless otherwise ordered or specifically provided by law, all moving and supporting

papers shall be served and filed at least 16 court days before the hearing. . . . However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California . . . .” (§ 1005, subd. (b).) The initial hearing date was June 16, 2011; therefore, ABC was required to serve the Levy Motion 16 court days before the hearing, or by May 24. Because the Levy Motion was served by mail, the 16-day period was increased by five calendar days to May 19. The Levy Motion was filed on May 17 and served by mail on May 19. The Levy Motion was timely served.

C.

*NEITHER BARILLA NOR VU HAS A LEGAL INTEREST IN THE FUNDS IN BARILLA’S SINGLE CLIENT TRUST ACCOUNT; THOSE FUNDS BELONG TO HA, AND BY VIRTUE OF ITS JUDGMENT AGAINST HA, ABC WAS ENTITLED TO OBTAIN A LEVY AGAINST THOSE FUNDS.*

Barilla argues that Vu is entitled to half the monies subject to the *Vu v. Ha* action and was “never . . . given an opportunity to assert such a claim.” In the *Vu v. Ha* action, Vu claimed a 50 percent interest in the properties which he alleged he jointly owned with Ha, although Ha held legal title to the properties in her name alone. The trial court’s judgment was in favor of Ha on all causes of action. Vu was given the opportunity at trial to assert his claim of a 50 percent interest in the properties. The funds Barilla holds in his single client trust account are sales proceeds from one of the properties, which was in dispute in the *Vu v. Ha* action.

Barilla further argues, “the underlying case never stated in any judgment that monies in [Barilla’s] trust account belonged to either [ABC] or Ha.” It is true that the default judgment in the *ABC v. Ha* action does not purport to give ABC any right to any specific property of Ha’s, nor did it need to do so. We must read the complaint in the *Vu v. Ha* action, the agreement between Vu and Ha to hold the sales proceeds of the disputed property until the resolution of the *Vu v. Ha* action, the judgment in the *Vu v. Ha*

action, the notice of lien filed by ABC in the *Vu v. Ha* action, and the Levy Motion together. All these documents combine to establish Ha's right to the funds currently held in Barilla's single client trust account, and ABC's right to satisfy its own judgment with those funds.

Barilla also argues that his single client trust account is not subject to levy by ABC because Barilla is entitled to the monies in the account for attorney fees and costs. He fails to offer any evidence supporting his argument. To the contrary, Barilla's argument on appeal directly conflicts with his earlier deposition testimony (given at the third party examination) that the monies in the single client trust account were not intended for attorney fees.

#### DISPOSITION

The postjudgment order is affirmed. Respondent ABC to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.