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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMICA MUTUAL INSURANCE
COMPANY,

Plaintiff and Respondent,

v.

LINDA MARY ALAWI,

Defendant and Appellant.

G052453

(Super. Ct. No. 30-2014-00725854)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Frederick Paul Horn, Judge. Affirmed.

Wasson & Associates, David B. Wasson and Michael D. Schoeck for
Defendant and Appellant.

Prober & Raphael, Dean Prober & Homan Mobasser for Plaintiff and
Respondent.

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Plaintiff and respondent Amica Mutual Insurance Company (Amica) brought this subrogation action to recover the amount it paid its insured for the damages he suffered in a three-car accident it concluded was caused by defendant and appellant Linda Mary Alawi. Amica served Alawi with the summons and complaint, but she did not respond. Amica therefore took her default and obtained a default judgment against her. After Alawi learned her driving privileges had been suspended based on her failure to pay the default judgment, she notified her insurer about this lawsuit and brought a motion seeking equitable relief from the default and default judgment based on extrinsic fraud and mistake.

Alawi argued the default and default judgment should be set aside because they resulted from her extrinsic mistake in failing to notify her insurer about the lawsuit and also Amica's extrinsic fraud in failing to notify her insurer about the lawsuit. According to Alawi, she reasonably believed her insurer would protect her interests in this lawsuit because it had hired counsel to appear and protect her interests in a separate subrogation action filed by the third driver's insurer. She also contends Amica should have notified her insurer about this action not only as a professional courtesy, but also because her insurer asked for a courtesy copy of any lawsuit Amica filed. The trial court denied the motion.

We must affirm the trial court's discretionary call. Alawi fails to provide any reasonable explanation why she did not notify her insurer about this action after she was served with the summons, complaint, and other documents leading up to the default judgment. Alawi reasonably could expect her insurer to defend her, but only if it knows about the lawsuit. Although Amica was in contact with Alawi's insurer before it filed this lawsuit, there is no evidence supporting Alawi's contention her insurer asked for a courtesy copy of any lawsuit Amica filed, nor is there any evidence showing Amica represented it would do so. Although given the opportunity to do so, Alawi failed to

submit a declaration from any representative of her insurer who purportedly had discussions with Amica.

Alawi also fails to cite any authority that required Amica to notify Alawi's insurer before it filed this lawsuit or took Alawi's default. Although Amica should have extended that professional courtesy to Alawi's insurer, and we do not look favorably upon its failure to do so, Amica had no legal obligation to provide notice. Amica's failure to warn Alawi's insurer did not require the trial court to grant Alawi relief from the default and default judgment in the face of evidence she received notice of this lawsuit and her undeniable failure to notify her insurer.

California law recognizes a strong public policy in favor of granting relief from defaults and allowing a party his or her day in court to defend on the merits. After the time limit for seeking relief from a default under Code of Civil Procedure section 473, subdivision (b),¹ however, that policy is supplanted by the equally strong public policy favoring finality of judgments. Once that time period expires, the trial court may grant relief only in exceptional circumstances. Alawi brought her motion after the time for seeking relief under section 473, subdivision (b), had expired, and she failed to show exceptional circumstances justifying equitable relief from the default and default judgment.

I

FACTS AND PROCEDURAL HISTORY

In February 2013, Alawi was involved in an automobile accident with two other vehicles driven by John Roth II and Andrew Sumida. At the time, Financial Indemnity Company (Financial) insured Alawi, Amica insured Roth, and State Farm

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

Mutual Automobile Insurance Company (State Farm) insured Sumida. Two weeks after the accident, Amica wrote a letter advising Financial it intended to assert a subrogation claim against Alawi because Amica concluded she was responsible for the accident. Financial responded by sending a letter acknowledging Amica's subrogation claim and explaining it would contact Financial to discuss settlement after completing its investigation. In the ensuing months, Financial unsuccessfully attempted to settle both Amica's and State Farm's subrogation claims within Alawi's \$5,000 property damage policy limits.

In December 2013, State Farm filed a subrogation action against Alawi seeking the approximately \$11,500 it paid its insured Sumida for the damages he suffered in the accident. Financial retained the law firm of Wasson & Associates to defend Alawi in State Farm's lawsuit and that firm filed an answer on her behalf. Amica was not a party to State Farm's action.

In May 2014, Amica filed this subrogation action against Alawi seeking the approximately \$35,000 it paid its insured Roth for the damages he suffered in the accident. Three months later, Amica personally served Alawi with the summons and complaint at a residence in Dana Point, California. When Alawi failed to answer, Amica took her default in October 2014, and the court entered a default judgment against Alawi in January 2015. Amica served Alawi with the request for entry of default, the request for entry of default judgment, and notice of entry of default judgment by separately mailing copies of those documents to her at the address where it served the summons and complaint. Amica, however, never notified Financial about any of these filings.

In April 2015, the Orange County Clerk-Recorder (Clerk-Recorder) mailed Alawi a courtesy notice informing her Amica had recorded an abstract of judgment against her property based on the default judgment. That same day the California Department of Motor Vehicle (DMV) mailed Alawi notice her driving privileges were suspended because she failed to pay Amica's judgment. Both of these notices were sent

to Alawi at the same address Amica used to serve Alawi with the foregoing documents. Upon receiving these notices, Alawi contacted Financial to inform it about this lawsuit and the default judgment entered against her. Financial promptly retained the law firm of Wasson & Associates to defend Alawi in this action.

After Amica's counsel refused to stipulate to set aside the default and default judgment, Alawi's counsel filed a motion seeking that same relief on three separate theories. First, she argued the court should set aside the default and default judgment under section 473, subdivision (b)'s discretionary relief provision because she was surprised the attorneys representing her in State Farm's action did not appear and protect her interests in this action. Second, Alawi argued the default and default judgment were void and should be set aside because Amica failed to properly serve her with the summons and complaint. According to Alawi, service was improper because she had not lived at the address where service allegedly occurred since 2012. Finally, Alawi urged the trial court to exercise its equitable power to set aside the default and default judgment because they were entered against her based on extrinsic fraud and mistake. In Alawi's view, she reasonably believed the attorneys representing her in State Farm's action would appear and defend her interests in this action because Amica's subrogation claim arose out of the same accident, but the attorneys did not do so because Amica failed to inform either Financial or Alawi's attorneys about this action. Amica opposed the motion.

At the original hearing on the motion, the trial court explained Alawi failed to provide sufficient evidence to support her request for relief, and the court therefore continued the hearing to allow Alawi to file a supplemental declaration. After considering Alawi's supplemental declaration, the court denied her motion in its entirety. First, the court explained discretionary relief under section 473, subdivision (b), was unavailable because Alawi filed her motion more than six months after the court entered her default. Next, the court explained Alawi failed to show the default and default

judgment were void because she never denied receiving those documents even if she was no longer living at the residence where service occurred. Finally, the court explained it could not grant equitable relief because Alawi failed to show the default and default judgment were entered against her because of a reasonable mistake. According to the court, Alawi never denied receiving the summons, complaint, or any other document relating to this action, and provided no explanation why she did not notify Financial or the attorneys representing her in State Farm's action about those documents. The court also notes Amica had no legal duty to notify Financial before taking Alawi's default.

Alawi timely appealed from the trial court's order denying her motion.

II

DISCUSSION

A. *Governing Legal Principles on Relief From Default Judgments*

California law recognizes a variety of grounds upon which a defendant may obtain relief from a default and the ensuing default judgment. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495 (*Cruz*).

Under section 473, subdivision (b), a trial court "may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." The decision whether to grant relief under this provision is vested in the trial court's sound discretion with any doubts resolved in favor of granting relief based on the strong public policy favoring trial and disposition on the merits. (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 695-696 (*Fasuyi*); see Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶¶ 5:400 to 5:401, pp. 5-112 to 5-113.) Relief under section 473, subdivision (b), is mandatory when the request is accompanied by a declaration from the party's attorney attesting that the default and default judgment were entered due to the attorney's "mistake, inadvertence,

surprise, or neglect.” (§ 473, subd. (b); *Matera v. McLeod* (2006) 145 Cal.App.4th 44, 63.)

But relief under section 473, subdivision (b)’s discretionary provision must be sought within six months after entry of the default or other order from which relief is sought, and relief under the mandatory provision must be sought within six months after entry of judgment. (§ 473, subd. (b); *Sugasawara v. Newland* (1994) 27 Cal.App.4th 294, 296-297.) These time limits are jurisdictional; the trial court has no authority to grant relief under section 473, subdivision (b), once the applicable six-month time period expires. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 5:365, p. 5-105; see *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42 (*Manson*).)

“Under section 473, subdivision (d), the court may set aside a default judgment which is valid on its face, but void, as a matter of law, due to improper service.” (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544; see § 473, subd. (d).) Similarly, a judgment that is void on its face for any reason may be set aside at any time under section 473, subdivision (d). (*Manson, supra*, 176 Cal.App.4th at p. 42.)

Trial courts also retain the inherent authority to vacate a default judgment on equitable grounds where the party seeking relief establishes the judgment resulted from extrinsic fraud or mistake. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 (*Rappleyea*); *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228 (*Gorham*).) Equitable relief, however, “may be given only in exceptional circumstances.” (*Rappleyea*, at p. 981.) “[Within the time in which] relief under section 473 is available, there is a strong public policy in favor of granting relief and allowing the requesting party his or her day in court. Beyond this period there is a strong public policy in favor of the finality of judgments and only in exceptional circumstances should relief be granted.” (*Rappleyea*, at pp. 981-982; see *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470 (*Kulchar*); *Gorham*, at pp. 1229-1230 [“Because of the strong public

policy in favor of the finality of judgments, equitable relief from a default judgment or order is available only in exceptional circumstances”].)

Based on these considerations, courts have established a “stringent” three-part test to obtain equitable relief from a default judgment. (*Rappleyea, supra*, 8 Cal.4th at p. 982.) First, the party must demonstrate it has a meritorious case. Second, the party “must articulate a satisfactory excuse for not presenting a defense to the original action” by showing extrinsic fraud or mistake prevented the party from defending the action on the merits. (*Ibid.*; see *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290-291 (*Moghaddam*).) Third, the party must show diligence in seeking to set aside the default judgment once the party discovered it. (*Rappleyea*, at p. 982; *Moghaddam*, at p. 291.)

“The terms ‘extrinsic fraud’ or ‘mistake’ ‘are given a broad meaning and tend to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing. It does not seem to matter if the particular circumstances qualify as fraudulent or mistaken in the strict sense.’” (*In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 505 (*Thorne*); see *In re Marriage of Park* (1980) 27 Cal.3d 337, 342 (*Park*).) “The term ‘extrinsic’ refers to matters outside of the issues framed by the pleadings, or the issues adjudicated.” (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738.)

““Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. [Citation.] Examples of extrinsic fraud are: . . . failure to give notice of the action to the other party, and convincing the other party not to obtain counsel because the matter will not proceed (and then it does proceed). [Citation.] The essence of extrinsic fraud is one party’s preventing the other from having his day in court.” [Citations.] Extrinsic fraud only arises when one party has in some way fraudulently been prevented from presenting

his or her claim or defense.” (*Moghaddam, supra*, 142 Cal.App.4th at p. 290; see *Kulchar, supra*, 1 Cal.3d at p. 471; *Manson, supra*, 176 Cal.App.4th at p. 47.)

“Extrinsic mistake occurs ‘when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits.’ [Citation.] In contrast with extrinsic fraud, extrinsic mistake exists when the ground of relief is not so much the fraud or other misconduct of one of the parties as it is the excusable neglect of the defaulting party to appear and present his claim or defense. If that neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief on the ground of extrinsic mistake is present.” (*Manson, supra*, 176 Cal.App.4th at p. 47; see *Kulchar, supra*, 1 Cal.3d at p. 471; *Cruz, supra*, 146 Cal.App.4th at p. 503.)

“Extrinsic mistake is found when a party becomes incompetent but no guardian ad litem is appointed [citations]; when one party relies on another to defend [citations]; when there is reliance on an attorney who becomes incapacitated to act [citations]; when a mistake led a court to do what it never intended [citations]; when a mistaken belief of one party prevented proper notice of the action [citations]; or when the complaining party was disabled at the time the judgment was entered [citations]. Relief has also been extended to cases involving negligence of a party’s attorney in not properly filing an answer [citations]; and mistaken belief as to immunity from suit.” (*Thorne, supra*, 203 Cal.App.4th at p. 505; see *Kulchar, supra*, 1 Cal.3d at pp. 471-472.)

“Relief is denied, however, if a party has been given notice of an action and has not been prevented from participating therein. He has had an opportunity to present his case to the court and to protect himself from mistake or from any fraud attempted by his adversary. [Citations.] . . . [¶] Relief is also denied when the complaining party has contributed to the fraud or mistake giving rise to the judgment thus obtained. [Citations.] ‘If the complainant was guilty of negligence in permitting the fraud to be practiced or the mistake to occur equity will deny relief.’” (*Kulchar, supra*, 1 Cal.3d at pp. 472-473; see *Park, supra*, 27 Cal.3d at p. 345; *Cruz, supra*, 146 Cal.App.4th at p. 503.)

“We review [a trial] court’s denial of a motion for equitable relief to vacate a default judgment or order for an abuse of discretion, determining whether that decision exceeded the bounds of reason in light of the circumstances before the court. [Citation.] In doing so, we determine whether the trial court’s factual findings are supported by substantial evidence [citation] and independently review its statutory interpretations and legal conclusions.” (*Gorham, supra*, 186 Cal.App.4th at p. 1230.)

B. *Alawi Failed to Establish Extrinsic Fraud or Mistake*

Alawi contends the trial court erred by refusing to grant her equitable relief from the default and default judgment because they resulted both from Amica’s extrinsic fraud and her own extrinsic mistake.² According to Alawi, Amica’s “unprofessional and deceptive actions” caused her default because Amica filed this lawsuit, served her, took her default, and obtained a default judgment without notifying her insurer, Financial, which had been in discussions with Amica about its claim and had requested a courtesy copy of any lawsuit Amica filed. Alawi also contends the default resulted from her reasonable belief that Financial would handle everything relating to the underlying automobile accident because Financial was attempting to resolve the claim with Amica and Financial had hired counsel to represent her in State Farm’s subrogation action. We conclude the trial court did not abuse its discretion because the record shows Alawi had notice of the lawsuit, Amica did nothing to prevent her from participating in the action, and the default resulted from Alawi’s inexcusable neglect in failing to notify Financial about this lawsuit despite receiving notice on several occasions.

The record establishes Amica personally served Alawi with the summons and complaint at a residence in Dana Point, California, and also served her with the

² Alawi does not challenge the trial court’s ruling denying relief under section 473, subdivision (b)’s discretionary relief provision on the ground the request was untimely, nor does Alawi challenge the court’s ruling that the default judgment is not void because Amica properly served the summons and complaint.

request for entry of default, request for default judgment, and notice of entry of default judgment by mailing copies of those documents to the same address. Alawi does not deny she received the summons, complaint, or any other document Amica served. In the trial court, Alawi argued the service of the summons and complaint was improper because she no longer lived at the address where Amica affected service, but the trial court rejected that argument based on the process server's declaration he personally served Alawi and her failure to deny receiving the documents. Alawi does not challenge that ruling on appeal.

Despite receiving all of the documents about this lawsuit, Alawi failed to respond to the complaint or notify Financial about the lawsuit until the Clerk-Recorder and the DMV informed her a lien had been recorded against her property and her driving privileges had been suspended based on her failure to pay Amica's default judgment. Tellingly, the Clerk-Recorder and the DMV sent the notices that finally spurred Alawi to action by mailing them to the same address where Amica had served the summons, complaint, and all other documents about this action.

Other than her professed belief Financial would handle everything regarding the accident, Alawi provides no explanation why she did not notify Financial about this lawsuit until she received the notices from the Clerk-Recorder and the DMV. Her belief Financial would handle everything does not establish a reasonable extrinsic mistake. Financial cannot defend a lawsuit without knowledge of its existence. Alawi does not contend Financial (or even Amica) told her to disregard any documents she received concerning a lawsuit nor is that a reasonable inference that can be drawn from the record.

Moreover, the summons Alawi received clearly warned: "You have been sued. The court may decide against you without your being heard unless you respond within 30 days. . . . [¶] . . . If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further

warning from the court.”³ Alawi’s failure to do anything in the face of this clear warning grew more unreasonable as Amica continued to serve documents on her—first the summons and complaint, then the request for entry of default, followed by the request for default judgment, and finally the notice of entry of default judgment. Alawi cites no authority that justified her complete lack of action in the face of these repeated notices about this lawsuit.⁴

As explained above, extrinsic mistake exists when the defaulting party fails to appear and present a defense through his or her own excusable neglect. (*Kulchar, supra*, 1 Cal.3d at p. 471; *Manson, supra*, 176 Cal.App.4th at p. 47; *Cruz, supra*, 146 Cal.App.4th at p. 503.) On these facts, we cannot fault the trial court’s conclusion that Alawi’s failure to notify Financial or otherwise respond to this lawsuit after receiving the summons and complaint was inexcusable and unreasonable. We emphasize our review of the trial court’s ruling is governed by the deferential abuse of discretion standard, and therefore we may reverse only if we conclude the trial court’s decision is “so irrational or arbitrary that no reasonable person could agree with it.” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) That a different decision could have been reached is not sufficient because we may not substitute our discretion for that of the trial court. The trial court’s ruling must be beyond

³ The record Alawi prepared does not include the summons. On our own motion, we judicially notice the mandatory Judicial Council form summons that must be used in all civil actions. (Evid. Code, § 452, subd. (h); *In re Trenton D.* (2015) 242 Cal.App.4th 1319, 1324, fn. 2 [appellate court may judicially notice Judicial Council forms on its own motion].)

⁴ Although Alawi acknowledges State Farm’s separate subrogation action and Financial’s defense of her interests in that action, she does not contend she delayed telling Financial about this action because she thought the summons, complaint, and other documents she received related to State Farm’s action. A cursory review of the captions from the two actions would rebut any such contention.

the bounds of reason for us to reverse it. (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881-882.) On the record presented, it was not.

The record also does not support Alawi's contention the default and default judgment resulted from Amica failing to comply with Financial's request for a courtesy copy of any lawsuit Amica filed. Alawi's brief does not cite any evidence, and our review of the record failed to disclose any evidence, showing Financial requested a copy of any lawsuit. Indeed, the only evidence Alawi submitted to support her motion was her own declaration and a declaration by the counsel Financial hired to set aside the default judgment. Neither one claimed to have any knowledge about a request for a courtesy copy of any lawsuit Amica filed, and Alawi did not provide a declaration from the adjuster or any other representative of Financial who communicated directly with Amica.

More importantly, Alawi does not contend Amica agreed to provide a courtesy copy of the lawsuit or otherwise agreed to give Financial notice before filing a lawsuit or taking Alawi's default. Without some representation or conduct by Amica that prevented Alawi from appearing and defending this action, there is no basis for a claim extrinsic fraud caused Alawi's default. (See *Kulchar, supra*, 1 Cal.3d at p. 471; *Moghaddam, supra*, 142 Cal.App.4th at p. 290 [““The essence of extrinsic fraud is one party's preventing the other from having his day in court””]; *Manson, supra*, 176 Cal.App.4th at p. 47.)

Acknowledging that no California authority required Amica to provide Financial with notice of this lawsuit, Alawi cites Arizona case law to support her contention public policy favors setting aside a default judgment against an insured when the insurer was not given notice of the action. (See *Union Oil Co. v. Hudson Oil Co.* (1982) 131 Ariz. 285; *East v. Hedges* (1980) 125 Ariz. 188, 189; *Camacho v. Gardner* (1969) 104 Ariz. 555, 560-561 (*Camacho*)). Alawi urges us to adopt a similar rule for California, but such a rule runs counter to existing authority addressing the analogous

situation of whether an attorney has an obligation to warn opposing counsel before taking the default of a represented party.⁵

In California, case law consistently condemns the conduct of attorneys who know a defendant is represented by counsel, but proceed to take that defendant's default without warning the defendant's lawyer. Case law, however, makes clear that any obligation to warn opposing counsel before taking a default is an ethical obligation, not a legal one: “““While as a matter of professional courtesy counsel should have given notice of the impending default, and we decry this lack of professional courtesy [citation], counsel was *under no legal obligation* to do so.””” (*Fasuyi, supra*, 167 Cal.App.4th at pp. 701-702; see *Bellm v. Bellia* (1984) 150 Cal.App.3d 1036, 1038 (*Bellm*); *Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 619-620.)

Similarly, Amica was under no legal obligation to warn Financial before taking Alawi's default. As a matter of professional courtesy, Amica should have given Financial notice about this lawsuit before taking Alawi's default, and we deplore its failure to do so. Nonetheless, the failure to give that notice did not require the trial court to set aside the default and default judgment in the face of evidence showing Alawi received notice of this action and failed to notify Financial or otherwise respond to the complaint. (See *Bellm, supra*, 150 Cal.App.4th at p. 1038 [failure to warn opposing counsel before taking defendant's default does not require trial court to grant relief from default and default judgment].)

Alawi also contends Amica caused her default by failing to file a notice of related case to inform the court and the attorney representing her in State Farm's

⁵ Although it may be good public policy to adopt a rule requiring notice to a party's insurer before the party's default may be entered, it is for our Supreme Court to adopt that rule. The Arizona cases on which Alawi relies demonstrate that it was the Arizona Supreme Court that adopted a similar rule for that state, not an intermediate appellate court. (*Camacho, supra*, 104 Ariz. at pp. 560-561.)

subrogation action about this lawsuit. According to Alawi, if Amica had filed a notice of related case, her counsel in the State Farm action would have prevented her default in this action. Again, Alawi cites no authority to support her contention Amica was required to file a notice of related case and its failure to do so required the trial court to grant her motion to set aside the default judgment. At most, Amica's counsel in the State Farm action had a professional obligation to inform Alawi's counsel about this case, but, as explained above, that obligation did not require the trial court to grant Alawi relief in the face of overwhelming evidence she received notice of this action and failed to inform Financial. Moreover, although Alawi claims Amica knew about State Farm's action, she cites no evidence to support that claim. Amica was not a party to State Farm's action and we found no evidence in the record establishing it had notice of that lawsuit.

Finally, Alawi contends the strong public policy in favor of deciding cases on their merits required the trial court to grant her motion. As explained above, that policy only applies to motions brought within the time for seeking relief under section 473, subdivision (b). Once the time for a motion under that section has expired, the policy in favor of deciding cases on their merits is supplanted by the strong public policy in favor of the finality of judgments, and a court may grant relief only in exceptional circumstances. (*Rappleyea, supra*, 8 Cal.4th at pp. 981-982; see *Kulchar, supra*, 1 Cal.3d at p. 470; *Gorham, supra*, 186 Cal.App.4th at pp. 1229-1230.) Alawi brought her motion after the time for seeking relief under section 473, subdivision (b), expired and she failed to establish exceptional circumstances justifying relief from the default and default judgment. No abuse of discretion is shown.

III
DISPOSITION

The postjudgment order is affirmed. Amica shall recover its costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.