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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

BEHZAD IMANI,

Plaintiff and Respondent,

v.

HAMID BARANRIZ,

Defendant and Appellant.

H039833

(Santa Clara County  
Super. Ct. 110CV176550)

Defendant Hamid Baranriz purports to appeal from an order denying his motion to vacate a clerk’s entry of default in this action for breach of contract and fraud, brought by plaintiff Behzad Imani. As defendant has sought review of a nonappealable order, we will dismiss the appeal.

*Background*

Plaintiff initiated this action in July 2010, claiming damages of \$26,966 for breach of contract and fraud relating to the dissolution of the parties’ business relationship.<sup>1</sup> Defendant did not answer the complaint. In January 2011, however, the parties executed a document bearing the title “Settlement Agreement Between Behzad Imani and Hamid Baranriz.” In that document they agreed that defendant would pay specified business

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<sup>1</sup> To the extent that the agreement was reduced to writing, the document was not provided in the appellant’s appendix.

debts amounting to \$21,950 and that half of that amount “should be deducted from the \$26,976 law suit [sic].”

On May 2, 2012, plaintiff filed an application for entry of default, referencing the July 2010 complaint. The clerk entered the default that day. On December 11, 2012, plaintiff requested a default judgment pursuant to Code of Civil Procedure section 585.<sup>2</sup> The amount he requested as the “[d]emand of complaint” was not the original \$26,966 but the amount set forth in the settlement agreement, \$16,675. Adding \$470 in costs brought the total claim to \$17,145.

Ten days later defendant moved to vacate the May 2 entry of default “and any judgment that may have been subsequently entered against him.” Defendant contended that the entry of default was “void” because the affidavit of mailing was “not legally competent evidence.”

On February 4, 2013, the court entered the default judgment for plaintiff and awarded him the amount he had requested, \$17,145. On August 1, 2013, defendant filed a motion for a new trial, followed the next day by a notice of appeal from the default judgment (*Imani v. Baranriz* (Dec. 10, 2014, H039983) [nonpub opn.]). On September 23, 2013, the court denied the motion for a new trial.

Meanwhile, on February 5, 2013, the parties appeared at a hearing before a different judge of the superior court on the motion to vacate entry of default. On May 1, 2013, the court denied that motion, finding “no defect in service and thus no basis to conclude that the Clerk acted in excess of his/her power by entering Plaintiff’s request for default.” Defendant filed his notice of appeal from that order on June 28, 2013.

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<sup>2</sup>

All further statutory references are to the Code of Civil Procedure.

### *Discussion*

The procedural posture of this case illustrates why there are rules governing the appealability of certain orders. Defendant took multiple avenues in a belated attempt to avoid the consequences of his default and obtain a judgment in his own favor: a motion to vacate entry of default, a motion for a new trial, a motion to vacate the denial of the new-trial motion,<sup>3</sup> an appeal from the default judgment, and this appeal from the order refusing to vacate the clerk's entry of default. Plaintiff has been representing himself over the entire four-year course of these proceedings, responding to each of defendant's tactics.

It has long been settled that an order denying a motion to vacate a clerk's entry of default is not appealable, just as the entry itself is nonappealable. (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960; *Winter v. Rice* (1986) 176 Cal.App.3d 679, 682.) Such orders are reviewable only on appeal from the default judgment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1146.) Here, defendant did appeal from the default judgment in H039983;<sup>4</sup> but instead of including his claim of ineffective service in that appeal, he chose to file a separate notice of appeal.

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<sup>3</sup> The court initially denied the motion for a new trial as untimely, but upon defendant's motion to vacate that order, it recognized the motion as in fact timely and set aside that ruling.

<sup>4</sup> Defendant's attorney calls this court's attention to the appeal from the default judgment and even advises us that "there is no need to formally consolidate the appeals. Strictly speaking, the two appeals could be decided by different panels, but the court will want to consider the advisability of both being decided by the same panel." This court appreciates the appellate guidance counsel offers, but his client would have been better served by attending to his own procedural obligations.

On October 22, 2014, we asked the parties to explain why this appeal should not be dismissed as taken from a nonappealable order.<sup>5</sup> Defendant responded that it is appealable as an order after judgment under section 904.1, subdivision (a)(2). He is mistaken. “[N]ot every postjudgment order that follows a final appealable judgment is appealable. To be appealable, a postjudgment order must satisfy two additional requirements. . . . The first requirement . . . is that the issues raised by the appeal from the order must be different from those arising from an appeal from the judgment. [Citation.] . . . ‘The reason for this general rule is that to allow the appeal from [an order raising the same issues as those raised by the judgment] would have the effect of allowing two appeals from the same ruling and might in some cases permit circumvention of the time limitations for appealing from the judgment.’ ” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651 (*Lakin*), quoting *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 358; *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 161.) The other requirement is that the postjudgment order must “affect the judgment or relate to its enforcement.” (*Lakin, supra*, at p. 654.) Section 906 reinforces these principles by explaining that in an appeal taken pursuant to section 904.1 or 904.2, “the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party.” The statute then cautions, “The provisions of this section do not authorize the reviewing court to review any decision or order *from which an appeal might have been taken.*” (§ 906, italics added.)

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<sup>5</sup> We also advised them that we were considering imposing sanctions on defendant for bringing a frivolous appeal, pursuant to section 907 and California Rules of Court, rule 8.276(a). Although it is a very close call, we decline to impose sanctions.

In light of section 906 and the guidance offered by *Lakin*, this appeal cannot be entertained. With regard to the second criterion, the May 9, 2013 order “ ‘neither added to nor subtracted from the relief granted in the judgment, nor did [it] adjudicate any rights or establish any liabilities’ ” of the parties. (*Lakin, supra*, 6 Cal.4th at p. 654.) Even more apposite is the first *Lakin* criterion. The issues defendant raises are primarily addressed to the clerk’s entry of default; they could have, and should have, been asserted in his appeal from the default judgment. Instead, defendant chose to file a separate notice of appeal, thus forcing plaintiff unnecessarily to respond to a new set of arguments. Defendant then adds an argument duplicating the principal argument raised in H039983, the appeal from the default judgment, and he seeks the same remedy on that ground—reversal of the default judgment and entry of judgment for him.

To permit this strategy in contravention of established appellate procedure would only defeat its purpose, to foreclose litigants from bringing two appeals from the same decision. (Cf. *Scognamillo v. Herrick, supra*, 106 Cal.App.4th at p. 1146.) Defendant offers no applicable authority or other cogent justification for his taking two appeals in evident disregard of long-established rules of appellate procedure.

#### *Disposition*

The appeal is dismissed. Plaintiff is entitled to his costs on appeal.

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ELIA, Acting P. J.

WE CONCUR:

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MIHARA, J.

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MÁRQUEZ, J.