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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

W.G. WELLS et al., Plaintiffs and Appellants, v. AMERICANTEX, INC., Defendant and Respondent.	B235019 (Los Angeles County Super. Ct. No. BC313252)

APPEAL from a judgment of the Superior Court of Los Angeles County. Matthew St. George, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

W.G. Wells, in pro. per., for Plaintiff and Appellant W.G. Wells; Phillip L. Tangalakis for Plaintiff and Appellant Valuation Systems.

Century City Law Group, Robin Mashal for Defendant and Respondent.

William G. Wells and his corporation are judgment debtors. In this appeal, they seek to prevent the judgment creditor's assignee from executing on the judgment. For reasons given below, we affirm the trial court's denial of appellants' postjudgment motion to strike the judgment creditor's assignment of his judgment, quash the writ of execution and enjoin the assignee from collecting on the debt.

FACTS

This is another installment of litigation that began more than a decade ago, generating several appeals to this Court.[1] Appellants William G. Wells and his company Valuation Systems leased commercial real estate to Richard Ciotti in 1998. Ciotti secured a judgment against appellants in 2002, in a dispute over the lease. Under a lease provision directing an award of attorney fees and costs to the prevailing party, the trial court awarded Ciotti fees and costs of over $56,000 incurred between 2001 and January 2003. This Court affirmed the 2004 fee award on appeal. (*Wells v. Ciotti* (Feb. 3, 2006, B179092) [nonpub. opn.].)

Ciotti filed a new motion for postjudgment attorney fees incurred from February 2003 until March 2005. The trial court awarded Ciotti $51,645 in June 2005. Appellants challenged the award—and the judge who gave the award—on appeal. This Court rejected the challenge to the judge, but vacated the attorney fee award because Ciotti's fee request was untimely. (*Wells v. Ciotti* (Sept. 28, 2006, B184691) [nonpub. opn.].)

In 2009, Ciotti assigned his judgment against appellants to respondent Americantex, Inc. Ciotti declared that appellants owe him $108,032: this represented the attorney fees awarded to him in 2004 (over $56,000) and the attorney fees awarded to him in 2005 (over $51,000). Ciotti failed to mention that the 2005 fee award was vacated on appeal in 2006. Americantex obtained an abstract of judgment for $108,032, naming Wells as the judgment debtor.

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[1] We take judicial notice of the prior appeals in this case, and the opinion of the State Bar court disbarring Wells, as did the trial court. (*People v. Vigil* (2008) 169 Cal.App.4th 8, 12, fn. 2.)

In June 2011, appellants filed a "Motion to Strike, Vacate and Quash an Alleged Assignment of Attorney Fee Orders . . . and to Order that Such Attorney Fee Order Is Satisfied." Appellants asked the court (1) to strike Ciotti's assignment of his judgment to Americantex; (2) to vacate Ciotti's assignment; (3) to quash the writ of execution and the abstract of judgment; (4) to order Americantex to give notice that the judgment has been fully satisfied; (5) to enjoin Americantex from initiating any attorney fee claim against appellants; and (6) to find that the attorney fee award is satisfied by rent offsets owed by Ciotti. Appellants noted that the 2005 fee award was vacated on appeal. They did not serve their motion on Ciotti, only on Americantex.

In support of their motion, appellants offer precious little evidence and even less legal authority. Wells declares in a conclusory fashion that Ciotti owes him $246,828 in back rent for 2003 to 2005. Wells maintains that an offset for rent was court-approved, but offers as proof a September 2003 minute order stating only "Motion is granted"; it is unclear what (if anything) the minute order accomplishes with respect to the attorney fee award rendered in 2004. Appellants cite a single legal authority as the basis for their motion: Code of Civil Procedure section 436, a pleading statute.[2]

Americantex opposed appellants' motion, stating that even if the dollar amount of appellants' debt is in question, it does not justify the relief that appellants seek. The trial court's 2003 rent offset order preceded the 2004 attorney fees award, and does not apply here. Americantex contended that the motion should be denied because it is unsupported by admissible evidence or legal authority.

The parties stipulated that a commissioner could hear the matter as a judge pro tem. At the hearing on July 19, 2011, the judge stated that the Court of Appeal affirmed one of the attorney fee orders, "So it appears the dispute may be over the amount that's due. But that does not appear to be basis for me to strike the assignment order. And I don't have any basis to find that the order itself has been satisfied." Wells pointed to his

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[2] All undesignated statutory references in this opinion are to the Code of Civil Procedure.

declaration as proof that the attorney fee award against him has been offset by overdue rent. In response, the court observed that Wells was disbarred due to "your repeated dishonesty under oath, which made [me] give very little credence to your declaration." The court denied appellants' motion, and they appealed.

On July 27, 2011, Wells asked that the judge pro tem be disqualified because of "a personal bias and prejudice against myself . . . ." His request was denied because there is "no pleading or motion pending before this court to which this declaration may be relevant."

DISCUSSION

Appellants asked the trial court to "strike" or "vacate" Ciotti's assignment of his judgment to Americantex. Although their request obviously affects the rights of defendant/assignor Ciotti, appellants did not serve him with their motion. The motion was properly denied because a ruling in favor of appellants would result in a due process violation: Ciotti was deprived of notice and an opportunity to be heard about the validity of his assignment.

Appellants cited section 436 in their moving papers as legal authority for all of their requested actions. A party may move to strike "to respond to a pleading," which is defined as a demurrer, answer, complaint, or cross-complaint. (§ 435.) When a motion to strike is made, the court may excise from the pleading irrelevant, false, or improper matters that do not conform with state law or court order. (§ 436.) Ciotti's assignment of his judgment is not a "pleading" subject to a motion to strike. The trial court properly denied appellants' motion for lack of relevant legal authority on which to base a ruling.

Ciotti is entitled to transfer his right to recover money in a judicial proceeding to Americantex. (Civ. Code, §§ 953, 954.) As assignee of the judgment, Americantex stands in the shoes of Ciotti, acquiring all of his rights and remedies against appellants. "An assignment carries the legal title to the judgment" and does not require consideration to be valid. (*In re Brooms* (Bankr. 9th Cir. 2011) 447 B.R. 258, 265.) When Ciotti assigned his judgment to Americantex in 2009, the assignment included all of Ciotti's

rights in this action, including his right to recover attorney fees from appellants as the prevailing party in a dispute over the lease.

Money judgments may be enforced with a writ of execution issued by the court clerk. (§ 699.510.) A judgment debtor may move to recall and quash a writ of execution if it was improperly issued after the judgment was fully paid, or if the writ fails to account for legitimate offsets against payment due. (*Meyer v. Meyer* (1952) 115 Cal.App.2d 48, 49; *In re Marriage of Peet* (1978) 84 Cal.App.3d 974, 977; *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1064-1065.) The judgment debtor challenging a writ of execution has the burden of proving the existence of each fact essential to his claim for relief. (Evid. Code, §500.) Resolution "is a matter for the sound discretion of the trial court to be determined from the facts and circumstances of each case." (*In re Marriage of Peet*, at p. 976.)

Appellants claim that the judgment was fully satisfied or offset by rents. As the trial court found, there is no proof that the judgment was fully satisfied: only the 2005 fee award was vacated, leaving the 2004 fee award for $56,000 intact. In a declaration, Wells dishonestly omitted any mention of the 2004 fee award and conveniently forgot to attach a copy of the appellate opinion affirming that award. The trial court found that Wells lacks credibility as a witness. If Wells was willing to deceive the court in a sworn declaration about the valid 2004 fee award, then it should come as no surprise that Wells would be equally willing to dissemble about unpaid rent.

Wells has pursued a pattern of dishonesty when he appears in court. This Court upbraided him for making false claims in a prior appeal in this case.[3] Wells was

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[3] We wrote, "In their opening brief, [Wells and Valuation Systems] falsely claim that the trial judge was served with their disqualification papers on May 18, 2005. Using this manufactured date of service, appellants argue that the court was disqualified by operation of law before the June 14 hearing on the motion for attorney fees. Not until this Court questioned appellants' service on the trial judge did they admit that the trial court was not served with their papers until June 14, the very day of the hearing, and almost a month after the date specified in their opening brief." (*Wells v. Ciotti, supra,*

disbarred for (among other things) repeatedly lying under oath and misappropriating settlement proceeds. The trial court took into consideration Wells's documented history of lying under oath when it discounted his declaration. This does not constitute "[b]ias or prejudice toward a lawyer in the proceeding." (§ 170.1, subd. (a)(6)(A)(B).)[4] If Wells has no credibility as a witness in the courts, it is a situation of his own making. Dishonorable conduct carries consequences.

On a final note, Americantex's brief "respectfully prays to recover its attorney's fees and costs on appeal." As the prevailing party in this appeal, respondent is entitled to recover its costs. (Cal. Rules of Court, rule 8.278(a)(1).) Respondent does not explain why it is entitled to its attorney fees on appeal as the assignee of Ciotti's *judgment* (as opposed to being the assignee of Ciotti's 1998 *lease agreement* with appellants, which contains an attorney fees clause). Respondent may bring a timely motion in the trial court—supported by relevant legal authority—in an effort to convince the lower court that it is entitled to recover contractual or statutory attorney fees incurred on appeal. If the trial court determines that respondent is entitled to appellate attorney fees, it should set the amount of the award.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J. ASHMANN-GERST, J.

B184691.) As a result of "appellants' dishonest conduct in this Court," we denied them recovery of their appellate costs. (*Ibid.*)

[4] Appellants' belated attempt to disqualify the trial judge for bias is not reviewable on appeal. (§ 170.3, subd. (d); *People v. Panah* (2005) 35 Cal.4th 395, 444.)