

App. 1

**NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO**

HAMRICK & EVANS, LLP,	B287437
Plaintiff and Respondent,	(Los Angeles County
v.	Super. Ct. No.
DAVID SILVER,	BC663869)
Defendant and Appellant.	(Filed Jun. 4, 2019)

APPEAL from a judgment of the
Superior Court of Los Angeles County.
Gregory Wilson Alarcon, Judge. Affirmed.

David Silver, in pro. per., for Defendant and Appellant.

Hamrick & Evans, A. Raymond Hamrick, III and
Neer Lerner for Plaintiff and Respondent.

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David Silver (Silver) appeals from a default judgment in favor of plaintiff and respondent Hamrick & Evans, LLP (H&E). We find no error and affirm.

FACTS

In November 2017, H&E filed a request for default judgment in the amount of \$96,378.94 against Silver. The trial court entered judgment accordingly. Subsequently, Silver filed this appeal.

We dismissed this appeal on April 19, 2018. Remittitur issued on June 20, 2018. Then, on July 30, 2018, we recalled the remittitur and vacated the dismissal.

DISCUSSION

Silver identifies the appellate issues as: (1) whether H&E lacked standing to request default judgment because it took more than 30 days to serve process; (2) whether the trial court erred by giving notice that it would rule on the request for default judgment on November 6, 2017, when it instead entered default judgment on November 8, 2017; (3) whether the trial court erred by not serving any documents on Silver; (4) whether H&E committed extrinsic fraud by sending notice of the case management conference to Silver's former office address instead of to his legal address; (5) whether the default judgment is void due to lack of notice; and (6) whether a July 30, 2018, order recalling remittitur and vacating dismissal of this appeal reduced or eliminated the judgment.

App. 3

As a preliminary matter, we note that Silver improperly attached various exhibits to his opening brief.¹ California Rules of Court, rule 8.204(d) provides that exhibits or other materials may be attached to an appellate brief, but only if they are otherwise in the appellate record. The appellate record contains only the request for default judgment and default judgment. We must limit our review to only those documents. Regardless, even if we considered the exhibits to Silver's opening brief, his arguments do not establish reversible error.

Other than his remittitur and service of process arguments, Silver's position essentially boils down to a claim that the judgment is void due to lack of various notices based on either the alleged fault of the trial court or alleged extrinsic fraud by H&E. But Silver cites no law providing that he can raise these challenges for the first time on appeal. Moreover, our own research has not revealed any case law or statutes obviating the need for Silver to first file a motion pursuant to Code of Civil Procedure section 473, subdivision (d)—the statute permitting a party to move to set aside a void judgment—or to attack the judgment either directly or collaterally through common law remedies. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1229 [noting the various methods for attacking void judgments based on lack of due process].)

¹ We deny Silver's request for the exhibits to be considered.

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Silver avers that H&E lacks standing because it served him more than 31 days after the complaint was filed on June 5, 2017. He cites no law supporting his argument. Notably, Code of Civil Procedure section 583.210, subdivision (a) provides that a summons and complaint “shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed.”

Finally, Silver cites no law establishing that our order recalling the remittitur and vacating the dismissal of this appeal had any effect on the judgment.

“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]” (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) Given that all of Silver’s arguments lack legal support, we deem each of them waived.

DISPOSITION

The judgment is affirmed. H&E is entitled to recover its costs on appeal.

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_____, J.
ASHMANN-GERST

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We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ

App. 6

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, state bar number, and address</i>): Raymond Hamrick, III, Esq. (93821) Kenneth A. Hearn, Esq. (87537) HAMRICK & EVANS, LLP 2600 West Olive Avenue, Suite 1020 Burbank CA 91505 TELEPHONE NO.: 818-763-0592 FAX NO. (<i>Optional</i>): 818-763-2308 E-MAIL ADDRESS (<i>Optional</i>): ray@hamricklaw.com; khearn@hamricklaw.com ATTORNEY FOR (<i>Name</i>): Plaintiff HAMRICK & EVANS, LLP</p>	<p>FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles NOV 08 2017 Sherri R. Carter, Executive Officer/ Clerk By /s/ <u>C. Khalil</u> Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT</p>	
<p>PLAINTIFF: Hamrick & Evans, LLP DEFENDANT: Northern Hills, Inc., etc., et al.</p>	

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JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On stipulation <input type="checkbox"/> After Court Trial <input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER: BC663869
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JUDGMENT

BY DEFAULT

- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d. **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
- e. **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - (1) plaintiff's testimony and other evidence.
 - (2) plaintiff's written declaration (Code Civ. Proc., § 585(d)):

ON STIPULATION

- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
- b. the signed written stipulation was filed in the case.
- c. the stipulation was stated in open court
 the stipulation was stated on the record.

AFTER COURT TRIAL The jury was waived. The court considered the evidence.

- a. The case was tried on (*date and time*):
before (*name of judicial officer*):
- b. Appearances by:
 - Plaintiff Plaintiff's attorney
(*name each*): (1) (1)
(2) (2)
 - Continued on Attachment 3b.
 - Defendant Defendant's attorney
(*name each*): (1) (1)
(2) (2)
 - Continued on Attachment 3b.
- c. Defendant did not appear at trial. Defendant was properly served with notice of trial.
- d. A statement of decision (Code Civ. Proc., § 632) was not was requested.

JUDGMENT IS ENTERED AS FOLLOWS BY:

THE COURT **THE CLERK**

Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

Parties. Judgment is

a. for plaintiff (*name each*): Hamrick & Evans, LLP
and against defendant (*names*): David Silver, an individual, and Northern Hills, Inc., a New Mexico corporation d/b/a Santa Fe Capital Group
 Continued on Attachment 5a.

b. for defendant (*name each*):

c. for cross-complainant (*name each*):
and against cross-defendant (*name each*):
 Continued on Attachment 5c.

d. for cross-defendant (*name each*):

Amount

a. Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$ 86,662.22
(2) <input checked="" type="checkbox"/> Prejudgment interest at the annual rate of 10%	\$ 8,666.22
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input checked="" type="checkbox"/> Costs	\$1,050.50
(5) <input type="checkbox"/> Other (specify)	\$
(6) TOTAL	\$ 96,378.94

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b. Plaintiff to receive nothing from defendant named in item 5b.

Defendant named in item 5b to recover costs \$
 and attorney fees \$

c. Cross-defendant named in item 5c above must pay cross-plaintiff on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify)	\$
(6) TOTAL	\$ 0.00

d. Cross-complainant to receive nothing from cross-defendant named in item 5d.

Cross-defendant named in item 5d to recover costs \$
 and attorney fees \$

Other (specify): Prejudgment interest is calculated from November 22, 2016

Date: NOV 08 2017 /s/ [Illegible]

JUDICIAL OFFICER

Date: Clerk, by GREGORY W. ALARCON, Deputy

(Seal)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**

I certify and state that I am now and at all times herein mentioned was, a citizen of the United States, over the age of eighteen (18) years, a resident of the County of Los Angeles, and not a party to the within action or cause. My business address is Hamrick & Evans, LLP, 2600 West Olive Avenue, Suite 1020, Burbank, California 91505.

I hereby certify that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I further certify that on October 19, 2017, I caused to be served the copies of the attached:

JUDGMENT (BY COURT/BY DEFAULT)

on the parties in said action as follows:

BY REGULAR MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing at

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my place of business following ordinary business practices. Said document(s) will be deposited with United States Post Office mail box at Burbank, California, addressed as follows:

SEE ATTACHED SERVICE LIST

- BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile machine, telephone number (818) 763-2308, pursuant to California Rules of Court, Rule 2005. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e), I caused the machine to print a record of the transmission, a copy of which will be provided upon request. Said fax transmission occurred as stated in the transmission record and was directed as stated above.
- BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- BY ELECTRONIC MAIL:** On the above-mentioned date, from Burbank, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.

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- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on October 19, 2017, at Burbank, California.

/s/ Andrea Millman
ANDREA MILLMAN

SERVICE LIST

DAVID SILVER, CEO
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Corporation, dba SANTA FE CAPITAL GROUP
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CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Appellate Courts Case Information

Supreme Court Change court

Court data last updated: 09/24/2019 08:23 AM

Case Summary

Supreme Court **S256869**

Case:

Court of Appeal Second Appellate District, Div. 2

Case(s): B287437

Case Caption: HAMRICK & EVANS v. SILVER

Case Category: Review – Civil Appeal

Start Date: 07/15/2019

Case Status: case closed

Issues: none

Disposition Date: 08/21/2019

Case Citation: none

Cross Referenced Cases:

No Cross Referenced Cases Found

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