Judicial Notice Exhibit 15

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GARY HUMPHREYS et al., Cross-complainants and Respondents, v. ADAM BEREKI, Cross-defendant and Appellant.	G065695 (Super. Ct. No. 30-2015-00805807) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, David J. Hesseltine, Judge. Dismissed.

Adam Bereki, in pro. per., for Cross-defendant and Appellant.

Law Offices of William G. Bissell and William G. Bissell for Cross-complainants and Respondents.

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THE COURT:*

"California courts have the inherent power to *dismiss* frivolous appeals." (*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1318.) "Of course, it is a power that should not be used except in the absolutely clearest cases." (*Ibid.*) This is such a case. We grant respondents' motion to dismiss because the appeal is premised on relitigating issues heard and decided seven years ago.

FACTS

In 2018, this court affirmed an April 2017 judgment against appellant Adam Bereki. The judgment ordered Bereki to repay (Bus. & Prof. Code, § 7031, subd. (b))[1] $848,000 he had received for work on a condominium remodeling project. (*Humphreys v. Bereki* (Oct. 31, 2018, G055075) [nonpub. opn.].) It was not a default judgment; Bereki participated in the bench trial.

Our court's opinion rejected Bereki's seven arguments on appeal. Two of those arguments were: "(1) disgorgement under section 7031, subdivision (b), is unconstitutional or, alternatively, criminal in nature; [and] (2) the trial court erred in ordering disgorgement because [plaintiff] Spartan Associates, not Bereki, performed the work and Spartan Associates held a contractor's license." (*Humphreys v. Bereki*, *supra*, G055075.) We also summarily denied Bereki's petition for rehearing (which featured 11 separate arguments, including an argument that this court erred by declining to characterize disgorgement due to the lack of a contractor's license as a

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* Before Moore, Acting P. J., Delaney, J., and Gooding, J.

[1] All further statutory references are to the Business and Professions Code unless otherwise indicated.

penalty, amounting to unconstitutional punishment or punitive damages under United States Supreme Court case law).

The California Supreme Court denied Bereki's petition for review and the United States Supreme Court denied his petition for writ of certiorari.

In February 2019, Bereki filed a motion to vacate the judgment as void; the trial court denied the motion in March 2019 concluding the 2019 motion was an attempt to argue issues "already raised and rejected."

Also in 2019, Bereki filed a lawsuit in federal district court regarding the same dispute. Among other reasons, that lawsuit was dismissed in 2020 "because [Bereki was] collaterally stopped from bringing [the] action." The Ninth Circuit Court of Appeals dismissed Bereki's appeal because it was frivolous.

In May 2025, Bereki filed a second motion in the trial court to vacate the judgment, which he continued to characterize as "void."

Bereki's recent motion contended the judgment was void "based on new evidence of extrinsic fraud and fraud on the court . . . . The new evidence includes a U.S. Supreme Court case [*Liu v. Securities and Exchange Commission* (2020) 591 U.S. 71] defining the nature and scope of the equitable remedy 'disgorgement' used to conceal the penal forfeiture in this case and [a new California case, *Eisenberg Village etc. v. Suffolk Construction Co., Inc.* (2020) 53 Cal.App.5th 1201], recognizing the penal nature of [section 7031]."

Bereki's motion added, "The judgment is void ab initio, due to lack of personal and subject matter jurisdiction, extrinsic fraud, fraud on the court, and due/judicial process violations, including no evidence [Bereki] personally performed construction work, as required by CACI [No.] 4560(3),

and misapplication of [section] 7031[, subdivision] (a) and (b) when, assuming [Bereki] violated the licensing laws which he disputes, [section] 7028.5 would have been the correct statute. Section 7031[, subdivision] (b), as applied, is a penal action, not a civil equitable remedy under the law of unjust enrichment referred to as 'disgorgement', imposing punishment without executive authority or criminal safeguards as confirmed by new evidence: [the two cases identified in the preceding paragraph above]."

On June 26, 2025, the trial court denied the motion, pointing to the procedural history summarized above and concluding this was an attempt to argue "the Court of Appeal either did not sufficiently consider [certain issues] or got [those issues] wrong."

This appeal followed. After the appellate record was filed, respondents promptly moved to dismiss (Cal. Rules of Court, rule 8.54(a)), primarily on the ground that Bereki's arguments are barred because they have already been raised and rejected.[2]

ANALYSIS

A trial court may grant a motion to "set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d); see *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 15 [courts have "inherent nonstatutory power . . . to set aside void judgments"].) Our review of whether a judgment is void is de novo. (*Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822.) There is no fixed deadline to file a

[2] Respondents also contend the appeal is moot because Bereki was apparently discharged from his obligations to respondents by a bankruptcy court in 2023. Bereki contests mootness. We need not reach this issue.

motion to set aside a void judgment. (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 225.)

But there are limited circumstances in which a judgment may be accurately classified as void, as opposed to voidable or even just not accepted as legitimate by a tenacious litigant. Trial courts lack discretion "to set aside a judgment that is not void [o]nce six months have elapsed since the entry of a judgment." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495–496.)

"A judgment is 'void' . . . when the court entering that judgment 'lack[ed] jurisdiction in a fundamental sense' due to the '"entire absence of power to hear or determine the case"' resulting from the '"absence of authority over the subject matter or the parties."'" (*People v. The North River Ins. Co.* (2020) 48 Cal.App.5th 226, 233.) In other words, a judgment is void if the court entering judgment lacked subject matter jurisdiction over the dispute or personal jurisdiction over the party challenging the judgment. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1226 (*Gorham*).)

A judgment may also be "void" if it is procured by extrinsic fraud, resulting in a party being "prevented from presenting his or her claim or defense." (*Department of Industrial Relations v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App.4th 560, 570.) By "extrinsic fraud," courts mean a situation in which '"'"the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff."' [Citation.] In those situations, there has not been 'a real contest in the trial or hearing of the case,' and the

judgment may be set aside to open the case for a fair hearing." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47 (*Manson*).)

Likewise, a judgment may be "void" if it is the result of "extrinsic mistake." "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.)

Other than a lack of subject matter jurisdiction, the existing grounds identified above for deeming a judgment "void" are directed to default judgments or trials that lack the participation of the losing side, i.e., situations in which a party simply does not appear at trial for one reason or another.[3] Default judgments may also be void if, e.g., the damages awarded exceed the amount prayed for in the operative pleading or statement of damages (*David S. Karton, A Law Corp. v. Dougherty* (2009) 171 Cal.App.4th 133, 150). Here, of course, the judgment at issue is not a default judgment or the result of a trial with only one side's participation. Bereki appeared at every phase of the proceedings and judgment was on the merits.

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[3] Of course, there may be other potential fact patterns, mercifully absent from California published cases, that could result in a judgment being deemed void, even with all parties participating at trial. (Cf. *Freedom Communications, Inc. v. Coronado* (Tex. 2012) 372 S.W.3d 621, 622 [order granting summary judgment was characterized as void on direct appeal "because the trial court judge accepted a bribe"].)

A judgment is not "void" merely because a court commits legal error, even extreme errors that are categorized as "voidable" and in excess of a court's jurisdiction. (*Johnson v. E-Z Ins. Brokerage, Inc.* (2009) 175 Cal.App.4th 86, 98–99.)

The gist of Bereki's motion is that the trial court and this court reached the wrong conclusions in 2017 and 2018 based on an incorrect understanding of the law and incorrect factual findings.

This was a dispute between contracting parties in Newport Beach, California. Money was exchanged for home renovations. One key factual dispute concerned whether Bereki himself (an individual who lacked a contractor's license) or the entity Spartan Associates (which apparently did have a contractor's license) was the party that contracted with respondents and performed work for respondents. The California state courts had subject matter jurisdiction to decide these questions. No facts are alleged to suggest that Bereki was misled about the time or location of trial. Indeed, Bereki appeared at trial and fully participated, raising numerous legal and factual arguments through trial, appeal, rehearing, petition for review, and petition for writ of certiorari. The California courts had personal jurisdiction over Bereki. No factual claim of extrinsic fraud, extrinsic mistake, of fraud on the court is identified.[4]

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[4] Bereki's opposition to the motion to dismiss points to an amended declaration filed in the trial court as containing support for "fraud" allegations. He claims the extrinsic fraud at issue was the inaccurate representation that the lawsuit was civil in nature, when in fact it was a criminal proceeding in which a penalty was imposed upon him. This is just another way of restating his legal arguments. It is not extrinsic fraud or fraud on the court to file a lawsuit, make legal arguments, or testify about facts. It is not fraud for a court to make factual findings and legal rulings.

Bereki, through sheer force of will, tries to connect his arguments to legal concepts of subject matter jurisdiction, personal jurisdiction, extrinsic fraud, extrinsic mistake, and fraud on the court. He is unsuccessful. Other than citations to legal authority postdating the earlier proceedings and some refinement of arguments previously made, nothing has changed.

Bereki is correct that doctrines of res judicata, collateral estoppel, and law of the case do not preclude relief from a void judgment. (See *Gorham*, *supra*, 186 Cal.App.4th at p. 1228 ["a judgment or order that is . . . void on its face . . . may be directly or collaterally attacked at any time"].) But merely applying the label "void" to a long-final judgment does not reopen the case to arguments that were or should have been made at trial and on direct appeal. Upon the issuance of this court's remittitur following affirmance on direct appeal, the trial court lacked the power to reopen the final judgment to entertain arguments based merely on new facts or new law. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.)

DISPOSITION

The motion to dismiss the appeal is granted. The appeal is dismissed. Respondents shall recover costs incurred on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

The parties' requests for sanctions (Cal. Rules of Court, rule 8.276), which were incorporated into their motion and opposition, respectively, are denied. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919 [denying sanctions request because party did not file "a separate sanctions motion as required by California Rules of Court, rule 8.276(b)(1)"].)