

The California Supreme Court – July 22, 2022

by Faisal Zubairi, Jill Gutierrez, and Jessica M. Leano

Yesterday, the California Supreme Court issued the following decision:

Siry Investment, L.P. v. Farkhondehpour, No. S262081: The Supreme Court resolved two issues: whether (1) a party in default has standing to file a motion for a new trial alleging legal error in the calculation of damages, and (2) a trial court may award treble damages and attorney’s fees under Penal Code section 496(c) in cases involving fraudulent diversion of a partnership’s cash distributions. Plaintiff was a limited partner in a partnership formed to renovate and lease space in a building. Plaintiff sued the general partner and two of the other limited partners’ trustees (“Defendants”), alleging they improperly diverted rental income from the partnership to an entity Defendants created.

The path toward the Supreme Court began with a jury award for Plaintiff, which the Court of Appeal reversed based on an “ambiguity” in the special verdict form. On remand, Defendants refused to respond to discovery requests and related court orders. The trial court entered default judgment against Defendants and awarded Plaintiff actual damages, treble damages and fees under Section 496(c), and punitive damages. Defendants then filed a motion for new trial claiming legal error. The court granted the motion in part and denied it in part, finding the treble damages proper but miscalculated and the punitive damages as excessive. It also required Plaintiff to choose between treble and punitive damages. Plaintiff chose treble damages, and the court entered an amended judgment. Defendants appealed from the default and amended judgments, and Plaintiff cross-appealed from the amended judgment, arguing that Defendants had no standing to move for a new trial as defaulting parties. The Court of Appeal ruled in Defendants’ favor on both the standing and Section 496(c) issues.

The Supreme Court granted review. As to standing, it agreed with the Court of Appeal, framing the issue as whether a defaulting party may move for a new trial when, because of the default, there was no trial. It answered this question affirmatively. First, the Code of Civil Procedure permits a defaulting defendant to *appeal* a default judgment on grounds of legal error. It would be illogical to preclude the trial court, which is already familiar with

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the case, from considering the same claimed legal errors and would burden the Courts of Appeal with issues that could be resolved at the trial court level.

As to Section 496(c), however, the Court disagreed with the Court of Appeal. The statute's "unambiguous" language permits civil plaintiffs to recover treble damages and attorney's fees when their "property has been obtained in any manner constituting theft." Defendants' fraudulent diversion of partnership funds fell within the ambit of the conduct criminalized in the statute, so Plaintiff could properly collect treble damages and attorney's fees.

Justice Groban, joined by Justice Kruger, concurred but wrote separately to assuage concerns that the majority's holding would transform most commercial cases into "theft" cases with the possibility of treble damages.

The full opinion is available [here](#).