



Second District Holds Adverse Judgment in CEQA Action Resulting from Plaintiff Attorney’s Failure to Lodge Administrative Record is Not “Dismissal” or “Default Judgment” Subject to Mandatory Relief Provisions of CCP Section 473(b)

By [Arthur F. Coon](#) on April 18, 2017

**Republished with the permission of Miller Starr Regalia*

In a published opinion filed April 13, 2017, the Court of Appeal for the Second Appellate District, Division 5, held that Code of Civil Procedure (“CCP”) § 473(b)’s provisions allowing mandatory relief upon an attorney’s sworn affidavit of mistake do not extend beyond the “dismissal[s]” and “default judgment[s]” referenced in the statute’s plain language. Specifically, the Court held they did not extend to a judgment entered in favor of a defendant in a CEQA action because the plaintiff’s attorney failed to lodge the certified administrative record and therefore failed to meet plaintiff’s burden of proof. *The Urban Wildlands Group, Inc. v. City of Los Angeles, et al.* (2d Dist., Div. 5, 2017) ____ Cal.App.5th ____.

Plaintiff sued defendant City of Los Angeles, Bureau of Street Lighting, challenging defendant’s determination that its project approving use of light emitting diode replacement lights was exempt from CEQA. Pursuant to the parties’ agreed arrangement, the trial court ordered plaintiff to lodge the administrative record on May 28, 2015. The record was not lodged due to a mistake by plaintiff’s attorney’s new legal assistant – who believed defendant’s notice of certification meant the record had been lodged – and the attorney’s failure to follow up. The matter was fully briefed, defendant submitted record excerpts, and a merits hearing was held July 8, 2015. Plaintiff’s counsel’s motion to continue the hearing was denied, and the trial court adopted its tentative ruling denying the Petition, ruling “plaintiff could not support its arguments because it failed to lodge the administrative record.” Judgment was so entered.

Plaintiff’s attorney moved for both discretionary and mandatory relief under CCP § 473(b). The trial court denied discretionary relief, finding the attorney’s “conduct did not rise to the level of excusable neglect,”

but granted mandatory relief based on the attorney's and paralegal's sworn declarations attesting to the errors that caused plaintiff to "lose its day in court."

Reviewing the issue of statutory interpretation de novo, and noting there was no dispute regarding the attorney affidavit's accuracy, the Court of Appeal reversed the order setting aside the judgment and directed that the judgment in defendant's favor be reinstated.

CCP § 473(b) states in relevant part: "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any... (2) resulting default judgment or dismissal entered against his or her client." Noting a split in appellate authority regarding the meaning of "default judgment" and "dismissal" as used in the statute, the Court followed the holdings of "[n]umerous Courts of Appeal" that "dismissal" and "default judgment" mean only that and should not be expanded to include other judgments." It rejected the "second much less numerous line of cases" (including two from its own division) which applied a broader definition and held CCP 473(b)'s "mandatory relief provisions [applicable] to judgments that are the procedural equivalents of defaults, default judgments, or dismissal." The Court found the first line of authority was better reasoned, and most faithful to the statute's legislative purpose – "to give plaintiffs the functional equivalent of the "default' provision for defendants" – and its plain unambiguous language, which was limited to default judgments and dismissals. Quoting a dissenting opinion from the minority line of cases, the Court agreed that "to read the mandatory provision of ... section 473 to apply whenever a party loses his or her day in court due to attorney error goes far beyond anything the Legislature has done." Rather than constituting "a catch-all remedy for every case of poor judgment on the part of counsel that results in dismissal," the statute applies only to "those parties [who lose their day in court by] ... fail[ing] to respond to a dismissal motion because of an attorney's error."

Noting that scenario was not present in the case before it, the Court stated: "Here, there was a trial of the merits of the mandate petition and complaint and thus the section 473, subdivision (b) mandatory relief provisions are inapplicable. Plaintiff failed to present sufficient evidence to meet its burden of proof – it never lodged the administrative record." Accordingly, the resulting judgment was similar to a summary judgment in favor of a defendant, which is not subject to § 473(b)'s mandatory relief provisions. In summarizing its reasoning and conclusion, the Court stated:

"The judgment against plaintiff here was not "a removal of plaintiff's application for relief" but instead resulted from a trial on the merits. Plaintiff failed to present sufficient evidence and thus did not meet its burden of proof. The judgment here is not a default, default judgment, or dismissal. The trial court could not therefore grant mandatory relief under section 473, subdivision (b)."

The Court of Appeal's opinion serves as a good reminder of the importance of (1) the trial court having before it the certified administrative record, which (apart from matters subject to judicial notice) is normally the only evidence before the court in a CEQA writ of mandate action, and (2) the plaintiff's burden of proof in CEQA actions, including its burden to secure preparation and lodging of an adequate administrative record, Where plaintiff agrees to prepare and lodge the record and does not do so, going forward with the merits hearing in that procedural posture will result in a failure to produce evidence that is fatal to its action, and as this case makes clear it will be unable to invoke CCP § 473(b)'s mandatory relief provisions to set aside the resulting adverse judgment.



**MILLER STARR
REGALIA**

Questions? Please contact [Arthur F. Coon](#) of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. "The Book" is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.mslegal.com.

www.ceqadevelopments.com