NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COASTLINE JX HOLDINGS LLC, Cross-complainant and Appellant, v. LETWAK & BENNETT, Cross-defendant and Respondent.	G059646 (Super. Ct. No. 30-2011-00497143) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, James Di Cesare, Judge. Reversed. Motion to dismiss. Denied.

Frandzel Robins Bloom & Csato and Hal D. Goldflam; Greines, Martin, Stein & Richland, Cynthia E. Tobisman and Jeffrey Gurrola for Cross-complainant and Appellant.

Miller Shah and Ronald S. Kravitz for Cross-defendant and Respondent.

* * *

INTRODUCTION

In 2012, Premier Commercial Bancorp, N.A. (Premier)[1] entered into a settlement agreement with accountants Stephen H. Bennett and Richard T. Letwak, and their professional corporation Letwak & Bennett (L&B Corp.), resolving the latter parties' claims they were owed payment for accounting services rendered on Premier's behalf. Notwithstanding their assent to the settlement agreement's provision for a full release of claims against Premier and its insurer, Progressive Casualty Insurance Company (Progressive), Bennett and Letwak filed a lawsuit against Progressive based on the fee dispute.

Premier filed a cross-complaint against Bennett, Letwak, and L&B Corp. (collectively, cross-defendants) for breach of contract, specific performance, and for declaratory relief. Premier alleged L&B Corp. was "the entity through which . . . Letwak and Bennett have at all times provided their professional services" and that L&B Corp. and the individual defendants "were acting as agents of one another and within the course and scope of such agency — with the knowledge, approval and ratification (whether express or implied) of the others." Premier also sought an award of attorney fees against cross-defendants.

Bennett and Letwak answered Premier's cross-complaint, but L&B Corp. did not. The clerk thereafter entered L&B Corp.'s default. After the trial court granted the motion for summary adjudication of the declaratory relief claim that was filed by Premier's successor by merger, CU Bancorp, the court ordered that CU Bancorp was entitled to judgment against all three cross-defendants, jointly and severally. CU Bancorp dismissed its remaining claims, and in 2013, judgment was entered in its favor

[1] Over the course of this litigation, Premier was succeeded, through merger, by CU Bancorp, which, in turn, was succeeded, through merger, by PacWest Bancorp. In June 2019, PacWest Bancorp executed an absolute assignment of its interest in the judgment, as successor to CU Bancorp, to Coastline JX Holdings LLC.

on the declaratory relief claim. The judgment included an award of attorney fees and costs against cross-defendants, jointly and severally, later determined to be in an amount of approximately $300,000. A panel of this court affirmed the judgment and the postjudgment order awarding attorney fees in Premier's favor. (*Bennett v. Progressive Casualty Ins. Co.* (Oct. 30, 2015, G049243) [nonpub. opn.] (*Bennett I*.) In 2016, the judgment was amended to include attorney fees and costs incurred during Bennett and Letwak's unsuccessful appeals.

In June 2020, L&B Corp. appeared for the first time in this action by filing a motion to vacate the judgment against it. The judge newly assigned to the case did not vacate the default or default judgment entered against L&B Corp., but modified the judgment to reduce L&B Corp.'s liability for attorney fees to a total of $2,500. The trial court stated Premier had failed to follow proper procedures in seeking attorney fees directly against L&B Corp. The court also asserted there were "defects associated with the award of *vicarious* attorney fees under the alter ego doctrine"; no party had previously argued that doctrine applied.

We reverse. Under section 473, subdivision (d) of the Code of Civil Procedure (section 473(d)), a trial court is only authorized to vacate a default judgment, or portion thereof, that is void. Even if the trial court had been correct in concluding Premier had failed to follow procedures set forth in Code of Civil Procedure section 585, rule 3.1700(a)(2) of the California Rules of Court (rule 3.1700(a)(2)), and/or rule 366 of the Local Rules of the Orange County Superior Court (local rule 366) in seeking the award of attorney fees against L&B Corp., such procedural failures would not render that award void. In any event, the record does not show Premier. failed to follow required procedures.

Furthermore, L&B Corp. was deemed to have admitted the material allegations of Premier's cross-complaint upon the clerk's entry of its default. L&B Corp. thus admitted direct liability, as an agent of the individual defendants, and vice versa,

with regard to the allegations of Premier's cross-complaint, including that it was a party to the settlement agreement containing a prevailing party attorney fees provision. L&B Corp. thus admitted direct liability for an award of attorney fees incurred in the litigation of the cross-complaint, jointly and severally with the individual cross-defendants, in an amount that was proven up via postjudgment motion and affirmed by this court.

L&B Corp. was neither sued nor included as a judgment debtor in the judgment based on the alter ego doctrine or any other theory of vicarious liability. As the judgment was not void, in whole or in part, the trial court was not authorized to modify its terms almost seven years after it was entered, and therefore erred by reducing Premier's award for attorney fees.

FACTS AND PROCEDURAL HISTORY

I.
PREMIER SETTLED ACCOUNTING MISREPRESENTATIONS CLAIMS; PREMIER'S INSURANCE COVERAGE DISPUTE WITH PROGRESSIVE

In October 2008, Premier entered into a settlement agreement resolving claims asserted against it in an arbitration initiated by the buyer of its controlling interest in an Arizona bank; the buyer alleged Premier was liable for accounting misrepresentations and for improperly charging fees. Premier had tendered coverage of the dispute to Progressive under a Directors & Officers/Company Liability Insurance Policy for Financial Institutions (the policy). Progressive had informed Premier that its request for coverage under the policy "raised substantial coverage issues" but agreed it would not assert its lack of consent to the settlement of the arbitration claims as a basis for denying coverage.

II.
CROSS-DEFENDANTS SOUGHT PAYMENT FOR SERVICES RENDERED IN A SELF-INITIATED INVESTIGATION INTO THE ALLEGED ACCOUNTING MISREPRESENTATIONS

At some point during Premier's dispute with the buyer of the Arizona bank, Letwak, purportedly in his role as a director of Premier and as chair of its audit committee, teamed up with Bennett to investigate Premier's alleged accounting misrepresentations. Letwak and Bennett's investigation was conducted on their own initiative: They neither had a written contract with Premier nor its written consent for the investigation, much less an agreement setting forth the terms of how they might be compensated for their work.

After Premier settled the arbitration claims, L&B Corp., through which Letwak and Bennett performed accounting services and of which they are sole shareholders, sent Premier a bill in the amount of $168,750 for fees generated during their 11-month investigation. Cross-defendants asked Premier to submit the bill to Progressive as part of its claim for defense costs under the policy. Premier refused the request because "it never hired Letwak to conduct an investigation, and it believed a bill from [L&B Corp.] would appear collusive or even fraudulent."

III.
PREMIER SETTLED BOTH ITS COVERAGE DISPUTE WITH PROGRESSIVE AND ITS DISPUTE WITH CROSS-DEFENDANTS REGARDING INVESTIGATION FEES

In December 2008, Premier and Progressive entered into a settlement agreement to resolve the coverage dispute. Progressive agreed to pay Premier $350,000 in exchange for a release of all claims arising out of, or in any way involving the arbitration, or the settlement of the claims asserted against Premier in the arbitration, including any claim by Premier for reimbursement of fees and costs. After settlement of the coverage dispute, cross-defendants demanded that Premier pay the L&B Corp. bill directly and suggested Premier was liable for failing to submit the bill to Progressive.

In June 2009, Premier entered into a settlement agreement with cross-defendants. The recitals of that agreement included: (1) "L&B [Corp.], a certified public accountancy firm, the principals of whom are Letwak and Bennett, assisted as professionals in connection with certain issues, including tax and accounting issues relating to [Premier]'s sale transaction of [the Arizona bank]"; (2) "L&B [Corp.] submitted billings to Premier for services rendered"; (3) "[t]he dispute giving rise to this Settlement arises from the nature, extent and content of such services, the scope and amount of said billings and any and all issues and all claims that may arise therefrom or be connected therewith (collectively 'Dispute')"; and (4) "[t]he parties hereto intend to finally settle and resolve the Dispute on the terms and conditions set forth herein."

The terms of the settlement agreement included that Premier pay cross-defendants $99,000 in exchange for cross-defendants' release of all claims against, inter alia, Premier and its insurers. The settlement agreement also contained a "No Contact" provision stating: "After the date of signing, June 24, 2009, Letwak, Bennett and L&B [Corp.], and their agents and representatives, and each of them, agree not to contact or address Premier's insurance carrier or attorneys, on any matter connected to, related to or arising from the Dispute."

IV.
BENNETT AND LETWAK INITIATED THE INSTANT ACTION AGAINST PROGRESSIVE; PROGRESSIVE AND PREMIER EACH FILED A CROSS-COMPLAINT

Notwithstanding Premier and cross-defendants' settlement agreement, in October 2009, cross-defendants contacted Progressive and demanded it pay the L&B Corp. bill on Premier's behalf. After Progressive refused to pay the bill, in August 2011, Bennett and Letwak, both acting in propria persona, initiated this lawsuit. Their first amended verified complaint, filed in February 2012, alleged a single cause of action seeking a judicial declaration regarding rights under the policy to receive payment

directly from Progressive for work Bennett and Letwak claimed to have performed to investigate the accounting misrepresentation claims.

Progressive filed a cross-complaint (Progressive cross-complaint) alleging claims for breach of contract, specific performance, and injunctive relief against Bennett and Letwak. The Progressive cross-complaint also alleged claims for breach of contract and demand for express indemnity, specific performance, and implied contractual indemnity against Premier as Premier had denied Progressive's request to indemnify Progressive for the cost of defending against the lawsuit filed by Bennett and Letwak.

In April 2012, Premier filed a cross-complaint against cross-defendants asserting claims for breach of contract, specific performance, and declaratory relief (Premier cross-complaint). As to its declaratory relief claim, Premier sought an order declaring: "(a) L&B's claims against Progressive, including those asserted by Letwak and Bennett in this action, are barred by virtue of the release and non-contact provisions in the L&B/Premier Settlement Agreement, (b) none of the L&B cross-defendants has any standing to pursue such claims (or any claims) against Progressive under the Progressive Policy, and (c) L&B's pursuit of such claims constitutes a breach by L&B, and each of them, of the L&B/Premier Settlement Agreement." As to all cross-defendants and causes of action in the Premier cross-complaint, Premier sought attorney fees as permitted by contract and statute and for costs of suit. The settlement agreement between Premier and cross-defendants provided in part: "In any action or proceeding brought to enforce or determine the Parties' rights hereunder, the prevailing party or parties shall be entitled to recover its or their actual attorneys' fees . . . and recoverable costs incurred in such action or proceeding."

V.
THE CLERK ENTERED L&B CORP.'S DEFAULT; THE TRIAL COURT GRANTED CU BANCORP'S MOTION FOR SUMMARY ADJUDICATION ON ITS DECLARATORY RELIEF CLAIM.

L&B Corp. did not respond to Premier's cross-complaint and, pursuant to Premier's request, the clerk entered L&B Corp.'s default on July 3, 2012.

In January 2013, CU Bancorp, successor by merger to Premier, filed a motion for summary adjudication of its third cause of action for declaratory relief against Bennett and Letwak. The trial court judge originally assigned to the case granted the motion. CU Bancorp thereafter dismissed the first and second causes of action in the Premier cross-complaint.

In August 2013, CU Bancorp filed a request for court judgment against L&B Corp. The trial court granted CU Bancorp's request, stating in an order: "The Court finds that CU Bancorp . . . is entitled to the entry of judgment against L&B Corp. on the Third Cause of Action in [the Premier] Cross-Complaint . . . in the same manner and to the same extent CU Bancorp is entitled to judgment against Stephen H. Bennett ('Bennett') and Richard T. Letwak ('Letwak') based on the Court's granting of CU Bancorp's Motion for Summary Adjudication of the Third Cause of Action in the [Premier] Cross-Complaint against Bennett and Letwak. [¶] IT IS THEREFORE ORDERED that L&B Corp. shall be included as a judgment debtor in this action, jointly with Bennett and Letwak, in the judgment entered against Bennett, Letwak and L&B Corp. on [the Premier] Cross-Complaint."

VI.
JUDGMENT IS ENTERED IN FAVOR OF CU BANCORP AND AGAINST CROSS-DEFENDANTS, JOINTLY AND SEVERALLY.

The trial court declined to sign individual judgments that had been submitted to the court in the action and ordered as follows: "Counsel are to prepare and submit a **single** [Proposed] Judgment on [the Premier] Cross-Complaint and Judgment in

Favor of Progressive Casualty Insurance Company and Against Richard T. Letwak and Stephen H. Bennett on Plaintiffs' First Amended Complaint and on Progressive's Cross-Complaint for the Court's consideration."

On October 1, 2013, judgment, signed by the trial court, was entered resolving the entire action, stating, as relevant to this appeal, "[i]n favor of CU Bancorp, as successor by merger to Premier, against Bennett, Letwak, and L&B Corp., jointly and severally, on [the Premier] Cross-Complaint." The judgment further stated, "[t]he Court declares the claims asserted by Bennett and Letwak against Progressive in the Complaint, including without limitation those claims asserted for the implicit or actual benefit of L&B Corp., are barred by the Settlement Agreement." The judgment also awarded CU Bancorp its attorney fees and costs in an amount to be determined by postjudgment motion, stating such an award was "to be (a) recoverable from and against Bennett, Letwak, and L&B Corp., jointly and severally, and (b) inserted in this Judgment by the court clerk following the Court's ruling on any motion filed by CU Bancorp for attorneys' fees and the filing by CU Bancorp of its memorandum of costs."

CU Bancorp thereafter filed a motion for an award of attorney fees against cross-defendants and a memorandum of costs. Attorney fees in the amount of $298,932.65 and costs in the amount of $7,559.72 were later added to the judgment according to the trial court's orders.

VII.
THIS COURT AFFIRMED THE JUDGMENT AND AWARD OF ATTORNEY FEES AND COSTS; COASTLINE WAS ASSIGNED CU BANCORP'S INTEREST AS JUDGMENT CREDITOR

Bennett and Letwak appealed, challenging, inter alia, the trial court's order granting CU Bancorp's motion for summary adjudication and the court's award of attorney fees and costs to CU Bancorp. L&B Corp. did not appeal. A panel of this court affirmed the judgment and the postjudgment order awarding attorney fees and costs. (*Bennett I, supra*, G049243.)

In June 2016, the "Amended Judgment Including Fees and Costs Awarded on Appeal," signed by the trial court, was entered, reflecting, as a result of Bennett and Letwak's unsuccessful appeals, an increased attorney fees award of $390,106.65, and costs award of $8,244.87, and confirming that the combined amounts are "to be recoverable from and against Bennett, Letwak, and L&B Corp., jointly and severally" (the amended judgment).

In 2017, CU Bancorp merged with PacWest Bancorp; PacWest Bancorp was the surviving corporation of the merger and thus became the successor to CU Bancorp and all of its assets, including its interest under the amended judgment. In June 2019, Coastline JX Holdings LLC (Coastline) filed an acknowledgment of assignment of judgment that had been executed by PacWest Bancorp by which PacWest Bancorp assigned all of its interest under the amended judgment to Coastline.

VIII.
L&B CORP. FILED A MOTION TO SET ASIDE DEFAULT JUDGMENT; THE TRIAL COURT REDUCED THE ATTORNEY FEES AWARD AGAINST L&B CORP. IN THE JUDGMENT

Four years after entry of the amended judgment, and almost seven years after entry of the original judgment in this case, L&B Corp. first appeared in the action by filing a motion to vacate the judgment to the extent it encompassed a default judgment entered against it. L&B Corp. argued the judgment was void because (1) there had been no justiciable controversy between Premier and L&B Corp.; (2) the trial court lacked jurisdiction to provide relief against L&B Corp. that exceeded or was inconsistent with the relief demanded in the Premier cross-complaint under Code of Civil Procedure section 580, subdivision (a);[2] and (3) CU Bancorp, which "obtained a default judgment by written declaration and failed to include a request for fees in the default judgment,

[2] All further statutory references are to the Code of Civil Procedure.

[could not] seek attorney's fees [against L&B Corp.] by means of a postjudgment noticed motion."

The matter was re-assigned to a new trial court judge. In a minute order, the trial court rejected the first two grounds of the motion. As to the third ground of the motion, the court concluded: (1) "There was nothing fundamentally defective about the entry of [L&B Corp.]'s default in this matter, and thus the default remains and should not be set aside"; (2) "There was no defect with that portion of the default judgment relating to the causes of action asserted in the operative pleading, and those portions of the default judgment shall remain and shall not be set aside"; (3) "There were voidable defects associated with the inclusion of a *direct* award for attorney fees whether classified as a damage or as a cost in the default judgment because [CU Bancorp] did not follow proper procedure to have those included in the default judgment. In addition, given that [L&B Corp.] never appeared in the action, a *direct* award of some $300,000 in legal fees is on its face unconscionable. This is precisely why there are schedules and special procedures for claiming fees in default settings"; and (4) "[T]here are defects associated with the award of *vicarious* attorney fees under the alter ego doctrine."

The trial court's minute order stated: "In conclusion, the default judgment remains and shall not be set aside, except that the *direct* award of attorney fees was improper and must itself be modified. Since there was no request for fees beyond those that might be set forth in this Court's default schedule, and since no actual damages were awarded, this Court concludes that a *direct* award of $2,500.00 is proper for attorney fees associated with the default prove-up. The default judgment shall be amended in accordance herewith. [Coastline] to prepare amended judgment."

Coastline appealed.

MOTION TO DISMISS THE APPEAL

L&B Corp. filed a motion in this court to dismiss Coastline's appeal. L&B Corp. argues this court lacks jurisdiction because the appeal is not taken from an appealable order or judgment. Coastline appealed from the trial court's order denying L&B Corp.'s motion to vacate the judgment against it but also modifying that judgment to reduce CU Bancorp's attorney fees award.

An order granting or denying a statutory motion to vacate or set aside a default and default judgment is appealable under section 904.1, subdivision (a)(2) as an order made after final judgment. (*Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 503-504 [order setting aside void portion of judgment and modifying it to limit damages to comport with complaint "is appealable as an order after a final judgment"]; *County of Stanislaus v. Johnson* (1996) 43 Cal.App.4th 832, 834 [order granting motion to vacate a default and default judgment under section 473 is an appealable order after judgment]; *Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1137 [order denying statutory motion to vacate default judgment is a special order after judgment and as such is appealable]; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2021) ¶ 2:166, p. 2-123, ¶ 2.171, pp. 2-124 to 2-125.)[3]

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[3] As pointed out in the trial court's minute order, L&B Corp.'s motion to vacate the default judgment did not specify the grounds upon which it was based (e.g., statutory or nonstatutory basis). Given that L&B Corp. argued in its motion that the default judgment against it was void and made no argument that the default judgment should be vacated on the grounds of extrinsic fraud or mistake, the trial court concluded the motion to vacate sought statutory relief under section 473(d). L&B Corp. has since argued, in the trial court and on appeal, that the default judgment should be vacated under section 473(d).

At the end of its respondent's brief, L&B Corp. argues without supporting legal authority that even if the judgment is voidable, it should be set aside "based on equitable principles due to the unusual circumstances surrounding this judgment." L&B Corp.'s argument constitutes an improper and unsupported attempt to make an end run around the statutory and nonstatutory pathways (and their concomitant requirements) for requesting that a default judgment be vacated.

L&B Corp. argues the trial court's order was not appealable because it was "preliminary to a future amended judgment" as the trial court, in its minute order, had ordered Premier (Coastline) to prepare and submit an amended judgment which was not done. To be clear, the trial court's direction was that Premier submit an amended judgment "in accordance" with the court's ruling to simply reduce attorney fees to $2,500. As such, the court's order constituted a final and complete postjudgment order.

San Diego v. Superior Court of San Diego County (1950) 36 Cal.2d 483, upon which L&B Corp. relies in its motion, is distinguishable. In that case, the Supreme Court considered the appealability of an order modifying a prior order vacating a default judgment. (*Id.* at p. 486.) The court explained, "[S]ince there was no longer any final judgment in the action" at the time of the order, the order "was not appealable as a special order after final judgment" and therefore could only be reviewed "on an appeal from the subsequent final judgment." (*Ibid*.) The court further explained, "to be appealable as a special order made after final judgment within the meaning of [former] section 963 of the Code of Civil Procedure [now section 904.1], an order must affect the judgment in some way." (*Ibid*.)

Here, the trial court expressly ruled that the default judgment against L&B Corp. would not be vacated but modified to reduce the award of attorney fees in Premier's (Coastline's) favor. The trial court's order, therefore, constituted an appealable postjudgment order.

L&B Corp. also argues the trial court's discussion in its minute order regarding Coastline's options going forward in seeking L&B Corp. vicariously liable for accrued attorney fees and costs "[u]nderscor[es] the lack of finality" of the trial court's ruling with regard to its motion to vacate the default judgment. L&B Corp. is incorrect. The trial court's ruling on the motion to vacate the default judgment was final and complete, as evidenced by the court's direction that Coastline prepare an amended judgment in accordance with that ruling. The trial court's discussion of theories of L&B

Corp.'s potential vicarious liability for attorney fees in the future did not render the court's order nonappealable.

The motion to dismiss the appeal is denied.

DISCUSSION

I.
SECTION 473(d) AND STANDARD OF REVIEW

Section 473(d) grants a trial court discretion to set aside a void judgment. (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020.) The trial court does not have authority under section 473(d) to set aside a judgment that is not void. (*Ibid.*) Unlike a motion to set aside a judgment that is voidable, which must be brought within the time limits of section 473, subdivision (b) or section 473.5, a void judgment may be set aside at any time. (*Id.* at p. 1021.)[4] "The trial court's determination whether a judgment is void is reviewed de novo." (*Kremerman v. White* (2021) 71 Cal.App.5th 358, 369.) The trial court's determination whether to set aside a void judgment is reviewed for an abuse of discretion. (*Ibid.*)

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[4] A motion to set aside a voidable judgment under section 473, subdivision (b) must be brought within a reasonable time but not longer than six months after the judgment or dismissal has been entered. The six-month time period is jurisdictional; once that time period has elapsed, the trial court has no authority grant relief under section 473, subdivision (b). (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 928.)

Section 473.5 grants the trial court authority to set aside a default or default judgment if "service of a summons has not resulted in actual notice to a party in time to defend the action." A motion brought under section 473.5 must be filed and served "within a reasonable time" and no later than the earlier of two years after entry of default judgment or 180 days after service of a written notice that the default or default judgement has been entered. (*Id.*, subd. (a).) L&B Corp. does not contend it brought its motion to vacate the default judgment under either section 473, subdivision (b) or section 473.5, or that either section is otherwise relevant to this case.

II.
THE ATTORNEY FEES AWARD AGAINST L&B CORP. IN THE AMENDED JUDGMENT WAS NOT VOID DUE TO PROCEDURAL ERRORS

The trial court concluded "there were voidable defects associated with the inclusion of a *direct* award for attorney fees whether classified as a damage or as a cost in the default judgment because Premier did not follow proper procedure to have those included in the default judgment." The trial court concluded the default judgment contained within the judgment signed by the trial court and entered against the individual cross-defendants "remains and shall not be set aside." However, the trial court determined "the *direct* award of attorney fees was improper and must itself be modified" and reduced to a "*direct* award" of $2,500 "for attorney fees associated with the default prove-up." The trial court erred.

A.
The Trial Court Found the Judgment's Attorney Fees Award Voidable, Not Void.

As acknowledged by the trial court in a lengthy minute order, "only a *void* judgment could be subject to collateral attack at this late date" under section 473(d). Nevertheless, the minute order stated the court would modify the judgment to reduce the attorney fees award because "[t]here were *voidable* defects associated with" that award. (Italics added.)[5] The trial court was without authority under section 473(d) to modify a provision of the judgment it deemed voidable, but not void.

B.
Procedural Violations Alone Render a Judgment Voidable, Not Void.

Even if the trial court intended to rule (and state in the minute order) that it had concluded the attorney fees award was void, as opposed to voidable, CU Bancorp's purported failure to follow proper procedure with regard to requesting such an award in

[5] At the hearing on the motion to vacate the default judgment, Coastline's counsel pointed out the problem in the trial court's tentative decision that the court would modify the judgment pursuant to section 473(d) for *voidable* procedural defects. The trial court nevertheless ordered the tentative, unchanged, to become the court's final ruling.

the default judgment against L&B Corp. did not render the award void. "A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) "A judgment is void if the court lacked jurisdiction over the subject matter or parties, for example, if the defendant was not validly served with summons. [Citation.] In contrast, a judgment is valid but voidable if it is the result of the court's failure to follow proper procedure." (*Johnson v. E-Z Ins. Brokerage, Inc.* (2009) 175 Cal.App.4th 86, 98; see *Lee v. An* (2008) 168 Cal.App.4th 558, 566 [where court had jurisdiction over the party and questions presented, but acted in excess of its defined power by failing to follow procedures of giving notice before striking the party's answer and entering its default, the subsequent default judgment was voidable not void].)

Here, there is no question the trial court had fundamental jurisdiction over both the subject matter and the parties when the original judgment was entered (encompassing the default judgment against L&B Corp.) and when the amended judgment was entered in June 2016. Specifically, there is no dispute the trial court was authorized to include, in the judgment, an attorney fees award in favor of CU Bancorp and against L&B Corp. and the individual cross-defendants.

The trial court concluded the attorney fees award had to be reduced because CU Bancorp had failed to timely request an award of attorney fees and costs at the time it requested entry of L&B Corp.'s default, in violation of section 585, rule 3.1700(a)(2), and local rule 366. L&B Corp. has not cited any legal authority, and we have found none, that a violation of section 585, rule 3.1700(a)(2), and/or local rule 366 renders a subsequent attorney fees award in a default judgment void. In any event, the record does not support the trial court's findings of such procedural violations in the first place.

C.
Section 585

In its minute order, the trial court stated that CU Bancorp failed to comply with section 585's requirement that it file a written request at the time it applied for entry of L&B Corp.'s default to have attorney fees fixed by the court. The trial court, however, applied a requirement set forth in section 585, subdivision (a) — neither that requirement nor that subdivision applies to the instant case.

Section 585 "divides cases in which 'the defendant fails to answer' into different categories." (*Sass v. Cohen* (2020) 10 Cal.5th 861, 871 (*Sass*).) Subdivision (a) of section 585 applies in "actions arising upon contract or judgment for the recovery of money or damages *only*" (italics added) and thus in cases when "the amount of damages is immediately ascertainable" (*Sass, supra*, at p. 871). In such cases, "[t]he plaintiff shall file a written request at the time of application for entry of the default of the defendant . . . to have attorneys' fees fixed by the court, whereupon, after the entry of the default, the court shall hear the application for determination of the attorneys' fees and shall render judgment for the attorneys' fees and for the other relief demanded in the complaint . . . and the costs against the defendant." (§ 585, subd. (a).) Thereafter, "default and default judgment are entered by the clerk, almost simultaneously, 'for the principal amount demanded in the complaint' or in a statement of damages." (*Sass, supra*, p. 871.)

Subdivision (b) of section 585 applies "[i]n all other cases," and requires a plaintiff to seek a default judgment from the court for the relief demanded in the complaint. (*Sass, supra*, 10 Cal.5th at p. 871.) "In such cases, '[t]he court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just.'" (*Ibid.*, quoting § 585, subd. (b).) Subdivision (b) of section 585

does not include the same requirement of subdivision (a) that at the time the plaintiff requests the clerk to enter a defendant's default, it must request the court to fix attorney fees.

In the Premier cross-complaint, Premier sued L&B Corp. not only for breach of contract damages, but for specific performance and declaratory relief. The Premier cross-complaint, therefore, did not constitute an "action arising upon contract or judgment for the recovery of money or damages only," making subdivision (a) of section 585 inapplicable in this case.

D.
Rule 3.1700(a)(2)

The trial court also found CU Bancorp violated rule 3.1700(a)(2)'s requirement that "'a party seeking a default judgment who claims costs must request costs on the Request for Entry of Default (Application to Enter Default) (form CIV-100) at the time of applying for the judgment.'" The trial court stated, "Premier did not request attorney fees on either the 07/03/12 or the 07/11/13 default forms, nor was there any mention of fees in the memorandum supporting the court judgment by default. In fact, it was not until 12/13/13 that Premier for the first time brought the issue of attorney fees against [L&B Corp.] to the court's attention."

On July 11, 2013, CU Bancorp filed form CIV-100 in which it requested a court judgment against L&B Corp. pursuant to section 585, subdivision (b). The form itself stated that a memorandum of costs under section 1033.5 was required *if a money judgment was requested*, which here it was not — the default judgment sought against L&B Corp. was for declaratory relief. Costs under section 1033.5, subdivision (a)(10)(A) include attorney fees authorized by contract.

It makes sense that where a default judgment is requested against a defendant that would resolve a matter in its entirety, the requesting party would be in a position to quantify and request attorney fees and costs at that time. That was not the

case here. In accordance with section 585, subdivision (d), the trial court successfully endeavored to resolve the entire case in a single judgment, and thus resolve all outstanding claims between the parties as set forth in the operative complaint, the Progressive cross-complaint, and the Premier cross-complaint. That judgment also provided for cross-defendants' joint and several liability for attorney fees and costs, to be proven up in a postjudgment motion. As discussed *ante*, the judgment and the order awarding attorney fees were affirmed by a panel of this court in *Bennett I, supra*, G049243.

Under the circumstances of this case, it was premature for CU Bancorp to be able to quantify the amount of attorney fees and costs it had incurred in litigating the Premier cross-complaint against cross-defendants at the time it filed its form CIV-100 requesting entry of default judgment against L&B Corp. There is no dispute that CU Bancorp was entitled to a prevailing party attorney fees award under the terms of the settlement agreement and that the Premier cross-complaint sought such an award against cross-defendants, including L&B Corp. We do not interpret rule 3.1700(a)(2) under these circumstances to require a prevailing party to quantify the attorney fees and costs on the form CIV-100 or else forfeit recovery of such an award to which it is indisputably entitled. To hold otherwise would unfairly reward L&B Corp. for its default, triggering the use of form CIV-100 for requesting default judgment against it, as it would insulate it from responsibility for its fair share of liability for fees and costs.

E.
Local Rule 366

Finally, local rule 366 provides in part: "When a . . . contract provides for the recovery of, or a statute, authorizes the clerk or Court to enter a reasonable attorney fee the following schedule will be applied to the amount of the default judgment exclusive of costs: [¶] $5,000.00 or less, 10% with a minimum of $400.00." Citing local

rule 366, the trial court stated in its minute order, "Since there were no damages sought here, only a bare *de minimus* amount of fees could be awarded."

But as acknowledged by the trial court, local rule 366 also provides that "[i]n any case where an attorney claims to be entitled to a fee in excess of any of the above amounts, the attorney may apply to the Court and present proof to support a higher award. The Court will determine the reasonable fee amount according to proof." The trial court found "that never happened" in this case. But it did. After the trial court entered a single judgment resolving the entire action which encompassed a default judgment against L&B Corp., CU Bancorp filed its motion for an award of attorney fees and costs, supported by evidence, against not only Letwak and Bennett, but also L&B Corp. based on the court's prior finding of L&B Corp.'s coextensive liability with the individual cross-defendants. In *Bennett I, supra*, G049243, a panel of this court *affirmed* the court's postjudgment order granting CU Bancorp's motion for attorney fees and costs. Therefore, the record does not show that local rule 366 was violated in CU Bancorp's efforts to secure an attorney fees and costs award in the judgment against L&B Corp.

In any event, the trial court did not follow the schedule set forth in local rule 366 in reducing L&B Corp.'s liability for attorney fees to $2,500. The record does not otherwise explain how the trial court selected the amount by which to reduce the attorney fees award contained in the judgment.

III.
THE TRIAL COURT CORRECTLY REJECTED THE OTHER GROUNDS ASSERTED IN L&B CORP.'S MOTION TO VACATE THE DEFAULT JUDGMENT.

In its motion, L&B Corp. asserted two other grounds for vacating the default judgment against it: (1) the lack of a justiciable claim against L&B Corp. and (2) Premier's failure to serve a statement of damages in violation of section 580. We address these arguments because L&B Corp. renews them in its respondent's brief. The trial court properly rejected these arguments as without merit.

In the respondent's brief, L&B Corp. argues "[t]he default judgment is void on its face because it was predicated on Premier's declaratory relief claim that improperly requested an advisory opinion related to the anticipation of a possible lawsuit by L&B Corp." L&B Corp.'s argument heavily relies upon the fact that it was not a party to the filing of Letwak and Bennett's complaint against Progressive which Premier contended violated the terms of their settlement agreement. But the Premier cross-complaint contained three causes of action against L&B Corp., as well as Letwak and Bennett, alleging that, at all relevant times, the three cross-defendants "were acting as the agents of one another and within the course and scope of such agency — with the knowledge, approval, and ratification (whether express or implied) of the others." Premier's claims against all cross-defendants, including L&B Corp. were therefore ripe.

The trial court also properly rejected L&B Corp.'s contention that the default judgment was void in awarding attorney fees against it because the award exceeded the damages demanded in the complaint in violation of section 580, subdivision (a). Section 580, subdivision (a) provides in relevant part: "The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint . . . ; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles."

It is well established that the term "relief" in section 580, subdivision (a) refers to damages, not attorney fees, costs, or prejudgment interest. (*Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1287-1288, 1290 (*Simke*) [attorney fees and costs]; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1209 [prejudgment interest]; see *Chan v. Curran* (2015) 237 Cal.App.4th 601, 624 ["there is a sharp demarcation in the law between damages and costs incurred in brin[g]ing suit,

including attorney fees" as damages "are specifically defined in California law and do not include the attorney fees incurred in prosecuting the lawsuit to recover them"].)

Although section 580 does not require a party to specify the amount of attorney fees and costs requested, the party's pleading must include a prayer for attorney fees. (*Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 494; see *Wiley v. Rhodes* (1990) 223 Cal.App.3d 1470, 1472, 1474 [due process is satisfied if complaint requests unspecified amount of attorney fees and alleges entitlement to fees based on contract or statute].) That requirement was also satisfied here as the Premier cross-complaint contained a prayer as to all causes of action alleged against L&B Corp., Letwak, and Bennett for attorney fees, as permitted by contract, and for costs of suit.

IV.
THE AMENDED JUDGMENT AWARDED ATTORNEY FEES AGAINST L&B CORP. BASED ON ITS DIRECT AND COEXTENSIVE LIABILITY WITH LETWAK AND BENNETT AND NOT ON THE ALTER EGO DOCTRINE OR ANY OTHER THEORY OF VICARIOUS LIABILITY.

In this case, Premier sued L&B Corp. on a theory of its *direct* liability, alongside co-cross-defendants Bennett and Letwak as individuals, for breach of their settlement agreement with Premier, of which L&B Corp. was a party, specific performance, and declaratory relief. In the Premier cross-complaint, Premier alleged L&B Corp. was "the entity through which . . . Letwak and Bennett have at all times provided their professional accounting services" and that L&B Corp. and the individual defendants "were acting as agents of one another and within the course and scope of such agency — with the knowledge, approval and ratification (whether express or implied) of the others."

By defaulting, L&B Corp. was deemed to have admitted the material allegations of the Premier cross-complaint, including that, with regard to the conduct underlying Premier's claims, L&B Corp. and the individual cross-defendants were acting as agents of one another with knowledge, approval, and ratification of such conduct.

(*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156 ["by a default a defendant admits the allegations in the complaint"].) The Premier cross-complaint also alleged that L&B Corp., along with the individual cross-defendants, was a party to the settlement agreement with Premier, which included a term providing that the prevailing party of an action brought to enforce or determine the parties' rights under the agreement would be entitled to recover attorney fees and costs incurred in such action.

CU Bancorp later successfully moved for summary adjudication of the declaratory relief claim as to the individual cross-defendants. In support of its motion, CU Bancorp presented evidence supporting allegations of the cross-complaint already deemed admitted by L&B Corp, including that Letwak and Bennett's professional services were performed on behalf of L&B Corp. of which they are the sole shareholders. In an order granting CU Bancorp's request for court judgment against L&B Corp., the trial court expressly found CU Bancorp was entitled to entry of judgment against L&B Corp. on the declaratory relief claim "in the same manner and to the same extent" it was entitled to judgment against Letwak and Bennett.

Notwithstanding the circumstance that Premier had pursued claims against L&B Corp. for its direct liability, in its minute order, the trial court stated it had invited the parties to brief whether the previous trial court judge in the case "actually made an award of attorney fees against [L&B Corp.], or if the judgment for fees rendered against Bennett and Letwak was then imposed on [L&B Corp.], jointly and severally, as the alter ego thereto." The trial court observed: "The pleadings, orders, and briefing arguably cut both ways, and while no 'alter ego' finding was expressly made, it does seem to comport with the result. If it was an alter ego finding, it is probably not void after all." Nowhere in the Premier cross-complaint, motion for summary adjudication, order granting the request for court judgment against L&B Corp., or in the judgment or amended judgment is the alter ego doctrine, or any theory of vicarious liability, invoked.

The trial court ultimately determined there were "defects associated with the award of *vicarious* attorney fees under the alter ego doctrine," and that the trial court had "saddled [L&B Corp.] with the fees incurred litigating against the principals" although the concept of "reverse piercing" did not exist at the time judgment was entered. The court thereafter offered the parties two options: (1) for the court to conduct an evidentiary hearing to resolve the attorney fees issue, at which L&B Corp. could participate notwithstanding its default; or (2) dismiss the case to enable Coastline to file a new lawsuit to pursue attorney fees against L&B Corp. Neither party agreed to the first option, and as to the second option, Coastline expressed its preference to appeal from the trial court's order modifying the judgment instead.

Alter ego is essentially a theory of *vicarious* liability under which the owners of a corporation may be held liable for harm for which the corporation is responsible. (*Doney v. TRW, Inc.* (1995) 33 Cal.App.4th 245, 249.) It was not the basis upon which the original trial judge assigned to the case had awarded attorney fees against L&B Corp. in the judgment. The trial court therefore erred by inserting this issue into the resolution of L&B Corp.'s motion to vacate and by reducing the attorney fees award on the ground the judgment improperly imposed vicarious liability for such fees on L&B Corp.

DISPOSITION

The postjudgment order modifying the amended judgment is reversed. Appellant shall recover costs on appeal.

MARKS, J.*

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.