

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

Darryl Cotton,
Appellant,
v.
Lawrence Geraci
Respondent.

Court of Appeal No. D084992

San Diego Superior Court
Case No. 37-2022-00000023-
CU-MC-CTL

Appeal From an Order

Of The Superior Court, County of San Diego,

Honorable Judge James Mangione

RESPONDENT'S BRIEF

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INTRODUCTION

Appellant Darryl Cotton (“Appellant”) appeals from (1) the trial court's July 12, 2024 order denying appellants Motion to Vacate the Judgment (“Motion to Vacate”) under Cal. Civ. Proc. §473(d) [CT 122-123] and (2) the trial court's September 20, 2024 denying "Plaintiff Darryl Cotton’s Motion for Reconsideration" ("Motion for Reconsideration") [CT 534-535]. The judgment appellant sought to vacate ("2019 Judgment") was entered in San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL ("2019 Action") on August 19, 2019 for respondent Lawrence Geraci (“Respondent”) and against appellant Cotton. Appellant contends that this “Court is required to conduct discovery on its own...” and requests that it reverse “reverse the trial court’s decision and vacate the subject judgment.” [AOB 31].

Appellant' opening brief is an incomprehensible rehashing of matters addressed in the 2019 trial and a vitriolic diatribe of appellant's grievance and claims of unfairness about that years-ago trial and its results. Nowhere in his opening brief does appellant actually address the substance of two orders he appeals from - the trial court's July 12, 2024 denying appellants Motion to Vacate or the trial court's September 20, 2024 denial of appellant's Motion for Reconsideration - much less establish why the trial court abused its discretion in issuing those orders. This appeal can only be denied. The trial court's 2024 order denying appellant's Motion to Vacate and September 20, 2024 denial of appellant's Motion for Reconsideration should be affirmed.

STATEMENT OF FACTS

On April 17, 2024, appellant filed his "Notice of Ex-Parte Application (1) To Vacate Void Judgment and Court Referral to the Department of Justice" ("Motion to Vacate") in this action. [CT 53-61] Appellant's Motion to Vacate was not separately designated by appellant or included in the Clerk's Transcript but was the subject of appellants' April 14, 2025 Motion to Augment. On May 7, 2025, the Court ordered that appellant's April 14, 2025 motion to augment and appellant's supplemental motion to augment filed April 16, 2025 will be considered concurrently with the appeal.¹

With his Motion to Vacate, appellant sought to vacate the 2019 Judgment. Respondent opposed that Motion to Vacate on the grounds (1) it was not supported by admissible evidence, (2) was untimely under Code of Civil Procedure Section 473(d) because the 2019 Judgment was not void on its face, (3) was barred by res judicata and collateral estoppel, and (4) because it was "legally untenable, void of logic and reason, and unsupported by any proffered legal authority". [CT 63-76]. In that opposition, respondent noted, in part, that in 2022 appellant had filed and lost essentially the same motion to vacate. [CT 63-76]. In fact, the court's February 25, 2022 order denying appellant's previous motion to vacate [CT 271] is essentially the same as the trial

¹ It should be noted that appellant's April 17, 2024 Motion to Vacate is included in record at CT 53-61 as part of a request for judicial notice filed by appellant in support of his Motion for Reconsideration. [CT 18-533] That request for judicial notice was granted by the Court. [CT 123]

court's July 12, 2024 denying appellants Motion to Vacate which is the subject of this appeal. [CT 122-123].

On June 24, 2024, appellant filed his reply to respondent's opposition. [CT 78-122-123].

On July 12, 2024, after hearing, the Court denied appellant's Motion to Vacate. The Court ruled that (1) the 2019 Judgment was not properly the subject of a direct attack by way of independent action because appellant was previously provided with the opportunity to present his illegality argument in a prior fair, adversarial proceeding and (2) the 2019 Judgment was not void on its face such that it should not be set aside under Code of Civil Procedure Section 473. [CT 122-123].

In August 2024, appellant filed a Motion for Reconsideration. [CT 537-551] ². On September 9, 2024, respondent filed his opposition to motion for reconsideration. [CT 7-12] Respondent argued, among other things, that the motion was untimely. [CT 8] On September 13, 2024, appellant filed his reply [CT 13-17]. On September 17, appellant filed a Request for Judicial Notice that included over 500 pages of materials. [CT 18-533] That request for judicial notice was granted. [CT 535]

On September 20, 2024, after hearing, the Court denied appellant's motion for reconsideration as untimely filed. [CT 534-535].

² Appellants Motion for Reconsideration [CT 537-551] is dated August 22, 2024, but bares the file date of October 10, 2024 [CT 537]. It is unclear why that is the case.

STANDARDS OF REVIEW

I. Order Denying Motion To Vacate

“The reviewing court generally faces two separate determinations when considering an appeal based on section 473, subdivision (d): whether the order or judgment is void and, if so, whether the trial court properly exercised its discretion in setting it aside [or not].” *Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822. “Evaluating an order or judgment as void is a question of law, reviewed de novo.” *Id.* Evaluating whether a trial court properly exercised its discretion in concluding whether to set aside an order or judgment as “void” is reviewed for abuse of discretion. *Id.* However, where the judgment is determined by the reviewing court not to be void, the reviewing court need not reach the question of whether the trial court abused its discretion. *Id.*

II. Order Denying Motion For Reconsideration

“An order denying a motion for reconsideration... is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order.” Cal. Civ. Proc. §1008(g). “[A]n order denying a motion for reconsideration” is reviewed “under the abuse of discretion standard.” *Reynolds v City of Calistoga* (2014) 223 Cal.App.4th 865, 871.

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ARGUMENT

I. Appellant Has Not Established That the Trial Court Abused Its Discretion in Denying His Motion to Vacate the July 2019 Judgment.

Appellant has not established the trial court abused its discretion in denying his Motion to Vacate the 2019 Judgment.

A. The Trial Court's Ruling That The 2019 Judgment Was Not Properly The Subject of A Direct Attack by Way of Independent Action

The trial court first ruled that the 2019 Judgment was not properly the subject of a direct attack by way of independent action because appellant was previously provided with the opportunity to present his illegality argument in a prior fair, adversarial proceeding. [CT 122-123] The court ruled that:

Plaintiff was not precluded from presenting his illegality argument to the court. Plaintiff argues that the judgment is void because it is based on an illegal contract. However, he received the opportunity to present this argument in a fair, adversarial proceeding.

Appellant has not shown that the trial court abused its discretion in making this ruling. There was ample evidence before the trial court on the reconsideration motion that the contract illegality argument was an issue before the trial court in the underlying Geraci v. Cotton case which resulted in the 2019 Judgment. [CT 54-55, 110-112, 134-168, 209-215, 537-551] Contract illegality was the specific topic of a motion for new trial in that case. [CT 209-215]. In fact, in his Motion for Reconsideration, appellant states:

My claim of Geraci being unable to lawfully operate cannabis businesses because of the judgments against him sanctioning for operating three illegal dispensaries was constantly raised during the course of the Cotton litigation. [CT 543]

In his opening brief, appellant attacks Judge Wohfeil, the trial judge in the underlying Geraci v. Cotton case [AOB 4, 10-14], claiming bias, apparently, though it is unclear, in effort to show that he did not receive a fair trial in that action. But, that issue was raised and fully litigated in the underlying Geraci v. Cotton action.

Appellant sought to disqualify Judge Wohlfeil in the Geraci v. Cotton action with a Verified Statement of Disqualification Pursuant to Cal. Civ. Proc. §170.1. [CT 134-168] That statement was subsequently stricken by Judge Wohlfeil because, in part, it failed "to state any legal basis for disqualification on its face." [CT 170-175]. Thereafter, appellant did not seek writ review of Judge Wohlfeil's order pursuant Cal. Civ. Proc. §170.3.

"All litigants, in both criminal and civil cases 'who seek to challenge denial of a statutory judicial disqualification motion are relegated to writ review as described in [Code of Civil Procedure] section 170.3 [subdivision] (d).'" *Roth v. Parker* (1997) 57 Cal.App.4th 542, 548, quoting *People v. Brown* (1993) 6 Cal.4th 322, 355. Where a defendant fails to pursue his or her statutory remedy to challenge a judge's refusal to disqualify him or herself, the defendant has forfeited that remedy and cannot "simply fall back on the narrower due process protection without making the heightened showing of a probability, rather than the mere

appearance, of actual bias to prevail.” *People v. Freeman* (2010) 47 Cal.4th 993, 1006. “Instead, based on an objective assessment of the circumstances in the particular case, there must exist ‘the probability of actual bias on the part of the judge... that is too high to be constitutionally tolerable.’” *Id.* at 996, quoting *Caperton v. A.T. Massey Coal Co., Inc.* (2009) 556 U.S. 868, 877 (providing that, where a Judge has a financial interest in the outcome of a case and where a Judge had a conflict arising from his participation in an earlier proceeding, recusal was required under the Due Process Clause).

Further, appellant did not raise the denial of this motion and the alleged “bias” of the trial judge as grounds to vacate the 2019 Judgment in his Motion to Vacate which is the subject of this appeal, and should be precluded for doing so here.

Appellant has not established the trial court abused its discretion in ruling the 2019 Judgment was not properly the subject of a direct attack by way of independent action because appellant was previously provided with the opportunity to present his illegality argument in a prior fair, adversarial proceeding.

B. The Trial Court's Ruling That The 2019 Judgment Was Not Void on Its Face Such That It Should Not Be Set Aside Under Code of Civil Procedure Section 473.

The trial court ruled that the 2019 Judgment "is not void on its face such that it should be set aside pursuant to Code of Civil Procedure § 473(d)". [CT 122-123] Appellant has not

established that the trial court abused its discretion in making this ruling.

Appellant sought to vacate 2019 judgment under Cal. Civ. Proc. §473(d) as “void”. Appellant corrected cited long-applicable case law that a judgment void upon its face is not extinguished by lapse of time. [AOB 8-9]. In fact, a judgment that is **void on its face** is subject to either direct or collateral attack at any time. *OC Interior Services LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1326-1327; *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228. However, unless the challenged judgment is void on its face, a motion to vacate under Section 473(d) must be brought within the time limits proscribed by Section 473. *Calbert v. Al Binali* (2018) 29 Cal.App.5th 954, 960-961 (“[I]f a judgment is void on its face, the customary six-month time limit set by section 473 to make other motions to vacate a judgment does not apply.”)

Conversely, if a judgment is **not** void on its face, the six-month time limit applies and motion to vacate made after that period is untimely. *Id.* Under Section 473, appellant had six months after the entry of judgment to move to vacate the judgment if it is not void on its face. *Kremerman v. White* (2021) 71 Cal.App.5th 358, 369-70. Only if the judgment is void on its face would the appellant have had additional time. *Id.*

Here, it is without dispute that the 2019 judgment was entered more than six months before Motion to Vacate was filed. The 2019 judgment was entered on August 19, 2019, nearly five years before the Motion to Vacate was filed. [CT 217-223]. Thus,

unless the appellant established that the 2019 Judgment was void on its face, the Motion to Vacate was untimely under Section 473(d) and was properly denied.

The 2019 Judgment is clearly not void on its face. To establish that a judgment is void on its face, the party challenging the judgment is limited to the judgment roll. No extrinsic evidence is allowed. *OC Interior Services LLC, supra*, 7 Cal.App.5th at 1327-1328. See also *Johnson v. Hayes Cal Builders, Inc.* (1963) 60 Cal.2d 572, 576 (“The validity of the judgment on its face may be determined only by a consideration of the matters constituting part of the judgment roll.”). See also *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441 (“A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment roll”). See also *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181; *Calvert, supra*, 29 Cal.App.5th at 960-961.

Cal. Civ. Proc. Code §670 defines the contents of the judgment roll in Superior Court as follows:

In superior courts the following papers, without being attached together, shall constitute the judgment roll:

(a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment if defendant has appeared by a demurrer, and the demurrer has been overruled, then notice of the overruling thereof served on defendant’s attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.

(b) In all other cases, the pleadings, all orders striking out any pleading, in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgments to pass against him or her by default, the summons, with proof of its service, on the defendant, and if the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

Neither appellant's Motion to Vacate nor appellant's Opening Brief establish that the 2019 Judgment is void based solely on matters in the Geraci v. Cotton judgment roll. In neither case did appellant undertake that analysis. In fact, the Motion to Vacate was specifically premised upon, and dependent upon, matters outside the judgment roll. [CT 53-61]. Appellant's argument in the Motion to Vacate was that the 2019 Judgment was void based upon a murder-conspiracy disguised as "newly discovered evidence". Appellant abandoned that argument on this appeal from the denial of that motion.

II. Appellant Has Not Established That The Trial Court Abused Its Discretion In Denying His Motion For Reconsideration.

Appellant has not established the trial court abused its discretion in denying his Motion for Reconsideration. The trial court denied appellant's Motion for Reconsideration as untimely. [CT 534-535] Appellant does not address the denial of his Motion For Reconsideration on appeal. Further, that ruling was fully

correct based on the reasoning proffered by respondent in his opposition to the motion [CT 8] and by the trial court in its ruling [CT 534-535]. Appellant clearly did not timely file his Motion for Reconsideration under Cal. Civ. Proc. Code §1008(a).

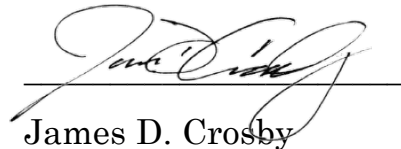
CONCLUSION

Based on the foregoing, respondent Geraci respectfully requests that this Court affirm the trial court's orders denying appellant's Motion to Vacate and his Motion for Reconsideration.

Respectfully submitted,

Dated: August 13, 2025

By:

A handwritten signature in black ink, appearing to read "James D. Crosby", is written over a horizontal line.

James D. Crosby

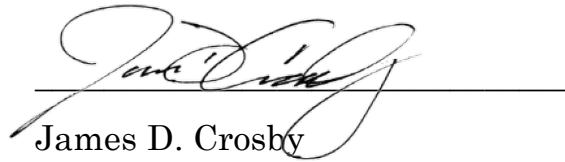
Attorney for Respondent

LARRY GERACI

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2,636 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Date: August 13, 2025



James D. Crosby

PROOF OF SERVICE

I am over the age of 18 years. I am employed in the County of San Diego, State of California. I am not a party to the above-referenced action. I am not a party to the above-referenced action. My business address is James D. Crosby, Attorney at Law, 550 West C Street, Suite 620, San Diego, CA 92101.

On August 13, 2025, I served the following documents:

RESPONDENT'S OPENING BRIEF

on the following parties in this action as follows:

Darryl Cotton, *In Pro Per*

Email: 151darrylcotton@gmail.com

Electronic Service by Email

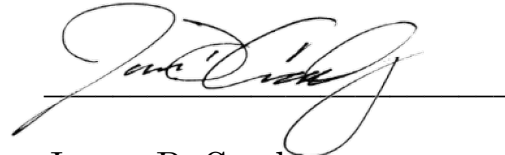
[X] by sending a copy or copies thereof via email transmission to each of the persons or entities at each of the email addresses designated above.

Electronic Service by Fourth District Court of Appeal approved e-Filing Service Provider

[X] by causing a copy or copies hereof to be electronically served in the above-entitled case upon each of the persons or entities at each of the email addresses designated above via True File, a Fourth District Court of Appeal approved e-Filing service provider.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this

proof of service was executed at San Diego, California, on August 13, 2025.



James D. Crosby