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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COMPTON UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent, v. ALAIN HASSAN, Defendant and Appellant.	B233412 (Los Angeles County Super. Ct. No. BC297833)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ralph W. Dau, Judge. Affirmed.

Stanley L. Friedman for Defendant and Appellant.

Orbach, Huff & Suarez, David M. Huff, Marley S. Fox and Sarine A. Abrahamian for Plaintiff and Respondent.

Alain Hassan (Hassan) held an interest in a 168-unit condominium complex in Compton. The Compton Unified School District (the District) obtained a default judgment against Hassan in eminent domain for four units, and placed the sum of $25,370.83 on deposit. He contends he did not have actual notice of the proceedings, which were served on him by publication; the amount on deposit is insufficient because he held 26 trust deeds encumbering 92 additional units; and we must remand for a full determination of his interest in those remaining 92 units. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. The District Obtains Default Judgment Against Hassan

Hassan is a French citizen living in Paris, France.

On June 23, 2003, the District filed its complaint for eminent domain, seeking to acquire title to a condominium complex known as Santa Fe Gardens for the purposes of constructing administrative offices. Santa Fe Gardens consists of eight total lots on South Santa Fe Avenue in Compton. Four lots are situated on the east side of the street and four lots are on the west side of the street. The property contained a total of 168 condominium units. The units were in a state of severe disrepair, had no utilities, had been abandoned, and were used as crack dens. By the time of the condemnation proceedings, all of the units except 24 had been demolished.

The property was appraised at $2,500,000, and on June 23, 2003, Compton deposited that amount with the court pursuant to Code of Civil Procedure section 1255.070.[1]

During the condemnation proceedings, the District was required to extinguish numerous liens on the property, including liens filed by fraudulent homeowner associations, and to that end employed a title expert to determine which liens were valid and which liens were fraudulent. Included among those liens extinguished were those of Charly Hagege, a relative by marriage of Hassan. On September 29, 2004, the District

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

moved to extinguish mechanics liens held by Hagege on 23 of the 24 parcels on Lot 2 of the Santa Fe Gardens property. The summons and complaint was served on Hagege, as Doe 4, who was in jail on fraud charges, on August 11, 2004. Hagege's default was taken on September 21, 2004. On October 13, 2004, the court ordered Hagege's liens extinguished.

The District asserted that Hassan had lien interests in four of the units: Lot 1, Unit 4; Lot 2, Unit 5; Lot 2, Unit 6: and Lot 8, Unit 8.

Hassan was added as Doe 30 on August 26, 2004.

In order to locate Hassan to serve him with a copy of the summons and complaint, Marley S. Fox, counsel for the District, conducted a "Choicepoint" search for "Alain Hassan," and turned up only one individual, who lived in Brewster, Massachusetts. On September 1, 2004, Fox contacted the Alain Hassan residing in Brewster and learned that he had no ownership interest in the units, but because Fox could not locate any other Alain Hassan, on September 3, 2004, the District served the summons and complaint on him. On October 4, 2004, Hassan confirmed in writing that he had no ownership interest in the units at Santa Fe Gardens. The District continued its search, but was unable to locate Hassan.

On December 8, 2004, Compton obtained an order permitting it to serve Hassan by publication in the Los Angeles Times. On December 23, 2004, December 30, 2004, January 6, 2005, and January 13, 2005, the District published the summons in the Los Angeles Times. The District received no response.

On May 20, 2005, the District obtained default against Hassan.

After taking Hassan's default in May 2005, the District learned that Hassan was related to Charly Hagege, who was incarcerated for fraud. Hagege testified in a deposition taken December 14, 1993 that Hassan resided in France and was married to Hagege's niece. Hagege used Hassan's name to open bank accounts in the United States, obtained a bank signature card authorizing himself to sign checks on Hassan's account, and signed checks on Hassan's account. In connection with the District's motion to

expunge Hagege's liens, no one objected, not even Hagege, who received notice through his criminal counsel.

On June 19, 2007, a jury returned a verdict valuing four other units at from $17,790 to $19,820.

The District placed $17,253.93 on deposit for Lot 1, Unit 4. Of that amount, $5,414.06 was used to pay delinquent property taxes. There was a $12,116.67 deposit for Lot 2, Unit 5. Of that amount, $11,362.40 was used to pay delinquent property taxes. The District placed $15,809.45 on deposit for Lot 2, Unit 6. Of that amount, $12,789.06 was used to pay delinquent property taxes. The District placed $15,005.71 on deposit for Lot 8, Unit 8. Of that amount, $5,049.41 was used to pay delinquent property taxes. Remaining on deposit for Hassan was the total of $25,570.83.

On May 7, 2008, the District obtained a default judgment against Hassan in the amount of $25,570.83. The funds were left on deposit with the trial court. On June 11, 2008, the trial court entered judgment of condemnation against 111 of the units at Santa Fe Gardens, including Hassan's four units. The final order of condemnation was entered August 5, 2008.

2. Hassan's Motions

On May 12, 2010, Hassan filed a motion for an order permitting him to withdraw the funds on deposit pursuant to section 1268.140. The motion was withdrawn as procedurally defective.

On December 30, 2010, Hassan filed a second motion for an order permitting him to withdraw the funds on deposit pursuant to section 1268.140. Hassan sought either $25,570.83 (the funds on deposit), $247,400 (his asserted value of the four trust deeds), or $3,751,237 (his asserted value of the trust deeds on the 92 additional properties). Hassan disputed that he was ever served with the summons and complaint, and claimed to have a total of 26 trust deeds encumbering 92 of the 168 units worth a total of $3,751,237. He attached copies of these trust deeds to his motion. He further asserted that the proper value of the default judgment, which was based on only four of the units

on which he held trust deeds, was $247,400, based on a value of $67,500 each for three of the four units, and a value of $44,900 for the remaining unit. In the alternative, Hassan sought release of the $25,570.83.

The District opposed Hassan's motion, and sought to limit him to the withdrawal of the $25,570.83 on deposit. The District contended Hassan's motion was untimely because he was required to set aside the default; Hassan did not follow the proper procedure for obtaining funds on deposit; further, the trial court had previously determined that Hassan's interest was limited to the four lots; and the 26 trust deeds had been conveyed by Hassan to a third party in 1992.

In support, the District presented evidence that on August 17, 1992, Hassan entered into an agreement with Hub Cities Home Improvement Center pursuant to which Hassan transferred to Hub Cities his interest in the 26 trust deeds on 98 units in the Santa Fe Gardens units. The Agreement was recorded by Frank Campagna on February 7, 2007. Further, the District's title searches indicated that Hassan had an interest in only four of the units, namely, those that were the subject of the default judgment. Finally, only $182,173.91 remained on deposit with the court as the other interested parties had withdrawn the majority of the $2.5 million placed on deposit with the court.

In reply, Hassan asserted that Hub Cities was irrelevant and should be disregard, and argued the Settlement Agreement was "phoney" (sic.) and forged. Further, the trial court had previously determined, in connection with the District's report to the trial court regarding HUB Cities' trust deeds, that the Settlement Agreement had been entered into between Hassan and Frank Campagna as a representative of HUB Cities, and not the proper Hub Cities entity, and in any event, HUB Cities' corporate status had been suspended since 1991. Hassan also submitted a declaration in which he disclaimed the settlement agreement and that it did not contain his signature, and included a copy of his passport to establish his identity.

At the first hearing on the matter, held February 3, 2011, the proceeding was devoted to the issue of whether Hassan had established he was the person entitled to the

funds. The court continued the matter to permit Hassan to submit additional evidence of his identity to the District. On March 16, 2011, the parties advised the court they had agreed Hassan was entitled to the funds on deposit, plus interest.

On April 1, 2011, the court entered its order for distribution of funds to Alain Hassan in the amount of $25,570.83 for the four units, plus interest from the date of deposit.

DISCUSSION

Hassan contends his motion was not time barred because he never received proper notice; if we determine otherwise, the default only covers four of the 92 liens he held; his deeds of trust remain valid; and the District's declaration regarding its due diligence in attempting to find him was false. Hassan requests us to reverse the default judgment and remand the case "with instructions to give full effect to Mr. Hassan's deeds of trust." The District counters that Hassan's challenge to the default judgment is time-barred; Hassan is barred from seeking funds beyond the amount on deposit; Hassan no longer possesses the interests he claims in the property; and he has failed to rebut the Fox declaration regarding due diligence for service. We conclude that service of the summons and complaint was proper on Hassan, that he did not state grounds for relief from default with respect to the claimed interests in 26 trusts deeds encumbering 92 of the units, and is therefore limited to contesting the sufficiency of the compensation funds on deposit.

A. Default and Default Judgment

Once a defendant's default has been entered, damages other than contract damages must be proved. "The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for [such sum] . . . as appears by the evidence to be just." (§ 585, subd. (b).) A default judgment may be granted by the court at a prove-up hearing upon an evidentiary showing with live testimony or, in the court's discretion, with affidavits or declarations setting forth "with particularity" the facts that are "within the personal knowledge" of the declarant. (§ 585, subd. (d).) The court has discretion to

consider hearsay testimony. (*City Bank of San Diego v. Ramage* (1968) 266 Cal.App.2d 570, 584.)

A default is said to admit the material facts alleged by plaintiff, i.e., the defendant's failure to answer has the same effect as an express admission of the matters well pleaded in the complaint. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) The damages awarded may not exceed those prayed for in the complaint. (*Id*. at p. 362.) We may interfere with an award of default damages only where the sum awarded is disproportionate to the evidence and so lacking in evidentiary support such "that it shocks the conscience of the appellate court." (*Uva v. Evans* (1978) 83 Cal.App.3d 356, 363–364.)

B. Time and Grounds for Relief from Default

Time limits for seeking relief from default depend upon the grounds asserted. A defendant may seek discretionary relief from default under section 473, subdivision (b) on the grounds of "mistake, inadvertence, surprise, or excusable neglect" within six months of entry of default, and another six-month period starts after entry of the default judgment. After expiration of this six-month period, a defendant may obtain relief for up to two years from the default judgment, or 180 days of notice of the default judgment, if "lack of actual notice" of the proceedings can be shown. (§ 473.5.) A defendant is entitled to relief under section 473.5 if he or she has not received actual notice of the proceedings. (*Rosenthal v. Garner* (1983) 142 Cal.App.3d 891, 895.) However, where the proceedings are in rem, lack of actual notice of the proceedings is not ground for relief under section 473.5. (*Parage v. Couedel* (1997) 60 Cal.App.4th 1037, 1042–1043.) An eminent domain proceeding is an action in rem. (*San Bernardino etc. Water Dist. v. Gage Canal Co.* (1964) 226 Cal.App.2d 206, 210.)

Equitable relief from default may be sought at any time on the grounds of extrinsic fraud or mistake. To obtain relief under equitable principles, the defendant must show (1) a meritorious defense, (2) a satisfactory excuse for not presenting a defense to the original action, and (3) diligence in seeking to set aside the default once it was

discovered. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982.) This last requirement is "inextricably intertwined with prejudice" to the plaintiff. (*Id.* at pp. 983–984.) Further, laches is a defense to equitable relief. If the moving party is guilty of unreasonable delay causing prejudice to the other party, relief may be denied. (*Id.* at p. 983.)

Grounds for relief under equitable principles require a showing of extrinsic fraud or mistake. "'"Extrinsic mistake involves the excusable neglect of a party. [Citation.] When this neglect results in an unjust judgment, without a fair adversary hearing, and the basis for equitable relief is present, this is extrinsic mistake."'" (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290.) "'Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding.'" (*Sporn v. Home Depot USA, Inc*. (2005) 126 Cal.App.4th 1294, 1300.) "'The essence of extrinsic fraud is one party's preventing the other from having his day in court.' [Citations.] Extrinsic fraud only arises when one party has in some way fraudulently been prevented from presenting his or her claim or defense." (*Ibid*.)

We review the trial court's grant or denial of relief from default on equitable grounds for abuse of discretion. (*Rappleyea v. Campbell*, *supra*, 8 Cal.4th at p. 981.) When the trial court makes factual findings in connection with a motion for relief from default, we affirm those findings if they are supported by substantial evidence. (See *Milton v. Perceptual Development Corp.* (1997) 53 Cal.App.4th 861, 867.) Under that standard, "[a]n appellate court's '. . . power begins and ends with a determination as to whether there is *any* substantial evidence to support [the factual findings]; [it has] no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or *in the reasonable inferences that may be drawn therefrom*.' [Citation.]" (*Orange County Employees Assn. v. County of Orange* (1988) 205 Cal.App.3d 1289, 1293.)

C. Methods for Service of Summons

Service by publication in a newspaper of general circulation can only be made upon court order. (§ 415.50.) Service by publication is not adequate notice for due process purposes for defendants whose whereabouts are known. (*Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791, 795 [103 S.Ct. 2706, 77 L.Ed.2d 180].) In order to obtain an order to serve a summons and complaint by publication, the plaintiff must show reasonable efforts to serve the summons in some other authorized manner. (§ 415.50, subd. (a).) The plaintiff must demonstrate "a thorough, systematic investigation and inquiry [was] conducted in good faith by the party or his [or her] agent or attorney." (*Watts v. Crawford* (1995) 10 Cal.4th 743, 749, fn. 5.) The summons must be published once a week for four successive weeks. (§ 415.50, subd. (b); Gov. Code, § 6064.) Service is complete on the 28th day following the first day of publication. (§ 415.50, subd. (c); Gov. Code, § 6064.)

D. Analysis

Here, Hassan has not established his entitlement to relief. These are in rem proceedings, and Hassan's lack of personal notice is not grounds for setting aside the default judgment under either section 473.5 or equitable principles. (*Parage v. Couedel*, *supra*, 60 Cal.App.4th at pp. 1042–1043.) In any event, the District's declarations constitute substantial evidence that Hassan was properly served by publication after a due diligence search was made for Hassan. The fact that the "Alain Hassan" in Brewster, Massachusetts was not the Hassan who claimed the trust deed interests in the units does not make Fox's declaration false. Rather, the declaration establishes that the District was unable to locate Hassan after an extensive search and proof of service by publication was necessary. Given that the property was located in Los Angeles County and Hassan's location was unknown, the Los Angeles Times was an appropriate newspaper.

Furthermore, Hassan would not be entitled to relief on equitable grounds due to the delay in his appearance in this matter, and the prejudice such delay has caused the District. Due to the lapse of time, the District has disbursed most of the court-approved

funds on deposit in this matter, and has insufficient funds with which to increase compensation to Hassan.

Finally, Hassan cannot relitigate his entitlement in any of the remaining properties based on the 26 trust deeds. The complaint in eminent domain alleged that the City intended to take title to all of the properties comprising Santa Fe Gardens. The default judgment encompasses all issues well pleaded in the complaint. "'"The doctrine of conclusiveness of judgments applies to a judgment by default with the same validity and force as to a judgment rendered upon a trial of the issues, provided such judgment is regular and valid, and shows distinctly on what count or what cause of action it was rested. . . . [T]he confession implied from the default is limited to the material issuable facts which are well pleaded in the declaration or complaint . . . ."'" (*English v. English* (1937) 9 Cal.2d 358, 363, italics omitted.) Thus, the eminent domain judgment against him is res judicata as to all issues related to his title to any of the 168 properties. (See *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823.) "'[T]he *judgment by default* is . . . in consequence, *res judicata* on the issue of the right to the relief awarded.'" (*Ibid.*) Therefore, Hassan is "presumed to have acceded to the proposition embraced in the complaint and to have consented that plaintiff should obtain the relief therein prayed for, upon the conditions and facts set forth in the complaint.'" (*Id.* at p. 823, fn. 10, quoting *Brown v. Brown* (1915) 170 Cal. 1, 5.) As a result, although the City only acknowledged Hassan's right to assert a lien in four of the properties, his default in the eminent domain action encompassed his right to assert an interest in any of the other properties.

As a result, on appeal from the default judgment, Hassan is limited to contesting the amount of the award actually on deposit for the four units vis-à-vis the prove up hearing on their value. (*Uva v. Evans*, *supra*, 83 Cal.App.3d at pp. 363–364.) Substantial evidence supports the trial court's default judgment finding their value, after payment of delinquent taxes, to be $25,570.83, based on evidence of valuation for four comparable units. Hassan presented no evidence to the contrary other than his bare

assertion of fact, and did not produce any promissory note showing that his purported encumbrances were in a larger amount. (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1235 [security interest does not exist without underlying obligation].)

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.