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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RITA REYES,

Plaintiff and Respondent,

v.

BALUBHAI PATEL,

Defendant and Appellant.

B278823

(Los Angeles County
Super. Ct. No. BC575532)

APPEAL from an order of the Superior Court of Los Angeles County. Holly J. Fujie, Judge. Affirmed.

Frank A. Weiser for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

* * * * *

Defendant and appellant Balubhai Patel appeals from a default judgment entered against him and in favor of plaintiff and respondent Rita Reyes. Defendant contends the entry of default was procedurally defective, and that he was not given notice of entry of default, such that the default judgment must be set aside and reversed.

We find no error in the entry of default and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed an action against defendant, her landlord, on March 13, 2015, for negligence and premises liability. Plaintiff alleged she was injured in her unit when she slipped on water that had leaked from defective plumbing which defendant had failed to repair. In accordance with Code of Civil Procedure, section 425.10, subdivision (b), the complaint did not specify an amount of damages because it stated a claim for personal injury. Paragraph 2 of the complaint alleged that damages were being sought in excess of \$25,000.

Plaintiff filed a proof of service form with the court indicating that defendant was personally served, by a registered process server, with the summons and complaint on March 20, 2015. The proof of service form does not list a separate statement of damages as one of the documents served at that time. In defendant's opening brief, he admits he received service of the summons and complaint.

Almost a year later, plaintiff served defendant with a separate statement of damages pursuant to Code of Civil Procedure section 425.11, subdivision (c). The proof of service form indicates that personal service of the statement of damages was effected on defendant by a registered process server on

February 13, 2016. The statement of damages requests \$40,000 in pain and suffering, \$10,000 for emotional distress, and \$34,927.62 in medical expenses.

No answer or other appearance by defendant appears in the case summary report from the Los Angeles Superior Court. More than 30 days later, plaintiff filed a request for entry of default form with the court, and the attached affidavit states defendant was mail-served with the form on April 4, 2016.

Default was entered on April 5, 2016.

Thereafter, plaintiff submitted documentation in support of entry of default judgment, including copies of plaintiff's medical records and a declaration in support of the requested damages indicating she suffered a broken rib in the incident. Plaintiff sought judgment in the amount of \$85,370.49. The materials were mail-served on defendant.

On September 21, 2016, the court entered a default judgment in favor of plaintiff and against defendant in the amount of \$48,970.68. Plaintiff served defendant by mail with notice of entry of judgment on September 26, 2016.

This appeal followed.

DISCUSSION

Defendant contends the default judgment is procedurally defective and must be set aside on two grounds: (1) the statement of damages was served after entry of default; and (2) the clerk failed to give notice of entry of default. Neither claim has merit.

In a personal injury action, such as this, the complaint may not specify a dollar amount of damages. (Code Civ. Proc., § 425.10, subd. (b).) Damages must be itemized in a separate document as set forth in section 425.11. Default may not be

entered against a non-appearing defendant in a personal injury action until the separate statement of damages is served in the same manner as a summons. (§ 425.11, subd. (c) [“If no request is made for the statement referred to in subdivision (b), the plaintiff shall serve the statement on the defendant before a default may be taken.”]; *Id.*, subd. (d)(1) [“If a party has not appeared in the action, the statement shall be served in the same manner as a summons.”].)

As defendant concedes, plaintiff’s complaint complied with the dictates of Code of Civil Procedure section 425.10 and did not specify a dollar amount of damages. In accordance with section 425.11, plaintiff prepared and served a separate statement of damages. Defendant does not dispute he received service of the statement of damages, but erroneously asserts that the statement was not served until after entry of default. The record unequivocally demonstrates the statement of damages was served on February 13, 2016 and default was entered *52 days later on April 5, 2016*.¹ We find no support in the record for defendant’s assertion the default was actually entered a year earlier on April 5, 2015.

Defendant also argues he was denied due process because the clerk did not serve him with notice that default had been duly entered. Pursuant to Code of Civil Procedure section 587, plaintiff was required to file an affidavit showing mail service of the request for entry of default on defendant. Plaintiff filed the requisite affidavit showing that the request for entry of default was mail-served on defendant on April 4, 2016, and the request for court judgment by default was mail-served on August 10,

¹ 2016 was a leap year.

2016. Plaintiff thereafter served notice of entry of judgment. Nothing further was required. Section 587 specifies that “[t]he nonreceipt of the notice shall not invalidate or constitute ground for setting aside any judgment.” Defendant cites no authority requiring separate notice from the clerk that default was entered.

The record below shows defendant received service of all of the relevant documents and chose not to respond, move to set aside, or file any document with the court until the notice of appeal. We see no basis for setting aside the default judgment.

DISPOSITION

The default judgment entered in favor of plaintiff and respondent Rita Reyes is affirmed. Plaintiff and respondent shall recover costs of appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.