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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOSEPH C. LAPLANT,

Plaintiff and Respondent,

v.

JOSEPH RA,

Defendant and Appellant.

B285616

(Los Angeles County
Super. Ct. No. BC578716)

APPEAL from an order of the Superior Court of Los Angeles County, Gregory W. Alarcon, Judge. Affirmed.

Richie Litigation, Robert K. Lu and Joshua G. Blum for Defendant and Appellant.

Bret D. Lewis for Plaintiff and Respondent.

Joseph Ra appeals from an order denying his motion to vacate a \$67,344.22 default judgment in favor of Joseph C. LaPlant. Ra contends that: (1) “[t]he trial court abused its discretion by failing to consider the substance of [his] argument” that an extrinsic mistake deprived him of a fair hearing on the merits of his defense; and (2) the notice of the default proceedings was not properly served. We conclude that the court properly denied the motion to vacate.

FACTUAL AND PROCEDURAL BACKGROUND

LaPlant filed a complaint against Ra and Joseph Huang on April 14, 2015, alleging the following facts: Ra was a salesman at Shelly BMW in the City of Buena Park and Huang was Ra’s assistant. Ra said that a loophole made it possible for LaPlant to lease a BMW sedan from Shelly BMW without making any lease payments. Ra said that he had found someone in China who would buy the car and that Ra would make all of the lease payments due until the car was sold and pay the optional residual purchase price at the end of the 36-month lease term. Ra stated that he would pay LaPlant \$1,000 upon signing the lease and \$500 for any referrals. Relying on these representations, LaPlant signed the lease on January 24, 2014.

LaPlant alleged that Ra paid, or caused to be paid, the amounts due under the lease through June 24, 2014, but after that date made no further payments, did not pay the residual purchase price, and did not pay LaPlant \$500, resulting in damages in excess of \$69,800.

LaPlant alleged causes of action against Ra for (1) breach of oral contract; (2) fraud; (3) negligent misrepresentation; (4) conversion; (5) equitable indemnity; and (6) conspiracy to defraud.

Ra failed to respond to the complaint, and on October 6, 2015, his default was entered. On November 30, 2015, the trial court entered a default judgment against Ra awarding Laplant \$67,344.22 in damages and \$6,585 in costs.¹ The court dismissed Huang without prejudice at that time.

On June 8, 2017, Ra filed a motion to vacate the default judgment. Ra contended in his moving papers that he was personally served with the summons and complaint at his new place of employment, O’Gara Coach Company, and that his former employer, Shelly BMW, agreed to represent him in this case as it had in prior matters arising from his employment. He argued that he did not receive any of the subsequent papers that were served on him by mail at O’Gara Coach Company, and that upon learning of the default judgment he promptly filed his motion to vacate. Ra argued that these facts established an extrinsic mistake and justified relief from the default judgment.

Although the memorandum in support of the motion to vacate cited to portions of Ra’s supporting declaration, as did the opposition papers, Ra’s declaration is not included in the appellate record and is not listed in the trial court’s case summary.²

¹ LaPlant’s declaration filed in support of the default judgment stated that he received \$1,000 upon signing the lease, but he never obtained possession of the car, could not return the car, and was responsible to pay the monthly payments and the residual purchase price.

² On April 2, 2018, Ra filed a motion to augment the appellate record (Cal. Rules of Court, rule 8.155) with LaPlant’s complaint and several documents filed in connection with the default judgment and the motion to vacate, including a proposed verified answer. Those documents do not include the Ra

LaPlant opposed the motion to vacate and filed a declaration by Michael Chadwick, president of Shelly BMW, stating that he never told Ra that Shelly BMW would provide him with legal representation in this lawsuit.

On July 6, 2017, the trial court continued the hearing on the motion to vacate to hear live testimony and take additional evidence. On August 21, 2017, both Ra and Chadwick testified in court.³ The court filed a minute order on August 28, 2017, stating:

“This is a motion to set aside a default judgment. Defendant acknowledges service but states that he was told that Michael Chadwick from Shelly BMW told him he would provide legal representation for him, providing his justification for waiting 19 months after entry of judgment to move to vacate the default.

“Michael Chadwick presented a declaration insisting that he had never told Mr. Ra that Shelly BMW would provide legal representation. Joseph Ra provided a declaration that refutes this and insists he was promised legal representation. The court held a hearing and both witnesses testified. Plaintiff moved for discovery of any letters or emails for the time of the hearing that could corroborate the claim of Mr. Ra. Mr. Ra provided none. Mr. Chadwick also testified and the court had an opportunity to judge the credibility of both witnesses.

“The court finds Mr. Ra was not believable. The court finds Mr. Chadwick was credible. The court finds no extrinsic mistake.

declaration. The augmentation motion was granted on August 14, 2018.

³ The appellate record does not include a reporter’s transcript of the evidentiary hearing.

Therefore, the court DENIES Defendant Ra's Motion to Vacate the Default Judgment."

DISCUSSION

1. *Legal Framework*

A trial court may vacate a default or default judgment on equitable grounds if it was obtained by extrinsic fraud or extrinsic mistake, even if relief is unavailable under Code of Civil Procedure section 473 or 473.5. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 (*Rappleyea*); *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97 (*Bae*).) An extrinsic mistake occurs when circumstances outside the litigation unfairly deprive a party of a hearing on the merits. (*Rappleyea*, at p. 981; *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471–472.) Examples of extrinsic mistake include where a party reasonably relies on another person to defend an action or relies on an attorney who becomes incapacitated to act. (*Kulchar*, at pp. 471–472; *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855–856; *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 505.)

A party seeking equitable relief from a default judgment based on extrinsic mistake must demonstrate (1) a meritorious case; (2) a satisfactory excuse for not presenting a defense; and (3) diligence in seeking to set aside the default judgment. (*Rappleyea*, *supra*, 8 Cal.4th at p. 982; *Bae*, *supra*, 245 Cal.App.4th at p. 100.) In light of the strong public policy in favor of the finality of judgments, equitable relief from a default judgment is appropriate only in exceptional circumstances. (*Rappleyea*, at pp. 981–982; *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1229–1230 (*Gorham*).)

2. *Standard of Review*

We review the denial of a motion to vacate a default or default judgment based on extrinsic mistake for abuse of discretion. (*Rappleyea, supra*, 8 Cal.4th at p. 981; *Gorham, supra*, 186 Cal.App.4th p. 1230.) An abuse of discretion occurs if, considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478–479; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566 (*Denham*).) We must defer to the trial court's factual findings if they are supported by substantial evidence. (*Gorham*, at p. 1230.)

An appealed judgment is presumed correct, and an appellant must affirmatively show error. (*Denham, supra*, 2 Cal.3d at p. 564.) An appellant must provide a record adequate to demonstrate error, and the failure to provide an adequate record on an issue requires the issue to be decided against the appellant. (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.)

3. *The Trial Court Properly Denied Relief*

The trial court denied the motion to vacate because it found that there was no extrinsic mistake. The court credited Chadwick's testimony that he never stated that Shelly BMW would provide a defense to Ra, and found Ra's testimony to the contrary not credible.

Absent a reporter's transcript of the evidentiary hearing and Ra's declaration filed in support of his motion to vacate, we cannot review the evidence supporting the trial court's factual finding and Ra cannot satisfy his burden to show that there is no substantial evidence supporting the finding. Ra has therefore not shown that the court failed to consider the substance of his argument.

Ra also contends that he never received notice of the default proceedings and that the trial court erred because the notice of default was served at his current place of employment, which does not qualify as his last known address, as required by Code of Civil Procedure section 1013, subdivision (a). Ra cites no authority for the proposition that service at a defendant's place of employment does not qualify as his last known address.

Regardless, any defects in service will not invalidate a default judgment if the defendant received actual notice of the proceedings. (*Rodriguez v. Henard* (2009) 174 Cal.App.4th 529, 536; *In re Marriage of Harris* (1977) 74 Cal.App.3d 98, 102.) Although Ra contends by way of argument that he did not receive notice of the default proceedings, the record does not include the reporter's transcript or any other evidence to support that contention. Accordingly, we presume that no error occurred and that there was evidence that Ra received actual notice of the default proceedings. (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

For the reasons set forth above, we conclude that there was no abuse of discretion and that the court properly denied the motion to vacate.

DISPOSITION

The order is affirmed. LaPlant shall recover his appellate costs.

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MICON, J.*

We concur:

WILLHITE, Acting P. J.

COLLINS, J.

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