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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, Plaintiff and Respondent, v. ADRIAN HERLING WAWORUNTU, Defendant and Appellant.	B265486 (Los Angeles County Super. Ct. No. BC337925)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Borenstein, Judge. Affirmed.

Law Offices of Christopher Norgaard and Christopher Norgaard for Defendant and Appellant.

Herzlich & Blum, Allan Herzlich and Jerome J. Blum for Plaintiff and Respondent.

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This is an appeal from a recent order denying Waworuntu's motion to vacate a renewal of a default judgment obtained in 2005. Most of the issues Waworuntu seeks to litigate were decided in 2006 when Waworuntu moved to vacate the judgment. The 2006 order is final, was not appealed, and cannot be relitigated in this appeal. (*In re Matthew C.* (1993) 6 Cal.4th 386, 393, superseded by statute on another ground.) Waworuntu's one remaining argument lacks merit. Specifically, Waworuntu fails to show that he was not properly served with the notice and application for renewal of the judgment. We affirm the trial court's order denying Waworuntu's motion to vacate the renewal of respondent's judgment.

BACKGROUND

1. Waworuntu's Litigation Regarding Development Rights in Land Adjacent to the Queen Mary Ship in Long Beach

In 2003, Waworuntu hired respondent Nossaman, Guthner, Knox & Elliott, LLP (Nossaman), to represent him in litigation in connection with his $12 million investment in development rights of land adjacent to the Queen Mary Ship.[1] Waworuntu, an Indonesian citizen, was incarcerated in that country during the litigation, and he appointed Helen Wong as his authorized representative "to deal with all matters related to [his] investment in the Queen Mary Development . . . ." In 2005, Nossaman withdrew as Waworuntu's counsel, and he hired Christopher Norgaard, who continues to represent him in the current litigation. Nossaman was required to serve Waworuntu with the order relieving Nossaman at the following address: PT Aditarina Lestari, Aditarina Building 2nd Floor, Jalan Bangka Raya No. 33, Jakarta 12730, Indonesia. Apparently that was Waworuntu's business assistant's address. Nossaman also was required to serve Wong with the court's order relieving Nossaman.

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[1] Nossaman later changed its name, but that name change is not relevant to this appeal.

In the underlying litigation about development rights, Waworuntu obtained a judgment for fraud, fraud by concealment, negligent misrepresentation, and breach of contract, which this court upheld on appeal. (*Waworuntu v. Durst* (Feb. 11, 2013, B236904) [nonpub. opn.].)

2. Litigation re Attorney Fees and Default Judgment

In August 2005, Nossaman sued Waworuntu for payment of legal fees. Default was entered October 13, 2005. A proof of service indicated that Waworuntu was personally served at Cipinang Prison. The request for entry of default was mailed to Waworuntu at the same location. The trial court entered a default judgment against Waworuntu on November 28, 2005, in the amount of $611,548.

In April 2006, Waworuntu moved to set aside the default judgment. Waworuntu's overarching argument was that he was not properly served with the summons and complaint or the request for entry of default and judgment of default. His specific arguments included the following: (1) Nossaman did not give notice of the litigation to Wong (Waworuntu's agent for matters related to his investment in the Queen Mary development); (2) Nossaman did not give notice until March 2006 to counsel Christopher Norgaard, and if Nossaman had given such notice Waworuntu would have timely answered the complaint; (3) Nossaman did not give notice to any other representative of Waworuntu; (4) Nossaman did not identify the legal fees litigation as related to the litigation concerning Waworuntu's investment in the Queen Mary; (5) although Waworuntu was purportedly served at his place of incarceration, there was no evidence he received the complaint; (6) Nossaman's request for entry of default was mailed to Waworuntu at his place of incarceration on the same day default was entered.

In his declaration in support of his claim that the default judgment should be vacated, Waworuntu admitted that he was incarcerated at the prison where Nossaman personally served the summons and mailed service of the notice of entry of default. He also admitted that during his incarceration, he had "access to postal mail" even though his receipt of mail was delayed. Waworuntu stated under penalty of perjury that he remembered being notified of a letter from Nossaman but believed "the envelope did not contain anything that required any action" on his part. He stated: "If I had realized that the envelope delivered to Cipinang Prison contained legal papers starting a lawsuit against me, and that neither my agent (Helen Wong) nor any of my lawyers was aware of it, I would have promptly attempted to make them aware so that they could handle it."

In a detailed order dated May 25, 2006, the trial court denied Waworuntu's motion to set aside the default judgment. The court summarized Waworuntu's arguments enumerated above. The trial court concluded that Nossaman personally served the complaint on Waworuntu at Cipinang Prison, his place of incarceration. The court further concluded that Waworuntu's decision not to open the envelope could not be characterized as inadvertence or mistake. The court further concluded that Wong was Waworuntu's agent only in connection with the development litigation, not in connection with the fee litigation. The court further found that Nossaman's request for entry of default and request for judgment of default were properly served on Waworuntu at his place of incarceration. Waworuntu's request for reconsideration was denied. Waworuntu did not appeal from the trial court's 2006 order.

3. Current Litigation re Renewal of Judgment

In November 2014, Nossaman moved to renew its judgment. Nossaman served its notice of renewal of judgment and application for renewal of judgment on Waworuntu at Cipinang Prison. Nossaman also served Waworuntu's counsel Norgaard at counsel's current address. (This is the same counsel that Waworuntu averred should have been served with the complaint in the attorney fee litigation.) Nossaman obtained a renewal of the judgment on November 26, 2014.

On January 14, 2015, Waworuntu filed a motion to vacate the renewal of the judgment. The motion was made on the grounds that Nossaman did not serve Waworuntu with its application for renewal of judgment or its notice of renewal of judgment. Waworuntu argued that he had not had contact with Cipinang Prison for several years. Waworuntu also renewed the arguments listed above concerning service of the 2005 judgment, which were rejected in the trial court's final 2006 order.

In the current litigation, the trial court denied Waworuntu's motion to vacate the renewal of the judgment. The court concluded that service of notice of the renewal of judgment was valid. The court declined to consider the issues previously determined adversely to Waworuntu in the 2006 order denying his motion to vacate the judgment.

This appeal followed.[2]

DISCUSSION

1. Waworuntu Has Not Demonstrated Invalid Service of the Notice and Application for Renewal of the Judgment

On appeal, Waworuntu argues that service of the notice of renewal and application for renewal did not comply with Code of Civil Procedure section 684.120 (section 684.120). As we shall explain, his argument lacks merit.

Section 684.120, subdivision (a) provides: "Except as otherwise provided in this title, if a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows: [¶] (1) If an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010 or 684.020, to the attorney at the last address given by the attorney on any paper filed in the proceeding and served on the party making the service. [¶] (2) If any other person is being served, to such person at the person's current mailing address if known or, if unknown, at the address last given by the person on any paper filed in the proceeding and served on the party making the service. [¶] (3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known address."

First, Nossaman's service on Waworuntu at Cipinang prison was sufficient to comply with section 684.120, subdivision (a)(3). Nossaman served Waworuntu at the same location found sufficient in the court's 2006 order. The record contains no evidence that Waworuntu notified Nossaman of a change in address since then.

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[2] Waworuntu requests this court take judicial notice of numerous documents filed in connection with the 2006 litigation. Judicial notice of such court documents is permissible under Evidence Code section 452, subdivision (d), and we grant his requests for judicial notice.

Nossaman therefore served him at his last known address—exactly what the statute requires. (§ 684.120, subd. (a)(3).)

Second, Nossaman served Waworuntu's counsel consistent with section 684.120, subdivision (a)(1). Counsel's declaration does not dispute that he was served at his current address. Counsel continues to represent Waworuntu in the current appeal. There is no merit to Waworuntu's argument that Nossaman failed to properly serve him.

The only authority Waworuntu cites—*Pangborn Plumbing Corp. v. Carruthers & Skiffington* (2002) 97 Cal.App.4th 1039 is inapposite. *Pangborn* concerns the competing priorities of a judgment lien and contractual lien for attorney fees. (*Id*. at p. 1043.) It does not discuss the requirements of section 684.120 and does not support Waworuntu's argument that the statute was violated. In short, Waworuntu fails to demonstrate any error with respect to the service of documents related to the renewal of the judgment.

2. Waworuntu's Remaining Arguments Are Barred by Res Judicata

Waworuntu's remaining arguments concern the service of the complaint and default judgment entered in 2005, all of which were rejected in the context of considering Waworuntu's motion to vacate the default judgment. That order was appealable and no timely appeal was taken. (*People v. $8,921 United States Currency* (1994) 28 Cal.App.4th 1226, 1228, fn. 1 [order denying a motion to set aside a default judgment is an appealable order].) The issues determined in the 2006 order are therefore res judicata. (*In re Matthew C., supra*, 6 Cal.4th at p. 393 ["If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata."]; *People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1147 ["A prior appealable order becomes res judicata in the sense that it becomes binding in the same case if not appealed."]; *Reeves v. Hutson* (1956) 144 Cal.App.2d 445, 451 [refusing to review an order setting aside a default judgment when time to appeal had expired].)

Waworuntu's reliance on *Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 206, for the proposition that a defendant may challenge service of the complaint underlying a default judgment in a motion to vacate the renewal of a judgment is misplaced. In *Fidelity* that issue had not previously been litigated and resolved in a

final order. Here, in contrast, Waworuntu fully litigated the issue of service of the complaint underlying Nossaman's default judgment. Waworuntu's arguments were rejected in the trial court's 2006 order, which is conclusive. (*In re Matthew C.*, *supra*, 6 Cal.4th at p. 393.)

DISPOSITION

The order denying Waworuntu's motion to vacate the renewal of judgment is affirmed. Respondent is entitled to costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.