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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LARRY GALSTIAN et al.,

Plaintiffs and Appellants,

v.

GEORGE PLAVJIAN,

Defendant and Respondent.

B280686

(Los Angeles County
Super. Ct. No.
BC431799)

APPEAL from an order of the Superior Court of Los Angeles County, Rita Miller, Judge. Affirmed.

Law Offices of John A. Belcher, John A. Belcher and Nicholas W. Song, for Plaintiffs and Appellants.

Kaplan, Kenegos & Kadin, David Scott Kadin, for Defendant and Respondent.

I. INTRODUCTION

Plaintiffs Larry Galstian, Susie Galstian, and Vitaliy Galstyan¹ appeal from an order granting a motion to set aside a default judgment entered against defendant George Playjian. Plaintiffs obtained a default judgment against defendant jointly and severally. The trial court granted defendant's motion to set aside the default judgment against him because the relief granted was in excess of that demanded in the complaint, in violation of Code of Civil Procedure section 580.² The trial court ordered a new judgment, reducing Larry and Susie's relief against defendant to \$16,000, and vacating Vitaliy's judgment against defendant entirely. We affirm.

II. BACKGROUND

A. *First Amended Complaint*

On September 10, 2010, plaintiffs filed their first amended complaint against defendant and nine codefendants. Plaintiffs alleged that defendants defrauded them through fake real estate investments. Plaintiffs named defendant only in their ninth and tenth causes of action, for conversion and fraud. For the conversion cause of action, plaintiffs alleged that on June 1, 2007, "[p]laintiff Galstian," which appears to be a reference to either

¹ Plaintiffs share the same or similar last names. We will refer to them by their first name for clarity.

² Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Larry or Susie, issued to defendant a cashier's check in the amount of \$16,000. Plaintiff issued the check at the direction of codefendant Mary Pehlevanian. Pehlevanian had represented to Larry and Susie that the funds would be applied to a purported investment. Instead, the money was converted and delivered to defendant.

For the fraud cause of action, plaintiffs alleged defendants caused them to invest in various phony real estate projects. Defendants made these misrepresentations while aware that the real estate projects were a sham and that plaintiffs would not be getting their money back. Plaintiffs relied on these misrepresentations. Without the misrepresentations and nondisclosure, Larry and Susie would not have issued the \$16,000 cashier's check to defendant. In their prayer for relief in the ninth and tenth causes of action, plaintiffs requested damages in an amount according to proof, but in excess of \$16,000, interest, costs, punitive damages, and further relief as deemed proper by the court.

B. Default and Default Judgment

On November 16, 2010, plaintiffs requested and received entry of default against defendant.³ On March 25, 2013, plaintiffs received default judgments against defendant, First Real Estate Venture, Inc., Sona Chukhyan, and Pehlevanian, jointly and severally, in the amount of \$235,697.72 each for Larry

³ Plaintiffs did not request entry of judgment by the court pursuant to section 585, subdivision (b), which would have been necessary for recovery of punitive damages. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 287.)

and Susie, and in the amount of \$362,932.78 for Vitaliy, with interest.⁴

C. Defendant's Motion to Set Aside Default and Default Judgment

On October 20, 2016, defendant moved to set aside default and default judgment pursuant to section 473, subdivision (d). Defendant argued, among other things, that the default judgments were grossly in excess of the relief actually sought in plaintiffs' first amended complaint. Defendant also requested that he be allowed to defend against the complaint.

On January 27, 2017, the trial court granted defendant's motion in part. Regarding Vitaliy, the trial court ordered the March 25, 2013 judgment vacated in its entirety as to defendant. As to Larry and Susie, the trial court ordered the March 25, 2013 judgments reduced to the total amount of \$16,000 for both Larry and Susie, not \$16,000 each. Judgment was entered in favor of Larry and Susie jointly and severally against defendant for \$16,000, plus interest.

III. DISCUSSION

Section 473, subdivision (d) provides: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to

⁴ First Real Estate Venture, Inc. as alleged was a California corporation used by Chukhyan, Pehlevanian, and Cathy Reiner to launder converted money from investors like plaintiffs. Chukhyan was defendant's wife.

the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.” Section 580, subdivision (a) provides in pertinent part: “The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint” A default judgment greater than the amount demanded in the complaint is void as beyond the court’s jurisdiction. (*Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 968; *David S. Karton, A Law Corp. v. Dougherty* (2009) 171 Cal.App.4th 133, 150.) Whether a default judgment is void is a question of law reviewed de novo. (*Dhawan v. Biring, supra*, 241 Cal.App.4th at p. 968; *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 752.)

“The primary purpose of [section 580] is to insure that defendants in cases which involve a default judgment have adequate notice of the judgments that may be taken against them. [Citation.] ‘If a judgment other than that which is demanded is taken against him, [the defendant] has been deprived of his day in court—a right to a hearing on the matter adjudicated.’ [Citations.]” (*Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 493.) “[A] defendant must be notified by the prayer [citation] or allegations in the body of the complaint of the damages sought. [Citation.]” (*National Diversified Services, Inc., v. Bernstein* (1985) 168 Cal.App.3d 410, 417-418.)

Plaintiffs argue the body of the complaint alleged specific losses that put defendant on notice of his liability. Plaintiffs cite paragraph 22 of the first amended complaint, which alleged that Chukhyan induced Vitaliy to invest \$250,000 in purported real estate purchases. Plaintiffs also cite to paragraph 45, relating to their third cause of action against First Real Estate Venture, Inc., Chukhyan, and Reiner. Plaintiffs alleged that as a direct,

proximate and foreseeable result of defendants' conversion scheme, plaintiffs incurred damages in excess of \$624,550. Finally, plaintiffs alleged that: "The total Galstian gave to [codefendant] Pehlevanian at the May 31, 2007 meeting was \$261,750"; "The total Galstian gave to [codefendant] Pehlevanian at the June 1, 2007 meeting was \$65,000"; and "On June 14, 2007 . . . [p]laintiff had Cashier's Check . . . issued in the amount of \$50,000 payable to [codefendant] First Real Estate Venture, Inc."

Plaintiffs contend that based on these allegations, defendant was on notice of the higher damage amounts. None of these allegations, however, put defendant on notice of damages caused by *him*. "Every person who suffers detriment *from the unlawful act or omission of another*, may recover *from the person in fault* a compensation therefor in money, which is called damages." (Civ. Code, § 3281, italics added.) For example, the \$624,550 in alleged damages appeared in plaintiffs' third cause of action for conversion, but plaintiffs named only First Real Estate Venture, Inc., Chukhyan, and Reiner as defendants. Likewise, the other allegations indicated misconduct by other individuals or entities, not defendant. The only damages alleged by plaintiffs against defendant was \$16,000 for a cashier's check given to defendant by Larry and Susie on June 1, 2007.

Plaintiffs assert *National Diversified Services, Inc., v. Bernstein, supra*, and *People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, support their contentions. We disagree. In *National Diversified Services, Inc., v. Bernstein, supra*, the plaintiff obtained a default judgment against the defendant in the amount of \$56,779.89. (168 Cal.App.3d at p. 412.) In the complaint, the plaintiff alleged that it agreed to purchase two

automobiles for \$75,284, and to pay for them in part by conveying a boat with a trade-in value of \$22,500. (*Ibid.*) In the prayer, the plaintiff sought specific performance, or in the alternative, damages that were in excess of \$10,000 and return of the boat. (*Ibid.*) The defendant appealed the default on the grounds that it exceeded the damages plead in the prayer. (*Ibid.*) The Court of Appeal found that the prayer requested \$10,000 and return of the boat. (*Id.* at p. 418.) The Court of Appeal concluded: “The largest money judgment that we can say defendant was on notice of would be \$32,500, representing \$22,500 for the value of the boat and \$10,000 for its detention.” (*Id.* at p. 419.) Accordingly, the court affirmed the default judgment in the reduced amount of \$32,500. (*Ibid.*) Unlike the plaintiff in *National Diversified Services, Inc., v. Bernstein*, *supra*, plaintiffs’ complaint here does not include any allegation that defendant caused damages other than \$16,000 to Larry and Susie. Additionally, plaintiffs’ prayer for relief only asserted \$16,000 in damages by defendant.

People ex rel. Lockyer v. Brar, *supra*, is likewise inapposite. There, plaintiff the Attorney General obtained a default judgment against defendant for violations of Business and Professions Code section 17200. (*People ex rel. Lockyer v. Brar*, *supra*, 134 Cal.App.4th at p. 667.) The prayer for relief sought an injunction and penalties “of \$2,500.00 for each violation of Business and Professions Code section 17200 as proven at trial, but in an amount of not less than \$1,000,000.00.” (*Ibid.*) The Attorney General obtained a default judgment of \$1,787,500.00 in civil penalties. (*Ibid.*) The Court of Appeal affirmed, noting the complaint had alleged at least 1,500 incidents of violations in the complaint. (*Id.* at p. 668.) Thus, the defendant was on notice of possible penalties of \$3.75 million (\$2,500 times 1,500), which

was more than the \$1,785,000 awarded in the default judgment. (*Ibid.*) Here, by contrast, plaintiffs did not allege that this defendant caused plaintiffs to suffer any more than \$16,000 in damages. Accordingly, we find no error by the trial court.

IV. DISPOSITION

The order is affirmed. Defendant George Plavjian is entitled to recover his costs on appeal from plaintiffs Larry Galstian, Susie Galstian, and Vitaliy Galstyan.

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KIM, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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