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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

TOTAL EDUCATIONAL ACTIVITY MODEL CORPORATION et al., Plaintiffs and Appellants, v. VOIT REAL ESTATE SERVICES, LLC, et al., Defendants and Respondents.	B265235 (Los Angeles County Super. Ct. No. BC498967)

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

Jeffrey L. Hoffer for Plaintiffs and Appellants.

Archer Norris, Gary A. Watt, Omar J. Yassin, and Tiffany Ng for Defendants and Respondents.

* * * * * * * * * *

Plaintiffs and appellants Total Educational Activity Model Corporation and G. Albert Hreish appeal the entry of summary judgment in favor of defendants and respondents Voit Real Estate Services, LLC, Michael Cargile and Kent Turner. Plaintiffs contend the entry of judgment is void because the motion for summary judgment was not served on plaintiffs' counsel's address of record.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a complaint against defendants in January 2013 for various claims, including fraud and breach of contract arising from a commercial landlord-tenant relationship. At the time of filing, plaintiffs' counsel's address of record was on Ventura Boulevard in Woodland Hills.

By January 2015, the case had been set for trial and continued several times. On January 7, 2015, plaintiffs' counsel of record, Steven Sandler, served an ex parte application to continue the pending trial date due to the fact plaintiff Hreish was in the hospital. The address of record listed by Attorney Sandler on that court filing is 7753 Densmore Avenue, Van Nuys, California, 91406 (hereafter the Van Nuys address). Two days later, Attorney Sandler filed a supplemental declaration in support of the continuance request, again listing the Van Nuys address on the face page of the court filing as his address of record.

On January 12, 2015, the court considered and granted plaintiffs' ex parte request for a trial continuance. The court ordered that the "trial date is trailed to May 25, 2015. Defendant is granted leave to file a Motion for Summary Judgment on or before 2/6/15. The Summary Judgment hearing date is set for

4/24/15." The court clerk mailed notice of the court's ruling to counsel of record, including to plaintiffs' counsel at the Van Nuys address.

Thereafter, defense counsel served a notice of the court's ruling on plaintiffs' counsel at the Van Nuys address.

On February 5, 2015, defendants served, by overnight mail, their motion for summary judgment on plaintiffs' counsel at the Van Nuys address, with notice of the April 24 hearing date for the motion previously set by the court.

Plaintiffs did not file an opposition to the motion. On April 17, 2015, defendants filed and served a notice of non-opposition, with service on plaintiffs' counsel at the Van Nuys address.

On the morning of April 23, 2015, Attorney Sandler gave notice to defense counsel by email that he intended to move ex parte the next morning, April 24, for a continuance of the hearing on the summary judgment motion and another continuance of the trial date. The email from Attorney Sandler included a signature block with the Van Nuys address as his office address. Attorney Sandler represented in his declaration that he had closed his practice and taken an in-house counsel position at the Van Nuys address in January 2015. He explained there had been problems with mail delivery to him at the address which bore the designation "Law Offices of Steven Sandler." He represented that he had "no doubt that Defendant properly served notice, as defense counsel Archer Norris is a reputable firm with a proven track record of ethical and competent representation." Attorney Sandler stated however that he never received the motion and was unaware of it until receipt of the notice of non-opposition. He requested a continuance of the motion and the trial because of

a stated need to withdraw as counsel of record for plaintiffs in light of his new in-house position.

Defendants filed opposition to the ex parte request, arguing in part that service had been duly and timely made and that no good cause had been shown for a further continuance.

Attorney Sandler and defense counsel appeared at the hearing on April 24, 2015. The trial court entertained argument and issued a detailed, eight-page ruling granting the summary judgment motion. The ruling includes the following language:

"The ex-parte and the argument on the Summary Judgment were heard at 1:30 p.m. Despite a failure to file an opposition, the Court asked counsel to argue the merits of the motion. Had counsel for Plaintiff given this Court any reason to believe a continuance of the trial and motion might result in a meritorious opposition, this Court would have granted his request. . . . After a lengthy discussion regarding the meaning of Ex. L., it became clear to the Court Plaintiff was on notice of his potential claims no later than the date of Ex. L. Defendants' motion is therefore meritorious. Plaintiff's claims are barred by the statute of limitations."

Judgment was entered in defendants' favor thereafter on July 6, 2015.

This appeal followed. Defendants filed a request for judicial notice of three documents: two documents filed in the trial court but omitted from the clerk's transcript, and a page purporting to be a downloaded record from the website of State Bar of California. Plaintiffs did not file any opposition. We grant the request for judicial notice only as to the two records filed in the action below. (Evid. Code, § 452, subd. (d).)

DISCUSSION

Plaintiffs' sole argument is that entry of judgment is void and must be set aside because defendants failed to serve the motion for summary judgment on plaintiffs' counsel's address of record. Plaintiffs' argument consists of one paragraph and no citations to any authority. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Plaintiffs did not file a reply brief, nor any opposition to defendants' request for judicial notice.

The record demonstrates that Attorney Sandler, plaintiffs' trial counsel, relocated his business address in January 2015 to the Van Nuys address. He filed documents in this case on behalf of plaintiffs with the court in January 2015 with the Van Nuys address as his designated address of record. It does not appear he filed a formal notice of address change in accordance with rule 2.200 of the California Rules of Court. Nevertheless, he filed documents with the court using the new address, which the court relied upon in serving notice of its ruling on January 12, 2015, granting plaintiffs' request for a continuance of trial. In that ruling, the court also set April 24, 2015, as the date set for hearing on any summary judgment motion defendants might file.

Defendants then served their motion for summary judgment at the Van Nuys address, giving notice of the April 24 hearing date set by the court. The proofs of service filed with the moving papers are in compliance with the statutory requirements. Code of Civil Procedure section 1013 provides, in relevant part, that service by mail shall be "addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail . . . ."

In belatedly requesting a continuance of the hearing on the motion and another continuance of the trial date, Attorney Sandler did not state that the Van Nuys address was an incorrect address. He only stated that the moving papers apparently had been misdirected upon receipt so that he did not personally receive them. Attorney Sandler indicated he believed defense counsel duly served the papers. "When proof of service by mail is properly made, it creates a rebuttable presumption that the notice was actually received[.]" (6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without Trial, § 23, p. 447.)

Plaintiffs have not shown that defendants failed to properly serve or give notice of their motion for summary judgment. Moreover, the record demonstrates that the court allowed counsel to argue extensively at the hearing despite the lack of written opposition, but concluded there was no material disputed fact that the statute of limitations defense raised by defendants was meritorious. Plaintiffs have not demonstrated any basis for setting aside the judgment.

DISPOSITION

The judgment entered in favor of defendants and respondents is affirmed. Defendants and respondents shall recover costs of appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J. FLIER, J.