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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DONALD MOTZKIN,

Plaintiff and Appellant,

v.

BOAZ SHAMAM et al.,

Defendants and Respondents.

B253593

(Los Angeles County
Super. Ct. No. LC089142)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maria E. Stratton, Judge. Affirmed.

Thomas N. Cano for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Donald Motzkin appeals from the judgment entered in favor of Boaz Shamam and Erit Shamam, a married couple. Motzkin contends that, because the Shamams defaulted on his second amended complaint, the trial court could not award judgment in their favor after the prove-up hearing. We disagree and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On December 30, 2010, Motzkin filed the operative second amended complaint, alleging 29 causes of action arising out of several transactions involving real property or loan and credit card agreements between him and one or both of the Shamams.¹ On September 14, 2012, the trial court entered the defaults of the Shamams, striking their answers and any cross-complaints filed against Motzkin. The Shamams also were deemed to have admitted requests for admissions propounded by Motzkin. The court set a default judgment prove-up hearing for September 16, 2013. Motzkin submitted exhibits in support of his request for a default judgment against the Shamams. In addition, Motzkin and Jeffrey Rose, an expert accounting witness, testified at the prove-up hearing.² The Shamams did not appear at or submit any evidence for the hearing.

After the prove-up hearing, on October 28, 2013, the trial court issued an order, “find[ing] a failure . . . as to the substantive and damage allegations of the [second amended complaint] and therefore grant[ing] judgment in favor of [the Shamams] and against [Motzkin] on all causes of action.” According to the court, “the allegations of the [second amended complaint] are not well-pleaded in that they are statements of legal

¹ Motzkin’s first, second and third causes of action are based on allegations of fraud. The fourth cause of action alleges breach of fiduciary duty. The fifth, eighth and eleventh causes of action allege breach of a joint venture agreement. The sixth cause of action is for breach of contract. The ninth, twelfth and fourteenth causes of action allege breach of a stockholder’s agreement. The tenth, thirteenth, fifteenth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth causes of action are common counts. The sixteenth, seventeenth, eighteenth and twenty-fourth causes of action are for breach of a promissory note. The seventh cause of action is against other defendants who no longer are part of the action, and Motzkin did not pursue his nineteenth through twenty-third causes of action.

² No transcript of the prove-up hearing is included in the record on appeal.

conclusions, not statements of fact. Therefore the court relied on the live testimony at the prove-up hearing to establish certain elements of the causes of action. Specifically[,] the court finds that the [second amended complaint] is conclusory with respect to the allegations of fraud, intentional misrepresentation, negligent misrepresentation, breach of fiduciary duty, and common counts.”

The trial court also stated, “[d]uring the hearing the court was compelled to take two recesses so that Mr. Rose[, the accounting expert,] could rework his accounting calculations, which had been based on incorrect information. At one point the court had to point out where he had erred in his calculations. The court finds Mr. Rose’s expert testimony not reliable and declines to base its ruling on it. [¶] . . . Motzkin’s testimony was no more reliable. Motzkin could not remember the terms and conditions of the numerous loans he made to [the Shamams]. Several of the loans he could recall were not entered into within four years of the filing of the complaint, as so alleged. While Motzkin presented several exhibits that purport to be checks he wrote to [the Shamams], the agreements themselves were apparently oral agreements, the terms of which Motzkin could not recall. Therefore it is impossible for the court to discern whether [the Shamams] breached those agreements.

“In addition, it is extremely troubling to the court that Motzkin appears to be asking the court for a second judgment with respect to the alleged unauthorized credit card charges. On October 25, 2012, in Case No. LC 092030, filed in the Los Angeles Superior Court (Van Nuys), the court entered default judgment in favor of [Motzkin] and against . . . Boaz Shama[m] in the amount of \$120,410.10. That amount was calculated as follows: [¶] \$55,935.00 attorney fees[;] [¶] \$49,343.32 damages[;] [¶] \$14,620.78 pre-judgment interest[;] [¶] \$511.00 costs[.] [¶] The damages award was based on [Boaz Shamam’s] unauthorized use of two American Express cards in the amount of \$32,958.76 and one Visa card in the amount of \$16,484.56. The documentation supplied in support of that judgment is the very same documentation supplied to the court in this action on the very same debts in the very same amounts. That [Motzkin] would seek a double recovery is very troubling and causes the court to

doubt his credibility with respect to the other transactions he has alleged. Moreover, he has asked for entry of judgment as to those charges against . . . Erit Shama[m] and presented no reliable evidence to support the allegations against her of breach of fiduciary duty, breach of a stockholder's agreement and the common count."

Motzkin timely appealed from the judgment.

DISCUSSION

Motzkin seeks reversal of the judgment, contending that the trial court had no authority to enter judgment for the Shamams but rather was required to enter a default judgment in his favor for the amounts he requested in the second amended complaint. We disagree.

After the entry of a defendant's default, "[t]he [trial] court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint . . . as appears by the evidence to be just." (Code Civ. Proc., § 585, subd. (b).) In considering whether to enter a default judgment for the plaintiff, "[t]he correct standard of proof requires that the plaintiff merely establish a prima facie case." (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) "Generally speaking, the party who makes default thereby confesses the material allegations of the complaint. [Citation.] It is also true that *where a cause of action is stated* in the complaint and evidence is introduced to establish a prima facie case the trial court may not disregard the same, but must hear the evidence offered by the plaintiff and must render judgment in his favor for such sum, not exceeding the amount stated in the complaint, or for such relief, not exceeding that demanded in the complaint, as appears from the evidence to be just. [Citations.] It is established law, however, that where a complaint does not state a cause of action or where it shows no grounds for relief, the default of the defendant does not improve it, because . . . '[t]he default admitted nothing more than was alleged in the complaint. . . .' [Citations.]" (*Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408-409.) In other words, a defendant who defaults admits only facts well pleaded in the complaint: "If the complaint fails to state a cause of action or the allegations do not support the demand for relief, the plaintiff is no more

entitled to that relief by default judgment than if the defendant had expressly admitted all the allegations. Such a default judgment is erroneous, and will be reversed on appeal. [Citations.]” (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153-1154 (*Molen*).) Consequently, although a plaintiff need only make a prima facie case, that showing must be based on a well-pleaded complaint and evidence.

“It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is not in plaintiffs’ interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through. That role requires the court to analyze the complaint for itself—with guidance from counsel if necessary—ascertaining what relief is sought as against each defaulting party, and to what extent the relief sought in one cause of action is inconsistent with or duplicative of the relief sought in another. The court must then compare the properly pled damages for each defaulting party with the evidence offered in the prove-up. [Citation.]” (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868; see also *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 273 [“court’s role in the process of entering a default judgment is a serious, substantive, and often complicated one, and it must be treated as such”].) The court, therefore, may enter a default judgment only for causes of action on which proof exists of the damages sustained by the plaintiff. (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560.)

The trial court, after reviewing the complaint, admitting Motzkin’s exhibits and evaluating the testimony at the prove-up hearing, determined that Motzkin had not established a prima facie case entitling him to a default judgment against the Shamams on any of his causes of action. This was within the court’s purview. The court found the allegations as to many of the causes of action in Motzkin’s complaint conclusory statements of law rather than fact. Motzkin does nothing to show otherwise, only repeating the allegations in the complaint. The court also found the testimony at the prove-up hearing of Motzkin and his expert witness not credible, for example, based

on errors in the expert's accountings, Motzkin's failure to remember the details of the transactions for which he sought recovery and his attempt to pursue causes of action involving amounts that the court concluded were the subject of another judgment. Motzkin does nothing to counteract the court's findings. And, as noted, we have no transcript from the prove-up hearing to review the testimony.

Although Motzkin complains that the trial court did not consider the deemed admissions to his requests for admissions, the court explicitly stated that it had admitted and reviewed the exhibits, containing the requests for admissions, and Motzkin does not show how those admissions establish a prima facie case in light of the court's determinations that the second amended complaint contained conclusory statements of law rather than fact and that the testimony at the prove-up hearing was incredible. Indeed, Motzkin concedes that the allegations in the second amended complaint and the contents of the requests for admissions are "substantially duplicative." Consequently, given the conclusory allegations in the second amended complaint, as the court found, the requests for admissions do no more to establish a prima facie case entitling Motzkin to entry of a default judgment.

According to Motzkin, the trial court had no authority to enter judgment in favor of the Shamams after the prove-up hearing without affording him any notice that it intended to do so or an opportunity to be heard. The mere entries of default against the Shamams, however, did not entitle him automatically to default judgments. The prove-up hearing was Motzkin's opportunity to argue the basis for liability and damages stated in the second amended complaint and to present supporting evidence so as to demonstrate a prima facie case. That he failed to do so does not entitle him to a second opportunity.

Motzkin also cites *Molen, supra*, 64 Cal.App.4th 1149, to claim that his complaint need not state a cause of action for him to obtain entry of a default judgment and hence the trial court's determination the allegations were conclusory does not matter. The parts of *Molen* on which Motzkin relies, however, involve the rules for a collateral attack on a default judgment. This case does not involve a collateral attack on a default judgment but rather the basis for entry of a default judgment itself. *Molen* recognizes that the grounds

for a collateral attack on a default judgment differ from the trial court's duty to scrutinize a complaint and evidence before entering a default judgment. (*Id.* at pp. 1153-1157.) Contrary to Motzkin's contention, *Molen* supports the court's authority to evaluate a complaint's allegations and find incredible a plaintiff's evidence submitted in connection with a prove-up hearing.

Motzkin also contends that the trial court erred by applying a statute of limitations defense because the Shamams' answers were stricken and they therefore had no affirmative defenses. The court, however, did not rely on a statute of limitations defense to conclude that Motzkin had not established a prima facie case. The lack of proof found by the court centered on Motzkin's unreliable expert witness, the absence of specifics in Motzkin's testimony and his attempt to recover amounts for which the court believed he had already obtained a judgment.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.