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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MICHAEL AUGUST,

Plaintiff and Appellant,

v.

RAYMOND AVARGA,

Defendant and Respondent .

B232996

(Los Angeles County
Super. Ct. No. LC091013)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Michael B. Harwin, Judge. Affirmed.

Michael August, in pro. per., Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Plaintiff Michael August appeals a default judgment of \$6,000 against defendant Raymond Avarga. He contends the trial court erred because he made a prima facie case of damages on his claims, and erred in awarding insufficient damages. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Factual Background

Plaintiff worked at the Burbank Airport for defendant Central Parking, Inc. (Central Parking). Defendant Raymond Avarga (Avarga), who was the manager of operations for Central Parking, was plaintiff's supervisor. On September 25, 2009, defendant Krystal Alvarado (Alvarado), the director of human resources for Central Parking, told Avarga that plaintiff had recorded a conversation between her and another supervisor because plaintiff alleged he had been harassed and discriminated against by his coworkers.

Avarga referred the matter to airport police, who arrested plaintiff for unlawfully recording a conversation in violation of Penal Code section 632, subdivision (a). Plaintiff was taken to Burbank City jail, where he was incarcerated for three days, and later transferred to Los Angeles County jail for another three days.

On October 2, 2009, Central Parking terminated plaintiff for violation of Central Parking's rule No. 4 prohibiting stealing, dishonesty, and embezzlement. "The gross act of dishonesty occurred on 9/25/09 when you admitted to eavesdropping by filming video and audio of conversations taking place in the Dispatch area between two supervisors and dispatch personnel. Your co-workers were not aware that this activity that was taking place and neither your supervisors or the company had provided their consent or permission, resulting in action taken by Airport police."

In January 2010, the superior court dismissed plaintiff's case in the interests of justice.

2. Procedural History

Plaintiff's complaint filed September 2, 2010, alleged claims against Central Parking, Avarga, Alvarado, and Tom Janowitz for false arrest, false imprisonment,

intentional infliction of emotional distress, malicious prosecution, abuse of process, invasion of privacy, defamation, negligence, and libel. On each claim, plaintiff sought damages of \$2,000,000.

On October 25, 2010, plaintiff filed his request for entry of default against defendant Avarga. Plaintiff sought \$20,800,410 in damages. On February 7, 2011, the clerk entered default against defendant Avarga. Plaintiff's statement of damages detailed \$2 million in pain, suffering, and inconvenience damages, \$4 million in emotional distress damages, \$22,000 in lost earnings, \$3 million in lost future earning capacity, and \$750 in property damage.

Plaintiff's declaration in support of monetary damages filed February 22, 2011 stated that Avarga, as general manager of Central Parking, earned \$72,000 per year plus bonus. Further, plaintiff asserted that Avarga had a home valued at \$750,000. At the time plaintiff began working for Central Parking in April 2009, plaintiff made \$8 an hour. Four months later, he was promoted to shuttle driver and was paid \$11 per hour. Plaintiff asserted he was entitled to "damages in the millions for false arrest" because he has been unable to find employment due to the reasons for his termination. Plaintiff calculated he was entitled to \$1 million for each of the causes of action asserted in his complaint.

On February 22, 2011, the trial court conducted the prove-up hearing. Plaintiff presented testimony on his damages. Plaintiff testified that he had been unable to obtain employment as a result of his arrest, and had applied for dozens of jobs. Although Avarga accused plaintiff of taping a conversation between two supervisors without their knowledge, plaintiff told a different story. In order to become a general manager at Central Parking, he had to spend six months driving a tram. Plaintiff stated that he had made a videotape while driving a tram in order to show that he was not at fault in the event an accident occurred. While driving the tram, one of the coworkers engaged in reckless behavior by jumping up and down while plaintiff was driving the bus. Plaintiff denied taping a conversation between supervisors.

After he was terminated, Avarga posted the letter regarding plaintiff's termination in the lunch break room where all the other employees of Central Parking could see the letter.

Plaintiff asserted his tape was taken by the police, given to Avarga, and was never returned to him. Plaintiff did not have any paperwork establishing that the police had the tape or that they had destroyed it. While in Los Angeles County jail, plaintiff was attacked by gang members, but did not make a report to the sheriff's department. Although plaintiff suffered a physical attack and suffered from severe emotional distress after his release from jail, he did not consult a doctor.

The trial court took the matter under submission.

On April 26, 2011, the court entered judgment by default against Avarga in the sum of \$6,000.

DISCUSSION

Plaintiff argues: (1) we review the trial court's determination of whether he made a prima facie case of damages de novo; (2) the trial court failed to state whether it applied a preponderance of the evidence standard; (3) the court may not disregard uncontradicted credible testimony; (4) the court's award of \$6,000 indicates it found plaintiff had made a prima facie case; thus the only issue for this court is whether the amount of damages is correct; (5) damages are inadequate, amounting to only four months of pay; and (6) the court failed to issue a written explanation for its ruling.¹

Once a defendant's default has been entered, damages other than contract damages must be proved. "The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for [such sum] . . . as appears by the evidence to be just." (Code Civ. Proc., § 585, subd. (b).) A default judgment may be granted by the

¹ Plaintiff asserts for the first time on appeal, and without support in the record, that the trial judge was biased against him and was previously removed from a case in which plaintiff was a party. We find that plaintiff's claim is not cognizable because it is raised for the first time on appeal. (See, e.g., *People v. Snow* (2003) 30 Cal.4th 43, 78.)

court at a prove-up hearing upon an evidentiary showing with live testimony or, in the court's discretion, with affidavits or declarations setting forth "with particularity" the facts that are "within the personal knowledge" of the declarant. (Code Civ. Proc., § 585, subd. (d).) The court has discretion to consider hearsay testimony. (*City Bank of San Diego v. Ramage* (1968) 266 Cal.App.2d 570, 584.)

A default is said to admit the material facts alleged by plaintiff, i.e., the defendant's failure to answer has the same effect as an express admission of the matters well pleaded in the complaint. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) But the defendant who has failed to answer admits only facts which are well pleaded. (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153.) The damages awarded may not exceed those prayed for in the complaint. (*Johnson*, at p. 362.) Nothing in Code of Civil Procedure section 585 requires the court to enter a statement of decision explaining its reasons for the award made. (See Code Civ. Proc., § 585.)

Plaintiffs who have requested default judgment may appeal from the judgment. The scope of review on appeal is limited to whether the judgment is without evidentiary support. (*Johnson v. Stanhiser*, *supra*, 72 Cal.App.4th at p. 361.) We consider only "whether there is any substantial evidence, contradicted or uncontradicted, which will support the [judgment]." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) Thus, we may interfere with an award of default damages only where the sum awarded is disproportionate to the evidence and so lacking in evidentiary support such "that it shocks the conscience of the appellate court." (*Uva v. Evans* (1978) 83 Cal.App.3d 356, 363–364.)

Here, plaintiff's overstated assertion that he suffered \$1 million in damages for each cause of action does not automatically entitle him to such damages in a default prove-up hearing. Rather, even default damages must be based on some evidence. (*Uva v. Evans*, *supra*, 83 Cal.App.3d at pp. 363–364.) The evidence at the default hearing established that plaintiff made \$8 an hour, and the only evidence of defendant Avarga's salary and assets was plaintiff's unsupported statements that amounted to pure

speculation. Plaintiff presented no documentary evidence of Avarga's salary or other assets; presented no medical bills for his alleged injury while in jail; and presented no evidence that his tape was ever given to the police, or that he filed a claim for its return. As a result, substantial evidence supports the trial court's default judgment.

DISPOSITION

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

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.