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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ACOSTA ENTERPRISES, INC.,
et al.,

Plaintiffs and Respondents,

v.

RAYMOND AVILA, JR.,

Defendant and Appellant.

B294540

(Los Angeles County
Super. Ct. No. BC694053)

APPEAL from a judgment of the Superior Court of
Los Angeles County. William F. Fahey, Judge. Affirmed.

Rogers & Harris and Michael Harris for Defendant and
Appellant.

Law Offices of John Charles Davidson and John Charles
Davidson for Plaintiffs and Respondents.

Defendant and appellant Raymond Avila, Jr. (Avila), appeals from a default judgment entered against him and in favor of plaintiffs and respondents Acosta Enterprises, Inc., and MOTIV8 Investments, LLC. Avila contends that the trial court abused its discretion by denying his motion to vacate the default judgment.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 15, 2018, plaintiffs filed a complaint against Avila and Lunar Construction Services.¹ The complaint was served on April 17, 2018, via substituted service by leaving the complaint and summons with an adult occupant of Avila's residence and then mailing a copy to the address of the residence. When Avila did not timely file and serve an answer to the complaint, plaintiffs requested that his default be entered. Avila's default was entered on June 6, 2018.

On August 10, 2018, Avila filed a motion to set aside his default and any default judgment entered against him. He asserted that he was never served with the complaint. In fact, "[u]ntil he received a request for default, he was unaware of the purported service." Plaintiffs opposed Avila's motion.

While Avila's motion was pending, the trial court entered a default judgment against him. As an apparent result of calendaring errors and confusion, Avila's motion was continued to November 5, 2018, and denied by the trial court.

¹ Lunar Construction Services, Inc., is a suspended corporation and not a party to this appeal.

On November 13, 2018, Avila filed a motion for reconsideration of denial of motion to set aside default, pursuant to Code of Civil Procedure sections 473 and 1008. Plaintiffs opposed Avila's motion. After entertaining oral and written argument, the trial court denied defendant's motion for reconsideration.

Avila's timely appeal ensued.

DISCUSSION

I. Standard of review

As the parties agree, we review the trial court's order for abuse of discretion. (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 42 [we review denial of a motion for reconsideration for an abuse of discretion]; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 319 [a trial court's ruling on a motion seeking relief from judgment under Code of Civil Procedure section 473 is generally reviewed for abuse of discretion].) That said, where the trial court has resolved disputed factual issues, we do not substitute our judgment for the trial court's express or implied findings that are supported by substantial evidence. (*Shandralina G. v. Homonchuk* (2007) 147 Cal.App.4th 395, 411.)

II. The trial court properly denied Avila's motion for reconsideration

Throughout Avila's opening brief, he conflates Code of Civil Procedure sections 473 and 1008, making it difficult to discern under which statute he is seeking relief.

While Avila repeatedly uses the term "reconsideration," he only cites to Code of Civil Procedure section 473. Thus, we first consider whether Avila is entitled to relief pursuant to this statute.

Code of Civil Procedure section 473, subdivision (b), provides, in relevant part: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

Avila’s principal argument on appeal is that he was never served; therefore, his default should never have been entered. But, the appellate record contains evidence that Avila was served, namely the proof of service from the process server describing how substituted service was accomplished per Code of Civil Procedure section 415.20, subdivision (b). By asking us to disregard the proof of service and credit only Avila’s self-serving declaration that he was never served, Avila is asking us to reweigh the evidence, something we cannot, and will not, do. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515.)

To the extent Avila seeks relief under Code of Civil Procedure section 1008, his argument fails. He offers no legal authority in support of his contention that the trial court should have reconsidered its November 5, 2018, order denying his motion to vacate the default entered against him. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; Cal. Rules of Court, rule 8.204(a)(1)(B).) It follows that any such argument has been forfeited on appeal. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.)

DISPOSITION

The judgment is affirmed. Plaintiffs are entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT