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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

ACE ANTENNA CO., Plaintiff and Respondent, v. DAENY DAYEONG SUNG, Defendant and Appellant.	B281219 (Los Angeles County Super. Ct. No. BC599109)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara Scheper. Affirmed.

Law offices of Steven C. Kim and Associates, Steven C. Kim and Henry Elyashar, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Daeny Dayeong Sung filed a motion to set aside a default judgment arguing that he had been improperly served by publication. Specifically, Sung argued that the plaintiff, Ace Antenna Company, failed to make a diligent effort to serve him at his South Korea residence prior to seeking court authorization for service by publication. The trial court denied the motion. We affirm.

FACTUAL BACKGROUND

*A. **Summary of the Complaint and Default Judgment***

On October 27, 2015, plaintiff Ace Antenna Company (Ace) filed a complaint alleging that its former chief executive officer, defendant Daeny Daeyong Sung, had unlawfully converted approximately $130,000 that belonged to the company.

In April of 2016, Ace filed an application for service by publication. (See Code of Civil Proc., § 415.50.[1]) Ace's counsel, Shemma Nazdjanova, provided a declaration in support of the motion that described the steps Ace had taken to locate and serve Sung. Nazdjanova stated that she had searched numerous public records and databases (including, among other things, phone records, postal records, property records and LexisNexis), and determined that Sung's last known address was 26924 Pebble Ridge Place, Valencia, California (the Pebble Ridge residence). Nazdjanova retained a process server to attempt service on Sung at that location, and also attempted to serve him by mail. The process server informed Nazdjanova that the current occupant of the Pebble Ridge residence reported that Sung had "moved to South Korea."

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[1] Unless otherwise noted, all further statutory citations are to the Code of Civil Procedure.

After receiving this information, Nazdjanova obtained Sung's last known address in South Korea and attempted service in accordance with the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361) (Hague Service Convention). According to Nazdjanova's declaration, in December of 2015, she forwarded copies of the summons and complaint to the National Court Administration, South Korea's designated "Central Authority" for requests for service of process under the Hague Service Convention.[2] In April 2016, the National Court Administration provided Nazdjanova a certification indicating that it had unsuccessfully attempted to serve Sung three times at the address she had provided: 115-18 485th Street, Hyunchungwon-ro, Yusung-gu, Daejeon.

On April 21, 2016, the court granted Ace's application for service by publication. After the period of publication ended, Ace

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[2] The Hague Service Convention "requires each [signatory] state to establish a central authority to receive requests for service of documents from other countries. [Citation.] Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. [Citation.] The central authority must then provide a certificate of service that conforms to a specified model. [Citation.] A state also may consent to methods of service within its boundaries other than a request to its central authority. [Citation.]' [Citation.]" (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 698-699 (*Schlunk*); see also *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 133-134 (*Vanessa Q.*).)

filed a motion for entry of default, which the court granted. Ace thereafter sought entry of judgment.[3]

On August 3, 2016, the trial court held a status conference hearing and requested that Ace address the statute of limitations, and provide further information regarding the evidence that supported its claims. Following the hearing, Ace submitted an additional packet of documents in support of its request for a default judgment.[4] On October 19, 2016, the court entered a default judgment.

B. ***Sung's Motion to Set Aside the Default Judgment***

1. Summary of Sung's motion and supporting evidence

In December 2016, Sung filed a motion to set aside the default judgment "on the grounds that the order for publication

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[3] Although Sung's appellant appendix contains records indicating that Ace filed an application for entry of judgment that was supported by a declaration (see § 585, subds. (c) & (d)), the appendix does not contain a copy of the application or the declaration.

[4] Sung has not provided a transcript or settled statement of the status conference hearing, nor has he provided copies of the supplemental documentation that Ace submitted in support of its application for default judgment. The only information in the record regarding the status conference and the supplemental materials consists of a declaration from Nazdjanova, executed in October 2016. The declaration states that on August 3, 2016, the court held a status conference and asked Ace to address two issues: "the statute of limitations," and "the evidence that [Sung] converted the [funds at issue]." The declaration further asserts that Ace thereafter "submitted supplemental documents," and then "resubmitted a default judgment packet."

was fraudulently obtained [and] defendant's failure to file his answer . . . w[as] excusable under Code of Civil Procedure § 473 (b)."

Sung's motion asserted that he had "continuously" resided in South Korea from 2006 until September of 2016. Although Sung acknowledged he had visited his children in the United States "intermittently" between 2006 and 2011, he denied having entered the country at any time between 2012 and September of 2016.[5] Sung identified his residence in South Korea as "277-31 Noeun-dong, Yuseong-gu, Daejeon." He further contended that his sister and brother-in-law, Myung Koo and Gwan Koo, were both principals of Ace and lived next door to him in South Korea. Sung further asserted that the Koos and Ace had filed several lawsuits against him in South Korea, one of which involved the same allegations at issue in the current suit. Sung alleged he was not aware of the current action until the Koos filed a "copy of the default judgment" in a South Korea court on November 7, 2016. According to Sung, upon learning of the default judgment, he immediately retained counsel to contest the judgment. Sung provided a declaration containing statements that supported each of the factual allegations set forth in his motion.

Sung argued that the court should set aside the default judgment because the evidence showed Ace had "intentionally concealed" that the company's principals (the Koos) "knew" Sung was living at the 277-31 Noeun-dong residence, but failed to attempt service at that location. Sung also argued the judgment should be set aside because it was "indisputable that [he] was in

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[5] Sung's motion did not explain why he returned to the United States in September of 2016, whether his return was temporary or permanent, or where he resided upon his return.

Korea from 2012 to September 2016, during the period [Ace] attempted service of process in California."

2. Ace's opposition and supporting evidence

Ace's opposition argued that Sung's motion failed to acknowledge or address that its attorney had provided a declaration in support of the application for service by publication stating that she had attempted to serve Sung in South Korea in accordance with the Hague Service Convention. Ace further contended that under a new postal system South Korea had implemented in 2014, the address its attorney had provided to the National Court of Administration (115-18 485th Street, Daejeon) corresponded to the same physical location that Sung had identified as his residence in his moving papers (277-31 Noeun-dong, Daejeon). Thus, according to Ace, the company had in fact "attempted to personally serve [Sung] at the very address [he] claimed to be his home address in South Korea."[6]

In support of its opposition, Ace provided a second declaration from Nazdjanova that provided additional details regarding Ace's attempt to serve Sung in South Korea. Nazdjanova explained that after unsuccessfully attempting to serve Sung at the Pebble Ridge address in California, she asked Duy Jun Yong, an employee of an Ace affiliate located in South

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[6] Ace also argued Sung had filed several legal documents that showed he had in fact been in the United States in 2012, and was a resident of Los Angeles. In support, Ace provided copies of multiple complaints in which Sung identified himself as a resident of Los Angeles; two discovery responses (both signed under the penalty of perjury) stating that he had executed the documents in Los Angeles; and a signed settlement agreement stating that he was a resident of Los Angeles.

Korea, to research where Sung resided in South Korea. According to Nazdjanova, Yong determined that Sung resided at 115-18 485th Street in Daejeon. Yong also informed Nazdjanova that under a recent change to South Korea's postal system, this address corresponded to the former address of 277-31 Noeun-dong, Daejeon. Nazdjanova's declaration stated that she confirmed this address change information through discussions with FedEx personnel and independent internet research. Nazdjanova's declaration included documentation regarding the changes to South Korea's postal system, which included a printout indicating that under the new system, the 115-18 485th Street address corresponded to the former address of 277-31 Noeun-dong.

Nazdjanova's declaration further stated that when applying for service by publication, Ace had specifically informed the trial court that Sung was believed to be in South Korea, and that Ace had attempted service at the 485th Street address in accordance with the Hague Service Convention. As with the declaration she filed in support of the application for service by publication, Nazdjanova provided documentation showing that the National Court Administration had certified that it attempted service three times at the designated address.

Duk Jun Yong also provided a supporting declaration, confirming that: (1) Nazdjanova had asked him to ascertain Sung's address in South Korea; (2) he had researched the matter, and determined that Sung's residence in South Korea was located at 115-18 485th Street in Daejeon; and (3) as part of his investigation, Yong determined that under a "new postal system" which went into effect in January 2014, this address

corresponded to the residence formerly addressed as 277-31 Noeun-dong.

3. The trial court's ruling

After a hearing, the trial court issued a minute order denying Sung's motion to set aside the default judgment. The court's order does not set forth the basis for its decision, and Sung has not provided a hearing transcript or settled statement reflecting what was discussed at the hearing.

DISCUSSION

Sung argues that the trial court should have set aside the default judgment because the evidence established he was improperly served by publication. (See § 415.50.) Specifically, Sung argues that his declaration and other supporting materials show that Ace did not make a diligent effort to locate his residence in South Korea, nor did it take reasonable steps to serve him at that location. Sung contends that because service through publication was improper, the default judgment is void.[7]

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[7] In the trial court proceedings, Sung presented two additional arguments in support of his contention that the judgment should be set aside: (1) Ace made fraudulent statements or omissions in its application for service by publication (see generally *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181 [party may seek to set aside default judgment on the basis that "extrinsic fraud or mistake exists, such as a falsified proof of service"]); and (2) Sung did not receive actual notice of the action until after default was entered. (See § 473.5, subd. (a) ["[w]hen service of a summons has not resulted in actual notice to a party in time to defend the action . . ., he or she may . . . file a . . . motion to set aside the . . . default judgment"].) In this appeal, however, Sung has not raised fraud or lack of

A. Summary of Applicable Law

1. Standard of review

"'"[A] default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void. [Citation.]" [Citation.] Under section 473, subdivision (d), the court may set aside a default judgment which is valid on its face, but void, as a matter of law, due to improper service. [Citations.]' [Citation.]" (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1200 (*Hearn*); see also *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544 (*Ellard*).)[8]

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actual notice as an independent basis for setting aside the judgment. Accordingly, we treat any contention of error regarding those issues as abandoned or otherwise forfeited. (See *Tiernan v. Trustees of Cal. State University* (1982) 33 Cal.3d 211, 216, fn. 4 [argument that was presented to the trial court, but "not raised . . . on appeal . . . may . . . be deemed waived"]; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 ["[c]ourts will ordinarily treat the appellant's failure to raise an issue in his or her opening brief as a waiver of that challenge"]; *Humes v. Margil Ventures, Inc.* (1985) 174 Cal.App.3d 486, 493 ["A point not presented in a party's opening brief is deemed to have been abandoned or waived"].)

[8] Sung's appellate brief argues that the default judgment should be set aside for lack of proper service pursuant to section 473, subdivision (b), which provides the trial court discretion to "relieve a party . . . from a judgment . . . taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Our courts have clarified, however, that section 473, subdivision (d), which authorizes the court to set aside "void judgments," is the appropriate subdivision when, as here, the defendant seeks to set aside a judgment "due to improper service." (*Ellard, supra,* 94 Cal.App.4th at p. 544.)

"Where the question on appeal is whether the entry of default and the default judgment were void for lack of proper service of process, we review the trial court's determination de novo. [Citation.]" (*Hearn, supra,* 177 Cal.App.4th at p. 1200; see also *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858 ["Whether a judgment is void due to improper service is a question of law that we review de novo"].) However, we review any factual findings underlying that determination, including any implied factual findings, for substantial evidence. (See *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [substantial evidence standard applies to factual findings underlying grant of relief from default]; cf. *People v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143 ["If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence"].) In other words, we review the court's factual findings for substantial evidence, and review the court's determination whether service was proper under those findings de novo. (Cf. *People v. Simms* (2018) 23 Cal.App.5th 987, 994 ["Where we are called upon to address '"the interpretation of a statute . . . the issue . . . is a legal one, which we review de novo."' [Citation.] But '[w]here the trial court applies disputed facts to such a statute, we review the factual findings for substantial evidence and the application of those facts to the statute de novo"'].)

An appealed judgment or order is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) "'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . . ' [Citations.]" (*Ibid.*) An appellant has

the burden of overcoming this presumption by an affirmative showing of error on an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.)

2. Summary of service by publication under section 415.50

"'Personal service [is] the method of choice under the statutes and the constitution. [Citations.] When substituted or constructive service is attempted, strict compliance with the letter and spirit of the statutes is required. [Citation.]' [Citation.]" (*Kott v. Superior Court* (1996) 45 Cal.App.4th 1126, 1137 (*Kott*).)

"To obtain an order directing service by publication, section 415.50, subdivision (a), requires a party to establish to the satisfaction of the court in which the action is pending 'that the party to be served cannot with reasonable diligence be served in another manner specified in this article. . . .'" (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748-749 (*Watts*).) "'[T]he term "reasonable diligence" . . . denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney.'" (*Id.* at p. 749, fn. 5.) The Judicial Council comment to section 415.50 explains: "A number of honest attempts to learn defendant's whereabouts or his address by inquiry of relatives, friends, and acquaintances, or of his employer, and by investigation of appropriate city and telephone directories, . . . and the real and personal property index in the assessor's office, near the defendant's last known location, are generally sufficient. These are likely sources of information, and consequently must be searched before resorting to service by publication." (Judicial Council of Cal., com., reprinted at 14B, Pt.1 West's Ann. Code Civ. Proc. (2016 ed.) § 415.50, p. 106; see also *Watts, supra,* 10 Cal.4th at p. 749, fn. 5 [citing and quoting

Judicial Council comment to § 415.50].) "However, the showing of diligence in a given case must rest on its own facts and '[n]o single formula nor mode of search can be said to constitute due diligence in every case.' [Citation.]" (*Kott, supra,* 45 Cal.App.4th at p. 1138.)

B. Sung Has Failed to Show the Court Erred in Concluding that Ace Made a Diligent Attempt to Serve him in South Korea

Sung argues that Ace failed to act with "reasonable diligence" because the evidence shows the company "could have easily obtained" his address in South Korea, and then attempted to serve him at that location. According to Sung, Ace "chose to ignore obvious avenues for obtaining" his location in South Korea, including requesting such information from the Koos, who lived next door to him, or from his attorney in South Korea.

This argument fails to address the declaration that Ace's attorney filed in support of the application for service by publication stating that the company did attempt to serve Sung at his South Korea residence in accordance with the processes set forth in the Hague Service Convention. As summarized above, Ace provided additional evidence showing that the address its attorney provided to South Korea's central authority for effectuating service requests under the Convention corresponded to the address that Sung claimed as his residence in his moving papers.

Sung's appellate brief does not dispute that the address Ace provided to the central authority corresponded with his address in South Korea. Nor does Sung's brief dispute that Ace acted in accordance with the Hague Service Convention, which provides "the exclusive method of service upon a defendant resident in a

country which is a signatory to the convention." (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1246; see also *Schlunk, supra,* 486 U.S. at p. 699; *Kott*, *supra*, 45 Cal.App.4th at p. 1135 ["service through the . . . Convention provides the exclusive means of service" on person residing in signatory state]; *Vanessa Q., supra*, 187 Cal.App.4th at p. 134 [when serving "a civil complaint filed in the United States" on a resident of a signatory nation, service "must be accomplished in accordance with the Hague Service Convention's requirements"]; Code Civ. Proc., § 413.10, subd. (c) [California's provisions for service outside U.S. "are subject to" the provisions of Hague Service Convention].)

Sung presents no argument explaining why Ace's attempt to serve him at his South Korea residence in accordance with the Hague Service Convention was unreasonable or otherwise insufficient to constitute "reasonable diligence" under section 415.50. He has likewise failed to identify what further steps he believes Ace should have (or could have) taken to serve him in South Korea other than making a request through the central authority.[9] Accordingly, he has provided no basis for us to

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[9] In the trial court proceedings, Sung contended that, in addition to requesting service through South Korea's designated central authority (the National Court Administration), Ace should have attempted to serve him at his South Korea residence through the mail or through his attorney in South Korea. In response to this argument, Ace provided evidence showing that South Korea has objected to Article 10 of the Hague Convention, which allows methods of service other than through the central authority, including service by mail or personal service by third parties, unless the "'the State of destination'" has objected to the Article. (*Turick by Turick v. Yamaha Motor Corp. SA,* (S.D.N.Y.

conclude that the trial court erred in finding Ace's attempts to serve him abroad were reasonable. (See *Denham, supra,* 2 Cal.3d at p. 564 ["error must be affirmatively shown"]; *Gee v. Am. Realty & Constr., Inc.* (2002) 99 Cal.App.4th 1412, 1416 [affirming trial court order where appellants "ha[d] not sustained their burden . . . to demonstrate error, thus overcoming the presumption of correctness attending the order"].)

DISPOSITION

The trial court's judgment is affirmed. Because Ace did not appear, no party shall recover costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.

1988) 121 F.R.D. 32, 34 [citing and quoting Article 10 of the Convention].) In light of South Korea's objection to Article 10, service through South Korea's designated central authority is the exclusive means of serving a resident in that country, and Sung has presented no argument suggesting otherwise.