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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

PAUL NGUYEN, Plaintiff and Appellant, v. REUBEN FUKE et al., Defendants and Respondents.	B276459 (Los Angeles County Super. Ct. No. BC559526)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed in part and reversed in part.

Phillip L.J. Sandoval for plaintiff and appellant.

No appearance for defendants and respondents.

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A trial court entered a default judgment for a plaintiff on two of his claims against the people he sued after they never responded to his lawsuit. The court awarded damages. Plaintiff now appeals, arguing that the trial court erred in not awarding judgment and damages on two of his other claims. We conclude there was no error, and affirm.

FACTS AND PRORCEDURAL BACKGROUND

I. Facts

In April 2013, Paul Nguyen (plaintiff) brought his 1932 Ford Victoria hot rod to Stay Gold Garage for restoration. Plaintiff entered into a contract with Stay Gold Garage to restore the car's interior and door, to repaint the car at an "offsite paint shop," to re-plate all of the car's chrome fixtures in a bronze-copper color, and to do all of this work "in a workmanlike and competent manner." For this work, plaintiff agreed to pay $9,000, and he made a prepayment of $6,800.

Plaintiff was unsatisfied with Stay Gold Garage's work. Stay Gold Garage painted the car onsite and, worse yet, painted it the wrong color; the car was missing its $1,500 grill; and the car was returned late. It would cost another $15,000 to have the work corrected and the car properly restored.

II. Procedural Background

Plaintiff sued Stay Gold Garage's owner and general partner—defendants Reuben Fuke and Tanya Christine, respectively (collectively, defendants)—for (1) breach of contract, (2) fraud, (3) conversion, and (4) receiving stolen property under Penal Code section 496, subdivision (c).[1] In his complaint and

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1 Plaintiff also sued for violations of the unfair competition law (Bus. & Prof. Code, § 17200 et seq.), and for common counts, but ultimately abandoned those claims.

subsequently filed statement of damages, plaintiff sought $23,300 in out-of-pocket damages (comprised of the $6,800 he prepaid, $15,000 to properly restore the car, and the $1,500 value of the car's grill), $25,000 in emotional distress damages, $144,900 in treble damages under Penal Code section 496, subdivision (c), $75,000 in punitive damages, attorney's fees, and costs.

Defendants never responded to the complaint, and the trial court clerk entered a default.

Following a prove-up hearing at which plaintiff testified, the trial court concluded that plaintiff was entitled to relief on his breach of contract and conversion claims, and awarded him $23,300 in economic damages along with pre- and post-judgment interest, $15,000 in emotional distress damages, $8,000 in attorney's fees, and $1,142.50 in costs.

Dissatisfied, plaintiff moved for a new trial on the ground that the trial court erred in not ruling on his claims for fraud and for receiving stolen property under Penal Code section 496, and consequently, for not awarding treble damages. The trial court denied the motion. The court clarified that it had "not fail[ed] to rule on [plaintiff's] causes of action" for fraud and receipt of stolen property; instead, it had concluded that "there was insufficient evidence to support" those claims.

Plaintiff filed a timely notice of appeal.

DISCUSSION

Plaintiff argues that the trial court erred in ruling that he produced insufficient evidence at the prove-up hearing to support his fraud and receipt of stolen property claims. Plaintiff cites authority holding that a defendant's failure to respond to a complaint "admits the well-pleaded allegations of the [plaintiff's] complaint," and dispenses with any need for "further proof of

liability." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 883-884, 898 (*Carlsen*).) Thus, plaintiff reasons, the trial court erred in faulting him for not providing such proof. Plaintiff urges that his claims for fraud and receipt of stolen property are "well-pled," and that he is therefore entitled to a default judgment on these claims along with the treble damages that accompany a judgment for receiving stolen property.

Responding to plaintiff's arguments requires us to examine the law governing defaults and default judgments, as well as whether the trial court properly ruled on whether plaintiff is entitled to relief on the two claims he presses on appeal.

I. Defaults and Default Judgments, Generally

If a plaintiff in a civil lawsuit files a complaint and the defendant does not answer or otherwise respond with a procedurally appropriate filing, the defendant is in default. (Code Civ. Proc., §§ 580, subd. (a) & 585.)[2] The trial court may award plaintiff damages up to (but not exceeding) the amount collectively sought in the operative complaint (§ 425.10, subd. (a)(2)), in the separate damages statement that must be filed when a plaintiff seeks "damages for personal injury or wrongful death" (§ 425.11), or in the damages statement that must be filed when a plaintiff seeks punitive damages (§ 425.115). (See generally *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826; *Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 968-969.) As long as the defendant is properly served with the operative complaint and any applicable damages statement(s), the defendant is on notice of his or her potential maximum liability; the defendant's subsequent decision not to respond is deemed to be a decision to

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2 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

forego the opportunity to be heard and to consent to the entry of judgment up to and including that maximum, thereby satisfying the tenets of due process. (*Dhawan*, at pp. 969-970; see generally *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212 ["'The essence of due process is the requirement that "a person . . . [be given] notice of the case against him and opportunity to meet it"'"].)

The Code of Civil Procedure sets forth the procedures a trial court must follow when a defendant does not respond to the operative complaint.

The first step is the entry of *default*. That is to be done by the trial court's clerk as a matter of course once the plaintiff so requests and provides proof that the defendant was properly served and did not respond. (§ 585, subds. (a) & (b).)

The second step is the entry of the *default judgment*. How this is done depends on how easy it is to calculate the amount of damages from the operative pleadings.

"[W]here there is 'some definite, fixed amount of damages or where such may be ascertained by computation made by the clerk'"—in other words, "where the determination of damages is a purely ministerial act"—the *clerk* may enter the default judgment. (*Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1432, quoting *Ford v. Superior Court* (1973) 34 Cal.App.3d 338, 342; *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 287 (*Kim*); see also § 585, subd. (a).)

Where "the relief requested in the complaint is more complicated than that"—either because it involves nonmonetary relief or because the monetary relief to be awarded turns on "an accounting, additional evidence, or the exercise of judgment to ascertain (such as emotional distress damages, pain and

suffering, or punitive damages)"—then the *trial court* must enter the default judgment. (*Kim*, *supra*, 201 Cal.App.4th at p. 287; see also § 585, subd. (b).) Because this situation necessarily requires the trial court to look beyond the pleadings, the plaintiff must affirmatively "establish his [or her] entitlement to the specific judgment requested." (*Kim*, at p. 287; § 585, subd. (b) [imposing duty upon trial court to "hear the evidence offered by the plaintiff"].) The plaintiff must make a "prima facie case" for the relief sought, and it is up to the trial court whether to conduct a prove-up hearing with live testimony (with or without a jury), or instead to accept affidavits in lieu of live testimony. (§ 585, subds. (b) & (d); *Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361-362 (*Johnson*).) The court may only award relief "as appears by the evidence to be just" (§ 585, subd. (b)), and the defendant's absence imposes upon the court a "duty . . . to act as gatekeeper, ensuring that only the appropriate claims get through." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868 (*Heidary*); *Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, 1179.)

The courts appear to be divided on whether the plaintiff must put forth evidence to establish a prima facie case as to *liability and damages*, or just as to *damages*. Some cases hold that a plaintiff must only prove up damages. The defendant's default "admit[s] the well-pleaded allegations of the complaint," these courts note, which dispenses with any need to prove liability. (E.g., *Carlsen*, *supra*, 227 Cal.App.4th at p. 898; *Kim*, *supra*, 201 Cal.App.4th at p. 288; *Johnson*, *supra*, 72 Cal.App.4th at pp. 361-362; *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1744; *Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1597; see generally § 431.20, subd. (a) ["Every material allegation of the

complaint . . . not controverted by the answer, shall, for the purposes of the action, be taken as true"].) Other cases establish a greater burden, requiring the plaintiff "to show a judge some real evidence on the question of liability and damages." (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 396, fn. 9, disapproved on another ground in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12; *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1013; *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1588, fn. 15, disapproved on another ground in *Wilcox*, at p. 983, fn. 12.) We need not take a position on this issue because, as discussed below, the result in this case is the same no matter which rule we follow.

Consequently, our review is limited to two tasks. First, we must evaluate the predicate questions of whether the operative complaint states a cause of action for relief and whether its allegations sufficiently do so. (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 829.) Both questions are reviewed de novo. (See *People v. Allen* (1993) 20 Cal.App.4th 846, 849 [determination of elements of a cause of action is a question of law]; *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 956 [questions of law reviewed de novo]; *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1230 [for purposes of a demurrer, appellate court reviews de novo whether the operative complaint "'alleges facts sufficient to state a cause of action"'].) Second, and consistent with the trial court's role as gatekeeper, we may review the sufficiency of the plaintiff's evidentiary proof to ensure that the ultimate damages award does not work a "gross injustice"—that is, that the award is neither (1) "so disproportionate to the evidence as to suggest that the [judgment] was the result of passion, prejudice or corruption"

or (2) "so out of proportion to the evidence that it shocks [our] conscience." (*Uva v. Evans* (1978) 83 Cal.App.3d 356, 363-364; *Johnson*, *supra*, 72 Cal.App.4th at p. 361; *Kim*, *supra*, 201 Cal.App.4th at pp. 288-289.)

II. The Trial Court's Rulings, Specifically

A. Fraud claim

To plead a claim for common law fraud, a plaintiff must allege (1) a misrepresentation by the defendant (via a false representation, concealment, or nondisclosure), (2) the defendant's knowledge of the falsity, (3) the defendant's intent to defraud (that is, to induce reliance), (4) the plaintiff's justifiable reliance, and (5) resulting damage. (*AREI II Cases* (2013) 216 Cal.App.4th 1004, 1021-1022.) Fraud claims must also be pled with specificity; the plaintiff must allege "'how, when, where, to whom, and by what means the [actionable] representations were made.'" (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1008.)

Read as a whole, plaintiff's complaint in this case properly alleges a claim for common law fraud. Plaintiff alleged that, in or about April 2013, defendants misrepresented the type and quality of restoration work they would perform, while knowing they intended to do substandard work (and pocket the savings) and with the intent to induce plaintiff to give them his business (and thus his money). Plaintiff also alleged that he suffered out-of-pocket losses of $21,800 (the $6,800 prepayment plus the $15,000 to properly restore his car) as well as emotional distress damages.

The trial court erred in ruling that plaintiff's fraud claim fails for lack of evidence, and this is true no matter which rule we follow regarding what must be proven. Plaintiff properly alleged

the elements of common law fraud liability. What is more, the court had by that point found that plaintiff had produced sufficient evidence to make a prima facie case, as to the breach of contract and conversion claims, that defendants had fraudulently taken plaintiff's money and property and that defendants' acts caused him to suffer $23,300 in economic damages and $15,000 in noneconomic damages; that ruling applies with equal force to the common law fraud claim. This constitutes proof of both liability and damages.

However, plaintiff's entitlement to judgment on his common law fraud claim does not translate into greater damages. That is because the damages plaintiff suffered by virtue of defendants' fraud are the same as his breach of contract and conversion damages. A plaintiff may not "double dip." (*Heidary*, *supra*, 99 Cal.App.4th at p. 868 [noting trial court's duty, as gatekeeper, not to award "duplicative . . . relief" when issuing a default judgment].)

B. Trafficking in stolen property claim

California law makes it a crime to knowingly traffic in stolen property. This prohibition is set forth in Penal Code section 496, subdivision (a), which in pertinent part prohibits "buy[ing] or receiv[ing] any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or . . . conceal[ing], sell[ing], withhold[ing], or aid[ing] in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained." In 1972, our Legislature granted "[a]ny person who has been injured" by the commission of this crime the right to "bring a[civil] action for three times the amount of actual damages, if any, sustained by

the plaintiff, costs of suit, and reasonable attorney's fees." (*Id.*, subd. (c).)

The trial court correctly denied plaintiff any relief under Penal Code section 496 because defendants' alleged acts in not performing restoration work in conformance with the parties' contract does not constitute trafficking in stolen property as prohibited by Penal Code section 496, subdivision (a). Time and again, courts have recognized that this statute requires proof "'(1) that the particular property was stolen, (2) that the [defendant] received, concealed or withheld it from the owner thereof, and (3) that the [defendant] knew that the property was stolen.'" (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 213, quoting *People v. Moses* (1990) 217 Cal.App.3d 1245, 1250-1251.) Defendants accepted plaintiff's car and money from its true owner; they did not receive, conceal, or withhold stolen property.

Plaintiff urges that Penal Code section 496 has a broader reach. He first argues (1) that Penal Code section 496's literal language reaches the receipt of "property . . . that has been obtained in any manner constituting *theft*" (Pen. Code, § 496, subd. (a), italics added); (2) that "theft" is defined as the "fraudulent[] appropriat[ion] [of] property which has been entrusted" to another (*id.*, § 484, subd. (a)); and (3) that his conversion claim rests in part on the allegation that defendants fraudulently kept his prepayment money. Using the same logic, plaintiff secondly argues (1) that Penal Code section 496's literal language also reaches "theft by false pretenses" because "theft" is also defined as the act of obtaining personal property by knowingly making "any false or fraudulent representation or pretense" (*id.*, § 484, subd. (a)); and (2) that his common law

fraud claim is indistinguishable from a claim for theft by false pretenses. The first part of plaintiff's second argument was expressly endorsed by *Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1048 (*Bell*). Plaintiff asserts that *Bell* must be read to mandate judgment for plaintiff on his Penal Code section 496 claim.

However, we decline to read Penal Code section 496 to prohibit the performance of substandard work under a contract and thus to entitle a person to treble damages for such substandard performance, even if the contract-breacher's acts can also be characterized as conversion by fraudulent appropriation or theft by false pretenses. Two reasons support this conclusion. First, reading Penal Code section 496 to authorize treble damages whenever a plaintiff can recast a breach of contract claim as a misrepresentation-based common law fraud claim or a fraudulent appropriation-based conversion claim *could* (in contested cases) and *would* (in cases of default) entitle that plaintiff to treble damages for any breach of contract, conversion, or common law fraud claim. Because the traditional remedy for such claims is the plaintiff's *actual* damages (Civ. Code, §§ 3300 [damages for breach of contract is "the amount which will compensate . . . for all the detriment proximately caused thereby"] & 3336 [damages for wrongful conversion is the "value of the property at the time of conversion" plus "fair compensation for the time and money properly expended" in its pursuit]; *Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1165 ["fraud damages are computed under the out-of-pocket loss rule"]; *Benson v. Southern California Auto Sales, Inc.* (2015) 239 Cal.App.4th 1198, 1208 ["The damages recoverable in [a misrepresentation claim] are limited to those caused by the

misrepresentation"]), reading Penal Code section 496 broadly to allow for treble damages would significantly alter the universe of remedies available for such claims.

Our Legislature usually speaks with a much clearer voice when it creates such an extraordinary remedy. (E.g., Bus. & Prof. Code, § 16750, subd. (a) [treble damages available for violations of the Cartwright Act setting state antitrust laws]; *id.*, § 17082 [treble damages available for violations of the unfair competition law]; Civ. Code, §§ 52, subd. (a) & 54.3, subd. (a) [treble damages available for violations of the Unruh Civil Rights Act]; *id.*, § 1719, subd. (a)(2) [treble damages available to payee for passing checks with insufficient funds]; *id.*, § 3345 [treble damages available "in actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons . . . to redress unfair or deceptive acts or practices or unfair methods of competition"]; Gov. Code, § 12651, subd. (b) [treble damages available for violations of the False Claims Act]; Lab. Code, § 230.8, subd. (d) [treble damages available for denying employees wages "to engage in child-related activities" protected by statute]; see also 18 U.S.C. § 1964(c) [treble damages available under the federal Racketeer Influenced and Corrupt Organizations Act].)

Bell recognized that its holding that Penal Code section 496 reached any and all thefts could be read to "permit[] litigants to circumvent limitations on remedies" but felt constrained to defer to the literal language of Penal Code section 496. (*Bell*, *supra*, 212 Cal.App.4th at p. 1049.) We agree with *Bell* that reading the statute to allow for treble damages in run-of-the-mill breach of contract, conversion, and fraud claims would transmogrify the remedies available for such claims, but disagree that we are hostage to the statute's literal language. To the contrary, our

Supreme Court has held that "'a statute's literal terms will not be given effect if to do so would yield an unreasonable or mischievous result.'" (*People v. Vidana* (2016) 1 Cal.5th 632, 638 (*Vidana*), quoting *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 189.) Because the application of *Bell*'s reasoning to the breach of contract, conversion, and fraud claims before us yields an "unreasonable [and] mischievous result," we decline to read Penal Code section 496 literally.

Second, this conclusion is reinforced by the legislative history underlying the treble damages provision. As noted above, that provision was added in 1972. (Stats. 1972, ch. 963, § 1.) Its purpose was to "eliminate [the] markets through which stolen property is sold" by "making persons who steal, fence, or receive stolen property, civilly liable" for treble damages, thereby "tak[ing] the profit out of cargo thievery." (Statement on Sen. Bill No. 1068 (1972 Reg. Sess.) p. 1; Sen. Com. on Judiciary, com. on Sen. Bill No. 1068 (1972 Reg. Sess.) as amended June 26, 1972, p. 2.) The legislative history reflects a narrow and specific purpose having nothing to do with making treble damages available to plaintiffs who creatively plead breach of contract, conversion, and fraud claims. (Accord, *Vidana*, *supra*, 1 Cal.5th at p. 638 [noting propriety of looking to legislative history in construing statutes].)

DISPOSITION

We reverse the trial court's judgment declining to find defendants liable for fraud and modify the judgment to reflect such liability. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.