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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

PEOPLESUPPORT, INC., Plaintiff and Appellant. v. NEWPORT SATELLITE GROUP et al., Defendants and Respondents.	B230407 (Los Angeles County Super. Ct. No. BC405116)

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

Law Offices of Keith Alan and Keith Alan for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Plaintiff and appellant PeopleSupport, Inc., challenges a default judgment in its favor and against defendants and respondents Newport Satellite Group (Newport) and Dastmalchi Enterprises, Inc. (Dastmalchi). Plaintiff raises three arguments on appeal: (1) The trial court erred in failing to award it specific performance; (2) The trial court erred in dismissing the Doe defendants; and (3) The trial court erred in denying its motion to vacate the judgment pursuant to Code of Civil Procedure section 473, subdivision (b).[1]

We conclude that the trial court did not err in denying plaintiff's request for specific performance. Furthermore, plaintiff did not establish that the trial court erred in dismissing the Doe defendants. Finally, plaintiff failed to meet its burden based upon section 473. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Complaint and Newport and Dastmalchi's Defaults

On January 7, 2009, plaintiff filed a complaint alleging breach of contract, common counts, and specific performance against Dastmalchi and Newport. In the specific performance cause of action, plaintiff sought to enforce paragraph 8.N. of the parties' agreement. That paragraph provides: "As a condition precedent to [plaintiff's] obligation under this Agreement, Client shall, upon request by [plaintiff], deliver an executed personal guarantee in form and substance acceptable to [plaintiff]." In other words, plaintiff sought "a permanent injunction directing Defendants and each of them . . . to deliver the executed personal guarantee in form and substance that [plaintiff] demanded and which was promised in the Contract."

Dastmalchi and Newport were served with the complaint but failed to answer. Thus, Dastmalchi's default was entered on March 9, 2009, and Newport's default was entered on June 30, 2009.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

On September 9, 2009, plaintiff amended the complaint, substituting Inkor Communications, Inc. (Inkor), as Doe 1.

On May 26, 2010, plaintiff requested that a default judgment be entered against Dastmalchi and Newport. In addition to monetary damages, plaintiff sought "judgment by way of specific performance of paragraph 8.N. of the parties' Services Agreement, in that [Dastmalchi and Newport] are hereby ordered to forthwith provide to [plaintiff] guarantees executed by their respective principals . . . in the form attached hereto." In conjunction with its default judgment prove-up papers, plaintiff submitted a conditional request for dismissal, asking that the "[e]ntire action against does No. 2 through 100" be dismissed "ON CONDITION THAT DEFAULT JUDGMENT BY COURT IS ENTERED AS REQUESTED."

On August 10, 2010, the trial court entered a default judgment in favor of plaintiff and against Dastmalchi and Newport in the amount of $102,942. In so doing, however, it struck plaintiff's request for specific performance from the proposed judgment submitted to the trial court.

On October 12, 2010, plaintiff filed a motion for an order vacating the default judgment and entering a new default judgment pursuant to section 473. Plaintiff asked for a new judgment, including judgment on its specific performance cause of action. Alternatively, plaintiff asked "to know the reason why the [trial court] struck out the stricken portion of the proposed judgment that [plaintiff] submitted."

The trial court denied plaintiff's motion "for the reasons stated on the record." The transcript of the hearing is not part of the appellate record.

Plaintiff's timely appeal ensued.

DISCUSSION

All a plaintiff must present at a default prove-up is a prima facie case. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361–362.)

To obtain specific performance after a breach of contract, a plaintiff must show: (1) the legal remedy is inadequate; (2) the underlying contract is both reasonable and supported by adequate consideration; (3) the remedies are mutual; (4) the contractual

terms are sufficiently definite to enable the court to know what it is to enforce; and (5) the requested performance is substantially similar to that promised in the contract. (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 472.) A denial of specific performance is reviewed for abuse of discretion. (*Ibid*.)

Plaintiff has not demonstrated that it presented a prima facie showing in support of its specific performance cause of action. Specifically, the terms of the contract are not sufficiently definite. According to its plain terms, the contract is between plaintiff and Newport. While Dastmalchi is mentioned in handwriting at the bottom of the second page of the contract ("DASTMALCHI ENTERPRISES INC. (DEI) DBA NEWPORT SATELLITE GROUP"), it is unclear whether Dastmalchi is a party to the subject agreement. Moreover, the paragraph plaintiff seeks to enforce is vague. Who is required to deliver an "executed personal guarantee"? What sort of personal guarantee would be "acceptable" to plaintiff?[2]

In urging us to reverse, plaintiff directs us to requests for admission that were deemed admitted against Dastmalchi and Newport. In particular, Dastmalchi and Newport admitted that they "had the legal authority to deliver to [plaintiff] a personal guarantee executed by Alex Dastmalchi [and Kelly Sneed]." The problem for plaintiff is that the individuals from whom plaintiff seeks personal guarantees were not parties to the subject contract and were not named as defendants in the complaint. It would be highly unfair to compel unnamed nonparty individuals to execute personal guarantees via default judgment against two corporate defendants.

Next, plaintiff asserts that the trial court erred in dismissing the Doe defendants without its consent. Plaintiff has failed to meet its burden of proof on appeal. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) Plaintiff does not offer any record citation supporting its claim that the trial court

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[2] Plaintiff's reference to the personal guarantee it proposed in its default judgment papers is unavailing. As noted above, there is nothing in the contract that indicates that Alex Dastmalchi and Kelly Sneed should be the signatories to a personal guarantee.

dismissed all of "the non-defaulting 'doe' defendants." Plaintiff's failure to cite to the record allows us to treat this issue as waived.[3] (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.)

Finally, plaintiff contends that the trial court erred in denying its motion to vacate the judgment pursuant to section 473, subdivision (b). Again, plaintiff failed to meet its burden on appeal as it has not demonstrated that the trial court abused its discretion. (*Brown v. Williams* (2000) 78 Cal.App.4th 182, 186.) We do not know why the trial court denied plaintiff's motion. While plaintiff purports to set forth the trial court's reasons for denying its section 473 motion in its appellate brief, plaintiff fails to offer any supporting evidence in the appellate record. In fact, plaintiff deliberately elected not to submit the transcript of the hearing on its section 473 motion. Under these circumstances, and because plaintiff failed to comply with the requirements of California Rules of Court, rule 8.155(a), we deny plaintiff's request for leave to augment the record.

DISPOSITION

The judgment of the trial court is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ

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[3] Notably, plaintiff does not mention the status of Inkor, the named defendant substituted in place of Doe 1. Was Inkor properly served? Did Inkor answer or was its default entered?