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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

BLANQUITA H. PELAEZ, Plaintiff and Appellant, v. PANFILO M. LACSON, Defendant and Respondent.	A105552 (Alameda County Super. Ct. No. 2001034470)

Blanquita Pelaez appeals 1) a default judgment entered in her favor on October 27, 2003, and 2) a December 30, 2003 order denying her motion for a new trial.[1] We affirm.

BACKGROUND

On December 14, 2001, Pelaez filed a complaint for intentional interference with economic relationship and slander per se against respondent Panfilo Lacson.[2] Lacson is a citizen and resident of the Philippines, where he is a senator. Pelaez was the authorized representative in the Philippines of Smith & Wesson, which had a contract with the Philippine National Police (PNP) for the sale of handcuffs. She alleges Lacson interfered with that contract while he was the chief of the PNP, causing her to lose her commission. She also alleges Lacson prevented her from acting as a Smith & Wesson agent in future

[1] Pelaez's motion sought in the alternative modification and amendment of the default judgment, but this portion of her motion is not at issue in this appeal.

[2] The complaint also contains a cause of action for intentional infliction of emotional distress, but this claim is not at issue in this appeal.

bidding on PNP contracts after he blacklisted her as a vendor-supplier of the PNP. And she claims he called her a "scam artist" and a "smuggler" to members of the San Francisco Bay Area Filipino community. Her complaint asks for damages in the amount of her lost commission plus future earnings from contracts she would have obtained for Smith & Wesson had Lacson not blacklisted her, as well as $2 million in punitive damages.

The summons and complaint were served on Lacson in the Philippines in mid-January 2002. Lacson did not file an answer. Instead, on January 28, 2002, the court received a letter from Lacson's counsel stating 1) the court did not have jurisdiction over Lacson because of improper service of process and other jurisdictional problems, 2) they would ignore the service on their client, and 3) they were returning the summons and complaint.

On May 1, 2002, the court received a second letter from Lacson's counsel stating they had received Pelaez's request for entry of default against Lacson dated March 21, 2002. The letter reiterated that Lacson had not been properly served and that he had no legal obligation to participate in the action.

Default was entered against Lacson on June 11, 2002. After a prove-up hearing on January 10, 2003, the court awarded Pelaez a default judgment against Lacson in the amount of $3,031,262.

On February 7, 2003, Lacson filed a motion for relief from and to set aside the default. He argued mistake based on incorrect advice from his counsel in the Philippines. He also asked for leave to file an attached motion to quash based on lack of personal jurisdiction due to improper service.

On August 19, 2003, the court denied Lacson's motion to set aside the default, but granted his motion to set aside the default judgment of $3,031,262. In refusing to set aside the default, the trial court found Lacson had received actual notice of the complaint, relying on the first letter written by his counsel in the Philippines which acknowledged receipt of the same.

Pelaez filed a request for court judgment on September 26, 2003. The court held a second prove-up hearing in response to this request on October 23, 2003. On October 27, 2003, the court entered default judgment for Pelaez and against Lacson in the amount of $31,262. This amount was awarded on Pelaez's cause of action for intentional interference with economic relationship. It equaled the amount of the commission Pelaez lost on her contract for the sale of handcuffs to the PNP, as set forth in the complaint. The court refused to award damages for Lacson's alleged interference with other contracts which Pelaez expected from the PNP. The court also refused to award damages on Pelaez's slander per se claim or punitive damages.

On November 12, 2003, Pelaez brought a motion to modify and amend the October 27, 2003 judgment or for a new trial. On December 30, 2003, the court denied the motion. The court found the only fully executed contract was for the sale of handcuffs to the PNP. The court again rejected claims for damages based on other PNP contracts. The court found as an additional basis for denying punitive damages Pelaez's failure to comply with Code of Civil Procedure section 425.115 concerning the reservation of right to seek punitive damages at a default hearing.

DISCUSSION

I. The Default Judgment Is Not Void for Improper Service of Process.

Although Lacson never filed a notice of appeal in this action, he asks us to set aside the default and vacate the default judgment. He argues he was never properly served with the summons and complaint and consequently the trial court had no jurisdiction to enter any judgment against him. We disagree.

We consider Lacson's jurisdictional argument despite his failure to file a notice of appeal because a default judgment void on its face for lack of jurisdiction over the defendant may be attacked "anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers." (*Nagel v. P & M Distributors, Inc*. (1969) 273 Cal.App.2d 176, 180; see also *Schwab v. Southern California Gas Co.* (2004) 114 Cal.App.4th 1308, 1320 (court may set aside void judgment at any time; it is immaterial how invalidity is

called to court's attention).) We review the trial court's finding of proper service for abuse of discretion. (*Bolkiah v. Superior Court* (1999) 74 Cal.App.4th 984, 999 (*Bolkiah*).) In so doing, we are mindful of the policy in favor of liberal construction of the service statutes to effectuate service and to uphold the trial court's jurisdiction if actual notice has been received by the defendant. (*Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1391.) Where the defendant has actual notice, strict compliance with the service statutes is not required; substantial compliance is sufficient. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1436-1437.)

A summons may be served on a person outside the United States by any of the methods permissible for service on a person living in another state, including substitute service and service by mail with acknowledgment of receipt. (Code Civ. Proc., § 413.10(c); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶¶ 4:183, p. 4-27, 4:239, p. 4-38, 4:315, p. 4-49.)[3] Personal delivery need not be attempted first. (*Bolkiah, supra*, 74 Cal.App.4th at p. 1000 (upholding service on individual defendants in Brunei and England by mail without prior attempts at personal service).)

In this case, there was substantial but not strict compliance with substitute service. On January 14, 2002, the summons and complaint were served by Napoleon Estilles at Lacson's place of business in the Philippines. Lacson's executive secretary confirmed receiving them in an affidavit.[4] On January 15, 2002, Estilles mailed a copy of the summons and complaint to Lacson. But the proof of service indicates he mailed these to a different address. Estilles should have mailed them to the same address where Lacson's executive secretary received them on January 14. (See Code Civ. Proc., § 415.20(b).)

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[3] Service in the Philippines is not governed by the Hague Convention. (See Fed. Rules Civ. Proc., rule 4, 28 U.S.C. (setting forth list of signatory countries).)

[4] In an affidavit supporting Lacson's motion for relief from the default judgment, his executive secretary states she was not authorized to accept service on Lacson's behalf. However, for substitute service, there is no such requirement. She need only have been the person apparently in charge of his office, at least 18 years old, and be told what the papers are. (Code Civ. Proc., § 415.20(b).) Her affidavit shows these requirements were met.

However, the record also contains a certification by a local post office official that a registered letter was delivered to, and received by, a receiving clerk at Lacson's place of business on January 17, 2002. This letter appears to have contained the summons and complaint, as acknowledged by the receiving clerk in an affidavit.

The trial court did not abuse its discretion in finding adequate service of process. (See *Bolkiah, supra*, 74 Cal.App.4th at p. 999 (applying abuse of discretion standard).) Even apart from the substantially completed substitute service, the court could have relied on the mailing of the summons and complaint to Lacson coupled with evidence that these actually reached him. For an individual out-of-state or foreign defendant served by mail, evidence that the summons actually reached that individual is sufficient to establish valid service. (See Code Civ. Proc., § 417.20(a) (service by mail on out-of-state defendant shall include evidence satisfactory to the court establishing actual delivery to the person by signed return receipt or *other evidence*); *In re Marriage of Tusinger* (1985) 170 Cal.App.3d 80, 82-83 (letter from out-of-state defendant's attorney indicating defendant received complaint sufficient to establish service).) And this evidence can consist solely of confirmation that the summons and complaint were mailed to the correct address. (See *Bolkiah*, *supra*, 74 Cal.App.4th at pp. 1000-1001 (finding actual delivery to defendants outside of U.S. under § 417.20(a) based on evidence summons and complaint were mailed to addresses used on correspondence plaintiff had received from defendants and which defendants had directed plaintiff to use for other correspondence).)

In this case, the trial court found the complaint and summons actually reached Lacson. We note that the court's finding is entitled to great weight. This is true even where, as here, the finding is based solely on affidavits and other documentary evidence. (See *Bolkiah, supra,* 74 Cal.App.4th at p. 1000.)

The evidence supports this finding. Lacson's executive secretary acknowledged receiving the summons and complaint in January 2002. Less than two weeks after their service in the Philippines, the court received a letter from Lacson's Philippine counsel acknowledging their receipt on January 16, 2002. And before entry of default, the court

received a second letter from Lacson's Philippine counsel again acknowledging their receipt and of the request for entry of default. Finally, Lacson admitted in his motion to set aside the default that at the times his Philippine counsel wrote to the court, he relied on their advice that he need not appear in this action. Lacson did submit an affidavit in support of that motion in which he denied *ever* receiving *any* papers from Pelaez's action. But the court was entitled to give it little weight in light of the other facts, as well as the fact that in the same affidavit Lacson denied the material allegations of Pelaez's complaint (which would have been difficult to do if he never received it).

II. The Default Judgment Is Not Void for Failure to Comply with Code of Civil Procedure Section 425.11.

Lacson also argues the default judgment is void on its face because Pelaez never served him with a statement of damages. We agree that failure to serve a statement of damages pursuant to Code of Civil Procedure section 425.11 can render a default judgment void. (*Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 303 (*Barragan*).) However, Pelaez's failure to serve a statement in this case did not have this effect.

A section 425.11 statement is required "in an action to recover damages for personal injury or wrongful death." (Code Civ. Proc., § 425.11(b).) "This is interpreted broadly to include actions in which injury or death claims are *closely tied* to whatever other relief is requested." (Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 5:86, p. 5-24.) In this case, personal injury claims do not predominate and are not closely tied to the other claims for relief. Pelaez's first and second causes of action for intentional interference with contract and for slander per se do not seek any personal injury damages; instead, both seek damages for loss of commissions under PNP contracts and related punitive damages. Indeed, the prayer for relief does not seek any personal injury damages; it seeks the same damages sought in the first two causes of action. Only within the third cause of action for intentional infliction of emotional distress is there mention of personal injury damages (for humiliation, mental anguish, and emotional and physical distress), and it is vague regarding which conduct allegedly caused these damages. (See *Barragan, supra*, 188 Cal.App.3d at p. 304

(default judgment not void for failure to serve 425.11 statement where false imprisonment cause of action was not excessively intertwined with causes of action based on economic loss); cf. *Schwab v. Rondel Homes, Inc*. (1991) 53 Cal.3d 428, 432 (section 425.11 applicable where emotional distress was at the heart of the case's single cause of action, and not "incidental" to it, as evidenced by complaint's prayer for damages for emotional distress); *Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 930 (where four out of five of the complaint's causes of action included personal injury claims, finding plaintiffs' nonpersonal injury claims were tied so closely to the personal injury claims that section 425.11 applied to all causes of action).)

Moreover, the default judgment in this case did not award any personal injury damages. (*See Barragan, supra*, 188 Cal.App.3d at p. 304 (in case with cause of action for false imprisonment where no section 425.11 statement was served, upholding default judgment where it appeared the judgment only included damages for economic loss, and not for personal injury).) The $31,262 awarded was only on the intentional interference with contract cause of action and is the same amount specifically averred in the complaint under that cause of action. Because Lacson was served with a complaint setting forth the amount ultimately awarded against him, he received actual notice of his potential liability. (See *id.* at p. 304 (finding no prejudice to defendant from failure to serve 425.11 statement where defendant received actual notice from the complaint of its potential liability for the nonpersonal injury damages ultimately awarded in the default judgment).)[5]

III. Review of the Default Judgment.

We review the default judgment to determine whether there was substantial evidence to support it. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 364-365 (*Johnson*).) A default confesses the complaint's material facts, i.e., the defendant's

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[5] Because Lacson never filed a notice of appeal, we will not consider any additional arguments he makes for reversal of the default judgment. (*In re Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 (respondent who has not appealed from the judgment may not seek reversal of the judgment).)

failure to answer has the same effect as an express admission of the matters well pleaded in the complaint. (*Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1597.) However, a prove-up hearing is required in an action such as this one based on tort claims. (Code Civ. Proc., § 585(b).) At the prove-up hearing, Pelaez was required to establish a prima facie case for each of her causes of action, and was required to introduce evidence regarding the amount of recoverable damages. (*Johnson, supra*, 72 Cal.App.4th at p. 361 (prima facie case); *Lynch v. Bencini* (1941) 17 Cal.2d 521, 526 (evidence regarding damages).) The damages awarded must not exceed those prayed for in the complaint. (Code Civ. Proc., §§ 580(a), 585(b); *Johnson*, *supra*, 72 Cal.App.4th at p. 362; (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826 (a default judgment greater than the amount demanded in the complaint is void as beyond the court's jurisdiction).)

A. The Trial Court Did Not Err in Refusing Damages for Intentional Interference with Other PNP Contracts.

The trial court awarded Pelaez damages on her first cause of action in the amount of $31,262 for Lacson's intentional interference with the contract for the sale of handcuffs to the PNP (the handcuff contract). Pelaez does not seek additional damages for interference with the handcuff contract, but for interference with other contracts she expected from the PNP. In its default judgment, the trial court refused to award damages on these other contracts, in part because Pelaez did not properly plead the existence of these contracts and an award of damages based upon them would exceed the damages alleged in her complaint. We agree.

The first element of a cause of action for intentional interference with contractual relations is a valid contract between the plaintiff and a third party. (*Savage v. Pacific Gas & Electric Co*. (1993) 21 Cal.App.4th 434, 448 (*Savage*).) The only valid contract alleged in the complaint is the handcuff contract. The other contracts referred to in the complaint are future, unexecuted and unspecified contracts and no specific damage

amounts are alleged in connection with them.[6] Pelaez did not properly plead a cause of action for intentional interference with respect to these future contracts.[7] The trial court was thus without power to award damages for interference with them. (*Jackson v. Bank of America* (1986) 188 Cal.App.3d 375, 387 (*Jackson*) (default admits the material allegations of the complaint and no more; relief given to plaintiff cannot exceed the legal conclusion of the facts alleged).)[8]

B. There Was No Reversible Error for Refusing Damages on the Slander Per Se Claim.

The trial court refused to award Pelaez any damages for slander per se, reasoning in part that the complaint did not contain any specific allegations regarding damages for this cause of action. Pelaez argues she is entitled to such damages based on income lost from the same future PNP contracts discussed in the preceding section. She argues that because damages are presumed in a claim for slander per se, she need not have pleaded or proven these special damages. We disagree.

The definition of slander which Pelaez relies on is a false and unprivileged publication, orally uttered, which charges any person with a crime, or with having been indicated, convicted, or punished for a crime. (Civ. Code, § 46(1).) The charged crime

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[6] Only two parts of the complaint refer to contracts other than the handcuff contract. First, the intentional interference cause of action alleges Lacson prevented Pelaez "from acting as a Smith & Wesson agent in future bidding on PNP contracts after discrediting and blacklisting [Pelaez] as a vendor-supplier of PNP." Second, the prayer for relief seeks "future earnings according to proof for the future vendor-supplier contracts [Pelaez] would have qualified for had she not been discredited and blacklisted" by Lacson.

[7] Damages for interference with *future* contracts would be appropriate had Pelaez alleged a cause of action for interference with prospective economic advantage. (*Savage*, *supra*, 21 Cal.App.4th at p. 448 (distinguishing interference with prospective economic advantage from interference with contractual relations).) But there is no such cause of action in the complaint, nor do the allegations support one. (*Pacific Gas & Electric Co. v. Bear Stearns & Co*. (1990) 50 Cal.3d 1118, 1126, fn. 2 (describing elements of interference with prospective economic advantage cause of action).)

[8] For the same reasons, we reject Pelaez's argument that the trial court's award of $31,262 is unconscionable and without evidentiary justification. This argument is also based on Pelaez's alleged loss of earnings from future PNP contracts.

must be one involving moral turpitude, and be indictable or punishable by death or imprisonment. (5 Witkin, Summary of Cal. Law (9th ed. 1988) § 490, p. 577 ("Witkin").) Such a statement is slanderous per se and presumed injurious. The plaintiff need not plead and prove actual damage to establish a claim for slander per se. (5 Witkin, *supra*, §§ 489, 490, p. 577; 6 Witkin, *supra*, § 1435, p. 911.) But presumed damages are for injury to the plaintiff's reputation, not for other pecuniary losses caused by the slander. (6 Witkin, *supra*, § 1435, p. 911.) Presumed damages thus include reasonable compensation for loss of personal or professional reputation, shame, mortification, and hurt feelings. No definite standard or method of calculation is prescribed by law for presumed damages. However, the trier of fact may exercise its discretion to award nominal damages only. (BAJI 7.10.1. (July 2004).)

Pelaez pleaded a prima facie case of slander per se. The complaint's second cause of action alleges Lacson told a group of Filipinos that Pelaez was a "scam artist" and "smuggler" while he was visiting the San Francisco Bay Area. The complaint alleges these words accused Pelaez of committing the crimes of fraud and smuggling, were false, and Lacson knew they were false. But there are no allegations in the complaint, nor was there any evidence at the prove-up hearing, regarding presumed damages, i.e., harm to Pelaez's reputation, or feelings of shame or mortification caused by Lacson's statements. As discussed *supra*, such allegations and evidence were not necessary to establish a prima facie case. However, in their absence, the trial court could properly conclude Pelaez was entitled only to nominal damages. (See BAJI 7.10.1. (July 2004).) Although the trial court did not award her any damages for slander, we will not reverse the judgment for failure to award Pelaez nominal damages. (See *Sweet v. Johnson* (1959) 169 Cal.App.2d 630, 633 (failure to award nominal damages not grounds for reversal of the judgment or for a new trial).)

Pelaez primarily seeks special damages under her slander cause of action based on loss of income from future PNP contracts. (See BAJI 7.11 (July 2004) (special damages compensate for losses caused by the slander to plaintiff's business, profession or occupation).) Unlike presumed damages, special damages for slander per se must be

pleaded and proven. (See 6 Witkin, *supra*, § 1436, p. 912.) The complaint does not contain any allegations that the alleged slanderous statements caused the loss of future PNP contracts. Moreover, Pelaez did not present any evidence of such a causal connection at the prove-up hearing. Thus, it was not error for the court to refuse to award special damages. (See *Jackson, supra,* 188 Cal.App.3d at p. 387 (relief given to plaintiff in default judgment cannot exceed the legal conclusion of the facts alleged); (Code Civ. Proc., § 585(b) (at prove-up hearing, court must render judgment in sum as appears by the evidence presented to be just).)

C. The Trial Court Did Not Err In Finding Pelaez Could Not Recover Punitive Damages.

The trial court refused to award punitive damages in part because Pelaez failed to serve a notice of reservation of right to seek punitive damages under Code of Civil Procedure section 425.115. We find Pelaez's failure to serve a section 425.115 statement a sufficient basis for the trial court's denial of punitive damages.

Where a default judgment will include punitive damages, Code of Civil Procedure section 425.115, subdivision (f) requires serving the defendant before entry of default with a separate statement specifying the amount of punitive damages to be sought. Pelaez did not serve a section 425.115 statement on Lacson.

Pelaez argues her complaint's allegations seeking $2 million in punitive damages apprised Lacson of his potential liability for punitive damages and satisfied due process requirements without the need to comply with section 425.115. Pelaez is correct that due process requires the defendant be given adequate notice of the amount of the default judgment that may be entered against him. (*Wiley v. Rhodes* (1990) 223 Cal.App.3d 1470, 1472.) But Civil Code section 3295(e) specifically prohibits setting forth the amount of punitive damages in the complaint. And the only authority Pelaez cites in support of her argument, *Cummings Medical Corp. v. Occupational Medical Corp*. (1992) 10 Cal.App.4th 1291, 1297-1298 , was decided before the enactment of section 425.115 in 1995. Section 425.115 now specifies how a plaintiff must satisfy the notice

requirement. (See Code Civ. Proc., § 425.115(b) (specifying required content and form for the separate statement).)

IV. Motion for New Trial: The Record Does Not Disclose Any Irregularities in the Proceedings.

Pelaez's argues the trial court erred in denying her motion for a new trial because there were irregularities in the proceedings which prevented Pelaez from having a fair trial. We disagree.

The standard of review from denial of a motion for a new trial is abuse of discretion. (*Garcia v. Rehrig Intern., Inc*. (2002) 99 Cal.App.4th 869, 874.) Code of Civil Procedure section 657 sets forth the grounds for granting a motion for a new trial. Pelaez relies on the first ground: irregularity in the proceedings by which a party is prevented from having a fair trial. (Code Civ. Proc., § 657(1).) The irregularity must have materially affected Pelaez's substantial rights in order to warrant a new trial. (Code Civ. Proc., § 657.)

Pelaez's first asserted irregularity was the trial court's failure to carefully review the pleadings prior to the prove-up hearing. We find no evidence of this in the record. Instead, the record simply suggests the court was not persuaded by Pelaez's arguments in favor of higher damages, and rightfully so.

Pelaez next argues the trial court improperly "prejudged" the issue of punitive damages before Pelaez introduced all her evidence. But the "prejudging" consisted of the court raising important issues regarding whether punitive damages were recoverable in this case, and Pelaez's counsel was given ample opportunity to respond. The court's statements were appropriate given that Pelaez sought $2 million in punitive damages by way of a default judgment.

Pelaez's final irregularity argument is that the trial court required Pelaez to use a higher standard or burden of proof at the prove-up hearing than was legally required. The only evidence cited in support is the trial court's rejection of Pelaez's arguments based on the other PNP contracts. Because, as discussed *supra*, we find the court properly rejected these arguments, there could not have been any material impact on Pelaez's rights in this

regard and thus no basis for a new trial. (Code Civ. Proc., § 657 (ground asserted for new trial must materially affect party's substantial rights).)

DISPOSITION

The October 27, 2003 default judgment and the December 30, 2003 order denying the motion for a new trial are affirmed. Lacson shall recover his costs on appeal.

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Parrilli, J.

We concur:

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McGuiness, P. J.

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Corrigan, J.