

DHAWAN V. BIRING (2015) 241 Cal.App.4th 963

(Civil Procedure – in a non-personal injury or wrongful death case, if a plaintiff does not provide formal notice of the amount of compensatory damages sought in the complaint or in an amended complaint, any default judgment awarded is void; a statement of damages is insufficient)

FACTS/PROCEDURE:

Yogesh Dhawan and Manmohan Singh Biring were in a business relationship until Dhawan filed a complaint alleging 13 contract and fraud based causes of action against Biring and HealthWest, Inc. in 2004. The prayer for relief sought general and special damages, both according to proof; punitive damages; injunctive relief; costs; and attorneys' fees. In 2005, Plaintiff Dhawan obtained a default judgment against both defendants, but at a default prove-up hearing the trial court found Plaintiff had not filed a statement of damages and granted Plaintiff's oral request to vacate the defaults. Plaintiff served a statement of damages on Defendants for a total of \$2,153,333 in general and special damages, with \$250,000 allocated for emotional distress. The statement also reserved the right to seek \$1 million in punitive damages. The trial court issued a default judgment for \$1,924,008.64, which excluded emotional distress and punitive damages. Plaintiff served a notice of entry on Defendants in September 2005. The court denied Defendants' motions to set aside the judgment on the grounds of attorney mistake or fault pursuant to CCP § 473(b).

Seven years later, in March 2013, Defendant Biring filed a motion to vacate and set aside the default judgment on the grounds that since the judgment exceed the damages sought in the complaint in violation of CCP § 580, it was void under CCP § 473(d). The trial court granted the motion, and denied Plaintiff's motion for reconsideration. Plaintiff appealed both orders on the grounds that: (1) the requirements of section 580 were met as service of the statement of damages provided actual notice of the damages sought, and (2) even if the judgment violated section 580, the judgment was voidable, not void, which did not permit the trial court to vacate and set aside the judgment more than six months after entry.

DISCUSSION/HOLDING

Affirmed. Because the complaint did not specify the amount of damages sought, the section 580 default requirements were not met in this case, thereby rendering the judgment void and permitting the court to vacate and set aside the judgment.

A defendant has a due process right to notice of the potential consequences of defaulting before a default judgment may be entered. This right is secured by CCP § 580's default requirements. Here, Plaintiff argued he personally served a statement of damages on Defendant prior to entry of default, thus satisfying section 580(a). However, in a non-personal injury or wrongful death case, such as this, section 580(a) bars a default judgment from awarding a plaintiff damages in excess of the specific amounts formally demanded in the complaint.¹ The specific amount must be pled; a prayer for damages according to proof is insufficient unless the amount is specified in body of the complaint.

Furthermore, a statement of damages cannot be used as a substitute for an amended complaint in such a case. "A statement of damages only satisfies the requirements of Code of Civil Procedure section 580 when the law prevents a plaintiff from stating an amount of damages in the body of the complaint." The law prevents a plaintiff from stating the amount of damages in a complaint that includes a personal injury or wrongful death cause of action, or seeks punitive damages. (CCP § 425.10(b); Civ. Code § 3295(e).) Thus, in a personal injury or wrongful death case, a plaintiff must serve a statement of damages on a defendant providing notice of the amount sought before a default may be taken. (CCP § 425.11.) Likewise, if a plaintiff seeks punitive damages, they must serve a statement setting forth the amount of punitive damages sought before default can be taken if the motion for default requests punitive damages. (CCP § 425.115.)

Therefore, in a case not involving personal injury or wrongful death, a plaintiff must provide the defendant notice of the potential extent of their liability prior to default by formally amending the complaint to specify the amount of damages sought, although this opens the possibility that the defendant will file an answer. As to the effect of a prayer for punitive damages, a plaintiff is precluded from arguing that a statement of punitive

¹ In one case cited in the opinion, the trial court gave the plaintiff the choice between accepting a compensatory damage award limited to the minimum jurisdictional amount, and amending her complaint.

damages satisfies the notice requirement for compensatory damages, which is a different remedy. Even if a plaintiff serves a statement of damages that includes punitive damages, thereby providing notice of the amount of punitives sought, formal notice of the compensatory damages amount is still lacking unless stated in the complaint or in an amended complaint. Nor can notice of the possibility of a specific punitive damages award in a complaint support an award of compensatory damages above the amount of compensatory damages pled, even if the amount falls within the total amount of damages sought when combined with the prayer for punitive damages.

Here, the default judgment violated section 580 because it awarded damages in excess of those formally sought as Plaintiff's complaint did not set forth the amount of compensatory damages. His statement of damages setting forth the compensatory damages was ineffectual because it was not a personal injury or wrongful death case, and the mere fact that his complaint sought punitive damages did not enable his statement of damages to satisfy section 580(a) although the default judgment did not even include a punitive damages award.

The court further held that the violation of section 580 rendered the judgment void, thereby permitting the trial court to vacate and set aside the judgment seven years after its entry. A void judgment may be set aside at any time after notice to the non-moving party, unlike a voidable judgment, which may only be set aside within six months after entry. (CCP § 473(b), (d).) In keeping with prior case law, since a court does not have jurisdiction to grant a default judgment awarding greater relief than the amount sought in the complaint in violation of section 580, such a judgment is void rather than voidable, and subject to collateral attack at any time.