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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PREMIER CAPITAL, LLC,

Plaintiff and Respondent,

v.

SHAUL YAKOVI,

Defendant and Appellant.

B311833

(Los Angeles County
Super. Ct. No.
BC271003)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rupert A. Byrdsong, Judge. Affirmed.

Law Offices of Mark E. Goodfriend and Mark E. Goodfriend for Defendant and Appellant.

Verus Law Group, Holly Walker, and Mark N. Strom for Plaintiff and Respondent.

Plaintiff and respondent Premier Capital (Premier) is the assignee and successor in interest to NC Venture I, L.P. (NC Venture). NC Venture obtained a default judgment against defendant and appellant Shaul Yakovi (Yakovi) in 2002. Twenty years later, Yakovi moved to set aside the default judgment based on the contention it was void because plaintiff effected service of the summons and complaint at an address that was no longer defendant’s “usual place of business” (Code Civ. Proc.,¹ § 415.20, subd. (b)). The trial court denied Yakovi’s motion and we now consider—looking only to the “judgment roll” materials that may be consulted when dealing with such a belated motion to set aside a judgment—the correctness of that ruling.

I. BACKGROUND

A. *The Default Judgment*

Yakovi was president of Sam Electronics, Inc. and, in 1992, personally guaranteed a \$65,800 Small Business Administration loan issued to the company. Yakovi and Sam Electronics eventually defaulted on the loan payments due, and NC Venture (as servicer of the loan) sued Yakovi and Sam Electronics in March 2002 for breach of promissory note, money lent, open book account, and account stated. NC Venture claimed damages in the amount of \$64,185.75, the balance owing on the loan at the time, plus interest and attorney fees.

A proof of service for the summons and complaint indicates defendants were served by substituted service, i.e., by leaving a copy of the summons, complaint, and other materials with a

¹ Undesignated statutory references that follow are to the Code of Civil Procedure.

“manager” and “person in charge” (listed as John Doe with a physical description) present at the business located at 429 South Broadway in Los Angeles and mailing a copy of the documents to the same address. A “Declaration of Due Diligence” submitted with the proof of service indicates three attempts were made at serving Yakovi personally before resorting to substituted service. Notations are appended to each of the attempts at personal service listed on the declaration; the first two notations read “defendant not in” and the third notation reads “defendant not in per manager.”

Defendant did not timely answer or respond to the complaint. In May 2002, NC Venture requested entry of the defendants’ default. The clerk of the court did not enter the default, however, because NC Venture did not attach the summons and proof of service to its request. NC Venture cured the problem in a later request for entry of default, filed the following month, and the clerk entered defendants’ default.

NC Venture subsequently asked the trial court to issue a default judgment against defendants. The trial court issued an order requiring NC Venture to provide “support for the place of service, 429 South Broadway, Los Angeles, California 90013 as the correct address for service” of the summons and complaint.

NC Venture filed a declaration from its attorney with the court. The declaration attached a certified copy of a 1993 statement of information filed with the California Secretary of State listing Sam Electronics and Yakovi’s address as 429 S. Broadway, Los Angeles, CA 90013. The same statement of information also listed defendant as “President,” “Designated Agent for Service of Process,” “Chief Executive Officer,” and “Chief Financial Officer” for Sam Electronics. Counsel’s

declaration further averred (1) he served copies of the request for entry of default at the 429 South Broadway address, which were not returned by the postal service, and (2) the proof of service of the summons and complaint already on file with the court stated Yakovi was “‘not in’ rather than ‘does not work here’” when three attempts at personal service were made.

The court thereafter entered a default judgment against Yakovi and Sam Electronics in the amount of \$74,845.17 in October 2002. In March 2005, NC Venture assigned the judgment to Premier and plaintiff filed the notice of assignment of judgment on February 9, 2010. Roughly a year and a half later, plaintiff applied for and obtained renewal of the judgment in the amount of \$142,492.55.² Notice of the renewal of judgment was filed on January 13, 2012.

B. Yakovi’s Motion to Vacate the Default Judgment

In December 2020—roughly eight years after renewal of the judgment and some 18 years after the default judgment was originally entered—Yakovi moved to vacate the entry of default and default judgment. Yakovi contended the judgment was “void for lack of service of process, lack of jurisdiction[,] and lack of due process.” The motion and accompanying declarations claimed the judgment was void because substituted service was effected at an “incorrect address.” Specifically, Yakovi asserted that while he

² The 2012 application for renewal of the judgment was served on Yakovi by mail at an address on Simpson Avenue in Los Angeles.

was “employed” at the 429 South Broadway address until 1996, he was employed elsewhere after that time.³

Premier opposed Yakovi’s motion to vacate the judgment. Premier asserted the proof of service of the summons and complaint completed by the process server established substituted service was proper. Premier also emphasized the nearly two decade long delay in seeking to set aside the judgment—and the limitation that any defect in the judgment must appear “on the face of the record”—as further reasons for refusing to grant Yakovi any relief. Premier also asked the trial court to take judicial notice of both the 1993 statement of information filed with the Secretary of State listing Sam Electronics’ address at 429 South Broadway and more recent materials (including a 2001 Statement by Domestic Stock Corporation filed by Sam Electronics and a January 22, 2021 Business Search – Entity Detail printout from the California Secretary of State website) purporting to show Yakovi continued to be associated with the 429 South Broadway address.

³ Yakovi declared he was employed at two addresses on 11th Street in Los Angeles from 1998 to 2005. He also complained Premier had used the judgment to levy his bank account in 2019 and collected approximately \$19,000. Neither the motion to set aside the judgment nor the accompanying declarations explained the months-long delay between this apparent levy and Yakovi’s attempt to set aside the default judgment. Yakovi also submitted a declaration from one Yosef Cohen who claimed to be the only manager at a business at 429 South Broadway from “at least 1998 until about 2011.” Cohen averred Yakovi was not, during that time, an employee of the business, otherwise associated with the business, or, to his knowledge, ever present at that address.

C. *The Trial Court's Ruling*

After hearing argument from counsel, the trial court denied Yakovi's motion to vacate the default judgment. By way of brief explanation, the court stated it was not convinced Yakovi met his burden to justify setting the judgment aside.

II. DISCUSSION

When a defendant attempts to vacate a default judgment over two years after it has been entered, the defendant is required to show that service of process of the complaint and summons did not satisfy the statutory service requirements such that it rendered the service defective and the judgment void on its face, i.e., void when looking only to those materials that constitute the "judgment roll." (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021 (*Pittman*)). Here, as we now explain, the trial court correctly concluded that defendant failed to make that showing.

To set aside the judgment as void (not merely voidable) under Code of Civil Procedure section 473, subdivision (d), Yakovi must show service was defective according to a restricted procedure. Specifically, when determining whether defective service has been shown, a court may consider only the summons, the accompanying affidavit or proof of service, the complaint, the request for entry of default and the entry of the same, and the judgment. (*Pittman, supra*, 20 Cal.App.5th at 1020-1021; *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1328, fn. 2; see also § 670, subd. (a).) Consideration of other extrinsic evidence, e.g., Yakovi's self-serving declarations, is not permitted. (*Pittman, supra*, at 1021.)

The Code of Civil Procedure permits substituted service of a complaint on an individual, after unsuccessful attempts at personal service are made, by “leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, or usual mailing address . . . in the presence of a competent member of the household or a person apparently in charge . . . at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.” (§ 415.20, subd. (b).)

The proof of service of the summons and complaint that is part of the judgment roll indicates the process server made adequate attempts at personal service before resorting to substituted service. (See, e.g., *Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1392 [two or three attempts at personal service sufficient].) The proof of service (especially—though not necessarily—when combined with the supplemental proof of service information the trial court requested about the address where service was made before it entered the default judgment) also indicates that a copy of the summons and complaint were left with a person in charge of what was apparently Yakovi’s usual place of business at the time (the “manager” who said Yakovi was “not in” when attempts at personal service were made). These facts suffice to establish the judgment is not void on its face. (See, e.g., *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750-751 [substituted service properly effected where plaintiff attempted to personally serve defendant at his place of business on three separate occasions and then left the complaint and summons with the office manager].)

DISPOSITION

The trial court's order is affirmed. Premier is awarded costs on appeal.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.