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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

KAMLESH BANGA,

Plaintiff and Appellant,

v.

MIDAS INTERNATIONAL
CORPORATION et al.,

Defendants and Respondents.

A134167

(Solano County
Super. Ct. No. FCS034467)

I.

INTRODUCTION

Kamlesh Banga (Banga), appearing in propria persona, appeals a default judgment entered in her favor against Midas Auto Service Center (Midas) in the amount of \$6,861.40, which was considerably less than the \$205,428.16 she requested. Banga principally claims the court erred in reducing the amount of compensatory damages, and in denying her request for punitive damages. We affirm.

II.

FACTS AND PROCEDURAL HISTORY

On October 9, 2009, Banga filed a complaint against named defendants Midas and its parent corporation, Midas International Corporation.¹ Banga's complaint alleged that on October 20, 2006, she arranged to have the rear brakes of her vehicle replaced at a Midas Auto Service Center in Vallejo, California at the advertised price of \$99. However, after a Midas employee inspected the vehicle, the employee claimed the job required extra work and Banga was charged \$330.40 to replace the rear brakes. Banga took the vehicle back to Midas on several occasions complaining of unusual noises and problems with the brakes, but she was repeatedly assured the brake replacement had been done properly. In January, Banga was involved in a solo car accident allegedly due to faulty brakes that caused damage to her vehicle and required her to miss work for several days because of bodily injury. Banga alleges that on February 16, 2007, she took the vehicle to Acura of Concord which "found that Midas had installed defective [aftermarket] rear pads and used wrong brake pads . . . that had damaged [the] rear rotor of the vehicle."

The complaint asserted four causes of action. The first cause of action alleged Midas had committed an unfair business practice in violation of California's Unfair Competition Law (Bus. & Prof. Code, § 17200) by (1) charging her \$330.40 for brake work where the advertised price was \$99; (2) misrepresenting that the brake pads being installed on her car were new; and (3) misrepresenting that the brake pads were correctly installed.

The complaint asserts this conduct constituted a fraudulent (count two) and illegal (count three) business practice in violation of Business and Professions Code section 17200. The fourth cause of action contends this conduct violated the California

¹ Midas International Corporation's motion for summary judgment was granted by the court on November 16, 2010 and entered on November 29, 2010, and that judgment is final. Consequently, we omit any references to Midas International Corporation's role in Banga's lawsuit.

Consumers Legal Remedies Act (CLRA; Civ. Code, § 1770, subds. (a)(5), (7).) The complaint asks for “monetary damages, statutory, compensatory, exemplary and punitive damages and all the relief as provided by law.”

Banga claims she served the summons and complaint on Midas on January 22, 2010. She also claims to have served a statement of damages on Midas on or about April 28, 2010. Banga’s statement of damages included the following items: “Actual Damages: \$7,030.86 [¶] General Damages: \$50,000 [¶] Statutory damages for violation of California Consumers Legal Remedies Act; Unfair, Illegal, and Fraudulent Business Practice, Cal. Bus. & Prof. Code § 17200; and Disgorgement of Profit, etc. \$150,000.”

After Midas failed to file a responsive pleading, Banga filed a request for entry of default and for a court judgment on July 12, 2010. Default was entered as requested on that same date. After default was entered, Midas made a request for relief to set aside entry of default pursuant to Code of Civil Procedure section 473, subdivision (b). The court denied Midas’s request and, to our knowledge, there has been no appeal from that ruling.

After a number of hearings on collateral matters that are not pertinent to the issues on appeal, Banga’s request for a default judgment against Midas was heard on August 31, 2011, to prove her entitlement to any damages (prove-up hearing). Banga appeared in propria persona. The court considered Banga’s testimony and the documentary evidence she submitted to substantiate her damages request and issued a default judgment for Banga against Midas in the amount of \$6,861.40.

This amount equaled the full amount requested for (1) the charges for the initial brake repairs by Midas (\$330.40); (2) the cost of subsequent replacement of rotors and rear brake pads due to the installation of the faulty brakes (\$854.11); (3) the cost of repairing Banga’s car after the auto accident (\$1,167.17); (4) general damages (\$2,500); and (5) Banga’s wage loss due to the accident (\$999.60). The court also awarded Banga the full amount of her costs (\$527) and postage (\$3.12).

Attorney fees were not awarded because Banga appeared in these proceedings in propria persona and was not able to provide an invoice from the attorney to whom she

claimed to have paid \$1,000 for a consultation. Banga also did not submit any documentation substantiating her medical expenses, nor did she provide any other evidentiary support for her out-of-pocket expenses. The court refused to award Banga the \$150,000 in punitive damages that she requested.

Later, Banga filed a written objection to the judgment, contending she was entitled to \$205,428.16, the full amount requested. In response, the court sent a letter dated December 1, 2011, where the court explained because Banga's claim involved property damage and bodily injury, it was governed by Code of Civil Procedure section 585, subdivision (b), which required the court to determine the amount of damages " 'as appears by the evidence to be just.' " This appeal followed.²

III.

DISCUSSION

A. Failure to Issue Statement of Decision

Before the court issued its ruling, Banga filed a formal request for statement of decision, stating that if the court failed to enter a judgment for the requested amount, \$205,428.16, the court should issue a statement of decision "setting forth the factual and legal basis for its decision as to why the relief as prayed in the Complaint cannot be granted." On October 24, 2011, the trial court entered a judgment in the sum of \$6,861.40, and denied Banga's request to issue a statement of decision, stating that the court is not required to issue any statement in a default hearing "as there was no trial." On appeal, Banga claims "[t]he Requirement [*sic*] of findings is mandatory, and failure to make them constitutes reversible error."

² In support of her appeal, on March 21, 2013, Banga requested permission to file "a supplemental reply brief." On March 25, 2013, we ordered Banga's motion to be decided with the merits of this appeal. (Ruvolo, P.J.) We now deny the motion, as the "supplemental reply brief" is procedurally improper and raises irrelevant matters for the first time on appeal.

Code of Civil Procedure section 632³ provides in part: “In superior courts, upon the trial of a question of fact by the court, . . . [t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. . . . The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.”

Given the statutory language, we are not convinced a statement of decision was necessary or required in the present circumstances. Section 632 requires a statement of decision only “upon the *trial* of a question of fact,” as opposed to a hearing on a motion, even if evidence is received at the hearing and the decision is appealable. (§ 632, italics added; *In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040.) Further, the statement of decision need address only “the principal *controverted* issues at trial” identified by the requesting party. (§ 632, italics added; *Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156 [by defaulting, a defendant is deemed to admit the material allegations of the complaint for purposes of the action].) Where judgment is entered by default, there are no controverted issues, and no obligation of the court to make findings. (*Nicholson v. Nicholson* (1917) 174 Cal. 391, 394 [no obligation to make findings where judgment entered on default].)

Furthermore, section 632 provides that when a trial is concluded in one calendar day, as here, the court may give an oral statement of decision on the record in the presence of the parties. In the language of the statute: “The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day . . . the statement of decision may be made orally on the record in the presence of the parties.” (§ 632.) Therefore, *even if* a statement of decision were otherwise required, the trial court fulfilled section 632’s requirements by providing an oral statement of decision.

³ All undesignated statutory references are to the Code of Civil Procedure.

B. General Principles Governing Default Damages

Most of Banga’s arguments on appeal are based on an erroneous understanding of default judgments and default damages—primarily her assumption that a default judgment automatically entitles a plaintiff to all of the relief requested in the complaint as a matter of law. Instead, while Midas’s default conclusively established its liability, the court still needed to make an independent assessment of damages.

This was cogently explained in the recent case of *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267 (*Kim*). “Code of Civil Procedure section 585 sets forth the two options for obtaining a default judgment. First, where the plaintiff’s complaint seeks compensatory damages only, in a sum certain which is readily ascertainable from the allegations of the complaint or statement of damages, the clerk may enter the default judgment for that amount. (Code Civ. Proc., § 585, subd. (a).) A clerk’s judgment is appropriate only in cases where the determination of damages is a purely ministerial act, i.e., where there is ‘some definite, fixed amount of damages or where such may be ascertained by computation made by the clerk. If evidence must be taken to establish the amount due . . . , the clerk may not render judgment.’ [Citation.]” (*Id.* at p. 287.)

The *Kim* court went on to explain “if the relief requested in the complaint is more complicated than that, consisting of either nonmonetary relief, or monetary relief in amounts which require either an accounting, additional evidence, or the exercise of judgment to ascertain (such as emotional distress damages, pain and suffering, or punitive damages), the plaintiff must request entry of judgment by the court. (Code Civ. Proc., § 585, subd. (b).) In such cases, the plaintiff must affirmatively establish his [or her] entitlement to the specific judgment requested. ‘The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff’s favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11 [personal injury or death actions], or in the statement provided for by Section 425.115 [punitive damages actions], as appears by the evidence to be just.’ ” (*Kim, supra*, 201 Cal.App.4th at p. 287; *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1740-1741 (*Ostling*).)

Consequently, a prove-up hearing was required in an action such as this which involved claims for personal injury general damages, medical expenses, loss of wages, attorney fees and punitive damages. (§ 585, subd. (b).) At the prove-up hearing, Banga 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 v. Stanhiser* (1999) 72 Cal.App.4th 357, 361-362 (*Johnson*).)

While Banga interprets section 580 as guaranteeing her the recovery sought in her complaint and statement of damages once Midas defaulted, the primary purpose of section 580 is to provide the defaulting party with adequate notice of the *maximum* judgment that may be assessed against him or her.⁴ As explained by our Supreme Court in *In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166: “We have long interpreted section 580 in accordance with its plain language. Section 580, we have repeatedly stated, means what it says and says what it means: that a plaintiff cannot be granted *more relief* than is asked for in the complaint.” (Italics added; *Janssen v. Luu* (1997) 57 Cal.App.4th 272, 275 [§ 580 guarantees “the amount of damages communicated to the defaulting defendant sets the ceiling on the plaintiff’s recovery, and that a default judgment in excess of that amount is void”]; *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].) Viewing section 580 in light of its legislative purpose, there is nothing indicating an intent to preclude the court from *decreasing* the amounts requested by the prevailing plaintiff according to proof.

Therefore, the question becomes whether the trial court erred in determining the amount of damages. While Banga claims this question requires our de novo review, once again, she is mistaken. An award of damages after a default judgment will be reversed on appeal if it is not supported by substantial evidence. (*Johnson, supra*, 72 Cal.App.4th at pp. 361-362; *Ostling, supra*, 27 Cal.App.4th at p. 1746.) Moreover, an appellate court

⁴ Section 580, subdivision (a), states in part: “The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint”

may interfere with the trier of fact's determination of damages where the damages award, or lack thereof, is "totally unconscionable and without justification." (*Johnson, supra*, 72 Cal.App.4th at p. 361; see also *Uva v. Evans* (1978) 83 Cal.App.3d 356, 363-364.)

The damages awarded in the court's default judgment were fully supported by the evidence, and Banga does not claim otherwise. As already noted, the court awarded Banga damages for expenses that she was able to substantiate with proof, such as receipts. Banga did not provide the court with any medical or billing records to confirm she had out-of-pocket expenses for her injuries, or her consultation with an attorney. Her explanation of why she was entitled to \$50,000 in general damages merely restated the underlying facts of this case. Although given the opportunity to augment the evidence submitted at the prove-up hearing, no additional evidence was provided. The trial court's award was fully supported by the evidence.

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

Banga claims because she "established by conclusive evidence that she had suffered a monetary harm" from Midas's violations of the CLRA "she was entitled to the punitive damages as warranted under Civil Code § 1780(a)." The CLRA is designed "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." (Civ. Code, § 1760; see generally *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1077.) The evils it aims to "alleviate" are the "social and economic problems stemming from [unfair and] deceptive business practices." (*Broughton*, at p. 1077.) It provides for individual actions (Civ. Code, § 1780) and class actions (Civ. Code, § 1781), and provides for relief in both sorts of action, including actual damages, injunction, restitution, and punitive damages (Civ. Code, §§ 1780, subd. (a), 1781, subd. (a)).

We first address a misconception that appears throughout Banga's briefs in this matter. She repeatedly claims, "[a]t the outset of the default hearing, the court required plaintiff to get [*sic*] agree to set aside the default if she wished to get access to the

punitive damages notwithstanding the punitive damages are warranted to any consumer who suffers a financial harm as a result of a forbidden practice”

Contrary to Banga’s claim in this regard, the court did not “require” her to agree to set aside the default in order to get access to punitive damages.⁵ The record is clear that the default judgment was never set aside. Nevertheless, the court fully considered Banga’s arguments and evidence in support of punitive damages on their merits, and found, based on the record before it, Banga had not proven her entitlement to punitive damages.

Next we note that on appeal Midas claims the trial court was justified in refusing to award punitive damages because Banga failed to serve a notice of her intention to seek punitive damages under section 425.115. Although not mentioned by the trial court, we find Banga’s failure to serve a section 425.115 statement provides a sufficient basis for the trial court’s denial of punitive damages.

As we pointed out, principles of due process require that defendants be provided with notice of the specific relief sought by a plaintiff prior to entry of default. (See *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1520-1521.) “[A]ctual notice of the damages sought is not sufficient; due process requires ‘formal notice.’” (*Stein v. York* (2010) 181 Cal.App.4th 320, 326 (*Stein*)). To that end, certain statutory provisions have been enacted “to ensure that a defendant who declines to contest an action does not thereby subject himself to open-ended liability.” (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826.)

A complaint may not “state an amount” of punitive damages sought. (Civ. Code, § 3295, subd. (e); see also § 425.10, subd. (b).) Therefore, a plaintiff must serve a statement notifying defendant of the specific amount the plaintiff intends to seek in

⁵ This argument is based on a remark made by the court at the outset of the hearing about the difficulty of proving entitlement to punitive damages based on a default judgment: “[I]f you wish to agree to setting aside this default judgment and you wanted to litigate this case and be able to prove up punitive damages against Midas Auto Service Center, then maybe you can have access to punitive damages. I don’t know. There has just not been enough discovery on that.”

punitive damages, thereby “preserv[ing] the right to seek punitive damages . . . on a default judgment.” (§ 425.115, subd. (b).) “The plaintiff *shall serve the statement* upon the defendant pursuant to this section *before a default may be taken*, if the motion for default judgment includes a request for punitive damages.” (*Id.* at subd. (f), italics added.)

The required content of punitive damages statements is precisely set forth in section 425.115, subdivision (b): “NOTICE TO ____ (Insert name of defendant or cross-defendant) [¶] ____ (Insert name of plaintiff or cross-complainant) reserves the right to seek \$ ____ (Insert dollar amount) in punitive damages when ____ (Insert name of plaintiff or cross-complainant) seeks a judgment in the suit filed against you.”

In the case at bench, it is undisputed that Banga never served Midas with a formal notice of intention to seek punitive damages. Nevertheless, Banga argues that she sent letters to Midas before the default hearing, setting out her demand for punitive damages, which she claims apprised Midas of its potential liability for punitive damages and satisfied due process requirements without the need to comply with section 425.115. However, courts have held due process requires formal notice of the amount demanded, which is not satisfied by “constructive notice” from other sources. (See *Stein, supra*, 181 Cal.App.4th at p. 327 [where complaint did not specify amount of damages sought, defaulted defendant’s participation in discovery and other pretrial procedures did not waive his right to object to amount of damages awarded]; *Morgan v. Southern Cal. Rapid Transit Dist.* (1987) 192 Cal.App.3d 976, 986, disapproved on another point in *Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428, 434 [rejecting claim that despite the failure to serve a statement of damages, the defendant had actual notice of the amount of damages sought through the plaintiff’s answers to interrogatories as well as settlement discussions]; *Debbie S. v. Ray* (1993) 16 Cal.App.4th 193, 199 [various settlement demands made before trial did not satisfy the actual notice requirements of section 425.11].)

Here, Midas was never provided with the statutorily required notice of the punitive damages amount. No amount is set forth in the complaint (which would be improper in

any case), and Midas was never served with the notice required by section 425.115, which would have put it on notice of the level of punitive damages that were requested. The statement of damages served on Midas requested \$150,000 in “[s]tatutory damages” without specifying that Banga was seeking punitive damages. Therefore, under the plain meaning of section 425.115, subdivisions (b) and (f), Banga has not preserved her ability to obtain punitive damages against Midas by way of a default judgment.

Despite this procedural failing, the trial court considered Banga’s request for punitive damages on its merits, and concluded she had not presented sufficient evidence to recover punitive damages. Under California law, “meaningful evidence” of defendant’s financial condition is a prerequisite to a punitive damages award.⁶ (*Adams v. Murakami* (1991) 54 Cal.3d 105, 109 (*Adams*)). Financial condition must be considered because the “quintessence” of punitive damages is deterrence, and an amount that will deter is directly related to the wealth of the defendant. (*Id.* at p. 110.)

The burden is on the plaintiff to show defendant’s financial condition. (*Adams, supra*, 54 Cal.3d at pp. 122-123.) “[T]he absence of evidence as to financial condition ‘frustrates meaningful appellate review of punitive damage awards . . . , since the absence of net worth precludes an appellate court from deciding whether an award might, for example, bankrupt the defendant.’ ” (*Id.* at p. 114.)

Banga was the only witness at the default prove-up hearing, and the court asked her directly about Midas’s financial condition in the following exchange: “[Q.] Do you have any sense of the value of the business of this Midas dealership? . . . [D]o you know what their net worth is? [¶] [A.] Well, I was reading—they submitted their declaration. And with that declaration, they submitted the insurance. . . . They have a one million dollars [per] incident”

⁶ Three factors must be considered in awarding punitive damages: (1) the reprehensibility of defendant’s conduct; (2) proportionality: whether the amount of the award bears a reasonable relationship to the damage actually suffered by plaintiff; and (3) whether the award is reasonable in light of defendant’s financial condition. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.)

Banga made no effort to introduce evidence of Midas's financial condition and instead relied on the value of an insurance policy to justify the punitive damages award. While the insurance policy protects against a loss of net worth, it does not itself establish Midas's net worth. The trial court's denial of punitive damages was justified because it did not have meaningful evidence of Midas's net worth that was necessary to support an award of punitive damages. (See *Robert L. Cloud & Associates, Inc. v Mikesell* (1999) 69 Cal.App.4th 1141, 1151-1153 [punitive damages award reversed for lack of evidence of net worth]; *Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 302 [default judgment awarding punitive damages reversed as to amount because of absence of evidence of defendant's net worth]; *Forte v. Nolfi* (1972) 25 Cal.App.3d 656, 689 [punitive damages award reversed as potentially excessive because the amount was awarded "without taking any evidence of the resources of the alleged wrongdoers which it sought to punish"].) Consequently, the trial court did not err in failing to award punitive damages.

IV.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Midas.

RUVOLO, P. J.

We concur:

REARDON, J.

HUMES, J.