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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CHAITANYA RAMAVAJJALA,

Plaintiff and Respondent,

v.

ANANYA PATTANAYAK,

Defendant and Appellant.

A144968

(San Francisco County  
Super Ct. No. CGC-14-539282)

Defendant Ananya Pattanayak, appearing in propria persona, appeals from a default judgment entered by the San Francisco Superior Court in favor of plaintiff Chaitanya Ramavajjala and against defendant for \$215,754.72. The judgment was entered in a lawsuit that stemmed from a dispute between the two regarding plaintiff's claims of lending money to defendant and defendant's commitments and representations related to the loan. The court entered the default judgment after denying defendant's second motion to set aside entry of default pursuant to Code of Civil Procedure section 473, subdivision (b) based on mistake, inadvertence or excusable neglect. Plaintiff has not responded to defendant's appellate arguments.

Defendant's opening brief contains numerous arguments that are not cognizable on appeal. Nonetheless, she makes the cognizable argument that the court erred in denying her relief from default because her failure to timely respond to the complaint was based on what in effect was an honest mistake of law, and that she otherwise acted diligently. We conclude the trial court abused its discretion because defendant's conduct

was not clearly inexcusable and did not prejudice plaintiff. Therefore, we reverse the judgment.

### **BACKGROUND**

On June 19, 2014, plaintiff, through counsel, filed a request for entry of default in the lawsuit he had filed against defendant in San Francisco Superior Court on May 14, 2014. The court entered default as requested that same day.

Plaintiff filed a notice of entry of default with the court on June 23, 2014, stating that the court entered default on June 19, 2014. He attached to his notice both the entry of default and a proof of service by mail of this notice to defendant.

Six weeks later, on August 1, 2014, defendant, through counsel, filed her first motion to set aside entry of default pursuant to Code of Civil Procedure section 473, subdivision (b) based on mistake, inadvertence, or excusable neglect. In a declaration accompanying her motion, plaintiff stated she was served with the complaint on May 16, 2014, and initially thought she had 30 days to respond, until June 15, 2014. However, she was served “with additional papers for the same action on May 28, 2014,” which her attorney stated in the motion papers were several discovery requests from plaintiff. Defendant contended these papers stated she had 30 days to respond, which led her to believe that “my first response to this lawsuit was now due June 27, 2014.” She “had previously scheduled to be out of town” and since she “believed [her] first response to this lawsuit was now due on June 27, 2014,” she “planned to get an attorney to represent [her] after [her] trip.” She returned from her trip “and received papers indicating default was entered” against her. She brought all the papers she had received in the case to her attorney “on June 15, 2014,” and retained him to represent her. Thus, she contended, her “failure to file a timely response to the Complaint was a result of a mistake, inadvertence, surprise, and excusable neglect.”

Defendant’s attorney also submitted a declaration that accompanied defendant’s motion to set aside entry of default. He stated defendant first informed him of the lawsuit on June 25, 2014, and subsequently retained him to defend her in the action. He stated he had conferred with opposing counsel, who refused to stipulate to set aside the default

because the retention of counsel after entry of default was not a proper ground for such relief.

Plaintiff opposed defendant's motion. He contended that defendant did not qualify for relief for numerous reasons, including because she did not provide any evidence that she went on a trip, such as receipts, and, in any event, used "a host of communications equipment when she [was] 'away' " that would have allowed her to consult with counsel. He also argued defendant could not have been confused about her deadline to respond to his complaint given the plain language of the documents served on her.

Plaintiff also argued defendant's motion was defective for a number of reasons. This included that defendant did not include a proposed responsive pleading to the complaint, although this is required pursuant to Code of Civil Procedure section 473, subdivision (b). At the hearing on the motion, defendant's counsel gave plaintiff's counsel a copy of an answer he proposed to file in an apparent effort to rectify this error, but plaintiff's counsel objected that this was outside the procedure called for by statute.

At the hearing, the trial court agreed that by statute the motion had to be accompanied by a copy of a proposed answer or other pleading. It denied defendant's motion without prejudice on this ground. After doing so, the court made further comments suggesting it intended to grant the motion. It stated: "I do want to encourage the parties to see if you can resolve this between yourselves, if possible, now that you have seen the proposed Answer that is set to be filed." The court encouraged the parties, if defendant filed another motion, "not to reduplicate the efforts that they've already taken, but simply to reattach things with new cover sheets, if necessary." It concluded the hearing by stating, "The law encourages or supports the resolution of defenses on the merits . . . and I hope everybody keeps that in mind if there does need to be a further motion."

On October 10, 2014, defendant filed her second motion to set aside entry of default, again bringing her motion pursuant to Code of Civil Procedure section 473, subdivision (b) based on mistake, inadvertence or excusable neglect. In support of it, defendant submitted the same declaration she submitted with her first motion. Her

attorney also submitted a declaration, which made the same contentions he had previously made and additional ones. Attached to his declaration was a proposed verified answer to defendant's complaint. Plaintiff opposed defendant's motion for many of the same reasons he asserted in opposing her first motion.

The second motion was considered by a different judge than the one who considered the first. The court held a hearing, took the motion under submission and on November 12, 2014, filed an order denying defendant's motion to set aside entry of default. The court found that defendant "failed to meet her burden of establishing by a preponderance of the evidence that default was entered due to her mistake, inadvertence of excusable neglect." Citing *Price v. Hibbs* (1964) 225 Cal.App.2d 209, 217, the court stated, "The mislaying of process, forgetfulness, or intentional disregard of service does not constitute mistake or excusable neglect and does not require the court set aside a default." The court continued, "Defendant acknowledged receiving the complaint and summons on May 16, 2014, and that a response to the complaint was due by June 15, 2014. Defendant did not respond or retain counsel then nor did she do so when she received the discovery request on May 28, 2014, stating a response was due June 27, 2014."

On December 14, 2014, plaintiff filed a request for default judgment against defendant in the amount of \$340,724.39, consisting of special and general damages, interest, costs, and attorney fees. The court did not process this request in the absence of a "prove up" hearing.

In February 2015, plaintiff submitted a second request for a default judgment, this time in the amount of \$215,754.72 and not including attorney fees, along with some supporting documentation and a memorandum of points and authorities. The largest part of this proposed judgment amount was "general damages" of \$100,000, but which were not explained in the supporting memorandum or by the supporting documentation. It appears from defendant's statement of damages accompanying his first request for default judgment that these "general damages" consisted of \$50,000 each for "pain, suffering and inconvenience" and "emotional distress." On February 19, 2015, the court

entered default judgment in favor of plaintiff and against defendant for \$215,754.72, consisting of the amounts requested by plaintiff.

Defendant filed a timely notice of appeal from this default judgment.

### **DISCUSSION**

Defendant's opening brief contains numerous arguments as to why we should reverse the court's default judgment. We conclude most of her arguments are either patently meritless or inadequate to merit our consideration. Defendant improperly asserts factual contentions that are outside the record (see *Weller v. Chavarria* (1965) 233 Cal.App.2d 234, 246), seeks to convince us to reweigh the evidence she presented below (see *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531) and argues the merits of the underlying case (see *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823–824). Further, she makes a series of somewhat confused and conclusory legal arguments without citing legal authority, explaining her reasoning or showing their relevance to the court's ruling. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793; *Strutt v. Ontario Sav. & Loan Assn.* (1972) 28 Cal.App.3d 866, 873.)

Nonetheless, defendant contends the default judgment was wrongly entered, the service of legal papers to her on May 28 caused her “significant confusion,” and she acted diligently to respond to the complaint filed against her. These are cognizable arguments that we now examine.

Code of Civil Procedure section 473, subdivision (b) (section 473) states that a court “may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” This subdivision invokes the trial court's discretion, and the court's ruling on a motion brought pursuant to it “ ‘shall not be disturbed on appeal absent a clear showing of abuse.’ ” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 254, 257.) The moving party has the burden of showing the requisite mistake, inadvertence, or excusable neglect. (*Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1478.)

“Excusable neglect is neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances.” (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435.) When a party contends he or she did not timely file a response because of a mistake of law—here, defendant stated she believed plaintiff’s service of discovery on May 28 extended her legal deadline to respond to the complaint—appellate courts consider the nature of the mistake, whether the party acted diligently upon discovering it and whether granting relief from default causes prejudice to the other party. (See *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276–279 [reviewing a claim under a statute that applied the same standards as section 473 (*id.* at p. 275, fn. 5)].) “[N]ot every mistake of law is excusable (citations) but . . . an honest mistake is excusable, the determining factor being the reasonableness of the misconception.” (*Viles v. State of California* (1967) 66 Cal.2d 24, 29 [also reviewing a claim under a statute that applied section 473 standards].) The “controlling factor” is “the reasonableness of the misconception of the law under the circumstances in each particular case. . . . [A] mistake of law may be excusable when made by a layman but not when made by an attorney.” (*Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 479 [also reviewing a claim under a statute that applied section 473 standards (*id.* at pp. 475–476)].)

The order denying a motion to vacate default—made before entry of the default judgment—is not independently appealable, but may be reviewed on appeal from the judgment. (*Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459, 1465–1466.) We review such a denial for abuse of discretion, but informed by the long-standing principle that we favor the resolution of cases on their merits. As this court stated in *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681: “The law favors resolution of cases on their merits, and because it does, any doubts about whether Code of Civil Procedure section 473 relief should be granted ‘ ‘must be resolved in favor of the party seeking relief from default [citations]. Therefore, a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits.’ ” (*Id.* at p. 685, fn. omitted, quoting *Rappleveya v. Campbell* (1994) 8 Cal.4th 975, 980.)

In other words, “the trial court’s discretion . . . must be ‘ ‘exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.’ ” [Citations.] [¶] Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations ‘very slight evidence will be required to justify a court in setting aside the default.’ ” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 (*Elston*), followed in *Parage v. Couedel* (1997) 60 Cal.App.4th 1037, 1041-1042.) “Unless *inexcusable neglect is clear*, the policy favoring trial on the merits prevails. [Citation.] Doubts are resolved in favor of the application for relief from default [citation], and reversal of an order denying relief results. [Citation.] Reversal is particularly appropriate where relieving the default will not seriously prejudice the opposing party.” (*Elston*, at p. 235, italics added.)

Here, defendant’s own declaration statement indicates she made a mistake of law by assuming that service of defendant’s discovery papers to her on May 28, 12 days after service of the summons and complaint, extended her time to respond to the complaint until the end of June. Nothing in the record indicates this is anything other than the truth, and the trial court did not doubt her credibility in its ruling; instead, it appears to have accepted the veracity of what she said in finding her at fault for not immediately seeking counsel upon receiving service on the two occasions.

In denying defendant’s motion, the trial court relied on case law that the mislaying of process, forgetfulness or intentional disregard of service is not sufficient to qualify for relief. However, the case it cited in support of this proposition, *Price v. Hibbs, supra*, 225 Cal.App.2d at p. 217, is inapposite because it did not involve any contention of mistake of law, but only that the defaulting party did not recall being served as claimed by the other side. (*Id.* at pp. 213–215.)

The trial court also stated in its ruling, “Defendant acknowledged receiving the complaint and summons on May 16, 2014, and that a response to the complaint was due by June 15, 2014. Defendant did not respond or retain counsel then nor did she do so when she received the discovery request on May 28, 2014, stating a response was due

June 27, 2014.” Defendant’s failure to immediately seek counsel was an insufficient basis for denying her motion. As our review of the case law indicates, the court, in order to properly exercise its discretion, needed to determine whether (1) defendant’s mistake of law was clearly inexcusable, (2) whether defendant acted diligently before and after learning of the entry of default against her, and (3) whether plaintiff was prejudiced if the court were to grant defendant’s motion for relief from default. It did not do so. We now analyze these determinative issues.<sup>1</sup>

First, we cannot say defendant’s honest mistake of law was clearly inexcusable under the circumstances. The service of papers can be confusing to a layperson, even for a layperson with experience in business and legal matters. This was, for example, the implicit conclusion of the court in *Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653. There, the plaintiff filed a foreclosure action on a materialman’s lien on certain real property, served the summons and complaint on one of three defendant owners of the property, Schuman, and, when Schuman did not timely appear in the action, obtained a default judgment against him. (*Id.* at p. 655.) Schuman

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<sup>1</sup> We have great sympathy for the pressure on trial courts to move quickly through their dockets in order to diligently rule on all matters that come before them. However, this case demonstrates the need for the courts to fully consider the circumstances and arguments presented to them. This is true not only with regard to defendant’s motion, but also with regard to the default judgment entered in this case. It appears to contain \$100,000 for “emotional distress” and “pain, suffering and inconvenience” damages requested by plaintiff’s counsel even though these damages are not pled in the complaint as required for a default judgment (see, e.g., *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 753–755 [default judgment void because “the court could award only that amount of damages set forth in the complaint”]), and are rarely awarded for breach of contract, fraud or common count claims—the only claims plaintiff alleged. (See, e.g., *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1601–1602 [“Generally, ‘damages for mental suffering and emotional distress are . . . not compensable in contract actions’ ” although possible “ ‘when the express object of the contract is the mental and emotional well-being of one of the contracting parties’ ”].) As we have written, because there is no opposing party in a default judgment situation, “ ‘it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through.’ ” (*Fasuyi v. Permatex, Inc.*, *supra*, 167 Cal.App.4th at p. 691.) The importance of this gatekeeper function is most evident here.

sought relief from the court, contending he was handed a paper by a person who said he was the plaintiff's attorney, which paper Schuman assumed from their conversation was only a lien claim that did not require immediate attention and which would be settled; Schuman further stated that he placed the paper on a desk for later attention and misplaced it, and was only later advised it was a summons and complaint. (*Id.* at pp. 655–656.) The plaintiff contended he personally served Schuman with what he told Schuman was a summons and complaint. (*Id.* at p. 656.) The trial court granted relief and the plaintiff appealed. The appellate court affirmed the ruling after citing many of the guidelines we have discussed here. (*Id.* at pp. 656–658.) It concluded that the defendant's "affidavit sufficiently warranted the court in believing that respondent was, in good faith, mistaken as to the fact of what the papers he received pertained to." (*Id.* at p. 657.)

Other courts have similarly excused various mistakes by attorneys or their staff that similarly demonstrate the " 'very slight evidence' " (*Elston, supra*, 38 Cal.3d at p. 233) needed to obtain relief based on similar honest mistakes of law and misunderstandings. (See *Bettencourt v. Los Rios Community College Dist., supra*, 42 Cal.3d 270 [reversing denial of relief upon finding counsel's mistake about defendant college's legal status was the reasonable result of his unfamiliarity with the area where the college was located, 75 miles away]; *Viles v. State of California, supra*, 66 Cal.2d at p. 29 [reversing a denial of relief upon concluding the plaintiff's failure to timely file a claim based on erroneous advice from experienced persons about his deadline could not be said to be based on an "unreasonable misconception"]; *Toon v. Pickwick Stages, Northern Div., Inc.* (1924) 66 Cal.App. 450, 455–456 [reversing denial of relief upon finding it "pardonable" that an inexperienced employee in the attorney's office had placed the complaint in the file without telling the attorney about it].)

Below, plaintiff argued that any mistake by defendant was inexcusable because she should have consulted a lawyer, citing *Goodson v. Bogerts, Inc.* (1967) 252 Cal.App.2d 32, 40. However, *Goodson* is inapposite because the defaulting party, Goodson, against whom a cross-complaint had been filed, did nothing in the case until

almost two months after the court entered a default judgment against him. (*Id.* at pp. 34–35.) Also, the court found it could be reasonably inferred from the facts that Goodson “intentionally ignored” the service of the summons and cross-complaint in order to “forestall payment of his obligation and would have continued to do so had not . . . his assets been levied upon.” (*Id.* at p. 40.) The court also rejected Goodson’s claim that he did not understand the significance of receiving the cross-complaint, concluding that he was not entitled to any more consideration than a lawyer because he had elected to proceed with his action in propria persona and, further, that it could be reasonably inferred from the facts that his “plea of ignorance was false.” (*Ibid.*)

The circumstances here stand in sharp contrast to those in *Goodson*. The court’s findings indicated nothing negative about defendant’s credibility in asserting that she thought her time to respond to the complaint was extended by the later service of the discovery requests; nor do we see any reason to doubt it. Further, the record indicates, bearing in mind defendant was mistaken about her time to respond to the complaint, that she was not inexcusably negligent in retaining counsel. According to her declaration, defendant brought all of her papers to the office of an attorney on June 15, just 19 days after receiving service of what she did not understand were discovery papers.

Defendant’s attorney stated in his declaration that he learned of the case from her on June 25, just days after she received notice of the entry of default against her.<sup>2</sup> While the court found her at fault for not seeking counsel immediately upon receiving either the summons and complaint or the discovery requests, defendant stated that her trip delayed her effort to do so. Under these circumstances it cannot be said that she inexcusably delayed in retaining counsel.

Further, the record shows that within days of defendant retaining him, this counsel began engaging in what became an extended meet-and-confer process with plaintiff’s

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<sup>2</sup> These references to June 15 and June 25 suggest either defendant and her counsel did not meet when she first brought papers to his office or that one or the other was mistaken about the date of their first meeting. If a mistake were made, it would not affect our analysis since a meeting on either date would indicate the two did not meet beyond a reasonable period of time given the other circumstances of the case.

counsel, as indicated by a July 11 letter by plaintiff's counsel summarizing their discussions up to that point. Defendant's first motion for relief was filed three weeks after the date of that letter, on August 1. This cannot be said to be inexcusably negligent either.

Finally, plaintiff did not argue below that he would be prejudiced in litigating his claims by the court's granting defendant's motion. The record does not reveal any such prejudice, and we cannot think of any that would result under the circumstances.

Accordingly, we conclude the trial court abused its discretion in denying defendant's motion for relief because her failure to timely respond to plaintiff's complaint was not clearly inexcusable in light of her honest mistake of law, her retention of counsel in a reasonable period of time given this mistake, and the lack of any indication that plaintiff is prejudiced by such relief.

#### **DISPOSITION**

The judgment is reversed and this matter remanded to the trial court with instructions that it enter an order granting defendant's motion for relief and conduct further proceedings consistent with this opinion. We express no opinion regarding plaintiff's requests below that the trial court, if it were to grant defendant's motion, also issue further orders, such as that defendant pay plaintiff's attorney fees and expenses, penalties, and/or post an appropriate bond as a condition precedent to filing an answer. Defendant is awarded costs of appeal.

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STEWART, J.

We concur.

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KLINE, P.J.

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RICHMAN, J.

*Ramavajjala v. Pattanayak* (A144968)