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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KOREAN CENTER CHURCH,

Plaintiff and Respondent,

v.

KENNETH RHEE et al.,

Defendants and Appellants.

G049757

(Super. Ct. No. 30-2013-00631869)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Frederick Paul Horn, Judge. Affirmed.

The Fullman Firm, Adam C. Fullman, Christopher J. Peters,  
Ryan J. Hanley and Sergio G. Chaidez for Defendants and Appellants.

Park & Lim, S. Young Lim and Jessie Y. Kim for Plaintiff and Respondent.

\* \* \*

## INTRODUCTION

A default judgment was entered in favor of Korean Center Church and against Kenneth Rhee and Clara Key. Rhee and Key filed motions to set aside the default judgment on the ground they were never served with the summons and complaint. The trial court denied those motions; we affirm. Rhee and Key failed to affirmatively establish lack of service of the summons and complaint and failed to attach proposed responsive pleadings to their motions.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Korean Center Church sued Rhee and Key, among others, for breach of a lease agreement. Rhee was personally served with the summons and complaint on February 22, 2013. Key was served via substituted service on Key's son on March 7; copies of the summons and complaint were mailed to Key on that day. The proofs of service were filed with the trial court on April 19.

Neither Key nor Rhee filed a responsive pleading, and the Korean Center Church filed a request for entry of default on April 23, 2013. On June 18, 2013, default judgment was entered in favor of the Korean Center Church and against Rhee and Key.

On December 9, 2013, pursuant to Code of Civil Procedure section 473.5, Rhee and Key each filed a motion to set aside the default judgment. Following briefing and a hearing, the trial court found neither Rhee nor Key had provided sufficient evidence to show he or she had not received actual notice of the summons and complaint, and that proposed responsive pleadings had not been attached, and therefore denied their motions. Rhee and Key filed a timely notice of appeal from the order.

## DISCUSSION

“We review the court’s denial of a motion for equitable relief to vacate a default judgment or order for an abuse of discretion, determining whether that decision exceeded the bounds of reason in light of the circumstances before the court. [Citation.] In doing so, we determine whether the trial court’s factual findings are supported by

substantial evidence [citation] and independently review its statutory interpretations and legal conclusions [citations].” (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230.)

“[Code of Civil Procedure s]ection 473.5 grants the trial court discretion to set aside a default judgment taken against a party who lacked actual notice of the action, and it sets forth the procedure with which the party moving to have the judgment set aside must comply.” (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 861.)

“Section 473.5 requires that the motion to set aside the default judgment be accompanied by ‘an affidavit showing under oath that the party’s lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect’ and ‘a copy of the answer, motion, or other pleading proposed to be filed in the action.’ [Citation.]” (*Ibid.*)

“Discretionary relief based upon a lack of actual notice under [Code of Civil Procedure] section 473.5 empowers a court to grant relief from a default judgment *where a valid service of summons has not resulted in actual notice to a party in time to defend the action.*” (*Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1319, italics added.)

Because Rhee and Key, as the moving parties, had the burden of proof on all statutory prerequisites for relief under Code of Civil Procedure section 473.5 (*Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1079-1080), the trial court did not abuse its discretion in denying the motions.

### *Service of Summons and Complaint*

In her affidavit in support of the motion to set aside the default judgment, Key stated she did not live or do business at the address at which substituted service was effected. Key attached to her affidavit a copy of a residential lease form, which, she asserted, proves she did not live at that address. In its minute order, the trial court stated that the lease established Key did live at the address at which service was effected. This

reflects a misreading of the lease; the lease states that Key is the lessor, not the lessee, of the property at which she was allegedly served. However, this error by the trial court does not establish an abuse of discretion. First, Key attached only the first page of what purports to be a four-page document, and there is no evidence that the lease was ever signed by the potential lessee. Key's affidavit also stated that she lived at a different address in La Habra when substituted service was purportedly effected, although no documentary evidence was presented. Key also attached a copy of a lease showing she lived in Los Angeles during October 2012; that time period is irrelevant to a determination of where Key was residing when service was effected in March 2013. Key failed to affirmatively establish she did not reside at the address at which service was effected.

In support of his motion to set aside the default judgment, Rhee's affidavit stated he was performing missionary work outside the country in 2013, and therefore could not have been personally served with the summons and complaint. In support of that contention, Rhee submitted documentation written primarily in what appeared to be Korean. The trial court found that this documentation, for which a translation was not provided, was unintelligible, and could not support Rhee's claim of being out of the country. The trial court did not abuse its discretion.

*No Proposed Responsive Pleadings Filed with Motions*

The trial court also denied the motions because neither Key nor Rhee filed a proposed responsive pleading with his or her motion. Both Rhee and Key argue that because they did not receive actual notice of the summons and complaint, they were not required to comply with this requirement of Code of Civil Procedure section 473.5, subdivision (b). Rhee and Key provide no authority for their claim that the clear requirement of the statute need not be complied with.

### *Timeliness of Motions*

The trial court also found that it could not determine whether the motions were timely because Rhee and Key failed to specify when they were served with the notice of default or notice of the entry of default judgment. To be timely under Code of Civil Procedure section 473.5, a motion must be brought “within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.” (Code Civ. Proc., § 473.5, subd. (a).) The appellate record in this case is devoid of any indication when the notice of default was served on Rhee and Key. However, the notice of entry of default judgment could not have been served before June 18, 2013, the day on which the judgment was entered. The motions, filed on December 9, 2013, were timely as challenges to the default judgment. The trial court erred in reaching a contrary conclusion. However, the motions were properly denied on the grounds identified *ante*, so the trial court’s error in this regard is inconsequential.

### DISPOSITION

The postjudgment order is affirmed. Respondent to recover costs on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.