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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JACQUELINE VO,

Plaintiff and Respondent,

v.

JOSH M. LUCERO,

Defendant and Appellant.

H037542

(Santa Clara County

Super. Ct. No. CV128160)

Plaintiff Jacqueline Vo sued defendant Josh M. Lucero for repayment of loans, sexual battery, and intentional infliction of emotional distress. The trial court entered defendant's default and later rendered judgment for plaintiff in the amount of \$633,667.81 plus \$55,957.33 prejudgment interest accruing from July 23, 2007. On appeal, defendant contends that the trial court awarded damages exceeding the amount demanded in the complaint. We agree. We therefore modify and affirm the judgment.

BACKGROUND

The first amended complaint sought debt payments of "at least" \$103,000, unspecified special and consequential damages, and \$600,000 in punitive damages. The request to enter default on Judicial Council form CIV-100 does not specify any amount for damages. Plaintiff did not serve plaintiff with a statement of damages or a reservation of the right to seek punitive damages on a default judgment.¹ Plaintiff's motion to enter

¹ Plaintiff apparently served defendant with two punitive damages reservations but concedes that service of each was untimely.

default judgment sought repayment of \$133,667.81² and prejudgment interest on that amount calculated at the legal rate from July 23, 2007. It also described one and one-half years of abuse suffered by plaintiff at the hands of defendant during a romantic relationship. At the default judgment hearing, plaintiff acknowledged that the total damages being sought was \$633,667.81 and that the interest component calculated to \$55,957.33.³ The trial court entered judgment accordingly.

DISCUSSION

“The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by [Code of Civil Procedure] Section 425.11 [statement of damages served in the same manner as a summons before entry of default in personal injury or wrongful death action], or in the statement provided for by Section 425.115 [reservation of right to seek punitive damages on default judgment served in the same manner as a summons before entry of default in action where plaintiff seeks punitive damages]” (Code Civ. Proc., § 580, subd. (a).)

The court in *Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, explained the following: “The purpose of [Code of Civil Procedure] section 580 is to require the plaintiff to provide notice of the *maximum* amount of the defendant’s potential liability. The complaint in the present case, however, seeks damages ‘in an amount in excess of \$50,000.’ Thus, rather than giving defendants notice of their *maximum* liability, the complaint instead purports to provide notice of their *minimum* liability.” (*Id.* at p. 1174, fn. omitted.) It therefore held that the compensatory damages in the case were limited to \$50,000.

² Plaintiff’s declaration stated that she had recalculated the debt since filing the first amended complaint.

³ The record does not make clear the basis for the \$500,000 damage component that exceeded the \$133,667.81 debt-repayment damage component. Plaintiff asserts that she did not seek punitive damages at the default judgment hearing. Thus, the \$500,000 is presumably general damages for the tort causes of action.

The instant case is indistinguishable. Plaintiff's first amended complaint asked for "at least" \$103,000. This provides notice of defendant's minimum liability, and the relief granted does not comply with Code of Civil Procedure section 580, subdivision (a). Plaintiff's contract damages are therefore limited to \$103,000.

Plaintiff contends that the first amended complaint gave defendant notice of a claim for \$703,000 because it asked for punitive damages of \$600,000. But plaintiff did not perfect the punitive damage claim by serving a reservation and concedes in any event that she did not ultimately seek punitive damages. And plaintiff did not perfect her personal injury claims by serving a statement. Thus, the trial court's award in excess of \$103,000 was for something that was neither demanded in the first amended complaint nor perfected by a reservation or statement.

Defendant argues that plaintiff's request for default was in some way defective because it did not specify the damages being sought. But he cites no authority for the proposition that the defect, if it is a defect, affects the judgment in any way. Here, the first amended complaint specified the amount of damages being sought for plaintiff's contract claim as contemplated by Code of Civil Procedure section 580, subdivision (a). And we are modifying the judgment to conform to that amount as required by Code of Civil Procedure section 580, subdivision (a). The lack of specificity in the CIV-100 form is of no moment.

In the event the awarded damages exceed the amount pleaded, the trial court has discretion to vacate the underlying default and allow the plaintiff to amend. (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1743.) Plaintiff has declined this option and asked us to simply modify the judgment to the maximum amount warranted by the complaint.

DISPOSITION

The judgment is modified to award plaintiff damages of \$103,000 plus interest on that amount at the legal rate from July 23, 2007. As so modified, the judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.