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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PAUL F. ANSBERRY et al.,

Plaintiffs and Respondents,

v.

MELASKO ENERGY GROUP, LLC,

Defendant and Appellant.

H039376

(Monterey County

Super. Ct. No. M113625)

Defendant Melasko Energy Group, LLC (Melasko) appeals the trial court's entry of default judgment in an action for quiet title and slander of title brought by plaintiffs Paul F. Ansberry et al. relating to land in Monterey County. Melasko argues on appeal that the trial court erred by granting plaintiffs' application to serve Melasko by substituted service of process on the California Secretary of State and by striking Melasko's answer. For the reasons stated here, we will affirm the judgment.

I. TRIAL COURT PROCEEDINGS

Plaintiffs filed a verified complaint for quiet title and slander of title against Melasko and other entities (collectively, defendants) in August 2011, alleging that defendants recorded deeds with the County of Monterey asserting ownership interests in oil, gas and mineral rights (property rights) on land that was actually owned by plaintiffs. Plaintiffs attached recorded documents and correspondence between plaintiffs and a representative of Melasko as exhibits to the complaint. A document attached to one of the grant deeds recorded against the property, entitled "Public Declaration of Result of

Claim Hearing,” states that defendants acquired the property rights at a “Claim Hearing” held in King City, California, notice of which was published in California newspapers. Melasko obtained its purported interest in the property rights via grant deed from Valley Pacific Environmental & Energy. Melasko later recorded a grant deed transferring fee title to the property rights to Alcona Shipping, LLC, and also executed an option agreement with that corporation giving Melasko the option to repurchase the property rights. That option agreement provided: “In the event of any dispute between the parties, this agreement shall be interpreted pursuant to California law and any action must be instituted in State or Federal Court in Los Angeles County, California.” Finally, plaintiffs attached a letter they received in response to their request that Melasko quitclaim any interest in the property rights. According to the letter, an individual named Richard Irwin claimed plaintiffs had no interest in the property rights because they failed to appear at the claim hearing. Citing plaintiffs’ allegedly false claim to the property, Irwin’s letter enclosed “Invoices” for each of the plaintiffs and their counsel for \$1.25 billion, payable within three days from receipt to Melasko’s “Notary Acceptor” located in Fresno, California.

Plaintiffs applied to serve Melasko by substituted service on the Secretary of State, based on Melasko’s status as an unregistered foreign limited liability corporation transacting business in California. (Former Corp. Code, § 17456, subd. (d), added by Stats. 1994, ch. 1200, § 27, pp. 7296, 7340; repealed by Stats. 2012, ch. 419, § 19, p. 3986.)¹ In support, plaintiffs attached a copy of an Alaska Secretary of State business search result for Melasko. Regarding Melasko’s alleged transaction of business,

¹ Unspecified statutory references are to the Corporations Code. Effective January 1, 2014, Title 2.5 of the Corporations Code (§§ 17000–17657), governing limited liability companies, was repealed and replaced with Title 2.6 (§§ 17701.01–17713.13). (Stats. 2012, ch. 419, §§ 19–20, p. 3986.)

plaintiffs relied on their verified complaint and its exhibits. The court granted the application in late August 2011.

In September 2011 plaintiffs filed a first amended complaint, which named an additional defendant but did not substantively amend plaintiffs' causes of action. Later that month, plaintiffs filed a notice of case management conference as well as a proof of substituted service of the summons and first amended complaint on the Secretary of State. Also filed was a certification from the Secretary of State's office that it had mailed the documents received from plaintiffs to Melasko's address in Alaska.

By agreement of the parties, the deadline for Melasko's answer was November 1, 2011. When Melasko did not meet that deadline, plaintiffs sent a request for entry of default, which the trial court received on November 9, 2011. Melasko submitted an answer on November 10, 2011, which the clerk filed. Melasko's answer did not assert lack of personal jurisdiction as an affirmative defense and Melasko did not concurrently file a motion to quash service of summons.

Plaintiffs' case management statement noted they had been informed by the court that their request for entry of default had been received but not processed on November 9, 2011 because of a backlog in processing the mail. Because the request for entry of default arrived before Melasko's answer, plaintiffs asked the court to disregard the answer. In December 2011, the trial court issued an order that set aside Melasko's answer, reasoning that because the court received plaintiffs' request for entry of default before Melasko submitted its answer, "default should have been entered and the Answer [should have been] returned unfiled."

After the answer was set aside, Melasko filed a case management statement requesting a jury trial, estimating a trial length of five days, and listing various types of discovery it intended to pursue. Though the case management statement form provided an area to disclose "any matters that may affect the court's jurisdiction," Melasko did not object to the court's personal jurisdiction over it or claim that substituted service failed to

provide it notice of the action. Counsel for Melasko appeared at a case management conference on December 16, 2011, stated he was aware that default had been entered against Melasko, and said he would be “filing a motion for relief of the default as soon as possible.” Counsel also argued that “the order ... setting aside the answer is void on its face,” which the court informed counsel he could address in “a motion or a request, whatever you’d like to do.” No request for relief from default was ever filed. In February 2012, counsel for Melasko moved to be relieved as counsel, stating that he was unable to establish communication with any officer of the corporation. The court granted the motion after an uncontested hearing.

Plaintiffs agreed to a stipulated judgment with the other defendants named in the first amended complaint, which quieted title to the property rights in plaintiffs’ favor. After a hearing, in December 2012 the court entered default judgment against Melasko, quieting title, declaring void the recorded documents purporting to convey a property interest to Melasko, and dismissing with prejudice plaintiffs’ slander of title cause of action (at plaintiffs’ request).

II. DISCUSSION

A. SCOPE OF APPEAL

Respondent plaintiffs argue that Melasko cannot challenge on appeal the trial court’s order allowing substituted service on the Secretary of State. Plaintiffs’ argument is twofold. First, they note that because Melasko did not move to set aside the default judgment, on appeal we may review only “ ‘questions of jurisdiction, sufficiency of the pleadings and excessive damages’ ” (Quoting *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 824.) Second, they argue that Melasko narrowed the scope of its appeal by stipulation. To resolve a motion by Melasko to strike portions of the plaintiffs’ designation of the record on appeal, the parties stipulated that Melasko “hereby unconditionally agrees to limit the scope of its Notice of Appeal in this action ... to an appeal solely of the validity of the entry of

[Melasko's] default and the trial court's order striking [Melasko's] answer." Plaintiffs concede that the validity of the substituted service order is a question related to jurisdiction and thus ordinarily within the scope of an appeal from a default judgment, but contend that Melasko's challenge to the substituted service order is not encompassed in the two issues identified in the stipulation. We conclude that Melasko's challenge to the substituted service order is within the scope of the parties' stipulation and therefore appropriate for our review.

B. VALIDITY OF THE SUBSTITUTED SERVICE ORDER

Melasko claims the trial court erred in allowing service of process on Melasko through the Secretary of State under former Corporations Code section 17456, subdivision (d) (former section 17456(d)). As the evidence in the first amended complaint forming the basis of the trial court's substituted service order was undisputed and statutory interpretation is a question of law, we apply a de novo standard of review. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).

To satisfy the Fourteenth Amendment to the United States Constitution, service of process must at a minimum provide notice and an opportunity to be heard. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313–314.) If a defendant is served within the state, service of process provides notice of the action *and* establishes personal jurisdiction over the defendant. (*Burnham v. Superior Court of California* (1990) 495 U.S. 604, 619 [finding "jurisdiction based on physical presence alone constitutes due process"].) For nonresident defendants, service outside the state merely provides notice of the suit and personal jurisdiction must be established by other means. (*In re Marriage of Merideth* (1982) 129 Cal.App.3d 356, 361–362 [finding nonresident defendant's acknowledgement of receipt of summons outside the state did not establish personal jurisdiction].) Personal jurisdiction over a nonresident defendant is proper "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate 'traditional notions of fair play and substantial justice.'" "

(*Vons, supra*, 14 Cal.4th at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) Statutes governing service of process are “ ‘liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant’ ” (*Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778 [liberally construing Code Civ. Proc., § 416.10 to find jurisdiction over defaulting corporate defendant that “decided to permit plaintiff to obtain a default judgment” and then sought to “invoke a technical defect in service to set aside that judgment”].)

1. Melasko Forfeited Jurisdiction and Notice Arguments

Melasko appears to concede the existence of a basis for personal jurisdiction, stating in its Reply Brief that “Melasko has never disputed” that “Melasko’s ‘doing business’ in California afforded the trial court a basis for in personam jurisdiction” (Emphasis omitted.) As such, Melasko’s only cognizable challenge is that the method of service used by plaintiffs failed to provide adequate notice, violating the Fourteenth Amendment due process clause. But Melasko’s conduct in the trial court served to forfeit any challenge to notice or jurisdiction.

In an attachment to plaintiffs’ case management conference statement, plaintiffs claimed that Melasko had been “granted an extension” to file an answer. Melasko refers to that extension in its Opening Brief and states it had been “agreed to by” plaintiffs. As Melasko could only be granted an extension if it asked for one in the first place, the record demonstrates that Melasko had actual notice of the suit before the deadline to file an answer. That notice, coupled with multiple actions by Melasko (including filing a case management statement and appearing at a case management conference) without ever objecting to the court’s personal jurisdiction served to cure any arguable defect in the method of service selected by plaintiffs. (Civ. Proc. Code, § 410.50, subd. (a) [“A general appearance by a party is equivalent to personal service of summons on such party.”]; *Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1756–1757 [general

appearance “does not require any formal or technical act”; filing case management statement and active participation at a hearing constituted general appearance]; see also *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313 [“[S]tatutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant.”].)

2. Substituted Service Order Was Valid

Even if Melasko had not forfeited their challenge to the adequacy of the notice provided by plaintiffs’ method of service, Melasko’s argument that substituted service on the Secretary of State was invalid as a matter of law because Melasko is not a corporation to which former section 17456(d) applied is without merit.

a. “Transacting Business” Is Not Limited To “Transacting Intrastate Business”

Former section 17456(d) provided: “A foreign limited liability company, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.” (Stats. 1994, ch. 1200, § 27, pp. 7296, 7340, repealed by Stats. 2012, ch. 419, § 19, p. 3986.) Melasko quotes the foregoing language but then argues it applies only to foreign LLC’s “transacting intrastate business in California.” Though acknowledging that the word “intrastate” does not appear in former section 17456(d), Melasko argues that because subdivisions (a) and (b) of former section 17456 discuss “transacting intrastate business,” the Legislature similarly intended former section 17456(d) to apply only to corporations transacting intrastate business.

When interpreting statutes, we begin with the statutory language and give “the words their usual, ordinary meaning.” (*People v. Canty* (2004) 32 Cal.4th 1266, 1276 (*Canty*)). If it is unambiguous, we follow its plain meaning. (*Ibid.*) If it is ambiguous, we may determine “ ‘whether the literal meaning of a measure comports with its purpose

or whether such a construction of one provision is consistent with other provisions of the statute.’ ” (*Ibid.*, quoting *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) We must construe statutory language “in the context of the statute as a whole and the overall statutory scheme” (*Canty*, at p. 1276.)

Beginning with the plain language of former section 17456(d), the word “intrastate” is not used, suggesting that “transacting business” means something different than “transacting intrastate business.” That these phrases have different meanings is apparent by looking at the definition of “transact intrastate business” in former section 17001, subdivision (ap): “ ‘Transact intrastate business’ means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.” (Former § 17001, subd. (ap), repealed by Stats. 2012, ch. 419, § 19, p. 3986.) From this definition, it appears that for purposes of the foreign LLC provisions of the Corporations Code, “transact[ing] intrastate business” describes a subcategory differentiated from the broader general category of business transactions based on geography (referring to transactions “other than in interstate or foreign commerce”). Melasko’s argument that the terms “transacting business” and “transacting intrastate business” are synonymous under the Corporations Code is therefore unavailing.

Melasko’s statutory interpretation argument is similar to one rejected by the Supreme Court in *Carl F.W. Borgward, G.M.B.H. v. Superior Court* (1958) 51 Cal.2d 72 (*Borgward*). At the time of *Borgward*, California courts could exercise personal jurisdiction over nonresident corporations that were “ ‘doing business in this State; in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.’ ” (*Id.* at p. 75, quoting former Code Civ. Proc., § 411, repealed by Stats. 1969, ch. 1610, § 12, p. 3372.) Those sections of the Corporations Code applied to corporations that “[t]ransact[ed] intrastate business,” which was defined as “ ‘entering into repeated and successive transactions of its business in the State, other than interstate or foreign commerce.’ ” (*Ibid.*, quoting former § 6203, repealed by Stats. 1975, ch. 682, § 6,

p. 1516; see also former § 17001, subd. (ap) [containing almost identical “[t]ransact intrastate business” definition: “enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.”], repealed by Stats. 2012, ch. 419, § 18, p. 3986.) The nonresident corporation defendant argued that “no provision has been made for service on corporations engaged solely in interstate or foreign commerce and that ‘doing business in this State’ within the meaning of section 411 must mean transacting intrastate business as defined in section 6203.” (*Borgward*, at p. 76.)

The Supreme Court disagreed, noting that “[former] [s]ection 6203 defines, not the words ‘doing business in this State,’ but the words ‘transact intrastate business.’ ” (*Borgward*, *supra*, 51 Cal.2d at p. 76.) In finding that these terms had different meanings, the court reasoned: “Since the Legislature was dealing specifically with the definition of terms, had it meant the two phrases to be equivalent, it would have said so. Moreover, by excluding acts done by a foreign corporation in this state in interstate or foreign commerce from its definition of the words ‘transact intrastate business,’ it clearly recognized that a corporation may do business in this state without transacting intrastate business.” (*Ibid.*) Though the *Borgward* court did not determine the precise issue raised by Melasko, its reasoning is nonetheless applicable, especially because the definition of “transact intrastate business” has not materially changed since *Borgward*. Consistent with the *Borgward* court’s analysis, we find that a corporation may transact business in this state without necessarily transacting intrastate business.

Melasko also argues that because subdivision (a) of former section 17456 only required foreign LLC’s to register in the state if they were “transacting intrastate business,” former section 17456(d) “can only apply if a foreign limited liability corporation was transacting intrastate business in this state.” We decline to read the term “intrastate” into former section 17456(d). Former section 17456, subdivision (a), stated that foreign LLC’s “transacting intrastate business ... shall not maintain any action, suit,

or proceeding in any court of this state until it has registered in this state.” That subdivision therefore limited a foreign LLC’s access to California courts for the purpose of bringing lawsuits. Former section 17456(d), on the other hand, governed lawsuits *against* foreign LLC’s “with respect to causes of action arising out of the transaction of business in this state.” The Legislature’s use of the broader term “transacting business” in former section 17456(d) is consistent with California’s interest in providing litigants with a forum for convenient and effective relief from conduct in the forum by nonresident defendants. (See *Vons, supra*, 14 Cal.4th at p. 447 [“[T]he state has ‘a “manifest interest” in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.’ ”].)

Though acknowledging that it does not govern this case because it became effective in January 2014, Melasko argues that the Legislature’s codification of the California Revised Uniform Limited Liability Company Act supports its statutory interpretation argument. In support, Melasko relies on section 17708.07, subdivision (d), which provides: “If a foreign limited liability company transacts intrastate business in this state without a certificate of registration ..., it shall be deemed to have appointed the Secretary of State as its agent for service of process for rights of action arising out of the transaction of intrastate business in this state.” (§ 17708.07, subd. (d).) That section does not apply here because it “applies only to the acts or transactions by a limited liability company ... occurring ... on or after January 1, 2014” and expressly states that the “prior law governs all acts or transactions by a limited liability company ... occurring ... prior to January 1, 2014.” (§ 17713.04, subd. (b).) Further, section 17708.03, which defines “transacting intrastate business,” now states explicitly that the section “does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under the law of this state other than this article.” (§ 17708.03, subd. (e).) We thus find nothing in the new statutory scheme that affects our interpretation of former section 17456(d).

We find that former section 17456(d) applied not only to foreign LLC's transacting intrastate business but also to any foreign LLC transacting business in California and that the order authorizing substituted service was therefore properly granted if Melasko was "transacting business" in California. (Former § 17456(d).)

b. Melasko was "Transacting Business" in California

In their application for substituted service, plaintiffs referred to the allegations of their initial verified complaint (and attached exhibits) to show that Melasko was "transacting business" in California. Those documents showed that Melasko originally claimed ownership of the property rights by recorded grant deed. Though Melasko later transferred its purported interest to another entity, it also signed an option agreement (with a California choice of law provision) allowing it to repurchase the property rights. Further, in response to plaintiffs' request that Melasko quitclaim any interest in the property rights, plaintiffs received a letter from an individual that included invoices for \$1.25 billion payable to Melasko through a "Notary Acceptor" located in Fresno, California. The foregoing activities amply supported the trial court's findings that Melasko was "transacting business" in California and had thus appointed the Secretary of State as its agent for service of process with respect to plaintiffs' lawsuit because it was an unregistered foreign LLC. (§ 17456(d).) As such, the trial court did not err in granting plaintiffs' application.

Though Melasko concedes the trial court had "a basis for in personam jurisdiction" over it, we note that in addition to supporting the trial court's determination that Melasko was transacting business in California, the foregoing activities are also adequate to establish specific personal jurisdiction over Melasko. (Emphasis omitted.) "A state may exercise specific jurisdiction over a nonresident who purposefully avails himself or herself of forum benefits, because the state has 'a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. [Citations.] Moreover, where individuals "purposefully derive benefit" from

their interstate activities [citation] it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities.’ ” (Vons, *supra*, 14 Cal.4th at p. 447.) Claiming ownership of property in the state can support the exercise of specific personal jurisdiction when ownership of the property is the subject of the lawsuit. (*Long v. Mishicot Modern Dairy, Inc.* (1967) 252 Cal.App.2d 425, 428 [“[A]lthough mere ownership of land may not be sufficient to subject a nonresident to personal jurisdiction in an unrelated cause of action, it may be sufficient if the cause of action is related to such ownership.”]; *Shaffer v. Heitner* (1977) 433 U.S. 186, 207 [“[W]hen claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction.” [fn. omitted.]].)

C. STRIKING OF MELASKO’S ANSWER

Melasko argues that the trial court erred by striking its answer. “An order striking all or part of a pleading under Code of Civil Procedure section 435 et seq. is reviewed for abuse of discretion.” (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282.) Melasko contends the trial court abused its discretion because plaintiffs never properly served Melasko, meaning that the deadline to file an answer had not arisen when plaintiffs filed their request for entry of default. Alternatively, Melasko claims an abuse of discretion because plaintiffs did not comply with the procedures governing motions to strike. (Citing Code Civ. Proc., §§ 435, subd. (b)(2), 585, subd. (f).)

Requests for default are governed by Code of Civil Procedure section 585, subdivision (b), which provides, in relevant part, that “if the defendant has been served, other than by publication, and no answer ... has been filed with the clerk of the court within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, shall enter the default of the defendant.” (Code Civ. Proc., § 585, subd. (b).) That section imposes a ministerial duty on the clerk

to enter a default “on the date [the plaintiff] requests it if there is then no responsive pleading by the defendant on file; and ... the plaintiff cannot be deprived of his right to the entry of a default merely because the clerk erroneously fails to perform his ministerial duty and does not enter it when requested.” (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 142 (*Goddard*)). As for striking pleadings, a “court may, ... at any time in its discretion, and upon terms it deems proper: ... [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc., § 436, subd. (b).) An answer is a pleading. (Code Civ. Proc., § 422.10.)

Because we have determined that the order authorizing substituted service was valid, it follows that Melasko was properly served through the Secretary of State, as evidenced by the Secretary of State’s certification of service filed in the trial court. Upon valid service, Melasko became obligated to file a timely responsive pleading or face default. According to plaintiffs’ case management statement (the accuracy of which Melasko has not challenged), Melasko’s answer was due November 1, 2011. When Melasko did not file an answer, plaintiffs submitted a request for entry of default which was received by the Superior Court on November 9, 2011, but not filed until after Melasko filed its answer on November 10, 2011.

Upon receiving plaintiffs’ request for entry of default on November 9, 2011, the clerk had a ministerial duty to enter default that same day. (*Goddard, supra*, 37 Cal.App.3d at p. 142.) Had the clerk entered the default, Melasko’s answer would have been returned unfiled because “the entry of a default terminates a defendant’s rights to take any further affirmative steps in the litigation until either the default is set aside or a default judgment is entered.” (*People v. One 1986 Toyota Pickup* (1995) 31 Cal.App.4th 254, 259.) Having been informed by plaintiffs of the clerk’s delay, the trial court had discretion to strike the answer on its own motion because the entry of default eliminated Melasko’s right to take affirmative steps in the litigation (including

filing an answer) and the filing of the answer was thus “not in conformity with the laws of this state” (Code Civ. Proc., § 436, subd. (b).) We find no abuse of discretion.

III. DISPOSITION

The judgment is affirmed. Plaintiffs are entitled to their costs on appeal.

Grover, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Márquez, J.