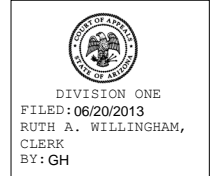


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



GREGORY BEST,) No. 1 CA-CV 12-0442
)
Plaintiff/Appellant,) DEPARTMENT T
)
v.) **MEMORANDUM DECISION**
)
FORESIGHT INVESTMENT GROUP LLC,) (Not for Publication -
) Rule 28, Arizona Rules of
Defendant/Appellee.) Civil Appellate Procedure)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-090128

The Honorable Karen A. Potts, Judge

AFFIRMED

Gregory Best
Appellant in Propria Persona

Phoenix

T H U M M A, Judge

¶1 Gregory Best appeals from a decision of the superior court denying him punitive and other damages in a default judgment against Foresight Investment Group, LLC (Foresight). Finding no error, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶12 Best sued Robert Warrick, the Estate of Nathaniel Fanniel of which Warrick was personal representative, Walter Jackson and Foresight. In his operative pleading, Best alleged that he had entered into an option contract with Warrick to purchase property owned either by Warrick or the Estate. Best claimed that Jackson and Foresight, knowing of the contract, induced Warrick to sell the property to Foresight. Best asserted tortious interference with contract and consumer fraud claims against Foresight. Foresight answered but otherwise failed to participate in the case. The court granted Best's motion to strike Foresight's answer and entered default against Foresight.

¶13 The court scheduled and held an evidentiary hearing on damages, which Foresight did not attend. After that hearing, the court awarded Best \$269,040 on his tortious interference claim but awarded Best no damages on the consumer fraud claim, finding the evidence did not support any award. The court denied Best's request for damages for a violation of Arizona Revised Statutes (A.R.S.) sections 13-2301, et. seq.,¹ because Best did not assert such a claim against Foresight. The court declined to award punitive damages on the tortious interference claim, finding

¹ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

Best had not proved an "evil mind." Finally, the court awarded Best attorneys' fees of \$16,238.

¶14 Best filed a motion to reconsider, arguing that all allegations in his complaint were deemed admitted by the entry of default and therefore he had proved an entitlement to damages for consumer fraud and for A.R.S. §§ 13-2301, et. seq., violations and punitive damages. In denying that motion, the superior court explained that Best's complaint had not alleged that Foresight had made any false promises or misrepresentations or alleged any causal connection to damages, meaning he was not entitled to damages for consumer fraud. The court explained that Best had not made a claim against Foresight pursuant to A.R.S. §§ 13-2301, et. seq. Finally, the court found that an award of punitive damages for the tortious interference claim was not warranted because Best had not alleged sufficient facts in the complaint or offered evidence at the hearing supporting such an award.

¶15 The court entered judgment, made final under Rule 54(b), Arizona Rules of Civil Procedure, in favor of Best for \$269,040 plus attorneys' fees. Best timely appealed. This court has jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶16 Best argues that the court erred in failing to award him consumer fraud damages, damages pursuant to A.R.S. §§ 13-

2301, et. seq., and punitive damages. He contends Foresight's default constituted a judicial admission to the claims alleged and established his entitlement to such damages, that no further proof or evidence was required and that the only issue to be decided at the evidentiary hearing was the amount of damages. Best further argues that he need not prove malice or an evil mind, but is entitled to an award of punitive damages simply by having obtained entry of default on tortious interference.

¶17 When a defendant defaults, all well-pleaded facts of the complaint are deemed admitted. *Ness v. Greater Arizona Realty, Inc.*, 21 Ariz. App. 231, 232, 517 P.2d 1278, 1279 (1974); *Reed v. Frey*, 10 Ariz. App. 292, 294, 458 P.2d 386, 388 (1969). A default judgment cannot, however, be based on a complaint that does not state a cause of action. *Ness*, 21 Ariz. App. at 232, 517 P.2d at 1279. The complaint must allege facts supporting the claim. See *Dube v. Likins*, 216 Ariz. 406, 412, ¶ 14, 167 P.3d 93, 99 (App. 2007). "[A] default judgment cannot award any relief beyond that which the facts alleged in the complaint in the action show the plaintiff legally entitled to." *Walls v. Stewart Bldg. & Roofing Supply, Inc.*, 23 Ariz. App. 123, 126, 531 P.2d 168, 171 (1975). Consequently, when a complaint adequately pleads a cause of action, entry of default constitutes an admission of liability on the claim, although not on the amount of damages if the claim is unliquidated. *Dungan v.*

Superior Court, 20 Ariz. App. 289, 290, 512 P.2d 52, 53 (1973); *Reed*, 10 Ariz. App. at 294, 458 P.2d at 388. Conversely, when a complaint does not allege facts showing that plaintiff is legally entitled to recovery, plaintiff is not entitled to recovery; any default judgment to the contrary would be void. *Walls*, 23 Ariz. App. at 126, 531 P.2d at 171.

¶18 Best argues that the claims were deemed proved by entry of default, and the superior court erred in finding that he was required to prove the causes of action. The court's rulings, however, did not disregard the fact that the allegations in the complaint were deemed admitted. Instead, the court denied relief for the consumer fraud claim and for punitive damages on the tortious interference claim because the complaint did not allege the necessary facts to support such relief. When a complaint does not allege facts sufficient to support the claim, the plaintiff is not entitled to judgment.

¶19 Best contends that he alleged facts sufficient to support an award of punitive damages² and that by proving an intentional tort, he was entitled to punitive damages. Stated simply, in Arizona, punitive damages are awarded only when the plaintiff proves by clear and convincing evidence that the defendant engaged in outrageous, aggravated, malicious or

² Best has not presented any argument challenging the court's ruling that he had failed to state sufficient facts to support a cause of action for consumer fraud.

fraudulent conduct and acted with an "evil mind." *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 331-32, 723 P.2d 675, 680-81 (1986); *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 498, ¶ 81, 200 P.3d 977, 995 (App. 2008). Punitive damages are awardable in egregious cases, "where there is reprehensible conduct combined with an evil mind over and above that required for commission of a tort" and where the "evil hand was guided by an evil mind." *Linthicum*, 150 Ariz. at 332, 723 P.2d at 681; *Rawlings v. Apodaca*, 151 Ariz. 149, 162, 726 P.2d 565, 578 (1986). An "evil mind" is shown only when the defendant "should be consciously aware of the evil of his actions, of the spitefulness of his motives or that his conduct is so outrageous, oppressive or intolerable [] that it creates a substantial risk of tremendous harm to others." *Linthicum*, 150 Ariz. at 330, 723 P.2d at 679.

¶10 Best argues that paragraphs 37 and 52 of his complaint allege the facts necessary for a punitive damages award. Paragraph 37 is an allegation against other defendants and is not applicable to Foresight. Paragraph 52 alleges that Foresight's acts "were intentional and malicious and warrant the imposition of punitive and exemplary damages to deter others from similar conduct." No facts are alleged, however, that Foresight engaged in outrageous or egregious conduct beyond the

conduct required for the tort³ or that Foresight's actions were motivated by an evil mind. See *Chanay v. Chittenden*, 115 Ariz. 32, 37, 563 P.2d 287, 292 (1977) (Malice in tortious interference claim means "the intentional doing of a wrongful act without justification or excuse," and "does not necessarily imply spite or ill will.").

¶11 The other allegations of the tortious interference claim assert Foresight was aware of the contract between Best and Warrick, Foresight induced Warrick to breach his contract with Best, and as a result of that breach, Best was damaged. These allegations do not describe the type of conduct and motive necessary for a punitive damages award. Although the entry of default resulted in the well-pleaded facts of the complaint being deemed admitted, it did not result in the admission of facts supporting a claim for punitive damages because Best did not allege the facts necessary for such a claim.⁴

³ The elements of tortious interference with contract have been described as (1) "the existence of a valid business expectancy"; (2) the defendant's "knowledge of the business expectancy"; (3) defendant's intentional interference causing the "termination of the business expectancy"; (4) wrongful interference; and (5) damages. *Dube*, 216 Ariz. at 412-413, ¶ 14, 167 P.3d at 99-100.

⁴ Even if Best could have amended his complaint at the evidentiary hearing, he does not argue that he presented any additional facts at that hearing and he did not provide a transcript of that hearing on appeal. See *Walls*, 23 Ariz. App. at 126, 531 P.2d at 171 ("[A] default judgment cannot award any relief beyond that which the facts alleged in the complaint in the action show the plaintiff legally entitled to.").

¶12 Best also argues he was entitled to damages for an A.R.S. §§ 13-2301, et. seq., claim. In making that argument, the allegations in the complaint to which Best refers (paragraphs 39-44) were allegations made against another defendant; Best's complaint does not allege an A.R.S. §§ 13-2301, et. seq., claim against Foresight. Accordingly, Best is not entitled to damages (by default or otherwise) from Foresight for such a claim.

¶13 Best finally argues that denying him the relief he requests would constitute an injustice and does not make him whole for the damages caused by Foresight. As summarized above, however, the superior court awarded Best all damages against Foresight to which he was entitled -- damages on the claims Best properly pleaded in his complaint and could prove damages for at the evidentiary hearing. The denial of any additional relief is not an injustice.

CONCLUSION

¶14 The superior court's ruling and judgment are affirmed.

/S/_____
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/_____
MAURICE PORTLEY, Presiding Judge

/S/_____
DONN KESSLER, Judge