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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CITY AND COUNTY OF SAN FRANCISCO et al., Plaintiffs and Respondents, v. WAYNE S. YEE, Defendant and Appellant.	A127426 (San Francisco County Super. Ct. No. CGC-04-432466)

Defendant and Appellant Wayne S. Yee (Yee) appeals the trial court's denial of his motion to vacate a default judgment previously entered in favor of plaintiffs and respondents City and County of San Francisco et al.[1] (collectively City). Finding no merit in defendant's contentions that the judgment is facially void, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2004, the City filed a complaint for damages and injunctive relief against Yee and his mother, Helen Chui Yee, arising from their ownership of an eight-unit apartment building at 725 Leavenworth Street, San Francisco. The complaint alleged that defendants maintained the building as a public nuisance in violation of San Francisco Building Code, Chapter 16B-C (the Unreinforced Masonry Building (UMB) Ordinance). The complaint asserted causes of action for per se public nuisance, general public

[1] In the complaint filed June 23, 2004, the plaintiffs are listed as the "CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the PEOPLE OF THE STATE OF CALIFORNIA, by and through San Francisco City Attorney DENNIS J. HERRERA."

nuisance, violations of state housing law and San Francisco Housing Code, and non-compliance with an order of abatement mandating defendants to seismically retrofit the subject property in order to comply with the UMB ordinance. Also, the complaint alleged a cause of action under Business and Professions Code sections 17200-17210, that by maintaining a residential rental property as a public nuisance, defendants engaged in unfair business practices.

After filing the complaint, the City filed a Notice of Pendency of Action and mailed a copy of the notice addressed to defendants at 725 Leavenworth Street, apartment no. 5. In September 2004, the City filed the summons, together with proof of service of summons (proof of service) and a declaration of diligence on substitute service (declaration of diligence) completed by a registered process server named George Perry. The proof of service states that the party served, Wayne S. Yee, was served by substituted service and that copies of the summons and complaint were left with or in the presence of " 'Jane Doe', female co-occupant."

On November 1, 2004, the City filed an application for entry of default and court judgment in the amount of $933,798. Default was entered as requested on the same date.[2] Following a hearing held on December 2, 2004, the trial court determined that "Wayne S. Yee ('Defendant'), who did not answer or appear, was duly and regularly served with summons and a copy of the complaint . . . ." The court entered default judgment against Yee in the amount of $981,000, representing civil penalties for violations of the Housing Code, the Building Code and Business and Professions Code section 17206, as well as costs and attorney fees incurred through the date of entry of default judgment. The court also entered an injunction against Yee declaring the Leavenworth property a public nuisance and ordering him to file a building permit together with drawings prepared by an architect or engineer to abate all municipal code violations at the property.

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[2] On November 4, 2004, the City asked the court to dismiss the complaint without prejudice as to Helen Chui Yee, defendant's mother, having learned that she was deceased.

In June 2009, Yee filed a Notice of Motion and Motion for Order Vacating Default Judgment. In support of his motion to vacate default judgment, Yee submitted declarations from himself, his spouse Miranda Yee, and his counsel, Brian McCauley. In his declaration, Yee averred: He did not receive a copy of the summons and complaint in 2004 or 2005, and only learned of the judgment in late 2008. For several years prior to 2004 to the present time, he has been working in Southern California and spends most of his time there. During the relevant time period he did not live in apartment no. 5, although he and his wife maintained a residence at 725 Leavenworth in apartment no. 3. The subject property was originally owned by his mother, Helen Chui Yee, who lived in apartment no. 5 until she died in March 2001.

In her declaration, Miranda Yee states: She has been married to Yee "throughout 2004 and to the present time" and that they never resided in apartment no. 5. Helen Chui Yee lived at apartment no. 5 until her death in 2001, but during 2004 the apartment was unoccupied and the utilities were disconnected. Miranda Yee also stated that she had reviewed the declaration of diligence filed with the proof of service of summons and that she does not match the description of the Jane Doe referenced in the proof of service. Further, during the period 2004 to the present, no other female lived in the Yee household.

The declaration of Yee's counsel contained several exhibits, one of which (Exhibit 9) was a series of printouts from the U.S. Census Bureau's Internet website showing San Francisco's total population for the years 2002-2006. Counsel stated that "these numbers are estimates and subject to statistical variability," but show that San Francisco's population in 2004 was less than 750,000.[3]

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[3] When the complaint was filed in 2004, Business and Professions Code section 17204 provided in pertinent part: "Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or . . . any city attorney of a city, or city and county, *having a population in excess of 750,000* . . . ." (4D West's Ann. Bus. & Prof. Code (2004 ed.) former § 17204.)

In the memorandum of points and authorities submitted in support of his motion to vacate default judgment, Yee asserted that the default judgment is void on its face for lack of valid service. Yee acknowledged that whereas a motion to vacate default judgment usually must be brought within two years of entry of judgment, no such time limit applies where the judgment is void on its face. Yee also argued that judgment was void as to the unfair competition claim under Business and Professions Code section 17200 et seq. On this point, Yee asserted that the city attorney had no authority to bring the claim, and the court was without jurisdiction over it, because the City failed to establish that the population of San Francisco was over 750,000 people when the complaint was filed.

After a hearing on the matter, the trial court entered an order denying Yee's motion to vacate the default judgment. In its order, filed on November 9, 2009, the court found that the "judgment roll, including summons and proof of service, is valid on its face. Therefore, Defendant's motion for order vacating default judgment for alleged improper service, pursuant to Code of Civil Procedure § 473(d),[4] is not timely because the requirement that Defendant file his motion within two years of entry of judgment has not been met." Additionally, the court found that "upon review of all documents and evidence, . . . service of the Summons and Complaint on Defendant was valid and proper." Also, pursuant to Evidence Code sections 452(h) and 458, the court took "judicial notice of the 2000 United States Census for San Francisco showing a population of 776,733" submitted by the City, and sustained the City's objection to Exhibit 9 of the declaration submitted by Yee's counsel.

On November 12, 2009, the City filed notice of entry of the order denying Yee's motion to vacate default judgment. Thereafter, Yee timely filed a Notice of Appeal on January 6, 2010.

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[4] Further statutory references are to the Code of Civil Procedure unless otherwise noted.

DISCUSSION

Yee argues that the trial court should have set aside the default judgment entered against him on the grounds that the judgment is void on its face. Specifically, Yee contends: (1) the summons was defective because it failed to advise the person served, Jane Doe, that she was served in a representative capacity; (2) proof of service was insufficient for substituted service on Jane Doe; (3) the trial court erred by considering inadmissible evidence in reaching its conclusion that the City properly effected service upon Yee; and, (4) the trial court was without jurisdiction to enter judgment on the section 17200 claim absent evidence at the prove-up hearing that the population of San Francisco exceeded 750,000 people. We address these contentions below.

A. Scope and Standard of Review

Preliminarily, we note Yee did not file his motion to vacate the default judgment until June 2009, more than four years after entry of default judgment in December 2004. Accordingly, and as acknowledged by Yee before the trial court (see *ante*), the trial court's entry of default judgment cannot be reversed unless the default judgment is void on its face. (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181 (*Trackman*) [noting that a judgment that is facially invalid may be set aside at any time, "with no limit on the time within which the motion must be made.' (Citation.)"].)[5]

" 'A judgment is . . . void on its face when the invalidity is apparent upon an inspection of the judgment-roll.' " (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441.) When a default judgment has been taken, the judgment roll consists of "the summons, with the affidavit or proof of service; the complaint; the

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[5] Courts have placed a two-year outer limit, from date of entry of default judgment, on the time to bring a motion to set aside a default judgment under section 473, subdivision (d), on the ground that the judgment, although valid on its face, is void for lack of proper service. (See *Trackman, supra,*187 Cal.App.4th at pp. 180-181; see also *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19, [comparing a motion to set aside a default judgment void on its face, which can be brought at any time, and a motion to set aside a default judgment " void for want of jurisdiction, but the invalidity of which does not appear from the judgment-roll or record," which must be brought within a reasonable time, not to exceed two years].)

request for entry of default. . . . , and a copy of the judgment." (§ 670, subd. (a).) The question of whether a judgment is void on its face is a question of law that we review de novo. (See *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 496.)

B. Analysis

1. The Summons

"A summons is the process by which a court acquires personal jurisdiction over a defendant in a civil action. The form of a summons is prescribed by law, and this form must be substantially observed. (Citation.) Service of a substantially defective summons does not confer jurisdiction over a party (citation) and will not support a default judgment. (Citation.)" (*MJS Enterprises, Inc. v. Superior Court* (1984) 153 Cal. App.3d 555, 557.)

The California Code of Civil Procedure sets forth the following requirements for issuance of a summons: A summons "shall be directed to the defendant, signed by the clerk and issued under the seal of the court in which the action is pending." The summons must contain "(1) The title of the court in which the action is pending. [¶] (2) The names of the parties to the action. [¶] (3) A direction that the defendant file with the court a written pleading in response to the complaint within 30 days after summons is served on him or her. [¶] (4) A notice that, unless the defendant so responds, his or her default will be entered upon application by the plaintiff, and the plaintiff may apply to the court for the relief demanded in the complaint, which could result in garnishment of wages, taking of money or property, or other relief. [¶] (5) The following statement in boldface type: 'You may seek the advice of an attorney in any matter connected with the complaint or this summons. Such attorney should be consulted promptly so that your pleading may be filed or entered within the time required by this summons.' [¶] (6) The following introductory legend at the top of the summons above all other matter, in boldface type, in English and Spanish: 'Notice! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read information below.' " (§ 412.20, subd. (a) (1)-(6).)

The summons at issue here fully complies with section 412.20. It carries the title of the court in which the action is pending as well as the names of the parties to the actions, including defendant Wayne S. Yee. In addition, the notice requirements specified in subdivision (a) (3)-(6) are satisfied because the summons utilized here was a Judicial Council form summons. (§ 412.20, subd. (c) ["A summons in a form approved by the Judicial Council is deemed to comply with this section"].)

Yee, however, contends that the summons is defective on its face because the section entitled "Notice to the Person Served" (just below the clerk's signature and adjacent to the state seal, hereafter "notice section") was not filled in correctly. Yee asserts that respondent was required to check box 3 of the notice section, and enter his name adjacent to the language "on behalf of (specify)." In addition, Yee argues that below where his name should have been entered, respondent was required to check the box adjacent to "CCP 416.90 (individual)."[6] According to Yee, the omission of this information from the notice section of the summons "causes an invalidity on the face of the judgment roll" because "Jane Doe" was not properly advised that she was receiving documents on behalf of defendant Wayne S. Yee.[7]

We find Yee's contentions unavailing. First, Yee identifies no legal authority in support of his contention that when a defendant is served via substituted service pursuant

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[6] Section 416.90 is found under Title 5, Chapter 4 (Service of Summons), Article 4 (Persons Upon Whom Summons May Be Served) of the Code of Civil Procedure. The various sections in Article 4 describe persons who can be served in order to effect service of process on corporations, dissolved corporations, joint stock companies, partnerships, public entities, wards, minors, conservatees and political candidates. The last section in Article 4 is section 416.90, which provides: "A summons may be served on a person not otherwise specified in this article by delivering a copy of the summons and of the complaint to such person or to a person authorized by him to receive service of process."

[7] In the notice section of the summons, one of three boxes can be checked, depending on whether the person served is served (1) as an individual; (2) as a person sued under a fictitious name (in which case the fictitious name must be specified in the space provided); or (3) on behalf of a party (in which case the party must be specified in the space provided). If (3) applies, one of seven more boxes can be checked to indicate the applicable section under which the person served is authorized to accept service on behalf of the party specified, e.g., "CCP 416.10 (corporation)."

to section 415.20, the summons is facially invalid unless it indicates that the person served was authorized to accept service on behalf of the defendant, pursuant to section 416.90. Rather, the cases cited by Yee hold that service upon an individual does not confer jurisdiction over a defendant corporation or defendant trust unless the summons indicates that the individual is being served in his or her representative capacity for that entity (and *vice versa*).[8] Thus, in *Mannesmann DeMag, Ltd. v. Superior Court* (1985) 172 Cal.App.3d 1118, the court held that service on the corporation was defective because the summons did not name the corporation, and was served on the vice president without notice that he was being served on behalf of the corporation, as required under section 412.30. (*Id.* at pp. 1121-1122.) Similarly, in *Bank of America Nat. Trust & Sav. Ass'n v. Carr et al.* (1956) 138 Cal.App.2d 727, the appellate court held that jurisdiction was not obtained over a trust where the trustee was served in his individual capacity but not in his representative capacity as trustee. (*Id.* at pp. 737-738; see also *Matthews Metals Products, Inc. v. RBM Precision Metal Products, Inc.* (1999) 186 F.R.D. 581, 582 (no jurisdiction over individual who was served on behalf a Colorado Corporation but

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[8] Indeed, section 412.30 specifically provides that in an action against a corporation or an unincorporated association (including a partnership), "the copy of the summons that is served shall contain a notice stating in substance: 'To the person served: You are hereby served in the within action (or special proceeding) on behalf of (here state the name of the corporation or the unincorporated association) as a person upon whom a copy of the summons and of the complaint may be delivered to effect service on said party under the provisions of (here state appropriate provisions of Chapter 4 (commencing with Section 413.10) of the Code of Civil Procedure).' If service is also made on such person as an individual, the notice shall also indicate that service is being made on such person as an individual as well as on behalf of the corporation or the unincorporated association. [¶] If such notice does not appear on the copy of the summons served, *no default may be taken against such corporation or unincorporated association or against such person individually*, as the case may be." (§ 412.30) The only other instance in which default is barred unless a specific form of notice is provided on the face of the summons is in regard to "Doe" defendants pursuant to section 474. (See § 474.) In contrast, the statute governing substituted service does not specify a form of notice which must appear on the face of the summons before default judgment may be taken. (See § 415.20.)

was not "put on notice that he was being served in his individual capacity rather than as an officer of [the corporation]".)

Here, by contrast, Jane Doe was not served in a representative capacity — she was served as a "competent member of the household" in order to effect substituted service pursuant to section 415.20, subdivision (b). Thus, the cases cited by Yee are not controlling. Accordingly, we reject his assertion that the summons was defective on its face because the return did not specify that Jane Doe was served on behalf of Yee pursuant to section 416.90. (Cf. *Warner Bros. Records, Inc. v. Golden West Music Sales* (1974) 36 Cal.App.3d 1012, 1017 [service under section 416.90 is made upon an agent of defendant who is authorized by law or by appointment to receive service of process].)

Second, Yee's contention — that to effect valid substitute service under section 415.20, the notice section of the summons must reflect that the individual served was a representative of the defendant within the meaning of section 416.90 — finds no support in the language of the substitute service statute, section 415.20. Indeed, the plain language of the section 415.20 actually contradicts Yee's contention, because it specifically provides that substituted service on a party can be effected by serving process on a person *other than* one authorized to receive service on behalf of that party. (See § 415.20, subd. (b) ["If a copy of the summons and complaint *cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section . . . 416.90,* a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house[.]"] [italics added].)

In sum, our examination of the applicable service statutes, and the case law interpreting them, reveals no requirement that in order to effect valid substitute service the summons must contain notice to the person served that he or she was served in a representative capacity on behalf of the defendant. Thus, we reject Yee's contention that the summons is facially void on this ground.

2. Substituted Service

Yee also contends the judgment is void on its face because the facts contained in the proof of service and declaration of diligence were "inadequate to uphold substituted service" under section 415.20. Again, we disagree.

The requirements for substituted service are set forth in section 415.20, which provides in pertinent part: "If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." (§ 415.20, subd. (b).)

The proof of service filed by City met fully the requirements for substituted service under section 415.20. In this regard, the City demonstrated "reasonable diligence" that the summons and complaint could not be personally delivered to Yee because the process server documented attempting personal service on at least 30 occasions prior to service upon Jane Doe. Also, a copy of the summons and complaint was left at 725 Leavenworth Street, apartment no. 5, Yee's dwelling house or usual place of abode. On this point, the declaration of diligence states that Yee was listed as the occupant of apartment no. 5 at the property, and that the process server spoke by telephone with a person inside apartment no. 5, who identified herself as Mrs. Yee and informed the process server that Mr. Yee was not at home. Moreover, the process server left a copy of the summons and complaint "in the presence of a competent member of the household" at least 18 years of age, identified as " 'Jane Doe', female co-occupant." Finally, in the declaration of diligence, the process server describes "Jane Doe" as

"Asian, female, 5'2"-5'3", 100-110 lbs., dark hair, 40-45 years." The process server further states that "I announced service, but this female refused to accept in hand or identify herself. The documents served were left in her presence, at the front door." Our review of the judgment roll reveals no facial defects with respect to the requirements for substituted service pursuant to section 415.20, and Yee fails to provide us with a basis to conclude otherwise.

For example, Yee argues that the proof of service was facially invalid because it identified the person with whom the process server left the documents as "Jane Doe." *Trackman, supra,* supports our rejection of Yee's argument. In *Trackman,* appellant argued that proof of service was void because " 'Jane Doe, co-resident' is not the name of the person to whom a copy of the summons and complaint were delivered." (*Trackman, supra,* 187 Cal.App.4th at p. 183.)

In response to appellant's contention, the *Trackman* court observed that: "Persons in apparent charge of businesses and residences often refuse to give their true legal names. For this reason, it is an accepted practice to name such a person as 'John Doe' or similar fictitious name, or by description." Reviewing the cases where such "Doe" proofs of service were upheld without disapproval, the *Trackman* court concluded that those cases reflect the "new rule" announced by our Supreme Court in *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778, namely, that the service of process statutes, as substantially revised in 1969, should be construed liberally, and minor deficiencies should not be allowed to defeat service. (*Trackman, supra,* 187 Cal.App.4th at p. 184; see also *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544 [statutes governing substitute service should be liberally construed to effectuate service]; *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1392 [accord].)

The *Trackman* court further observed that section 417.10[9] does not require that the "name" of the person to whom summons was delivered in the proof of service be "the

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[9] Section 417.10 provides in pertinent part that proof that a summons was served on a person by substituted service shall be made by "the affidavit of the person making such service showing the time, place, and manner of service and facts showing that such

true legal name of the person." (*Trackman, supra,* 187 Cal.App.4th at p. 184.) Rather, the court stated that "[t]he evident purpose of the requirement that the proof of service "recite or in other manner show the name" (§ 417.10, subd. (a)) of the recipient, is to enable the recipient to be located in the future, should the claim of service be challenged." (*Ibid.*) "The statement that 'John Doe, co-resident' received service at a specific address satisfies this purpose[,]" the court concluded. (*Ibid.*) On these grounds, the *Trackman* court rejected the appellant's contention that proof of service was void on its face because it did not state the true legal name of the person who received the summons. (*Id.* at p. 185.) We agree with the reasoning of the *Trackman* court, and reject Yee's contention that the proof of service was facially invalid because it identified the person with whom the process server left the documents as "Jane Doe."[10]

3. Business & Professions Code Section 17200

Yee argues that even if service was proper, the judgment is void as to the City's Business and Professions Code of action. Specifically, Yee states that under the 2004 governing statutes, a jurisdictional prerequisite to the city attorney bringing an unfair competition claim was that the population of San Francisco must be in excess of 750,000 people. Because no evidence was presented to establish the population of San Francisco at the prove-up hearing prior to entry of default, Yee asserts that this jurisdictional prerequisite was not met, and therefore the court was without jurisdiction to enter judgment on the Business and Professions Code of action. Not so.

To reiterate, we are concerned here only with whether, based upon an examination of the judgment roll, the judgment is facially valid. In this regard, the complaint clearly alleges that "the City and County of San Francisco . . . has a population in excess of

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service was made in accordance with this chapter. Such affidavit *shall recite or in other manner show the name of the person* to whom a copy of the summons and of the complaint were delivered. . . ." (§ 417.10, subd. (a) [italics added].)

[10] Because we conclude upon de novo review that the judgment roll is facially valid, we need not address Yee's contention that the trial court erred by relying on objectionable evidence, presented at the hearing on his motion to vacate default judgment in 2009, in order to find the 2004 judgment valid.

750,000 people." Accordingly, with respect to the cause of action pursuant to the Business and Professions Code, the judgment is facially valid. (Cf. *Dill v. Berquist Construction Co.*, *supra* 24 Cal.App.4th at p. 1441 [invalidity must be "apparent upon an inspection of the judgment-roll" for judgment to be void on its face].)

DISPOSITION

The judgment is affirmed. Defendant shall bear costs on appeal.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.

City and County of San Francisco et al. v. Wayne S. Yee, A127426