

FILED
LOS ANGELES SUPERIOR COURT

MAR 23 2010

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL JUDICIAL DISTRICT

JANICE M. McCLANAHAN

Plaintiff,

vs.

HAROLD MANSDORF, individually and as
Trustee of the Mansdorf Family Revocable
Trust also known as the Mansdorf Family
Trust; MILDRED MANSDORF, NORMAN
MANSDORF and DOES 1 through 50,
inclusive

Defendants.

) Case No.: BC363659
(Assigned to Hon. Abraham Khan, Dept. 51)

NOTICE OF COURT'S RULING

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON March 15, 2010 at 9:00 a.m. in Department 51 of the
above entitled Court, a hearing was held on Defendant Harry Mansdorf, Individually and as Trustee of
the Mansdorf Family Revocable Trust's Motion to Set Aside Order for Publication, Entry of Default

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1 and Default Judgment before the Honorable Abraham Khan. Defendant and moving party was
2 represented by his counsel Bob Mullen, Esq. Attorney At Law and Plaintiff and opposing party was
3 represented by her counsel Timothy B. Sottile, Esq. of the Law Offices of Timothy B. Sottile, A
4 Professional Law Corporation and Thomas P. Cacciatore, Esq. of the Law Offices of Thomas P.
5 Cacciatore. After hearing oral argument, the Court adopted its tentative decision and denied the
6 motion. A copy of the court's written tentative decision denying the motion is attached hereto as
7 Exhibit A. Plaintiff's counsel was further ordered to give notice of the Court's ruling.

8 DATED: March 22, 2010

LAW OFFICES OF TIMOTHY B. SOTTILE

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10 By: Timothy B. Sottile
11 TIMOTHY B. SOTTILE, ESQ.
12 Attorney for Plaintiff, JANICE M. McCLANAHAN
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Superior Court of California

County of Los Angeles

Department 51

Honorable Abraham Khan

McCLANAHAN,

Plaintiff(s),

v.

MANSDORF,

Defendant(s).

Case No.: BC363659

Hearing Date: 3/15/10

[TENTATIVE] RULING RE:

MOTION OF DEFENDANT HARRY
MANSDORF TO SET ASIDE ORDER FOR
PUBLICATION, ENTRY OF DEFAULT AND
DEFAULT JUDGMENT.

The motion is denied.

First, the Court resolves the disputes in the evidence to find that Defendant was properly served with the summons and complaint by personal and substituted service, and properly served with the statement of damages via publication service.

Where evidence is in dispute, trial courts may resolve the conflicts either way and the decision will be upheld if there is substantial evidence to support a trial court's finding. Costco Wholesale

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LA AV

1 Corp. v. Sup. Ct. (2009) 47 Cal.4th 725, 733; Shadow Traffic Network v. Sup. Ct. (1994) 24
2 Cal.App.4th 1067, 1082; Van de Kamp v. Bank of America (1988) 204 Cal.App.3d 819, 842.

3 Service of summons by delivering to defendant personally is authorized, personal service. CCP
4 §415.10; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2009) ¶4:184.

5 Code of Civil Procedure "Section 416.90 authorizes personal service on a defendant 'by
6 delivering a copy of the summons and of the complaint ... to a person authorized by him to
7 receive service of process.'" Summers v. McClanahan (2006) 140 Cal. App. 4th 403, 412.

8
9 Substituted service may be accomplished by leaving a summons and complaint at a defendant's
10 dwelling house, or usual place of business, with a competent member of the household, or person
11 apparently in charge, and thereafter mailing copies to that address. CCP §415.20(b); Weil &
12 Brown, Civ. Pro. Before Trial (The Rutter Group 2009) ¶4:206.

13 A filed proof of service creates a rebuttable presumption that service was proper, if it complies
14 with applicable statutory requirements. Floveyor Internat. v. Sup. Ct. (1997) 59 Cal. App. 4th
15 789, 795.

16 The return of a registered process server establishes a presumption of the facts stated. Ev. C.
17 §647.

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19 Second, the Court finds that the motion was filed untimely, where the judgment is not shown to
20 be void on the face of the official court records, where Defendant relies upon his declaration
21 filed with the instant motion.

22 Further, the entire judgment is not shown to be void for including damages stated in a statement
23 of damages served by publication service, where at least some amount was sufficiently set forth
24 in the pleading served by personal and substituted service, of which Defendant had notice (see,
25 e.g., Complaint, ¶19 ("which property defendants knew to be worth \$600,000.00")).

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1 “[I]n order to obtain relief after expiration of the six-month period provided in section 473, the
2 judgment must appear from the face of the judgment roll to be ‘void’....” Gibble v. Car-Lene
3 Research (1998) 67 Cal. App. 4th 295, 301. A judgment is void on its face where the failure to
4 serve a summons in support of personal jurisdiction is ascertainable from the record. Renoir v.
5 Redstar Corp. (2004) 123 Cal. App. 4th 1145, 1154.

6 A remedy for addressing a default judgment providing for excessive damages is to amend the
7 judgment by reducing the amount of which the defendant had notice, and not to void the entire
8 judgment. *See, e.g.,* Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group
9 2009) ¶5:257.

10 Third, the Court concludes that some of the list of contentions about legal errors in entering the
11 default judgment is not properly before this trial Court, while Judge John Shook, who signed the
12 judgment, still is sitting on the bench, just adjacent to this courtroom.

13 “[A] judgment or order once regularly entered can be reviewed and set aside only in the modes
14 prescribed by statute.” People v. Bhakta (2008) 162 Cal.App.4th 973, 981. The power to vacate
15 an order of another judge is limited by the requirements of Code of Civil Procedure Sections 473
16 and 1008. Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068-69. A judge
17 cannot set aside an order of another judge based upon contrary findings of fact, unless statutorily
18 authorized. Greene v. State Farm (1990) 224 Cal.App.3d 1583, 1588; Curtin v. Koskey (1991)
19 231 Cal.App.3d 873, 876-77. The rulings of a judge may not be reconsidered by another judge,
20 with limited exceptions. People v. Riva (2003) 112 Cal.App.4th 981, 991. “For one superior
21 court judge, no matter how well intended, even if correct as a matter of law, to nullify a duly
22 made, erroneous ruling of another superior court judge places the second judge in the role of a
23 one-judge appellate court.” In re Alberto (2002) 102 Cal.App.4th 421, 427. Superior Court
24 judges’ disagreements over other judges’ findings are not grounds for one judge to void the final
25 order of another judge. 321 Henderson Receivables Origination LLC v. Ramos (2009) 172
Cal.App.4th 305, 318. The rule prohibiting one judge from nullifying or reconsidering a ruling
of another would not apply where the ruling judge became unavailable. Alvarez v. Sup. Ct.
(2004) 117 Cal. App. 4th 1107, 1111. A different judge may have authority to proceed in a

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1 matter ruled upon by another judge, where there is an enabling statute, and it would "not threaten
2 the orderly administration of justice or place himself or herself in the role of a one-judge
3 appellate court over the second judge." People v. Konow (2004) 32 Cal. 4th 995, 1021.
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10 Dated: 3/15/10.
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12 _____
13 Hon. Abraham Khan
14 Superior Court Judge
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age and not a party to the within action. My business address is 31365 Oak Crest Drive, Suite 220, Westlake Village, CA 91361.

On March 22, 2010, I served, in the manner indicated below, the foregoing document described as NOTICE OF RULING on the interested parties in this action by placing true copies thereof enclosed in a sealed envelopes, at Westlake Village, California, addressed as follows (or as stated on the attached Proof of Service Mailing List):

Bob Mullen, Esq.
23151 Moulton Parkway, Suite 112
Laguna Hills, CA 92653
Telephone: (949) 588-1198
Facsimile: (949) 588-6258

Co-Counsel for Defendant(s):
HARRY MANSDORF, individually and as trustee of the
The Mansdorf Family Revocable Trust

Paul Orloff, Esq.
ORLOFF & ASSOCIATES
8402 Florence Avenue, Suite B1
Downey, CA 90240
Telephone: (562) 869-3034
Facsimile: (562) 869-3539

Co-Counsel for Defendant(s):
HARRY MANSDORF

Thomas P. Cacciatore, Esq.
LAW OFFICES OF THOMAS P. CACCIATORE
99 South Lake Avenue, Suite 501
Pasadena, CA 91101
Telephone: (626) 795-0200
Facsimile: (626) 795-1626

Co-Counsel for Plaintiff(s):
JANICE M. McCLANAHAN

[XX] (BY PRIORITY MAIL) I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Westlake Village, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one (1) day after date of deposit for mailing in affidavit (C.C.P. § 1013(a)).

[] (BY FACSIMILE) The document listed above was transmitted via facsimile to the facsimile numbers set forth above, or as stated on the attached Proof of Service Mailing List. The transmission was reported as complete and without error (C.C.P. § 1013(e)(f)).

[] (BY PERSONAL SERVICE) I caused such envelopes to be delivered by hand to the offices of the addressees (C.C.P. § 1011(a)(b)).
* * * * *

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

EXECUTED this 22nd day of March 2010 at Westlake Village, California.

Katie A. Bryan

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