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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

MAI-TRANG THI NGUYEN,

Plaintiff and Appellant,

v.

ALPHABET INC.,

Defendant and Respondent.

H047123

(Santa Clara County

Super. Ct. No. 18CV335346)

I. INTRODUCTION

Plaintiff Mai-Trang Thi Nguyen, a self-represented litigant, filed a civil action against defendant Alphabet Inc. After defendant failed to timely respond to the complaint, plaintiff requested entry of default against defendant. While the request was pending, defendant sought mandatory relief from default pursuant to Code of Civil Procedure section 473, subdivision (b)¹ (section 473(b)). The trial court granted the relief, and defendant thereafter filed a demurrer to the complaint. The court ultimately sustained the demurrer without leave to amend, and a judgment was entered in defendant's favor.

On appeal, we understand plaintiff to contend that the trial court erred in granting defendant's application to vacate the pending entry of default, and that the court should have instead entered a default and/or default judgment against defendant for failing to timely

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

respond to the complaint. We also understand plaintiff to make several contentions regarding defendant's purportedly inadequate meet and confer efforts before filing the demurrer, and that the court therefore erred in sustaining the demurrer.

For reasons that we will explain, we will affirm the judgment.

II. BACKGROUND

A. The Complaint

In September 2018, plaintiff filed a civil action against defendant. She alleged that she "was harassed and intimidated by Google's two security guards . . . while she stood next to her car" on a street in Sunnyvale. Based on the security guards' conduct, she alleged that defendant, "a parent company of Google," violated Penal Code section 653.2.²

² Penal Code section 653.2 states: "(a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. [¶] (b) For purposes of this section, 'electronic communication device' includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers. 'Electronic communication' has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United States Code. [¶] (c) For purposes of this section, the following terms apply: [¶] (1) 'Harassment' means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose. [¶] (2) 'Of a harassing nature' means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose."

B. Defendant's Declaration in Support of Automatic Extension of Time to Respond to Complaint

The summons and complaint was apparently served on defendant on October 18, 2018. Defendant's trial counsel submitted to the trial court a declaration, which was signed and dated November 15, 2018, but not filed until November 29, 2018, in support of an automatic extension of time under section 430.41 for defendant to respond to plaintiff's complaint. In the declaration, defense counsel stated the following. Before filing a demurrer, defendant was required to meet and confer with plaintiff at least five days before the deadline for filing a responsive pleading. Plaintiff provided only her home address and e-mail address on her pleading. Defense counsel sent a letter and e-mail to plaintiff on November 12, 2018, notifying her of the meet and confer requirement under section 430.41 and of defendant's intent to file a demurrer. Plaintiff did not respond. Defendant therefore sought an automatic 30-day extension of time within which to file a responsive pleading.

C. Plaintiff's Request for Entry of Default

In the meantime, on November 21, 2018, plaintiff filed a request for entry of default against defendant for failing to file a response to the complaint and failing to get an extension of time. Defense counsel did not receive notice of the request until on or about December 5, 2018.

D. Defendant's Request to Vacate the Pending Entry of Default

Defendant filed an ex parte application seeking to vacate the pending entry of default and to allow the filing of a demurrer. Defendant contended that it was entitled to mandatory relief from default pursuant to section 473(b). Defendant explained that its trial counsel inadvertently and/or mistakenly checked the wrong box on the filing form for the declaration that counsel had submitted to the court regarding the extension of time to respond to the complaint. If the declaration had been filed instead of rejected by the court,

defendant's time to respond to the complaint would have been automatically extended by 30 days.

In a declaration in support of the ex parte application, defendant's trial counsel stated the following. Defendant was required to meet and confer with plaintiff at least five days before its November 19, 2018 deadline to file a demurrer. (See § 430.41.) Defense counsel sent a letter to plaintiff by mail and e-mail on November 12, 2018, requesting that plaintiff contact defense counsel. Defense counsel did not receive a response from plaintiff. Defense counsel was unable to contact plaintiff by telephone because no phone number was listed on plaintiff's complaint. Defense counsel stated that she served and submitted to the trial court a declaration on November 15, 2018, in support of a 30-day automatic extension to respond to the complaint under section 430.41. With the extension, defense counsel believed the new deadline to file a demurrer would be December 19, 2018. However, defense counsel discovered on November 29, 2018, that the court had rejected for filing the declaration pertaining to the extension. After contacting the court, defense counsel learned that "because the wrong box had been inadvertently checked on the filing form," the court rejected the submission of the declaration for filing. "Immediately upon learning of the [c]ourt's rejection," defense counsel submitted the declaration again, and the court filed the declaration that same day, on November 29, 2018. On or about December 5, 2018, defense counsel learned that plaintiff had in the meantime requested entry of default against defendant on November 21, 2018, for failing to respond to the complaint. Defense counsel stated that her "inadvertent clerical error of checking the wrong box on the filing form for her [earlier declaration]" resulted in the declaration not being timely filed, defendant not receiving an automatic 30-day extension to file its demurrer pursuant to section 430.41, and the pending entry of default against defendant. Defense counsel attached a copy of defendant's proposed demurrer.

On December 14, 2018, after a hearing, the trial court granted defendant's ex parte application, vacating the pending entry of default and allowing defendant to file a response to plaintiff's complaint.

E. Defendant's Demurrer

Defendant thereafter filed its demurrer to plaintiff's complaint. Defendant contended that plaintiff failed to state facts sufficient to constitute a cause of action because: (1) there was no private right of action for an alleged violation of Penal Code section 653.2; (2) even if such an action may be brought, plaintiff failed to allege facts sufficient to show a violation; and (3) plaintiff failed to allege facts sufficient to establish defendant's liability for the acts of its subsidiary Google LLC. Defendant argued that no cognizable claim could be alleged, and that the demurrer should be sustained without leave to amend.

Plaintiff opposed the demurrer. She contended that the trial court should "reject" the demurrer, "reinstate" the default, and grant a default judgment in her favor. Among other arguments, she contended that the trial court erred in its earlier ruling to set aside the pending default, that no evidence was provided regarding defense counsel's claimed inadvertence in attempting to file the declaration regarding the extension of time, that defendant never satisfied the meet and confer requirement before filing the demurrer, and that defendant did not timely file a responsive pleading to the complaint.

In reply, defendant contended that plaintiff was improperly attempting to relitigate the default issue. According to defendant, plaintiff had attended the earlier ex parte hearing and opposed defendant's application to vacate the default requested by plaintiff. Defendant argued that it properly filed its demurrer upon the trial court's grant of the ex parte application.

F. The Trial Court's Order Regarding the Demurrer

On March 5, 2019, a hearing was held on the demurrer. After hearing argument from the parties, the trial court took the matter under submission.

That same day, on March 5, 2019, the trial court filed an order sustaining the demurrer without leave to amend. Regarding plaintiff's contention that defendant did not properly meet and confer before filing the demurrer, the court determined that defendant sufficiently attempted to meet and confer. The court cited defense counsel's declaration in support of the demurrer, in which counsel explained that she had mailed and e-mailed plaintiff on November 12, 2018, regarding defendant's intent to file a demurrer, and that plaintiff never responded. The court stated that even if the meet and confer was insufficient, section 430.41, subdivision (a)(4) provides that this "shall not be grounds to overrule or sustain the demurrer," and therefore the court would consider the merits of defendant's demurrer. Regarding the demurrer to plaintiff's complaint, the court determined that no private right of action existed for a violation of Penal Code section 653.2, that the facts alleged in the complaint did not establish a violation of Penal Code section 653.2, and that the facts alleged in the complaint did not establish liability on the part of defendant as parent corporation of Google. The court further found that plaintiff failed to allege any other statutory or common law cause of action. Finding no reasonable possibility that plaintiff would be able to "fix the [c]omplaint's many problems if given leave to amend," the court sustained the demurrer without leave to amend.

On May 22, 2019, a judgment was entered in defendant's favor. Plaintiff filed a notice of appeal from the judgment.

III. DISCUSSION

A. Default

As we have set forth above, plaintiff filed a request for entry of default after defendant failed to timely respond to the complaint. While plaintiff's request was pending, defendant filed an application to vacate the pending entry of default. Defendant's application was supported by a declaration from defense counsel who stated that she inadvertently checked the wrong box on the filing form for the declaration that sought an

automatic extension of time to respond to plaintiff's complaint. The trial court granted defendant's application and permitted defendant to file a demurrer to plaintiff's complaint.

On appeal, we understand plaintiff to contend that the trial court erred in granting defendant's application to vacate the pending entry of default, and that the court should have instead entered a default and/or default judgment against defendant for failing to timely respond to the complaint. We address each of plaintiff's contentions separately.

First, we understand plaintiff to contend that defendant "never provided [plaintiff] the evidence to support [defendant's] inadvertence of counsel claim ('incorrect box was inadvertently checked in the filing process')." Plaintiff argues that "[n]o proof of attempted filing was submitted by [defendant] as requested by [plaintiff]—[n]ot a simple receipt printed out by the system or handwritten note with a date attached." In support of this argument, plaintiff cites Evidence Code section 500, which states, "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

"Section 473(b) contains two distinct provisions for relief from default," a provision allowing for discretionary relief and a provision making relief mandatory. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838.) In the trial court, defendant sought mandatory relief in its application to vacate the pending entry of default. The mandatory relief provision applies to defaults, default judgments, and dismissals. (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 438.) The mandatory relief provision states: "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by

the attorney's mistake, inadvertence, surprise, or neglect." (§ 473(b).) "[I]f the prerequisites for the application of the mandatory provision of section 473, subdivision (b) exist, the trial court does not have discretion to refuse relief." (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

One of prerequisites for mandatory relief is "an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect" (§ 473(b).) Relevant here, section 473(b) does not require additional evidence beyond the attorney's affidavit of fault. For example, in *Hu v. Fang* (2002) 104 Cal.App.4th 61 (*Hu*), the defense attorney indicated that his failure to appear at a hearing was due to his paralegal's mistake in the calendaring of the attorney's appearances. (*Id.* at p. 63.) The appellate court determined that under section 473(b), relief should have been granted from the resulting default judgment. (*Hu*, *supra*, at p. 63.) In reaching this conclusion, the appellate court rejected the plaintiff's argument that "the motion for relief from default should have included copies of [the defense counsel's] calendar." (*Id.* at p. 65.) The appellate court explained that plaintiff's contention was "inconsistent with section 473, which requires only the 'attorney's sworn affidavit attesting to his or her mistake . . . ,' not additional evidence demonstrating the mistake. (§ 473, subd. (b).)" (*Ibid.*)

In this case, defendant's application for mandatory relief under section 473(b) was supported by a declaration from counsel. In the declaration, defense counsel stated that, "[d]ue to counsel's inadvertent clerical error of checking the wrong box on the filing form for the [declaration seeking an extension of time to respond to the complaint], the [declaration] was not timely filed and [defendant] did not receive the automatic 30-day extension to file its demurrer Counsel's error resulted in the pending entry of default against [defendant]." This declaration by counsel "attesting to . . . her . . . inadvertence" that "in fact caused" the then-pending entry of default satisfied section 473(b)'s requirement of an attorney affidavit of fault. Contrary to plaintiff's contention on appeal, no separate or

additional documentary proof of counsel's inadvertence was required in order for defendant to be entitled to relief under section 473(b). (*Hu, supra*, 104 Cal.App.4th at p. 65.)

Second, to the extent plaintiff contends that defense counsel was not truthful in the declaration, this contention does not provide a basis for reversal of the trial court's ruling. "The trial court's ruling concluding there were grounds for section 473, subdivision (b), relief implies it believed counsel's explanation. Credibility is an issue for the fact finder, and we do not reweigh evidence or reassess the credibility of witnesses. [Citation.] . . . [W]e defer to the trial court's implied finding of credibility and reject [plaintiff's] apparent attempt to encourage us to make a different credibility determination. [Citation.]" (*Gee v. Greyhound Lines, Inc.* (2016) 6 Cal.App.5th 477, 492; accord *Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 915 [trial court's finding regarding credibility " ' "is conclusive on appeal" ' "].)

Third, we understand plaintiff to contend that defendant failed to adequately meet and confer regarding the demurrer. Plaintiff fails to persuasively explain why defendant's purportedly inadequate meet and confer efforts regarding the demurrer precluded the trial court from granting defendant relief under section 473(b) regarding the pending entry of default. We therefore do not consider those contentions further here although we do address them below in connection with our discussion of the trial court's ruling on the demurrer.

Fourth, we understand plaintiff to contend that she was entitled to a default and/or default judgment pursuant to section 585, subdivision (b)³ based on defendant's failure to timely respond to the complaint. Defendant, however, obtained relief from the pending

³ Section 585 states that "[j]udgment may be had, if the defendant fails to answer the complaint, as follows: [¶] . . . [¶] . . . "[I]f the defendant has been served, other than by publication, and no answer[or] demurrer . . . 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. The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief" (*Id.*, subd. (b).)

entry of default under section 473(b). As we have explained above, plaintiff fails to show error in the trial court's grant of relief from default to defendant under section 473(b). Because defendant was properly granted relief from default under section 473(b), plaintiff was not entitled to a default or default judgment against defendant under section 585, subdivision (b).

In sum, plaintiff fails to demonstrate error in (1) the trial court's grant of defendant's application to vacate the pending entry of default and (2) the court's failure to enter a default and/or default judgment against defendant.

B. Demurrer

We understand plaintiff to make several contentions regarding defendant's purportedly inadequate meet and confer efforts before it filed its demurrer. First, we understand plaintiff to argue that it was improper for defendant to attempt to meet and confer by e-mail unless she expressly consented to that form of communication, and that, in the absence of such consent, defendant was only permitted to contact her by mail. We also understand her to argue that there was no evidence that defendant actually e-mailed her. Second, we understand plaintiff to contend that defendant's letter by mail was inadequate because the letter was sent two days before the deadline to meet and confer. Further, she received the letter on or after 6:00 p.m. on the deadline date, which plaintiff argues did not give her a reasonable amount of time to contact defendant. Third, in view of the above arguments by plaintiff regarding defendant's improper e-mail communication and late mail communication, we understand plaintiff to contend that defendant "lie[d]" when its counsel stated in a declaration in support of the automatic extension of time that plaintiff never responded to defendant's meet and confer inquiry. Fourth, we understand plaintiff to contend that the trial court erred in allowing the filing of the demurrer in view of defendant's failure to adequately meet and confer within the first 30 days of being served with the complaint, or within the 30-day extension thereafter. Fifth, we understand plaintiff to contend that the trial court, in subsequently ruling on the demurrer, erred when it

determined that it had no authority to vacate the earlier ruling that allowed defendant to file the demurrer. Based on these contentions, we understand plaintiff to argue that the demurrer “must be tossed out.”

Regarding plaintiffs first four contentions, which relate to the purported inadequacy of defendant’s meet and confer efforts before filing the demurrer, these contentions do not establish error on the part of the trial court in sustaining defendant’s demurrer without leave to amend. If a defendant intends to demur to a complaint, section 430.41 requires the defendant to first “meet and confer in person or by telephone” with the plaintiff before filing the demurrer “for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.” (§ 430.41, subd. (a).) In particular, “[a]s part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.” (*Id.*, subd. (a)(1).)

The meet and confer must occur “at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.” (§ 430.41, subd. (a)(2).)

Upon filing the demurrer, “[t]he demurring party shall file and serve with the demurrer a declaration stating either of the following: [¶] (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in

the demurrer. [¶] (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.” (§ 430.41, subd. (a)(3)(A), (B).)

Relevant here, notwithstanding the meet and confer requirement, subdivision (a)(4) of section 430.41 states that a “determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.” As one appellate court has explained, “Code of Civil Procedure section 430.41 does not contain any penalties for the failure to follow the meet-and-confer process set forth in subdivision (a)(1). Indeed, subdivision (a)(4) of that section provides that ‘[a]ny determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.’ Thus, even if the [defendant] did not comply with the meet-and-confer requirements, we do not agree with plaintiffs that the consequence of that failure is for the court to lose jurisdiction over the pleadings.” (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 515, fn. omitted (*Olson*).)

We find *Dumas v. Los Angeles County Bd. of Supervisors* (2020) 45 Cal.App.5th 348 (*Dumas*) instructive. In *Dumas*, the plaintiff contended that the defendant “failed to properly meet and confer” because the defendant’s written request to meet and confer “did not satisfy section 430.41’s requirement of a meeting ‘in person or by telephone.’ ” (*Id.* at pp. 354, 355.) Citing subdivision (a)(4) of section 430.41 and *Olson, supra*, 33 Cal.App.5th at page 515, the appellate court in *Dumas* determined that it did not need to “address the adequacy of the [defendant’s] efforts to meet and confer, as any insufficiency in the process would not undermine the trial court’s ruling on the [defendant’s] demurrer. [Citations.]” (*Dumas, supra*, 45 Cal.App.5th at p. 355.)

Similarly, in the instant case, we need not consider the adequacy of defendant’s meet and confer efforts, including whether it actually e-mailed plaintiff, whether an e-mail communication was proper, whether defendant’s written meet and confer provided plaintiff with an adequate time to respond, or whether defendant should have attempted to meet and

confer again within the 30-day extension period. “[A]ny insufficiency in the process would not undermine the trial court’s ruling on . . . [defendant’s] demurrer. [Citations.]” (*Dumas, supra*, 45 Cal.App.5th at p. 355; accord, *Olson, supra*, 33 Cal.App.5th at p. 515.)

Regarding plaintiff’s contention that the trial court, in ruling on the demurrer, erred when it determined that it had no authority to vacate the earlier ruling that allowed defendant to file the demurrer, we find no merit in the contention. The trial court in ruling on the demurrer specifically addressed plaintiff’s contention that defendant failed to properly meet and confer. The trial court ultimately ruled as follows: “After reviewing the record, the Court believes that Defendant sufficiently attempted to meet and confer with Plaintiff. [Citation.] Even if the Court were to determine that the parties’ meet-and-confer process was insufficient, that ‘shall not be grounds to overrule or sustain a demurrer.’ (Civ. Proc. Code § 430.41(a)(4).) The Court therefore will reach the merits of Defendant’s demurrer.” The record thus reflects that the trial court, before considering the merits of defendant’s demurrer, considered and rejected plaintiff’s contentions regarding defendant’s purported inadequate meet and confer efforts.

We further observe that the trial court proceeded to rule on the merits of defendant’s demurrer, finding that no private right of action existed for a violation of Penal Code section 653.2, that the facts alleged in the complaint did not establish a violation of Penal Code section 653.2, and that the facts alleged in the complaint did not establish liability on the part of defendant as parent corporation of Google. The court further found no reasonable possibility that plaintiff would be able to sufficiently amend the pleading and sustained the demurrer without leave to amend. On appeal, plaintiff does not raise any challenge to (1) the court’s ruling that the complaint failed to state facts sufficient to constitute a cause of action, or (2) the court’s denial of leave to amend.

C. Other Issues

In her reply brief on appeal, we understand plaintiff to contend that defendant filed its respondent’s brief tardy in this court, and that she is therefore entitled to a default

judgment for this “second” missed deadline by defendant, after defendant first missed a deadline in the trial court by failing to timely respond to the complaint.

We are not persuaded by plaintiff’s contention. Plaintiff must present argument supported by relevant legal authority as to each issue raised on appeal. “ ‘[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]’ [Citations.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) As plaintiff in this case fails to articulate a well-reasoned argument supported by relevant legal establishing that she is entitled to a default judgment due to a tardy respondent’s brief, we do not consider the contention further.

In sum, we determine that plaintiff fails to show reversible error regarding the trial court’s rulings (1) vacating the pending entry of default and allowing defendant to file a demurrer to plaintiff’s complaint and (2) sustaining defendant’s demurrer without leave to amend.

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

LIE, J.

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