

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2992-21

AILUN XIN,

Plaintiff-Respondent,

v.

LI TAN,

Defendant-Appellant.

Submitted May 16, 2023 – Decided August 3, 2023

Before Judges Sumners and Chase.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Docket No. L-1523-20.

Li Tan, appellant pro se.

Dressel/Malikschnitt LLP, attorneys for respondent
(Andrew J. Dressel and Christopher M. Malikschnitt,
on the brief).

PER CURIAM

Plaintiff Ailun Xin sued defendant Li Tan, alleging trespass, invasion of
privacy, and infliction of emotional distress, arising from defendant's uninvited

entry into her apartment on multiple occasions when she was not there, and he masturbated in her bedroom. Plaintiff sought damages, claiming she incurred expenses in moving out of her apartment due to concerns over her privacy and safety and suffered emotional damages.

Plaintiff obtained a court order for substituted service on defendant by email, and default was entered against him when he failed to file an answer. Defendant's "[m]otion (in lieu of an answer) to dismiss the complaint" was denied. The court considered the application as a motion to vacate the entry of default, determining "defendant ha[d] failed to establish [g]ood [c]ause as required under [Rules] 4:43-3, 4:50-1 and 4:6-2" to vacate the default. Defendant's motion for reconsideration was denied.

After a proof hearing at which plaintiff testified but defendant declined to appear, default judgment was entered against defendant totaling \$950,000, inclusive of \$350,000 in compensatory damages and \$600,000 in punitive damages. Defendant's motion seeking reconsideration of the default judgment was denied, but the court granted his request for a stay of judgment pending appeal.

Defendant never sought to vacate the default judgment in the trial court but instead filed this appeal. In his merits brief, defendant argues:

POINT I

THE TRIAL COURT JUDGE ABUSED ITS DISCRETION IN GRANTING A COURT ORDER FOR SUBSTITUTE SERVICE BY EMAIL WITHOUT A PHYSICAL ADDRESS.

POINT II

THE TRIAL COURT ERRED IN ACCEPTING THE SERVICE ATTEMPT BY EMAIL AS VALID, DESPITE THE PLAINTIFF'S PARTY WITHHOLDING A COURT SUMMONS.

POINT III

THE TRIAL COURT ERRED IN ENTERING DEFAULT AGAINST THE DEFENDANT AND IGNORING DISCREPANCIES IN THE DEFENDANT'S NAME.

POINT IV

THE TRIAL COURT ERRED IN DENYING THE MOTION TO DISMISS FOR IMPROPER SERVICE.

POINT V

THE TRIAL COURT ERRED IN DENYING THE MOTION TO DISMISS FOR IMPROPER PARTIES AND PRECLUSION OF RECOVERY UNDER THE ENTIRE CONTROVERSY DOCTRINE.

POINT VI

THE TRIAL COURT ABUSED ITS DISCRETION IN TESTIFYING AGAINST THE DEFENDANT BY

TURNING HIS CHECKS OVER TO THE PLAINTIFF.

POINT VII

THE TRIAL COURT ERRED IN IGNORING PROBATIVE EVIDENCE FROM THE DEFENDANT DURING ITS FACT-FINDING PROCESS AT THE DEFAULT JUDGMENT HEARING.

POINT VIII

THE TRIAL COURT ERRED IN AWARDING COMPENSATORY DAMAGES TO THE PLAINTIFF, AGAINST NJ STATUTES, COMMON LAW TORT, AND PRIOR CASE LAWS.

POINT IX

THE TRIAL COURT ERRED IN AWARDING PUNITIVE DAMAGES AND ABUSED ITS DISCRETION IN BARRING FUTURE CLAIMS AGAINST THE PLAINTIFF.

POINT X

REGARDING ABUSIVE LITIGATION. (NOT RAISED BELOW DUE TO NOVEL LEGAL ISSUE).

None of defendant's arguments have been addressed by the trial court because he did not move before the court to vacate the default judgment. We agree with plaintiff that a direct appeal from a default judgment is improper. See, e.g., N.J. Div. of Youth & Family Servs. v. T.R., 331 N.J. Super. 360, 363 (App. Div. 2000) (citing Haber v. Haber, 253 N.J. Super. 413, 416 (App. Div.

1992) ("[T]he rule in New Jersey is that a direct appeal will not lie from a judgment by default.")). The proper course is to seek relief in the trial court by filing a Rule 4:50-1 motion. Id. at 364. Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION