

# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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## Alternative Dispute Resolution

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### *Stein v York (1/25/2010)*

#### **Legal Malpractice; Default Action; Statement of Damages**

Defendant served as plaintiff's attorney in a personal injury action that was dismissed and unsuccessfully appealed. Plaintiff then sued defendant for legal malpractice and other claims. The complaint did not specify the amount of damages sought. Although defendant did not file an answer, the parties engaged in the exchange of discovery, until, 18 months after filing the complaint, plaintiff filed a request for entry of default. The dollar amount demanded was "0.00." Default was entered by the court, and defendant refused to answer despite plaintiff's offer to set it aside by stipulation. At the prove-up hearing, counsel for plaintiff set forth damages of \$2.61 million. The court ordered counsel to submit a brief addressing whether Code of Civil Procedure code section 425.11 requires an indication of the amount of relief requested in the Statement of Damages before the court could enter a default judgment.

Plaintiff's counsel indicated since it was not a personal injury action, a 425.11 statement was not required. But, counsel also moved to amend the default to reflect the damages requested. The court denied the motion, and entered the default judgment for plaintiff in the amount requested above. Defendant then moved to modify the judgment on the basis that he was not aware of the amount of damages sought. The court denied the motion, stating the defendant waived his right to object because he was actively involved in discovery allowing him, "... to find out the amount of plaintiff's claim." Finally, defendant's motion to set aside and vacate the default was denied, and this appeal followed.

The Fourth Appellate District, Division Three, began its opinion by noting that CCP section 580(a) provides: "*The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint...*" **The primary purpose of the section is to guarantee defaulting parties adequate notice of the maximum**

judgment that may be assessed against them. (*Greenup v Rodman* (1986) 42 Cal.3d 822)

A defendant has the right to elect not to answer the complaint. Although this may have been a tactical move by defendant, it is permissible. Defendant, relying on the absence of a statement of damages in the complaint, was entitled to have default entered against him. Section 580 ensures that a defendant who declines to contest an action is not subjected to open-ended liability and operates as a limitation on the court's jurisdiction. (*Electronic Funds Solutions, LLC v Murphy* (2005) 134 Cal.App.4<sup>th</sup> 1161)

The notice requirement of section 580 was **designed to insure fundamental fairness**. This is undermined if the door is opened to speculation, no matter how reasonable it might appear in a particular case. If no specific amount of damages is demanded, the prayer cannot insure adequate notice of the demands made upon the defendant. If a default judgment awarded against a defendant exceeds the relief demanded in the complaint or is a different form of relief than demanded, the defendant is effectively denied a fair hearing. (*Matera v McLeod* (2006) 145 Cal.App.4<sup>th</sup> 44) Thus, a default judgment in an amount greater than the amount demanded is *void* and subject to either direct or collateral attack. (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160)

Plaintiff argues defendant was on notice because he represented her in the underlying action, was involved in discovery and trial preparation, and later attended the default prove-up hearing. The Fourth DCA disagreed, pointing out that constructive notice of potential liability does not satisfy section 580. (*Janssen v Luu* (1997) 57 Cal.App.4<sup>th</sup> 272) Due process requires that defendant know exactly what his exposure is in this case. Even physical presence at the default hearing was insufficient because he was in default and therefore "out of court." He did not participate in his capacity as a defendant, but only as a witness. After defendant's demurrer to the complaint was overruled, he elected not to answer. With no specific amount of damages, a complaint that merely prays for damages, "according to proof" without specifics, fails to satisfy section 580. Lacking proper notice to the defendant of the amount sought, a default judgment under those circumstances is void. Where a judgment is void, it must be vacated. (*Burnett v King* (1949) 33 Cal.2d 805) Thus the trial court erred in awarding plaintiff a judgment for over \$2.6 million. The judgment is void and must be vacated. Upon remand, plaintiff may move to amend, and defendant will then

have an opportunity to attack the pleading, answer it, or default once more, if he so chooses. (*Falahati v Kondo* (2005) 27 Cal.App.4<sup>th</sup> 823)

The judgment is reversed and the case is remanded. Defendant shall recover his costs on appeal.