

RESOLUTION 10-01-2013

DIGEST

Default Judgments in Quiet Title Actions

Amends Code of Civil Procedure section 764.010 to clarify that a defendant in default may not participate in the court's evidentiary and legal determinations of a plaintiff's quiet title claim.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Identical to Resolution 11-05-2012, which was disapproved.

Reasons:

This resolution amends Code of Civil Procedure section 764.010 to clarify that a defendant in default may not participate in the court's evidentiary and legal determinations of a plaintiff's quiet title claim. This resolution should be approved in principle because a defendant who fails to timely appear in the action, and has no good ground for relief from default, should forfeit the right to offer evidence and legal challenges to the issue tendered by the quiet action complaint.

In the case of *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, a divided court held that a defaulted defendant in a quiet title action may nonetheless appear and present evidence at the time of plaintiff's Code of Civil Procedure section 585 prove-up. That constituted a change in existing law and thinking (as reflected in *Yeung v. Soos* (2004) 119 Cal.App.4th 576, a decision by the Second Appellate District), and runs counter to the body of jurisprudence concerning the effect of a default. It advances only a colorable analysis for why in quiet title actions an unrelieved defaulted defendant should be treated as *sui generis*—particularly in light of the potential delays and mischief a defaulted defendant may cause at any time, and especially when an action is to quiet title claims on a property.

Under all circumstances, with or without a defaulted party, the court's mandate is that it "shall examine into and determine plaintiff's title claims against the claims of all the defendants," "shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants," and "shall render judgment in accordance with the evidence and the law." (See Code Civ. Proc. § 764.010.) Although the present quiet title statutes consider it an action *in rem* against all claimants, known or unknown, with respect to a known claimant who inexcusably permits a default to be taken, that defendant forfeits its right to weigh-in on the determinations made at trial.

The court *Harbour Vista* court predicated its analysis—that a defaulted defendant is entitled to participate in the evidentiary hearing vetting interest determinations in the property—on the statutory edict that "[t]he court shall not enter judgment by default but shall in all cases require evidence." (See Code Civ. Proc., § 764.010.) Yet, for purposes of reaching the judgment entered in a title quiet cause, the emphasis of the statute should be on the latter, not the former proviso.

They are not mutually exclusive. The proposed resolution would make that clear, and with good reason.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 764.010 to read as follows:

1 § 764.010

2 The court shall examine into and determine the plaintiff's title against the claims of all the
3 defendants. The court shall not enter judgment by default but shall in all cases require evidence
4 of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the
5 appearing defendants, other than claims the validity of which is admitted by the plaintiff in the
6 complaint. The court shall render judgment in accordance with the evidence and the law.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Under existing law, defendants who fail to timely respond, are defaulted, and fail to obtain relief from the default under Code of Civil Procedure section 473 cannot appear or file further documents in the case, or be involved in prove up proceedings. *Harbor Vista, LLC v. HSBC Mortgage Services, Inc.* (2011) 201 Cal.App.4th 1496 cites the language of Code of Civil Procedure section 764.010, and carves out an exception for quiet title actions. It holds even though the defendant failed to timely respond to the pleadings and lost on its motion to vacate default, it was entitled to appear and present evidence at the evidentiary hearing required for the default prove up. It acknowledged it was disagreeing with the leading case, *Yeung v. Soos* (2004) 119 Cal.App.4th 576 and Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2003) ¶ 5:271, p. 5-59, based on *Yeung*.

This Solution: This Resolution would amend Code of Civil Procedure section 764.010 to clarify that in quiet title actions only appearing defendants could present evidence, thereby harmonizing all aspects of the Code of Civil Procedure on defaults, by providing that if a defendant fails to appear and on application the clerk enters that defendant's default in a non-money or damages case, the Court is merely required to proceed pursuant to Code of Civil Procedure section 585, subdivision (b) and to require sufficient evidence to satisfy itself that the plaintiff's case has merit, whether through testimony or declarations. A defaulted defendant would still have the ability to move under Code of Civil Procedure section 473 to obtain relief from default, and certainly the fact it is a quiet title action would add weight to such an application, but obtaining such relief would be the requirement if the defendant wished to present evidence to the court.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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