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LITIGATION

State appellate court delivers twist in quiet title action

By Clifford E. Frieden

In a case of first impression, the 4th District Court of Appeal in *Harbour Vista LLC v. HSBC Mortgage Services Inc.,* 18079, Cal. App. 4 Dist. (Dec. 19, 2011), held that a default judgment could not be entered in a quiet title action, and that a defaulting defendant is entitled to submit evidence of its claim in an open court hearing, the purpose of which is to determine the interests of the parties in the property. The case could have a substantial impact on strategies in filing and defending quiet title actions.

Harbour Vista was the ground lessee of condominium property in Huntington Beach. Julie Nugent owned the condominium and subleased the land from Harbour Vista. Fieldstone Mortgage was Nugent's lender. Nugent defaulted on the lease payments to Harbour Vista, who obtained an unlawful detainer judgment against her.

Nugent also defaulted on the Fieldstone deed of trust. Fieldstone foreclosed and HSBC purchased the condominium at the foreclosure sale.

Harbour Vista filed a quiet title action and named HSBC as a defendant. HSBC was served but failed to answer. Harbour Vista took its default. At a case management conference, HSBC announced its intent to move to set aside the default. On the same day, the court entered a default judgment in chambers based on plaintiff's declaration.

HSBC's motion to set aside the default and vacate the default judgment was denied, as was the motion for reconsideration.

The 4th District held that the trial court erred in issuing the default judgment since under Code of Civil Procedure Section 764.010 (the quiet title statute), "The Court shall not enter judgment by default but 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, other than claims the validity of which is admitted by the plaintiff in the complaint."

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The 4th District held that in quiet title actions, even though a default may indeed be taken: a default judgment may not be entered; there must be an evidentiary hearing in open court; and the defendant is entitled to introduce evidence regarding its claim to the property. The court's role is to act as a fact finder and adjudicate issues as to title, and to consider and rule upon objections to evidence.

The majority opinion did not, however, state whether declarations could be used in lieu of live testimony (although the concurrence and dissentstrongly opted for live testimony only).

The effect of allowing a defaulting defendant to participate in an open evidentiary hearing to contest plaintiff's claim of title and submit evidence as to its own, is that an early trial on the quiet title cause of action will be the norm in default situations. And this will necessarily be without the benefit of discovery as to the defendant's position since, by definition, the defendant will not yet have made an appearance.

One must wonder if the Legislature intended to give the defaulting defendant this potential strategical advantage. The majority opinion did note, however, that a trial court could deal with defense surprise tactics by continuing the hearing to allow plaintiff to respond. But the dissent points out that this is still a matter of discretion for the trial court and provides the defendant with an opportunity for gamesmanship.

A practical issue in these cases is: If the defendant is in default and therefore not entitled to notice of further proceedings in the action, how likely is it that he or she will even know when the hearing in open court has been scheduled? Again, the dissent notes that in this day of instant information through the Internet, and with dockets posted online, it would not be difficult for a party to obtain this information.

The lesson here for plaintiffs' counsel is to make sure that all of your ducks are lined up before filing a quiet title cause of action. You may be put to your proof in an adversary hearing much earlier than you ever thought. And if you are relying on discovery to flesh out the defense, you may be limited as to what you can uncover before the court makes its decision on the merits.

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