#H-500 12/28/79

Memorandum 80-14

Subject: Study H-500 - Quiet Title Actions (1980 Legislation)

We have received the letter attached as Exhibit 1 from Mr. John Briscoe concerning the Commission's quiet title legislation which is being submitted to the 1980 legislative session. Mr. Briscoe is a Deputy Attorney General with the State of California whose practice involves quiet title actions on behalf of the state exclusively. This memorandum analyzes the points made by Mr. Briscoe and suggests changes in the proposed legislation to accommodate the points where appropriate.

§ 760.030. Remedy cumulative

Mr. Briscoe raises the general question whether a decree quieting title may be obtained through a complaint for declaratory relief or whether the statutory quiet title procedure is the exclusive remedy. Section 760.030 makes clear that the quiet title procedure is not exclusive:

> The remedy provided in this chapter is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property.

The Comment specifically refers to declaratory relief actions as other proceedings that may be available.

Mr. Briscoe believes that the Commission's proposed statute is a sound one and that it should govern all proceedings for determination of title to property; there are many litigated issues that the statute resolves, and use of the statutory procedure will result in good practice and certainty of title. While the staff agrees with Mr. Briscoe in principle, we can visualize situations where application of the quiet title procedures in the midst of other complex litigation would cause confusion. We would add a provision to permit the parties to another proceeding to invoke the quiet title procedures:

> In an action or proceeding in which establishing or quieting title to property is in issue the court in its discretion may, upon motion of any party, require that the issue be resolved pursuant to the provisions of this chapter to the extent practicable.

§ 761.010. Commencement of action

Section 761.010(b) requires that immediately upon commencement of a quiet title action, the plaintiff must record a lis pendens with the county recorder where the property is located. The effect of failure to file the lis pendens is that persons acquiring interests prior to entry of judgment are not bound by the judgment. Mr. Briscoe inquires whether there are other consequences of failure to comply with the mandate of recording lis pendens--is the complaint demurrable, can the court order compliance?

The Commission did not intend any other consequences--the lis pendens requirement is directory rather than mandatory; the plaintiff should file for its own protection. Failure to file does not deprive the court of subject matter jurisdiction. This is also the rule under existing law, the substance of which the Commission is simply preserving. See, e.g., Blackburn v. Bucksport etc. R.R. Co., 7 Cal. App. 649, 95 P. 668 (1908). The staff sees no need for further clarification of this point. The statute does provide that if service is made by publication, the court must require recording of the lis pendens. Section 763.020(b).

§ 761.020. Complaint

Section 761.020(e) requires a quiet title petition to include a prayer for "the determination of the title of the plaintiff and the adverse claims." Mr. Briscoe points out that this language could be construed to mean that the court may give affirmative relief to the defendant without the requirement that the defendant file a cross-complaint. To eliminate this implication, the staff suggests that the prayer requirement be revised to refer to a determination of the plaintiff's title "against" the adverse claims. This change should be made in other places in the statute where comparable language appears. Under general rules of pleading, affirmative relief may be asserted only by cross-complaint, and the quiet title statute in Section 760.060 incorporates the "statutes and rules governing practice in civil actions."

§ 761.030. Answer

Although the quiet title statute incorporates the general rules of pleading, the quiet title statute also contains some special rules.

Section 761.030(a) prescribes the contents of the answer, which includes any interest claimed by the defendant and any facts controverting the plaintiff's allegations. Mr. Briscoe suggests that the answer should also include any affirmative defenses the defendant may wish to raise, such as statutes of limitation, estoppel, etc. The staff believes this suggestion is a good one and would revise Section 761.030(a) to read:

> (a) The answer shall be verified and shall set forth:
> (1) Any claim the defendant has.
> (2) Any facts tending to controvert such material allegations of the complaint as the defendant does not wish to be taken as true.
> (3) A statement of any new matter constituting a defense.
>
> Comment. Paragraph (3) is drawn from Section 431.30(b) (contents of answer in general rules of pleading). See also Section 760.060 (rules of practice in civil actions govern this chapter except where inconsistent).

§ 764.040. Persons not bound by judgment

Mr. Briscoe notes Section 764.040, which states that the judgment does not affect the claim of any person not made a party to the quiet title action, but he also raises the question whether failure to join a person who might be deemed "indispensable" is grounds for demurrer to the action or voiding the judgment. The quiet title statute is drafted to enable the plaintiff to single out adverse interests against which title is to be determined. If an interest singled out by the plaintiff is so intertwined with other intersts that the other interests will necessarily be affected by the judgment, then the other interests are "indispensable" and must be joined. This is a general rule of pleading that applies in quiet title actions as well. The staff sees no problem here.

§ 764.070. Effect on State of California and United States

As drafted, Section 764.070 provides that the quiet title judgment is not binding or conclusive on the state or the United States unless individually joined as parties. This clearly implies that both the United States and the state may be made parties to a quiet title action. But as Mr. Briscoe points out, the United States has consented to be sued in a quiet title action only in federal court. Although Mr. Briscoe assumes that the state has consented to be sued in quiet title only in

specified cases, the staff believes that enactment of the Governmental Liability Act constitutes consent by the state to be sued in any action, including quiet title. Government Code Section 945 provides, "A public entity may sue and be sued." The staff would revise Section 764.070 to read:

> Notwithstanding any other provision of this chapter, the judgment in the action is not binding or conclusive on ~~the~~ :
>
> (a) The state ~~or the United States~~ unless individually joined as ~~parties~~ a party to the action.
>
> (b) The United States.
>
> Comment. Section 764.070 continues the substance of provisions formerly located in the first portion of the second paragraph of former Sections 751 and 751.5 , but eliminates the implication that the United States may be sued in a quiet title action absent statutory authorization. The United States may be sued in a quiet title action only in federal court. See 28 U.S.C. §§ 1346(f), 2409a; California v. Arizona, 99 S.Ct. 919, 924 (1979) . ~~For statutes authorizing quiet title actions against the state,~~ The state may be made a party to a quiet title action. ~~see, e.g.,~~ See Gov't Code § 945 (public entity may be sued); see also Pub. Res. Code §§ 6461-6465 (state lands administration), Rev. & Tax. Code § 3951 (tax-deeded property), Sts. & Hy. Code § 9012 (refundng of bonds).

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

[redacted]R
GEORGE DEUKMEJIAN
(Pronounced Duke-may-jin)
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
STATE BUILDING, SAN FRANCISCO 94102
(415) 557-2544

(415) 557-2210 December 6, 1979

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: Recommendation Relating to Quiet-Title Actions

Dear Mr. Sterling:

Thank you for forwarding a copy of the Commission's Recommendation Relating To Quiet-Title Actions. My comments (attached) are rather roughly drafted and elliptical, but in light of the shortness of time I wanted to get them off to you.

Very truly yours,

GEORGE DEUKMEJIAN
Attorney General

JOHN BRISCOE
Deputy Attorney General

JB:mw
Attach.

Section 761.010(b): What is the effect of plaintiff's failure to comply with this section? Section 763.040 only? Is the complaint demurrable? May the defendant file a lis pendens of his own? May the court order the plaintiff to comply with the provisions of the section?

Section 761.020(e): ". . . and the adverse claim." Is this subsection meant to imply that the defendant can obtain a decree quieting title to his claims? See Code of Civil Procedure section 431.30(c) which provides that affirmative relief may not be claimed in the answer. This latter section seems to have overruled cases that had indicated affirmative relief could have been granted to defendant. See Hough v. Wright, 127 Cal.App. 689 (1932); Munden v. Hayes, 89 Cal.App.2d 772, 776 (1949); Giles Co. v. Bank of America, 47 Cal.App.2d 315, 323 (1941); see District Bond Co. v. Pollack, 19 Cal.2d 304, 307 (1942).

(Note also the principle that generally one cannot cross-complain in quiet title with respect to lands different from those described in the complaint; the dispute at least must arise out of the same "transaction." See Anderson Co. v. Regenold, 166 Cal. 44; Womens Athletic Club v. Anglo California National Bank of San Francisco, 90 Cal.App.2d 850, 853 (1949). Would this principle still obtain? In a recent action a complaint seeking to quiet title to 188 acres was followed by a cross-complaint as to 10,000 acres. State v. County San Mateo, San Mateo County Superior Court No. 144257.

This question is significant in light of the well-established rule that one seeking to quiet his title must prevail on the strength of his own title and not upon the weakness of his opponent's. See Winter v. McMillian, 87 Cal. 57 (1890); Ernie v. Trinity Lutheran Church, 51 Cal.2d 702, 706 (1959); Helvey v. Sachs, 38 Cal.2d 21, 23 (1951). It perhaps might be preferable to require a defendant who wishes a decree quieting his title to file a cross-complaint, thus making it clear that he must prevail on the strength of his own title if he is to obtain the decree. Odd situations may arise where neither party can quiet his title. Plaintiff might be found to be barred from asserting his claim by the statute of limitations, estoppel, etc., and yet defendant might not be able to establish satisfactory his own title. An example is found in an original-jurisdiction action presently pending before the United States Supreme Court. The State of California has sued the United

States and the State of Arizona with respect to titles to the bed of an abandoned channel of the Colorado River. While California clearly holds the fee title, the United States has asserted that California's claim is barred by the twelve-year statute of limitations contained in 28 U.S.C. 2409a(f). If the United States is correct, California will be unable to present evidence on its behalf and thus be foreclosed from quieting its title. The United States, however, will not be able to show that it has any title to the lands in dispute. Thus while it might be able to frustrate the attempts of California to quiet its title, the United States will not be entitled to a decree quieting title in itself. Yet without an explicit requirement that defendant cross-complain in order to obtain a decree quieting title, careless practice on the part of counsel or the court could result in the defendant in such an instance in obtaining a decree quieting its title. The requirement of a cross-complaint would obviate this problem.

Section 761.030: Perhaps it should be made clear that the defendant may plead any affirmative defenses it may have, such as statutes of limitations, estoppel (see City of Long Beach v. Mansell, 3 Cal.3d 462 (1971)), etc.

Section 764.040: This section seems to answer the so-called "indispensable parties" problem. Is CCP section 430.10(d), however, applicable? Specifically, a judgment entered in a case to which a known claimant was not joined good as to all other parties but not as to the unjoined person, or simply void? The present law indicates that the judgment might be wholly void. Code of Civil Procedure section 389(a) was substantially amended in 1971, and discarded the former distinction between "necessary" and "indispensable" parties. The Law Revision Commission's comment to that amendment provided however that "[t]hese guidelines should require dismissal in the same circumstances where formerly a person was characterized as indispensable," citing Bank of California v. Superior Court, 16 Cal.2d 516 (1940). 14 West's Annotated California Codes, Code of Civil Procedure 223 (1973). The problem is raised because the Bank of California case indicates that the failure to join an indispensable party means that the court lacks jurisdiction. Id. at 521-23. See also Covarruvias v. James, 21 Cal.App.3d 129, 134 (1971); Southern Cal. Title Clearing Co. v. Laws, 2 Cal.App.3d 586, 589 (1969). An example of the nightmare that can result not naming all indispensable parties is contained in Orange County Water District v. City of Riverside, 173 Cal.App. 2d 137 (1959). That case was a lengthly and complex dispute concerning water rights, and many of the trial courts findings and substantial portions of the judgment were stricken because

of the failure to join water users who would be affected by the judgment. Id. at 218-219. Reichert v. Rabun, 89 Cal.App. 375, 381-82 (1928) held that the failure to join potential claimants rendered the judgment void, even as to the parties joined in the suit.

Section 764.070: Perhaps the Comment should make clear that the United States has not consented to be sued in quiet title except in the district courts and in instances in the United States Supreme Court. See 28 U.S.C. section 2409a and California v. Arizona, 99 S.Ct. 919 (1979). It might perhaps also make clear that this section is not intended as a wholesale waiver of sovereign immunity by the State of California but merely provides the procedure to be followed in those instances (cited in the comment) in which the state has already consented to be sued.

General comment: May a decree quieting title be obtained through a complaint for declaratory relief (CCP 1060-1062), or is this procedure exclusive?

I have other, less important comments which given the lateness of these I'll decline to make. I appreciate this opportunity, and please let me know if I can be of any assistance.