

5/19/83

## Memorandum 83-32

Subject: Study H-500 - Quiet Title (Effect of Judgment)

The quiet title statute (Code of Civil Procedure Sections 760.010-764.070) was enacted upon Commission recommendation in 1980. We have continued the matter on our agenda for further study in the event additional problems are brought to our attention. Attached as Exhibit 1 is a letter from an attorney, Richard F. Weiner, pointing out two defects in the new statute.

Code Civ. Proc. § 764.030. Persons bound by judgment

Code of Civil Procedure Section 764.030 states the general rule as to the effect of the quiet title judgment:

764.030. The judgment in the action is binding and conclusive on all of the following persons, regardless of any legal disability:

(a) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided.

(b) Except as provided in Section 764.050, all persons who were not parties to the action and who have any claim to the property which was not of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

(c) All persons claiming under any of the foregoing persons.

Subdivision (c) of this section is simply a continuation of former law, on which the new law is based.

Mr. Weiner points out that subdivision (c) adds nothing to what is already covered by subdivisions (a) and (b). Worse, it produces the wrong result if applied to a non-party who claims under a party and whose claim was of record at the time the lis pendens was filed.

This is really a technical rather than a substantive point, since this situation is covered by Section 764.040, which provides that the judgment does not affect such a non-party having a recorded claim--"The judgment does not affect the claim of any person who was not a party to the action and who had a claim of record in the property or part thereof at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded."

Nonetheless, the apparent conflict between Section 764.030(c) and Section 764.040 does exist, and should be resolved. The staff agrees with Mr. Weiner that the statute would be improved by repeal of Section 764.030(c). A comparable change should be made in the partition statute, which parallels the quiet title statute.

Code Civ. Proc. § 764.050. Unrecorded interests known to plaintiff

Despite the general rule of Section 764.030(b) that a person having an unrecorded claim on the property is bound by the quiet title judgment even though not made a party, Section 764.050 creates an exception in the case of an unrecorded claim actually known to the plaintiff:

764.050. If a person having an unrecorded claim in the property or part thereof was not a party to the action but the claim was actually known to the plaintiff at any time before entry of judgment or would have been reasonably apparent from an inspection to the property, the judgment does not affect the claim of the person. Nothing in this section shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value of the property.

This provision was drawn from a comparable provision in the partition statute (Code of Civil Procedure Section 874.230).

Mr. Weiner points out that this section creates a problem where an unrecorded claim arises after a lis pendens is filed. If the claim arises at any time before judgment the plaintiff would have to join the claimant as a party or risk not binding the claimant. This would defeat the basic concept of the lis pendens and would be contrary to the certainty we are seeking to achieve in the quiet title statute.

The staff believes Mr. Weiner is correct and that Section 764.050 is not properly drafted. Section 764.050 should be amended to read:

764.050. If a person having an unrecorded claim in the property or part thereof was not a party to the action but the claim arose before a lis pendens was filed and was actually known to the plaintiff at any time before entry of judgment or would have been reasonably apparent from an inspection of the property, the judgment does not affect the claim of the person. Nothing in this section shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value of the property.

A comparable change should be made in the partition statute.

The staff has incorporated these changes in the attached draft of a tentative recommendation. We would like to distribute the tentative recommendation for comment over the summer with the view to introducing corrective legislation in the 1984 session.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## Exhibit 1

Richard F. Weiner  
Attorney at Law

2029 Century Park East, Suite 600 Los Angeles, California 90067 (213) 553-9566

April 14, 1983

Mr. John H. DeMouilly  
California Law Revision Commission  
4000 Middlefield Road  
Room D-2  
Palo Alto, California 94306

Re: Quiet Title Section -- Code of Civil Procedure

Dear Mr. DeMouilly:

I suggest that C.C.P. §764.050 be modified such that the time of the unrecorded claim be stated. The way the statute is presently worded, it would appear that if a claim had its inception after the notice of lis pendens was filed, the plaintiff would have to name the claimant as a party in the action in order to bind him by a judgment rendered thereon. This effect would be undesirable, and would defeat a basic concept of the lis pendens and be contrary to existing law as based upon C.C. §1214 and C.C.P. §1908(2).

I believe that §764.050 should be concerned only with a claimant whose claim was in existence but not of record at the time of the recording of the lis pendens (or if a lis pendens was not recorded at the time judgment was entered). C.C.P. §764.040 allows for the non-binding effect of a judgment as against a claimant who is not a party to the action and whose claim not only existed but was of record at the time of the recordation of the lis pendens.

I believe the purpose of §764.050 was only to expand upon §764.040 by mitigating that application of C.C. §1214 wherein a claimant (not named as a party to an action) would be bound by a judgment if his claim, though existing at the time of the recording of the lis pendens was not then of record. §764.050 gives this type of claimant a chance at having his day in court by requiring the plaintiff to name this claimant in the action in order to so bind him by a judgment rendered thereon if Plaintiff acquires actual or inquiry notice of the claimant's claim prior to entry of judgment. §764.050 should be revised to read as follows:

Mr. John H. De Mouilly  
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*unrecorded*

"If a person having an ~~unsecured~~ claim (as determined at the time of the filing of the lis pendens or if none filed at any time before entry of judgment) in the property or part thereof was not a party to the action but the claim was actually known to the plaintiff at any time before entry of judgment, etc., etc."

C.C.P. Section 764.030(c) should be eliminated as it adds nothing to existing law and is incorrect as to a claimant who is not otherwise subject to subsections (a) and (b) thereof (i.e. a non-party bona fide transferee from a party, when such transferee records his interest prior to the lis pendens).

I would appreciate your comments and/or implementation of my proposals. Incidentally, would you please advise me as to who authored the above provisions.

Very truly yours,

  
RICHARD F. WEINER

RFW:pat

STAFF DRAFT

## TENTATIVE RECOMMENDATION

relating to

## EFFECT OF QUIET TITLE AND PARTITION JUDGMENTS

The Law Revision Commission has maintained a continuing review of the quiet title and partition statutes since their enactment upon Commission recommendation.<sup>1</sup> The Commission has discovered a few technical defects in the provisions governing the effect of the quiet title and partition judgments.<sup>2</sup> The Commission recommends cure of the defects in the manner set out in the following draft. Explanatory Comments are included in the draft.

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The Commission's recommendation would be effectuated by enactment of the following measure.

An act to amend Sections 764.030, 764.050, 874.210, and 874.230 of the Code of Civil Procedure, relating to judgments in property actions.

The people of the State of California do enact as follows:

405/582

SECTION 1. Section 764.030 of the Code of Civil Procedure is amended to read:

764.030. The judgment in the action is binding and conclusive on all of the following persons, regardless of any legal disability:

(a) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided.

(b) Except as provided in Section 764.050, all persons who were not parties to the action and who have any claim to the property which was

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1. 1980 Cal. Stats. ch. 44, § 15; Recommendation Relating to Quiet Title Actions, 15 Cal. L. Revision Comm'n Reports 1187 (1980). 1976 Cal. Stats. ch. 73, § 6; Recommendation Relating to Partition of Real and Personal Property, 13 Cal. L. Revision Comm'n Reports 401 (1976).
  2. The Commission is indebted to Mr. Richard F. Weiner of Los Angeles for calling these matters to the Commission's attention.

not of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

~~(c) All persons claiming under any of the foregoing persons.~~

Comment. Subdivision (c) is deleted from Section 764.030 because it added nothing to subdivisions (a) and (b) and was inconsistent with Section 764.040 (persons not bound by judgment) in certain cases.

405/505

SEC. 2. Section 764.050 of the Code of Civil Procedure is amended to read:

764.050. If a person having an unrecorded claim in the property or part thereof was not a party to the action but the claim arose before a lis pendens was filed and was actually known to the plaintiff at any time before entry of judgment or would have been reasonably apparent from an inspection of the property, the judgment does not affect the claim of the person. Nothing in this section shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value of the property.

Comment. Section 764.050 is amended to make clear that the plaintiff is not charged with knowledge of an unrecorded claim that arises after a lis pendens is filed. This is consistent with general law governing the effect of a lis pendens.

405/504

SEC. 3. Section 874.210 of the Code of Civil Procedure is amended to read:

874.210. The judgment in the action is binding and conclusive on all of the following:

(a) All persons known and unknown who were parties to the action and who have or claim any interest in the property, whether present or future, vested or contingent, legal or beneficial, several or undivided.

(b) All persons not in being or not ascertainable at the time the judgment is entered who have any remainder interest in the property, or any part thereof, after the determination of a particular estate therein and who by any contingency may be entitled to a beneficial interest in the property, provided the judge shall make appropriate provision for the protection of such interests.

(c) Except as provided in Section 874.230, all persons who were not parties to the action and who have or claim any interest in the property

which was not of record at the time the lis pendens was filed, or if none was filed, at the time the judgment was recorded.

~~(d) All persons claiming under any of the foregoing persons.~~

Comment. Subdivision (d) is deleted from Section 874.210 because it added nothing to subdivisions (a)-(c) and was inconsistent with Section 874.220 (persons not bound by judgment) in certain cases.

405/503

SEC. 4. Section 874.230 of the Code of Civil Procedure is amended to read:

874.230. Where a person having or claiming an unrecorded interest in the property or part thereof was not a party to the action but the claim arose before a lis pendens was filed and the existence or claim of the interest was actually known to the plaintiff at any time before entry of the interlocutory judgment or would have been reasonably apparent from an inspection of the property, the judgment does not affect the interest of such person in the portion of the property or proceeds of sale thereof allocated to the plaintiff. Nothing in this section shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or his successors in interest.

Comment. Section 874.230 is amended to make clear that the plaintiff is not charged with knowledge of an unrecorded claim that arises after a lis pendens is filed. This is consistent with general law governing the effect of a lis pendens.