Memorandum 92-2

Subject: Study #H-501 - Quieting Title to Personal Property

Attached to this memorandum is a letter from Gerald B. Hansen of San Jose suggesting that the Commission recommend legislation to make clear that California law permits a person to obtain a judgment quieting title to personal property based on adverse possession of the property. The California quiet title statute was recodified on recommendation of the Law Revision Commission, and the Commission's calendar of topics includes whether the law relating to real and personal property (including quiet title actions) should be revised.

The staff's research indicates that the quiet title statute does authorize a quiet title action for personal property. Code Civ. Proc. § 760.020(a) ("An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.") The Law Revision Commission Comment to this section notes that, "This chapter does not limit the interests that may be determined or the persons against whom they may be quieted; it is intended to provide the broadest possible forum for clearing title to the fee or any other interest in property. The ability to quiet title as to both real and personal property may be useful in cases involving land and fixtures, as well as in cases involving personal property alone."

At common law, there is no question that title to personal property may be acquired by adverse possession. See, e.g., discussion in Comment, 13 Cal. L. Rev. 256 (1925). California statutes codify the common law doctrine. Civil Code Section 1007 states that "Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all." The term "property", as used in the Civil

Code, "includes property real and personal". Civ. Code § 14(1). The statute of limitations for recovery of personal property is three years. Code Civ. Proc. § 338(c).

Witkin states that these statutes, construed together, "would seem to establish the right to acquire title to personal property by adverse possession". 4 B. Witkin, Summary of California Law, Personal Property § 99 at p. 95 (9th ed. 1987). However, Witkin also notes the existence of dictum in San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 239 Pac. 319 (1925), which states that it is unnecessary "to consider the question whether or not it was the intention of the legislature, by the enactment of section 1007 of the Civil code, that it should be applied to personal property." 916 Cal. at 707. The court goes on to note that "A careful examination of the decisions of this state has failed to disclose to our investigation a single case in which section 1007 of the Civil Code has been applied to the acquisition of title to personal property." 196 Cal. at 708. The dictum suggests the somewhat anomalous result that although the right of action to recover personal property might be barred by the statute of limitations, title would not be in the possessor.

This dictum is contrary to the fundamental purpose of quiet title statutes as well as basic common law doctrine. The court's musings also appear to be causing problems in California law. The case was cited by the Court of Appeal in 1965, suggesting that "the application of section 1007 of the Civil Code to personal property is not as well established as the City contends". Bufano v. City & County of San Francisco, 233 Cal. App. 2d 61, 71, 43 Cal. Rptr. 223 (1965). And the letter from Mr. Hansen indicates that in his action to quiet title to securities, even though there were no adverse claimants, the judge would not enter a quiet title judgment because it is not clear that California law authorizes title to personal property based on adverse possession. Mr. Hansen makes the rueful remark, "I consider it rather difficult to lose a default, but after 42 years of intensive legal practice I apparently have developed that capability."

Mr. Hansen suggests that the law be made clear that it is permissible to quiet title to personal property on the basis of adverse possession. He proposes amending Code of Civil Procedure Section 760.020(a) to read:

> (a) An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein , including title based on adverse possession .

To the staff's mind, this doesn't completely resolve the uncertainty, although the Comment could state explicitly that this section encompasses title based on adverse possession of personal property.

The staff believes a more direct approach would be to deal with the adverse possession statutes themselves. The staff would amend Civil Code Section 1006 to read:

> 1006. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a sufficient interest in real or personal property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.
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> Comment. Section 1006 is amended to make explicit the rule previously implicit in the statutes--that title to personal property may be based on adverse possession. See Section 14(1) ("property" includes real and personal property); see also 4 B. Witkin, Summary of California Law, Personal Property § 99 (9th ed. 1987). This overrules a contrary query in San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 239 Pac. 319 (1925).
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> The amendment to Section 1006 also reverses the statutory implication that an action to quiet title based on possession of personal property need not satisfy the requirements for title by prescription. See Section 1007 (title by prescription); see also Code Civ. Proc. §§ 760.020(a) (quieting title to real or personal property) and 761.020(b) (quieting title to property based on adverse possession). The prescription period for, or statutory bar of an action for recovery of, personal property is three years. Code Civ. Proc. § 338(c).

The staff believes this would be a useful clarification of the law. If the Commission agrees, the staff will convert this memorandum into a tentative recommendation and circulate it for comment.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Memo 92-2

Study H-501

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April 18, 1991

California Law Revision Commission
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RE: Acquisition of Title by Adverse Possession of Personal Property - Request for Recommendation of Legislation

Gentlemen:

It has been a recent experience of mine to be involved in an area of California law where the few Appellate California cases express uncertainty, there is no clear California holding either way and recently, in an actual case a Superior Court judge indicated the law was very unclear. It seems like such a basic question that it is amazing there is nothing definitive in California law or cases and that this would be a most suitable area for a recommendation coming out of your Commission.

While the general rule in England and the United States is announced as applying acquisition of title by adverse possession to personal property (3 Am Jur 2d, ADVERSE POSSESSION, Section 12 of Personal Property), and Witkin, 8th Ed. on Personal Property, Section 83 gives authority that "...would seem to establish the right to acquire title to personal property by adverse possession", there are no clear California holdings or statutes on it. There is one case that decided it was "...unnecessary to consider the question, whether or not it was the intention of the legislature by enacting Section 10007 of the Civil Code, that it should be applied to personal property".
San Francisco Credit Clearing House v. Wells (1925) 196 Cal. 701, and another case, Bufano v. City and County of San Francisco (1965) 233 C.A.2d 61 at 71, virtually repeated the Credit Clearing House case but appeared to state the affirmative of the proposition was established, but "...not as well-established" as one party contended.

The work of this Commission which went into the 1980 revisions and establishment of a new Quiet Title Law commencing

with CCP Section 760.010, covers both real and personal property and requires in Section 761. through .20(b), "...if the title claimed by plaintiff is based upon adverse possession, the complaint shall allege these specific facts..." but nowhere in the law or the notes of the Commission is there a clear adoption of view that adverse possession may be used as a method of acquiring title to personal property. There are a number of inferences and arguments available, but admittedly nothing definitive.

The Superior Court judge before whom I had pending a default proceeding on this principle, very graciously informed me by letter that "Unfortunately, I do not read the cited authorities in the same manner as you do; specifically, I read those citations as suggesting that it is, at best, an open question as to whether one can get adverse possession of personal property here in California, with the suggestion that a negative answer might be appropriate." He wished a full evidentiary hearing on the matter "...for the presentation of oral testimony and argument". After much consideration, I decided that it was simply too risky to proceed that way and run the definite risk of having an adjudication against me of my own doing, or even if no adjudication were made, the requirement that I ethically inform any other judge on the same question that there had been a prior presentation and adverse indication. I consider it rather difficult to lose a default, but after 42 years of intensive legal practice I apparently have developed that capability.

I submit my considered opinion that if acquisition of title by adverse possession is proper with reference to real property, and it certainly is, then there is no reason to differentiate personal property from its effect. The Law Revision Commission Reports, 15 CLRC R. 1191, point out the need for full marketability of lands and that desirable end of full marketability applies equally to personal property. As I attempt to suggest in detail later in this letter, the application of adverse possession principles to personal property is of even greater need in our society.

I am attaching hereto a copy of the body of the letter-brief addressed to the court, from which is deleted the name of the case and Judge. After the final response of the court that the matter was not at all clear, I would now retreat from my statement on Page 2, second paragraph, to the effect that the Quiet Title Law "expressly" recognizes coverage of real and personal property and that the title plaintiff claims based upon adverse possession is available to plaintiff. It is only true that the new law makes no exception nor different treatment between the two. If the law were clearly that adverse possession

could not be used to acquire title to personal property, I admit the mere failure to provide a different treatment between real and personal property is no indication that the law in this point is the same with reference to both types of property. The letter-brief is simply an expansion of the above principles.

It does seem extremely persuasive that title by adverse possession be applicable to personal property as well as to real property, based upon the general English and U.S. view, the California text authority, the application of the Commission's view with reference to the desirability of "full marketability" of real property and the apparent equal need for application of this principle to personal property, and the need to cure up some difficult titles to avoid a multiplicity of lawsuits and estate proceedings. At least with real property, if it appears abandoned by anyone, it will be sold for back taxes and put to good use. However, with personal property - that is, say, registered common stock normally traded on various exchanges, the party holding some old family stock and openly claiming entitlement to it by cashing dividend checks for decades, using his own name and not that of the registrants, might find himself in the position where the corporations refuse to accept his endorsement of dividend checks, forcing him into a series of default lawsuits a multitude of estate openings and litigation, where the cost thereof would simply cause an abandonment of the property.

My personal lifetime experiences indicate this is a frequent situation. For instance, my mother for several decades after the death of my father endorsed the joint tenant dividend checks rather than terminating the joint tenancy.

The facts in the instant case of mine go back many decades. A school teacher in an eastern state received certain stock on his father's death, but because his mother was an incompetent living in California he had the stock transferred into her name and his as joint tenants and included the stock as an asset of her guardianship estate, for which he was guardian so that the dividends could be used for her support. (I did not advise the use of a joint tenancy but some "helpful" stock broker did). The mother died an incompetent without a will and with no traceable relatives related by blood. They of course, existed but were not traceable. The school teacher believed he would get the stock back when his mother died, but that belief was mistaken because he died first! His wife then took over as guardian for many years without charge, letting the stock generated by the husband be the source of funds for care of the mother. That mother died

incompetent and without a will with no traceable blood relatives. For 20 years thereafter, dividend checks continued to get cashed showing a deposit thereof into the trustee account by a person whose name was different from any of the registered owners. Proxies were occasionally similarly signed and the party acting as trustee exercised as much dominion and control over the stock, including the physical possession thereof to the exclusion of everyone, as can be imagined. The daughter-in-law - not being related by blood to the mother-in-law, could not claim in her own right but had her agent exercise dominion as a trustee over all of the stock and its dividends for several decades under the obvious equitable claim that her husband had contributed his interest in the stock, intending only a short term gift, and doing so without consideration, all of which would generate a resulting and/or constructive trust on the stock for his benefit, which would then inure to the benefit of his widow.

Literally, no known person in the world would have any objection to the stock now being subject to a quiet title action on behalf of a widow who has proper equitable claims. Why then, should her agent-trustee be required to open the mother-in-law's estate, open the husband's estate in California, and have expensive and adversarial litigation between the two, when a simple default quiet title action would do the job and distinct justice without burdening the courts beyond that?

Thus, I request consideration that you make a recommendation for legislation. This could be accomplished by a simple amendment to C.C.P. Section 761.020(b) by inserting at the end thereof, after the word "possession", the words:

"of the real or personal property"

Perhaps a better amendment would be to add to C.C.P. Section 760.020(a) at the end thereof, after the word "therein", the words:

"including title based on adverse possession"

I invite any comment that might be helpful or corrective in any way with reference to my own particular case or the whole area of the law, generally. While I know I could propose to a number of legislators individual bills on this subject, I think a recommendation therefor from your Commission would be more effective.

Thanking you for your consideration,

Very truly yours,

GBH:jo

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June 14, 1989

Dear Judge

In response to your letter of June 9, 1989, requesting some citations to appropriate law or cases on the matter of securing title to personal property by adverse possession before you will be able to sign the Judgment, I am pleased to respond as follows:

3 Am Jur 2d ADVERSE POSSESSION

"§12. **Personal property**

"While a discussion of adverse possession ordinarily centers on real property, the same principle has been applied to the acquisition of title to personal property.[1] Historically, the English and American statutes of limitation have in many cases the same effect; and the general rule is that where one had the peaceable, undisturbed, open possession of personal property, with an assertion of ownership, for the term which, under the law would bar an action for its recovery by the true owner, the claimant acquired title superior to that of the true owner, whose neglect to assert legal rights resulted in loss of title.[2]"

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1. Citing cases, one covering stock certificates.

2. Citing some five U. S. Supreme Court cases and a number of state cases, one covering shares of stock.

In 1980 California revised its Quiet Title procedure by enacting a whole new chapter entitled Quiet Title commencing with CCP §760.010. It expressly covers "real or personal property or any interest therein." CCP §760.020; it expressly recognizes a title based upon adverse possession as coming within its reach by providing in §761.020 with reference to the contents of the complaint that

> "(b) ...if the title" claimed by plaintiff "is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession."

Thus this code section expressly recognizes coverage of real and personal property and that the title plaintiff claims based upon adverse possession is available to plaintiff. The new law expressly refers to both real and personal property, makes no exception for different treatment of either, and in the previous subsection (a) refers to the case of "tangible personal property" followed by subsection (b) discussing a title based upon adverse possession. This would seem to make it exceedingly clear plaintiff could establish a title based upon adverse possession of personal property, in accordance with the above quoted general rule in the United States and what California authority there was. Prior to 1980 the main California authority on the point is set out in Summary of California Law - Witkin - Eighth Ed.; Personal Property §83 as follows:

> "§83. **Adverse Possession.**
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> "C.C.P. 338(3) provides that an action for the specific recovery of personal property is barred after 3 years. (See First Nat. Bank v. Thompson (1943) 60 C.A.2d 79, 82, 140 P.2d 75; 2 Cal. Proc., 2d, Actions, §324 et seq.) This section, construed together with C.C. 1007, which gives title by occupancy after 'the period prescribed by the Code of Civil Procedure,' would seem to establish the right to acquire title to personal property by adverse possession. (See 3 Am.Jur.2d, Adverse Possession §202.)"

There is no California case which holds against establishing title to personal property by adverse possession and only two that even get close to discussing it. The first, San Francisco Credit Clearing House v. Wells (1925), 196 Cal 701, where the Court held at page 707 that the evidence was obviously insufficient in that case to support the claim of title by adverse possession on the personal property and stated that this "renders it unnecessary to consider the question of whether or

not it was the intention of the legislature by enacting §1007 of the Civil Code, that it should be applied to personal property. Said section reads: 'Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.'" Thus, we see the question was not even raised much less answered. Actually, another section, CCP §1050 at that time was a so-called adverse possession of personal property section, which is still in effect, providing in part "An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation;".

The second case, Bufano v. City & County of San Francisco (1965), 233 C.A.2d 61, virtually repeated the same as the San Francisco Credit Clearing House case, saying at page 71, where the City argued it had acquired title to two stone statues by adverse possession, that the application of §1007 to personal property was not as well established as the City contended, the Court said "we need not meet this issue as there was insufficient evidence of any hostility on the part of the City to establish adverse possession." Thus there was no holding on the question of obtaining title by adverse possession to personal property. The case can be cited for the proposition that the Court stated the affirmative to that proposition was established but not "as well as established" as the City contended.

The next edition of the Summary of California Law, the 9th Edition, published in 1987, carries the same language that obtaining title to personal property by adverse property would seem to be established in Personal Property §99 Adverse Possession, page 94-95. On seeing that there was never any express doubt as to a common law right under the general rule to obtain title to personal property through adverse possession, but only an unanswered question as to whether or not CCP §1007 applied to personal property, without answering the same, it is doubly important to note that Law Revision Commission saw no real question either in proposing the 1980 legislation because the Commission neither mentioned this in any of its comments, much less did it draft any language into the Statute recognizing the existence of any legitimate question. Indeed, it did just the opposite, knowing that this was a broadening of the rights of plaintiffs and provided in §760.030(a) "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." Likewise in the revised statute, as already noted, CCP §761.020 requires the

complaint to include a description of the tangible personal property and its usual location in (a), and in (b) that if the title of the plaintiff is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession. The Law Revision Commission comments on this section have been examined, and nothing indicates tangible personal property is to be treated any differently from real property. The comment includes the assertion "that the plaintiff may claim any interest", which would seem to include a title to personal property based on adverse possession. See Law Revision Commission Comment to above section conveniently set out in 5 California Procedure, 3rd Edition - Witkin, Pleading Section 616 at page 73.

The old quiet title sections, former CCP §738 through §751.3, were repealed when the new 1980 revised law went into effect. Those former sections referred only to real property and laid down some very peculiar requirements and while sounding like adverse possession, laid down additional requirements such as paying taxes and for various ten or twenty year periods and which were described by the Law Revision Commission as requirements, completely different from adverse possession requirements. Those being repealed, resort is had to the simple common law remedy of adverse possession. The new revised law obviously covers procedure for real property and mentions personal property in no different light, so that clear language of the statute covers the common law right to establish title by adverse possession on personal property. The Law Revision Commission Reports, 15 CLRCR 1191, points out the need for full marketability of lands and that desirable end of full marketability applies equally to personal property. Our research and review has, we believe, been exhaustive, and there has never been the slightest indication from any direct or collateral source that personal property was for some reason to be treated differently from real property under either the pre-1980 law or the 1980 revised law.

We trust that the foregoing constitutes sufficient citation of authority to his Honor's satisfaction as his Honor has requested, and we request that the judgment resubmitted with this letter be signed by the Court. If the Court has any further concern or wishes anything from counsel, we would appreciate the opportunity of knowing this to satisfy the Court.

Respectfully submitted,

GBH:vcm
Enclosures

GERALD B. HANSEN