

## Memorandum 83-50

Subject: Study H-500 - Quiet Title (Comments on Tentative Recommendation Relating to Effect of Judgment)

The Commission distributed for comment after the June 1983, meeting the tentative recommendation to make technical changes in the statutes governing the effect of the judgment in quiet title and partition actions. Of the three letters received concerning this tentative recommendation, two are not reproduced because they approve the tentative recommendation without further comment. (Allen J. Kent; Henry Angerbauer, CPA.) The third letter, from Richard F. Weiner, is reproduced as Exhibit 1.

Mr. Weiner points out some ambiguous language in Section 764.050 (and Section 874.230) and in the Comment. Mr. Weiner also notes that Sections 764.040 and 764.050 (and Sections 874.220 and 874.230) appear to conflict with Section 1908(a)(2) of the Code of Civil Procedure in that they fail to bind persons acquiring an interest in property with actual, as opposed to constructive, knowledge of the pendency of the proceedings.

The staff agrees with Mr. Weiner that the provisions as drafted are not technically accurate. We think the best approach is to recast Sections 764.040 and 764.050 (and Section 874.220 and 874.230) in clear language in a single section and to expressly recognize that Section 1908(a)(2) also applies. We would combine them in the following manner:

764.045. Except to the extent provided in Section 1908, the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if any of the following conditions is satisfied:

(a) The claim was of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

(b) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property at the time the lis pendens was filed or, if none was filed, at the time the judgment was entered. Nothing in this subdivision shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value of property.

Comment. Subdivision (a) of Section 764.045 continues the substance of former Section 764.040. Subdivision (b) continues the substance of former Section 764.050, with clarifications relating to the time of the plaintiff's knowledge. The introductory portion of Section 764.045 makes clear that notwithstanding the provisions

of this section, a claimant may be bound by the proceeding if the claim was acquired from a party after commencement of the proceeding and with actual knowledge of the proceeding. Section 1908(a)(2).

The staff believes these are useful, though technical, clarifications of the law and should be submitted to the Legislature.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## Exhibit 1

Richard F. Weiner  
Attorney at Law

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

July 7, 1983

Mr. Nathaniel Sterling  
California Law Review Commission  
4000 Middlefield Road  
Room D-2  
Palo Alto, California 94306

Re: Tentative Recommendation/Quiet Title  
and Partition Judgments

Dear Mr. Sterling:

The comment to the prospective revision of C.C.P. 764.050, and Section 874.230 should be changed as it is incorrect. The revision is being made in order to make clear that these sections do not apply to a non-party claim arising after the recordation of a lis pendens as a person with such claim would have acquired same with notice of the pending action and would always and without exception under existing law be bound by a judgment rendered thereon (See C.C.P. Section 1908(2)).

The word "unrecorded" as used to describe the claim in the tentative revision of C.C.P. Section 764.050 and 874.230 should be deleted as it is unnecessary, leads to an incorrect interpretation, and creates confusion as to the time that the claim was unrecorded. For example, with the word "unrecorded" left intact, one might incorrectly assume that these sections only apply to a claim that was currently unrecorded. Deleting the word "unrecorded" would eliminate any possibility of misinterpretation or confusion and would leave us with an accurate and correct statement of the law that effectively covers the ground intended to be covered.

It is interesting to note that Section C.C.P. 764.040 and C.C.P. 764.050 are in conflict with C.C.P. Section 1908(2) when it comes to actual notice by a claimant of a pending lawsuit. For example, if a person with actual knowledge of a lawsuit and who is not a party thereto acquires a claim and records it prior to the filing of the lis pendens, (or prior to the recordation of a judgment if no lis pendens is recorded) he would not be bound by a judgment under Section 764.040 but would be under

Mr. Nathaniel Sterling  
Page 2  
July 7, 1983

Section 1908(2). Furthermore, if a person with actual knowledge of a lawsuit and who is not a party thereto acquires a claim prior to the filing of a lis pendens which is actually known by Plaintiff prior to judgment, he would not be bound thereby pursuant to Section 764.050 but would be under Section 1908(2).

What is the consequence of actual knowledge of a claimant in a Quiet Title or Partition suit? I would think that the Quiet Title/Partition statutes should be subject to existing law as to the effect of such knowledge and perhaps a clarification of this matter should be included therein.

Would appreciate your comments and implementation of my recommended change to C.C.P. Sections 764.050 and 874.230 and the substitution of a new "comment" to reflect the real reasoning for the revision as I have expressed herein and in my letter of April 14, 1983.

Yours truly,



RICHARD F. WEINER

RFW:pat

STATE OF CALIFORNIA

CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

EFFECT OF QUIET TITLE AND PARTITION JUDGMENTS

June 2, 1983

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN AUGUST 31, 1983.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94306

## 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.