

DEFAULT JUDGMENT IS NOT AVAILABLE IN ACTIONS TO QUIET TITLE

January 9, 2012 by [Alejandro E. Moreno](#) and [Shannon Z. Petersen](#)

In *Harbour Vista, LLC v. HSBC Mortgage Services Inc.*, 2011 WL 6318525 (Cal.App. 4 Dist. 2011), the California Court of Appeal held that plaintiffs may not obtain default judgments in quiet title actions.

Harbour owned a ground lease under a condo complex. Julie Nugent purchased a condo and paid her mortgage to Fieldstone Mortgage Company. She also subleased from and paid rent to Harbour. Both the mortgage and the sub-lease were secured by the condo. Nugent eventually defaulted on both her rent and mortgage. After HSBC purchased the condo from Fieldstone at a foreclosure sale, Harbour filed a complaint to quiet title. HSBC failed to respond to the complaint and Harbour obtained a default judgment. HSBC then moved to set aside the default judgment, but the trial court denied the motion. HSBC appealed. The Court of Appeal reversed the judgment based on the language of California Code of Civil Procedure Section 764.010, which expressly provides that the "court shall not enter judgment by default." According to the Court, this language "is unequivocal," and the "prohibition against default judgments in quiet title actions appears absolute." The statute does not, however, prevent a quiet title plaintiff from taking a default. Instead, after taking a default, the court must hold an evidentiary hearing at which the parties (including the defaulted defendant) are entitled to present evidence regarding their conflicting claims to the property. Thus, even though HSBC had not answered the complaint and was in default, the trial court should have allowed HSBC to present evidence about its claim to the condo. Once a court holds a properly noticed evidentiary hearing, it may render a regular judgment in accordance with the evidence and the law regardless of whether the defaulted defendant appears.

Though a defaulted defendant has a right to appear at the evidentiary hearing, a plaintiff has no obligation to provide notice to the defaulted defendant of this hearing. Nor does the plaintiff have any obligation "to serve documents or give notice of any future court dates" to the defaulted defendant. If the defaulted defendant nevertheless learns of the evidentiary hearing and appears, it may be heard. If it does not appear, the Court will proceed and render judgment without the participation of the defaulted defendant. Following the evidentiary hearing, the Court should issue a judgment resolving all issues as to title.

Other causes of action and claims for relief will not be addressed at this evidentiary hearing and are not affected by this rule. If a defendant defaults as to other claims, normal procedures for obtaining entry of default and default judgment apply.

Harbour Vista, LLC v. HSBC Mortgage Services Inc., 2011 WL 6318525 (Cal.App. 4 Dist. 2011)

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