

APPELLATE DIVISION, SUPERIOR COURT, MARIN COUNTY

Parsons v. Superior Court, 58 Cal. Rptr. 3d 48

149 Cal. App. 4th Supp. 1 (Cal. App. Div. Super. Ct. 2007) · No. CV 064670 · Decided January 3, 2007

SUMMARY

The court held that a motion to quash service of summons is a proper procedure for challenging an unlawful detainer complaint when an alleged notice defect affects personal jurisdiction under the expedited unlawful detainer process. The court concluded that determining whether a 30-day or 60-day notice was required under the Floating Home Residency Law could involve competent evidence beyond the face of the complaint. Because the plaintiff raised substantive arguments and supporting evidence for the first time on writ review, the court directed the trial court to vacate its order denying the motion to quash and conduct further proceedings.

CASE DETAILS

COURT	Appellate Division, Superior Court, Marin County
WRITING FOR THE COURT	John A. Sutro, Jr.; Terrence R. Boren; Vernon F. Smith
JURISDICTION	California
DECIDED	January 3, 2007
DOCKET	CV 064670
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Defendants petitioned for a writ of mandate challenging the trial court's denial of their motion to quash service of summons and complaint in an unlawful detainer action.
STANDARD OF REVIEW	Review by petition for writ of mandate; the reviewing court ordinarily will not consider controverted facts or evidence that were not presented to or resolved by the trial court.
PRECEDENTIAL VALUE	Published California appellate division opinion
PARTIES	Barbara Parsons, Gilman Parsons v. The Superior Court of Marin County, The Arques Shipyard Management Co. LLC

TOPICS

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PRACTICE AREAS

civil procedure

landlord-tenant

appellate procedure

unlawful detainer

QUESTIONS PRESENTED

1. Whether a motion to quash service of summons is a proper procedure for challenging an unlawful detainer complaint based on an allegedly defective termination notice when the defect affects personal jurisdiction under the summary unlawful detainer procedure.
2. Whether the appellate court should consider evidence and factual arguments first presented in opposition to the writ petition concerning whether Civil Code section 800.70 applies.

HOLDINGS

1. A motion to quash service of summons is the proper procedure to challenge an unlawful detainer complaint when an alleged defect in the termination notice affects personal jurisdiction under the five-day unlawful detainer summons. Filing a demurrer without simultaneously moving to quash would constitute a general appearance and moot the personal-jurisdiction challenge.
2. The appellate court will not decide the factual and legal merits of the notice issue based on evidence that was not submitted to the trial court. The trial court must first consider competent evidence concerning the jurisdictional facts and determine whether a 30-day or 60-day notice was required.

KEY QUOTATIONS

“A motion to quash service is the only method by which the defendant can test whether the complaint states a cause of action for unlawful detainer and, thereby, supports a five-day summons.” (at 50)

“We believe that Greener is properly read to approve the use of a motion to quash to attack an unlawful detainer complaint when the pleading defect affects personal jurisdiction under the five-day unlawful detainer summons, and that a general demurrer is unavailable because a “demurrer only tests whether the complaint states a cause of action for something even if it is on a theory other than unlawful detainer”” (at 51)

“A motion to quash challenges service of summons for lack of personal jurisdiction. The jurisdictional facts must be proved by competent evidence at the hearing on the motion to quash.” (at 52)

FACTUAL BACKGROUND

The Arques, landlord of a houseboat marina, served Barbara and Gilman Parsons with a 30-day notice terminating their houseboat tenancy and then filed an unlawful detainer complaint. Defendants moved to quash service, asserting that Civil Code section 800.70 required a 60-day termination notice for the tenancy. The trial court denied the motion on procedural grounds without deciding whether the 30-day notice was legally sufficient or whether the 60-day statute applied.

PROCEDURAL HISTORY

The Arques filed an unlawful detainer complaint after serving defendants with a 30-day notice terminating their houseboat tenancy. Defendants moved to quash service, arguing that California Civil Code section 800.70

required a 60-day notice. The trial court denied the motion on the ground that defendants should have filed a demurrer. The appellate division granted writ relief and directed the trial court to vacate its order and conduct further proceedings on the merits of the motion to quash.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The respondent court was directed to vacate its October 10, 2006 order denying defendants' motion to quash and to hold further proceedings on the merits of that motion consistent with the opinion, including consideration of competent evidence concerning the applicable notice requirement.

CASES CITED

- Delta Imports, Inc. v. Municipal Court, 146 Cal. App. 3d 1033, 194 Cal. Rptr. 685 (1983)
- Greener v. Workers' Comp. Appeals Bd., 6 Cal. 4th 1028, 1036, 25 Cal. Rptr. 2d 539, 863 P.2d 784 (1993)
- BGJ Associates v. Superior Court, 75 Cal. App. 4th 952, 958, 89 Cal. Rptr. 2d 693 (1999)
- Crouse v. Brobeck, Phleger & Harrison, 67 Cal. App. 4th 1509, 1526-1527, 80 Cal. Rptr. 2d 94 (1998)
- McCarthy v. Superior Court, 191 Cal. App. 3d 1023, 1030, 236 Cal. Rptr. 833 (1987)
- People v. Superior Court (Lavi), 4 Cal. 4th 1164, 1173 n.5, 17 Cal. Rptr. 2d 815, 847 P.2d 1031 (1993)
- Stevens v. Superior Court, 75 Cal. App. 4th 594, 607 n.13, 89 Cal. Rptr. 2d 370 (1999)
- Stevens v. Superior Court, 52 Cal. App. 4th 55, 58 n.3, 60 Cal. Rptr. 2d 397 (1997)