

# Jurisdictional Default

BY HERB FOX

**C**an a Superior Court judge vacate a default judgment entered by a different Court in another County?

That's one of the questions answered by the state Court of Appeal in a set of related appeals involving efforts to execute on a judgment against a local attorney.

In the first appeal, the Court of Appeal affirmed an order by **Superior Court Judge Denise de Bellefeuille** vacating a \$2.5 million default judgment entered in an Alameda County Superior Court in 2001. In the second case, the Court reversed an order denying an anti-SLAPP motion to strike an abuse of process suit brought by the wife of the defendant against the plaintiff in the first case.

The underlying judgment arose from a complaint filed in the Alameda County Superior Court for professional negligence, breach of contract, fraud, and emotional distress against local attorney **Lawrence Smith**, who had previously represented the plaintiff in a wrongful termination suit against the University of California. The complaint did not set forth an amount of damages. Smith was served with an amended complaint and a statement of damages, but did not respond. A default was entered, and plaintiff obtained a \$2.5 million judgment against Smith. Smith later unsuccessfully tried to set aside the judgment by motion in the Alameda Court.

The plaintiff then filed a collection action here in Santa Barbara, where Smith lives. Smith filed a motion to vacate the default judgment, arguing that the amount of the judgment exceeded the amount sought in the complaint, and that the statement of damages was ineffective because the suit was for professional negligence and not personal injury (see Code of Civ. Proc. § 425.11). Judge de Bellefeuille agreed and vacated the judgment.

In a published opinion written by **Justice Ken Yegan**, the Court of Appeal affirmed the order vacating the judg-

ment. The Court reasoned, *inter alia*, that by instituting a new action in the Santa Barbara Superior Court, the plaintiff conferred jurisdiction on this court to rule on the validity of the underlying judgment. The motion to vacate was a "valid defense to the enforcement of the Alameda County judgment." The Court also rejected the argument that such a result encouraged forum shopping, pointing out that it was the plaintiff who chose to file the collection action in Santa Barbara County.

The companion appeal arose from an abuse of process suit filed by attorney Smith's wife **Carol Smith** against the plaintiff in the underlying case and her attorney for allegedly wrongfully executing on a bank account that contained separate property funds (the judgment was against attorney Smith alone). The judgment creditor filed an anti-SLAPP motion, which Judge de Bellefeuille denied because she found that although the execution on the judgment was a protected activity, the judgment creditor did not demonstrate a probability of prevailing on the execution action.

In an unpublished opinion also written by Justice Yegan, the order denying the anti-SLAPP motion was reversed. The Court of Appeal agreed that the execution on the judgment was protected activity, but also found that there was no evidence that the judgment creditor and her attorney were acting with an ulterior motive. The Court of Appeal directed entry of the anti-SLAPP motion and awarded the judgment creditor and her attorney costs and fees.

The first case (default judgment) is *Levine v. Smith*, 52 Cal.Rptr.3<sup>rd</sup> 197 (Dec. 18, 2006). Plaintiff and appellant Carol Ann Levine was represented by **Gregory T. May**. Respondent Lawrence Smith was in pro per.

The second case (SLAPP Motion) is *Smith v. Levine and Brandstetter*, Court of Appeal case no. B191207 (Dec. 18, 2006). Plaintiff and Appellant Carol E. Smith was in pro per. **Jeffrey Brandstetter** of Los Angeles represented himself and Carol Ann Levine. ■



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