Jurisdiction and Void Judgement

[2012.11.27 7:20:17 PM] Sunny c: Melo v. U.S. 505 F 2d, 1026. "Once jurisdiction has been challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction. The court has no authority to reach merits, but, rather, should dismiss the case."
[2012.11.27 7:21:02 PM] Sunny c: Joycc v. U.S., 474 F2d 215. "There is no discretion to ignore lack of jurisdiction."

The topic of the newsletter this week is a brief discussion of filing a motion to vacate a default and/or default judgment in California under Code of Civil Procedure section 473, subdivision (d). Proper use of this motion can be of great help to a defendant against whom a void judgment has been entered but who does not qualify for relief under any other subdivision of section 473 or other section of the Code of Civil Procedure.

A judgment could be void as a matter of law for several reasons including, (1) lack of subject matter jurisdiction, (2) lack of personal jurisdiction, (3) lack of or improper service of summons, (4) default improperly entered, and (5) a default judgment exceeding the amount demanded in the complaint.

Code of Civil Procedure section 473, subdivision (d) states that, “The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.”

Note that in order to obtain relief under subdivision (d) the judgment must be considered a void judgment, and not merely a voidable judgment.

“A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable.” In re Marriage of Goddard (2004) 33 Cal.4th 49, 56.

A judgment is void if the court lacked jurisdiction over the subject matter or parties, for example, if the defendant was not validly served with summons. Neumann v. Melgar (2004) 121 Cal.App.4th 152, 164.

If a judgment is in fact void, there is NO time limit mentioned for a party to file a motion to set aside the void judgment.

Under Code of Civil Procedure section 473, subdivision (b), a motion to vacate a default and default judgment must be brought within six months of entry of the default judgment. Section 473, subdivision (d) allows a trial court to set aside a void judgment without mentioning a time limit. Lee v. An (2008) 168 Cal.App.4th 558, 563.

Note that the Court in Lee v. An ruled that the resulting judgment was voidable, not void. See below.

If the court has jurisdiction over the parties and subject matter but acts "in excess of its jurisdiction," its judgment is voidable, not void. The difference is that in order to set aside a voidable judgment, a party must act before it becomes final. Thereafter, the judgment may be entitled to res judicata effect. Lee v. An supra at 565–566—where a terminating sanction was imposed without proper notice, the resulting judgment was voidable, not void, and could not be set aside under CCP § 473(d) after it became final.

If a party did not have actual or constructive notice of the lawsuit then the judgment is void.

Lack of actual or constructive notice of proceedings because the papers were served on defendant's attorney who had been suspended by State Bar and thus had no authority to represent defendant. Lovato v. Santa Fe Int'l Corp. (1984) 151 Cal. App.3d 549, 553.

And if the plaintiff did not serve the statement of damages required in personal injury and death actions then the judgment is void. See Heidary v. Yadollahi (2002) 99 Cal. App. 4th 857, 862- in that case a default was improperly entered for failure to appear at trial.

Of course lack of or improper service of summons is likely the most common reason for a judgment to be void as a matter of law, particularly when the defendant has not been personally served.

The law is well settled that personal service is the preferred means of service to notify a defendant of the commencement of a lawsuit.

Personal service is the preferred means to notify a defendant of the issuance of a summons and the commencement of a lawsuit. Olvera v. Olvera (1991) 232 Cal.App.3d 32, 41.

Any other form of service other than personal service is known as substituted or constructive service, depending on the method used. And the California Supreme Court has stated that, in using substituted or constructive service, strict compliance with the letter and spirit of the statutes is required

"When substituted or constructive service is attempted, strict compliance with the letter and spirit of the statutes is required." Stern v. Judson (1912) 163 Cal. 726, 735.

"Service of a summons by publication is in derogation of the common law, and in order to obtain such constructive service, the statute must be substantially complied with and its mandates observed." Columbia Screw Co. v. Warner Lock Co. (1903) 138 Cal. 445, 446.

The United States Supreme Court has ruled that a void judgment must be set aside

regardless of the merits of the underlying lawsuit. This was in a case where there was never a valid service of summons.

“Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.” Peralta v. Heights Medical Center, Inc. (1988) 485 US 80, 86–87, 108 S.Ct. 896, 900 (internal quotes omitted).

And a California Court of Appeal has ruled that lack of personal jurisdiction renders a default judgment void in a case involving a nonresident of California.

Lack of personal jurisdiction renders a default judgment void, so that it may be vacated at any time. Strathvale Holdings v. E.B.H. (2005) 126 Cal.App. 4th 1241, 1249—not affected by nonresident's failure to bring motion to quash.

In the right situations, filing a motion to vacate a void judgment can allow a defendant to have a void judgment that has been entered against them vacated, regardless of the length of time that has passed since the judgment was entered.