

The California Supreme Court (and Court of Appeal) – October 17-21, 2022

by Faisal Zubairi, Jill Gutierrez, and Jessica M. Leano

The California Court of Appeal for the Fourth Appellate District issued the following decisions this week:

Golf & Tennis Pro Shop, Inc. v. The Superior Court of Orange County, No.

G060852: The Court of Appeal analyzed an issue of first impression, which is commonly disputed and important to practitioners: whether interrogatory responses consisting of both unverified factual responses and objections start the 45-day deadline on a motion to compel under California Code of Civil Procedure section 2030.300(c). After noting the “three a.m. darkness of this area of pre-trial civil procedure,” the court analyzed the statutory text and statutory history. Based on its analysis, the court concluded the responses at issue had to be verified because they were a combination of responses and objections, and because they had to be verified, the 45-day clock did not begin running until they were verified. While service of unverified responses consisting of both objections and responses does not trigger the 45-day deadline unless or until the verifications are served, the court acknowledged the possible “absurd result” of there being no deadline to move to compel on interrogatory responses that consist solely of objections. The court expressly punted on the question of when the 45-day deadline would commence on responses consisting solely of objections, and instead appealed to the Legislature to address the ambiguity, noting that the day would come when the court would have to answer this question if the Legislature did not.

The court also considered another recurring question: whether filing a boilerplate notice of motion alone—without any supporting documents, such as a memorandum or declarations—within the 45-day limit was sufficient. The court concluded it is not sufficient, citing California Code of Civil Procedure section 1010, which states, in pertinent: “Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice.”

Related People

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Read the [full opinion](#).

Shapell Social Rental Properties, LLC v. Chico's Fas, Inc., Case No. G060411: This published decision reaffirms an attorney's ethical and statutory obligation to warn opposing counsel of an impending default and provide them a reasonable opportunity to file a responsive pleading.

CFI, a national chain of clothing stores, leased a retail space from Shapell for a store in Laguna Niguel, California. CFI did not pay Shapell rent for April, May, or June 2020 and paid half of the rent from July to December 2020. In August 2020, Shapell sent a formal notice to CFI's corporate office in Florida that CFI was in default for failure to pay rent. Shapell served a formal 10-day notice to pay rent or quit to CFI's corporate office two months later. CFI's legal counsel, Foley & Mansfield, responded to the 10-day notice, advising that CFI had retained counsel for its real estate disputes and asking Shapell to direct all related communications to CFI's counsel.

Shapell filed a summons and unlawful detainer complaint against CFI without communicating with CFI's counsel about the complaint or service. Rather than serving CFI's registered agent for service of process in California or mailing copies to CFI's counsel or corporate office, a registered process server personally served the complaint on an employee at the Laguna Niguel store and mailed copies of the complaint to the store. Without advising CFI's counsel of its intent to do so, Shapell filed a request for entry of default and default judgment against CFI and mailed it to the Laguna Niguel store.

The trial court entered a default judgment against CFI. CFI moved to set the default aside on grounds that Shapell's service did not provide CFI "actual notice" of the lawsuit, and its failure to answer resulted from "inadvertence, surprise, mistake, or excusable neglect," warranting relief from default under Code of Civil Procedure section 473.5. The trial court denied the motion.

The Court of Appeal reversed and remanded, finding the trial court abused its discretion by denying CFI's motion. It prefaced its opinion by reminding of an attorney's ethical and statutory duty under Code of Civil Procedure section 583.130 to advise opposing counsel, if their identity is known, of an intent to seek a default and provide them a reasonable opportunity to file a responsive pleading. Shapell did not deny "knowing who was representing CFI" when it filed the complaint or the request for entry of default and default judgment. Yet Shapell's counsel breached its ethical and statutory duty when it did not warn CFI's counsel "by e-mail or otherwise that its responsive pleading was past due and never warned CFI by e-mail or otherwise of its intent to seek a default judgment."

The court also addressed "what is best described as Shapell's use of stealth and deviousness" to obtain the default in the first place. Shapell's counsel did not communicate with CFI's counsel about the complaint; serve the complaint on CFI's counsel, registered agent in California, or headquarters; or mail copies of the complaint to CFI's counsel, registered agent, or headquarters. Instead, Shapell personally served

the complaint on a store employee at a “most inconvenient time”—after 5 p.m. on the Friday before Thanksgiving—and mailed copies of the complaint to the same store.

Read the [full opinion](#), which contains further guidance on required communications with opposing counsel.