

Court of Appeal, Third Appellate District - No. C086188

S246796

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BANK OF AMERICA, N.A., Plaintiff and Respondent,

v.

SHEILA J. HALOUSEK, Defendant and Appellant.

The petition for review is denied.

Chin, J., was recused and did not participate.

SUPREME COURT
FILED

MAR 14 2018

Jorge Navarrete Clerk

Deputy

CANTIL-SAKAUIYE

Chief Justice

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

BANK OF AMERICA, N.A.,
Plaintiff and Respondent,
v.

SHEILA J. HALOUSEK,
Defendant and Appellant.

C086188
Yuba County
No. CVUD160000924

BY THE COURT:

The court examined appellant's document entitled "Petition for Rehearing," which the Yuba County Superior Court treated as a notice of appeal and determined that the order appealed from is nonappealable. Therefore, the appeal filed on December 14, 2017, is dismissed.


RAYE, P.J.

cc: See Mailing List

NOV 27 2017
ENDORSED FILED
YUBA COUNTY SUPERIOR COURT
BONNIE SLOAN
SUPERIOR COURT CLERK
BY L. SPARKS
COURT CLERK

APPELLATE DIVISION OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

BANK OF AMERICA, N.A.

Plaintiff/Respondent,

vs.

SHEILA J. HALOUSEK,

Defendant/Appellant.

Case No. CVUD-16-0000924

OPINION

The Appellate Division of the Superior Court of the State of California in and for the County of Yuba heard oral argument in the above-captioned cause on November 16, 2017, Gary Decker, specially appearing on behalf of the law firm of Wright, Finlay, and Zak, LLP, for plaintiff/respondent, hereinafter referred to as plaintiff, and Sheila J. Halousek, defendant/appellant, hereinafter referred to as defendant, appearing as a self-represented litigant. The Honorable Kathleen R. O'Connor presided pursuant to appointment by the Chair of the Judicial Council; the Honorable Debra L. Givens and Honorable Brian R. Aronson sat pursuant to appointment by the Chair of the Judicial Council.

The Court has considered the record, the parties' briefs, the argument of the parties, and the law and based thereon issues this Opinion:

PROCEDURAL and FACTUAL BACKGROUND

On August 19, 2016, plaintiff Bank of America, N.A. filed this unlawful detainer action subsequent to a foreclosure involving the real property commonly known as 10996 Loma Rica Road, Marysville, California. (CT 1-16). Thereafter, personal service was attempted on defendant on August 23, 24, 25, 26 and 28, 2016 (CT 22). On August 31, 2016 plaintiff filed its

1 Application to Serve Summons by Posting and Mailing. The court granted the application and
2 ordered that defendants, including defendant Sheila J. Halousek, be served by posting a copy
3 of the summons and complaint on the premises and thereafter, mailing by certified mail a copy
4 of the summons and complaint to each defendant at their last-known address. (CT 24-25). On
5 September 8, 2016 defendant was served by posting and mailing by certified mail (CT 42-45).
6 On September 27, 2017, a Request for Entry of Default (Clerk's Judgment) was filed. A copy
7 of the Request for Entry of Default (Clerk's Judgment) had been mailed to defendant at the
8 subject property on September 26, 2017. (CT 34-35). On September 27, 2016 a Clerk's
9 Judgment-Unlawful Detainer (Possession Only) was also filed. (CT 36-37).

10 On November 18, 2016, plaintiff filed a Declaration of Lost Writ and a new Writ of
11 Possession was issued (CT 49-53).

12 On December 12, 2016 defendant filed a Motion to Quash Service of the Complaint (CT
13 58-64). On January 5, 2017 the trial court denied the motion as untimely (CT 65).

14 On December 13, 2016 a lockout was completed.

15 On February 6, 2017 plaintiff filed a Motion to Set Aside and Vacate the Judgment as to
16 her on the grounds of mistake, inadvertence, surprise or excusable neglect, pursuant to
17 California Code of Civil Procedure section 473. (CT 66-119). The motion did not include a
18 copy of the proposed answer in violation of California Code of Civil Procedure section 473,
19 subdivision (b). On March 2, 2017 the trial court denied defendant's motion (CT 120).

20 On March 17, 2017 defendant timely filed her notice of appeal. (CT 121-123).

21 STANDARD OF REVIEW

22 The standard of review in this case is "abuse of discretion." (See *Anastos v. Lee* (2004)
23 118 Cal. App. 4th 1314, 1318, rev. den. (2004 Cal. LEXIS 7509 (Cal. Aug. 11, 2004).)

24 DISCUSSION

25 The sole issue on appeal is whether the Court abused its discretion by denying
26 defendant's Motion to Set Aside and Vacate the Default Judgment.

27 Defendant contends that the court was without jurisdiction to enter the Judgment in the
28 underlying unlawful detainer action because she was not properly served. This contention fails

1 based upon the record before the appellate division.

2 After attempting personal service at the subject premises on five separate dates
3 (August, 23, 24, 25, 26 and 28, 2017) which included the process server knocking on both
4 front and back doors and on one occasion hearing a woman inside (CT 22), plaintiff applied for
5 and was granted permission to serve defendant by posting and mailing. Thereafter, plaintiff's
6 process server posted the requisite documents at the premises and mailed copies of the
7 summons and complaint by certified mail in compliance with the trial court's order (CT 42-45).
8 A review of the United Postal Service Tracking information submitted by defendant reflects that
9 the mail arrived at the Marysville office on September 12, 2017, and that a notice was left that
10 same day for defendant in the mail box at the property location. (RT 117-118). Defendant
11 failed to respond to the notice or pick up this certified mail. The September 30, 2017 entry
12 indicates "Unclaimed/max hold time expired." The mail was then returned to the sender, Bank
13 of America (RT 117).

14 Defendant attaches photocopies of her mail box which, although it appears to be
15 damaged, still appears to be operable. Defendant does not seriously contest the fact that she
16 received mail at the subject property.

17 Bank of America's legal requirement, pursuant to California Code of Civil Procedure
18 section 415.45, subdivision (b), was to post the summons on the premises in a manner most
19 likely to give actual notice to the party to be served and to mail a copy of the summons and of
20 the complaint forthwith by certified mail to such party at his/her last known address. The proof
21 of service and the tracking documents support the conclusion that plaintiff satisfied these legal
22 requirements. Thus, service on defendant Sheila J. Halousek was proper and the trial court
23 acted well within its discretion in denying the Motion to Set Aside and Vacate Judgment on
24 jurisdictional grounds.

25 Additionally, California Code of Civil Procedure section 473, subdivision (b) provides in
26 pertinent part:

27 "(b) The court may, upon any terms as may be just, relieve a party or his or her
28 legal representative from a judgment, dismissal, order, or other proceeding taken
against him or her through his or her mistake, inadvertence, surprise, or

1 excusable neglect. **Application for this relief shall be accompanied by a**
2 **copy of the answer or other pleading proposed to be filed therein,**
3 **otherwise the application shall not be granted,** and shall be made within a
4 reasonable time, in no case exceeding six months, after the judgment, dismissal,
order, or proceeding was taken.”
(Emphasis added.)

5 It is undisputed that defendant failed to attach a copy of her answer or other proposed
6 pleading to her Motion to Set Aside and Vacate Judgment as required by Code Civ. Proc. 473,
7 subdivision (b). For this further reason, her appeal fails.

8 DISPOSITION

9 The trial court's order denying the motion to vacate and set aside the Judgment is
10 affirmed.

11 DATED: November 17, 2017

Kathleen R. O'Connor

KATHLEEN R. O'CONNOR
Presiding Judge of the Appellate Division

14 We concur.

15 DATED: November 17, 2017

DEBRA L. GIVENS

DEBRA L. GIVENS
Judge of the Appellate Division

18 DATED: November 17, 2017

19 15/
BRIAN R. ARONSON
Judge of the Appellate Division