

The Morrison Law Journal  
October 2022  
Volume XVII, Edition 10

When You Have To Do The Right Thing: California Court of Appeal Sets Aside Default Judgment Where Legal Counsel for Creditor Plaintiff Failed to Notify Debtor Defendant Legal Counsel of Intention to Take a Default

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One of the businesses that was affected greatly in the wake of COVID, and shelter-at-home orders, was clothing store Chico's FAS, Inc. ("Chico's"). Chico's leased an upscale department store outlet in Laguna Niguel from Shapell SoCal Rental Properties, LLC ("Shapell"), but fell behind in rent, and did not pay rent for April, May, and June 2020. In August 2020, Shapell provided Chico's formal notice that it was in default of the lease, due to failure to pay rent. In October 2020, a 10-day notice to pay or quit was served on Chico's. All notices were served pursuant to the commercial lease between Shapell and Chico's. On October 20, 2020, Chico's, through its counsel, advised Shapell that all real estate disputes should be directed to Chico's legal counsel.

In November 2020, Shapell filed a summons and an unlawful detainer complaint with the Court and served Chico's shortly thereafter. Service was only made on Chico's and not its legal counsel. In December 2020, Shapell filed a request for entry of default with the Court and a default was entered shortly thereafter. The pleadings were served on Chico's but not its legal counsel (i.e., Shapell failed to advise Chico's counsel of an intention to take a default, and defaulted Chico's).

In March 2021, Chico's filed a Motion to set aside the default. However, the Trial Court refused to set aside the default judgment, even though Chico's counsel had notified Shapell of its legal representation and had not been provided notice of the filing of the default. On appeal, in the matter Shapell Socal Rental Properties vs. Chico's FAS, Inc. (2022) Westlaw 9755390 ("Shapell case"), the Court of Appeal set aside the default judgment, citing to La Salle v. Vogel (2019) 36 Cal.App.5<sup>th</sup> 1237. In its holding, the Court of Appeal ruled that Shapell's counsel had breached its ethical obligation and statutory obligation to notify Chico's counsel of the intent to default Chico's. Quoting from the Court of Appeal's Opinion:

We start with the unpleasant but necessary task of concluding that Shapell's trial counsel breached its ethical and statutory obligation to advise CFI's counsel of the intent to seek entry of a default judgment. That obligation was confirmed by a panel of this court in LaSalle [citation] in these direct and unambiguous words: "[I]t is now well acknowledged that an attorney has an ethical obligation to warn opposing counsel that the attorney is about to take an adversary's default." (Id. at p. 135, 248 Cal.Rptr.3d 263.)

The obligation to advise opposing counsel of an impending default is part of an attorney's responsibility to the court and the legal profession and takes precedence over the obligation to represent the client effectively.”

The Shapell case is important. No matter how much notice is provided to a debtor defendant, if legal counsel is involved, notice of the intention to file a default is mandated - and that obligation falls squarely on counsel for the plaintiff.

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