

Appellate Decision Demonstrates Risk of Ignoring Service of Process

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As a general rule, individuals and businesses cannot be forced to participate in a lawsuit until they are served with a summons and complaint. However, a recent decision of the California Court of Appeal illustrates that trying to avoid service of process is a high-risk strategy. In *Trackman v. Kenney*, the appellate court ruled that a defendant who had failed to appear in a lawsuit could not challenge a judgment that had been entered against him, even though “the evidence showed no actual service on [him].”

Rather than serving the summons and complaint directly on the defendant, the process server in *Trackman* left the documents with the defendant’s tenant. Although the defendant was aware that papers had been left for him, he made no effort to determine what they were. As a result, the defendant never appeared in the lawsuit and so the plaintiff entered a default judgment against him. Five years later, the defendant filed a motion asking the trial court to set aside the judgment. He pointed out that he did not live in the house where the papers had been left and that a simple search of public filings would have revealed his true address.

The trial court agreed that the service was improper. The judge wrote, “[t]he evidence presented by defendant persuades the Court that he was not served with the summons and that a diligent search of public records at the time of service would have disclosed his address.” Accordingly, the trial court ruled that the judgment should be set aside.

The Court of Appeal reversed the trial court’s determination. It ruled that the trial court erred in reviewing the evidence as to whether or not service was proper. The appellate court noted that California law imposes a two-year limitations period on motions to set aside default judgments, even if the defendant did not receive notice of the lawsuit or the resulting judgment. The only exceptions occur if the judgment is procured by fraud or mistake or if the judgment is void on its face, i.e., if the invalidity is apparent without examining the facts that led to its entry. Because these exceptions did not apply, and because the defendant did not file his motion to challenge the judgment within two years, the Court of Appeal held that the defendant had no legal basis to set the judgment aside.

Conclusion. The opinion is a stark warning of the risks of ignoring legal papers, even if they are improperly served. As a consequence of the appellate court’s decision, the defendant was bound by a judgment in which he had never been served and of which – as far as the record reveals – he was not even aware. An individual who learns that a process server is seeking to serve him is better off immediately contacting counsel, who can obtain a copy of the papers and take whatever steps are necessary to protect the client’s rights.