

## If a Lawsuit is Filed, Don't Put Yourself at Risk of Default.

By Robert B. Jacobs, Attorney at Law

Few things in the law are ironclad. But the things that are ironclad can be very unforgiving. A recent case serves as an important example.

In the recent case of Belz v. Clarendon America Insurance Company 2007 DJDAR 7, a contractor was sued by an owner who claimed the contractor's work was defective. Unfortunately, the contractor failed to file a timely answer to the complaint. As a result, a default was entered against the contractor. This was a major error on the part of the contractor. The law has many uncertainties, but one of the certain things is that if you get sued and you don't answer, you'll absolutely be at risk of default. Once a contractor is served with a summons and complaint, there is only a limited amount of time to file an answer, which under California law is 30 days. If no answer is filed, then the claimant may file a "default" against the contractor. Such a default will prevent the contractor from later filing an answer, and such a default, unless it is removed, will entitle the claimant to receive a judgment against the contractor.

"But" you may say "the claim may have no merit against the contractor. It may be absolutely false and may have no value at all." In a default situation, such defenses are meaningless. If a contractor fails to answer and a default is entered, then the contractor is considered to have admitted to all of the claims in the lawsuit, regardless as to whether or not the claims have any merit or truth. If the contractor doesn't answer, then for all purposes he is fully liable for all of the damages claimed in the lawsuit. The effect would be no different than if the lawsuit had been fully tried in front of a jury and the contractor was found to be fully liable - the result is the same. And once the judgment is entered against the contractor, then the Contractor's State License Board will suspend the contractor's license if the judgment isn't paid.

Defaults can sometimes (but not always) be set aside if a proper motion is made to the court less than 6 months after the default is entered. But these motions get harder and harder to make as more time passes. The clearest, safest and best rule is to always respond immediately if suit is filed against you.

I recently had a contractor client get sued and he never spoke to me until nearly six months had passed after he was sued and his default entered. I told him he needed to address the default immediately. However, he told me he wanted to try to resolve it first himself because there was no merit to the suit. He tried to get it resolved, but was unsuccessful and the 6 month deadline passed. The result? There was no way for him to answer the lawsuit, and he was thereafter fully liable for all of the claims that were made against him in the suit (even though they had no merit).

So what happened in the case of Belz v. Clarendon America Insurance Company 2007 DJDAR 7? A request was made to the court that the contractor's default be set aside, but the request was made too late. As a result, the court entered judgment against the contractor for \$191,395.90 - an expensive result for a judgment that may have been otherwise avoidable.

*The Law Office of Robert B. Jacobs provides legal services in the areas of Construction, Business, and Real Estate Law. The office is located in Pleasanton, California and can be reached at (925) 847-8680. The foregoing article concerns only California law and the law of other States may be different. The article is not a complete discussion of the applicable law, and competent counsel should be consulted concerning any specific situation or issue. © 2007 Robert B. Jacobs. All rights reserved.*