

Initiating a Quiet Title Action – State Procedures

Troy R. Covington, Bloom Parham, LLP

December 5, 2016

I. Causes of Action and Statute of Limitations

A. Conventional Quiet Title Action

“A quia timet, or quiet title action, is intended to remove a cloud on the plaintiff’s title to land.”¹ “In order to bring a quia timet action, the plaintiff ‘must assert that he *holds* some current record title or current prescriptive title. . . . Otherwise, he possesses no title at all, but only an expectancy. . . .”² Where plaintiffs do not assert that they have title to the property at issue, they have no standing to maintain a quia timet action.³ Plaintiffs have no right to a jury trial under the conventional quia timet statute.⁴

In a proceeding to remove a cloud upon the title to real estate, the court must grant the relief sought “whether the invalidity of the instrument sought to be canceled appears upon the face of the instrument or whether the invalidity appears or arises solely from facts outside of the instrument.”⁵ An instrument which, either by itself or in connection with other extrinsic facts, “gives the claimant thereunder an apparent right in or to the property may constitute a cloud on the title of the true owner.”⁶ The true owner of property may have a cloud on title removed by proving: (1) that he cannot immediately maintain or protect his rights by any other course of proceeding open to him; (2) that the instrument sought to be canceled would operate to throw a cloud or suspicion upon his title and might be used against him; and (3) that he either suffers a present injury because of the hostile claim of right or has reason to believe that the evidence upon which he

¹ Cunningham v. Gage, 301 Ga. App. 306, 308 (2009) (citing O.C.G.A. § 23-3-40).

² Id. (quoting In re Rivermist Homeowners Ass’n, 244 Ga. 515, 518 (1979)) (emphasis in original).

³ Id.

⁴ Karlen v. Reliance Equities, LLC, 291 Ga. 549, 550 (2012).

⁵ O.C.G.A. § 23-3-41.

⁶ O.C.G.A. § 23-3-42.

relies to impeach or invalidate an adverse claim may be lost or impaired by lapse of time.⁷

For example, the quia timet statute may be used to cancel a deed on the grounds of forgery.⁸ Further, a lender with a valid security deed may bring a claim to quiet title to property over which a purported lender has an invalid security deed securing nonexistent debt, because the invalid deed casts a cloud over the actual lender's title to the property.⁹

The plaintiff in a conventional quiet title action may request that the matter be submitted to a special master in the same manner as provided in the Quiet Title Act of 1966.¹⁰ Where the plaintiff makes this request, appointment of a special master is mandatory.¹¹ The special master is then authorized to handle every aspect of the quiet title claim.¹²

B. Actions Under Quiet Title Act of 1966

Actions against “all the world” to quiet title to real property are governed by the Quiet Title Act of 1966 (the “Act”).¹³ “The purpose of the Act is to create a procedure for removing any cloud upon the title to land; the Act is to be liberally construed; and the remedy provided is intended to be cumulative and not exclusive.”¹⁴ The Act is “a special statutory proceeding designed for a specific purpose.”¹⁵ The Act “creates an efficient, speedy and effective means of adjudicating disputed title claims and sets out specific

⁷ Id.

⁸ Brook v. Yale Mortg. Corp., 287 Ga. 849, 851 (2010).

⁹ Harris v. West Cent. Ga. Bank, 335 Ga. App. 114, 117 (2015) (citing O.C.G.A. § 23-3-40).

¹⁰ O.C.G.A. § 23-3-43.

¹¹ Boyd v. JohnGalt Holdings, LLC, 294 Ga. 640, 643 (2014) (citation omitted).

¹² Id.

¹³ O.C.G.A. §§ 23-3-60, et seq.

¹⁴ Johnson v. Bank of Am., N.A., 333 Ga. App. 539, 540 (2015), reversed on other grounds, Bank of Am., N.A. v. Johnson, No. S15G1878, 2016 WL 6407261 (Ga. Oct. 31, 2016) (citations and internal punctuation omitted). See also Smith v. Ga. Kaolin Co., 264 Ga. 755, 756 (1994) (“The legislature intended the act to serve as an additional remedy to other legal and equitable claims.”); Smith v. Ga. Kaolin Co., 269 Ga. 475, 477 (1998) (“The 1966 Quiet Title Act was designed to broaden the relief available by supplementing and not supplanting the quia timet procedure.”).

¹⁵ Id. (quoting James v. Gainey, 231 Ga. 543, 545 (1974)).

rules of practice and procedure with respect to an in rem quiet title action against all the world that take precedence over the Civil Practice Act when there is a conflict.”¹⁶

A quiet title action under the Act is in rem and is not an action against any person or entity; instead, it is an action against the underlying property, and its purpose is to remove any and all clouds on the title of that property.¹⁷ In an in rem action, the named defendant is real or personal property.¹⁸ “Any person who claims an interest in that property/defendant must affirmatively assert that claim against the property/defendant in the quiet title action.”¹⁹ Thus, an “in rem quiet title action is not subject to sovereign immunity because it does not involve a claim against the State, though the State may certainly make a claim to the property in question during the pendency of the quiet title action.”²⁰

C. Statute of Limitations

In Georgia, there is no statutorily-mandated or judicially-created statute of limitations for either conventional quiet title actions or actions brought under the Act.²¹ Instead, the Georgia Supreme Court has held that the appropriate inquiry is whether the equitable defenses of laches bars an action to remove a cloud on the quiet title plaintiff’s title.²² “Laches will not be imputed to one in peaceable possession of property, for delay in resorting to a court of equity to establish his right to the legal title.”²³

¹⁶ Id. (quoting Nelson v. Ga. Sheriffs Youth Homes, 286 Ga. 192 (2009)).

¹⁷ TDGA, LLC v. CBIRA, LLC, 298 Ga. 510, 512 (2015).

¹⁸ Id. (citing Black’s Law Dictionary (10th ed. 2014)).

¹⁹ Id.

²⁰ Id. In contrast, the State and its agencies are immune from suit under O.C.G.A. § 23-3-40, because that statute contains no waiver of sovereign immunity. Id.

²¹ See Tench v. Galaxy Appliance & Furniture Sales, Inc., 255 Ga. App. 829, 833 (2002) (“[T]here exists no statute of limitations for the recovery of an equitable interest in land.”). See also Ponder v. Ponder, 275 Ga. 616, 619 (2002) (“In suits to recover land, there is no statute of limitations in this State, title by prescription having been sustained for such statutes.”).

²² Hunstein v. Fiksman, 279 Ga. 559, 562 (2005).

²³ Id. (quoting Shirley v. Shirley, 209 Ga. 366 (1952)).

“Laches is principally a question of the inequity in allowing a claim to be enforced.”²⁴ “Among the factors to consider in determining whether laches applies are the length of the delay, the reasons for it, the resulting loss of evidence, and the prejudice suffered.”²⁵ Courts also consider the opportunity for the claimant to have acted sooner and whether the claimant or adverse party possessed any property at issue during the delay.²⁶ While laches is not merely a question of time, “lapse of time is an important element and in itself may be telling on the question of inequity.”²⁷ To prevail on a claim of laches, however, “a party must prove some harm or prejudice caused by the delay.”²⁸

In Thompson v. Central of Georgia Railroad, the defendant asserted that the Railroad’s quiet title action should be barred by laches because it was filed three years after the defendant filed affidavits of possession of the disputed parcel and which constituted a cloud on the Railroad’s title.²⁹ “Without any evidence regarding when the Railroad became aware of the [defendant’s] affidavits of possession, the reason for the Railroad’s delay in filing its petition to quiet title and whether it could have acted sooner than it did, and whether any evidence was lost due to the delay,” the Georgia Supreme Court could not say that the trial court erred when it did not bar the claim based on laches.³⁰

Likewise, in Sacks v. Martin, the defendants in 2001 filed a quiet title counterclaim to the plaintiffs’ petition to quiet title, claiming prescription due to adverse

²⁴ City of Dalton v. Carroll, 271 Ga. 1 (1999) (citing Hall v. Trubey, 269 Ga. 197 (1998)). See also O.C.G.A. § 9-3-3 (“Courts of equity may interpose an equitable bar whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights.”).

²⁵ Id.

²⁶ Kidd v. First Commerce Bank, 264 Ga. App. 536, 540 (2003) (citing Swanson v. Swanson, 269 Ga. 674, 676 (1998)).

²⁷ Plyman v. Glynn County, 276 Ga. 426, 427 (2003) (citing Cooper v. Aycock, 199 Ga. 658, 666 (1945)).

²⁸ Howington v. Howington, 281 Ga. 242, 243 (2006) (citing Stone v. Williams, 265 Ga. 480 (1995)).

²⁹ 282 Ga. 264, 266 (2007).

³⁰ Id. (citations omitted).

possession of more than twenty years.³¹ The plaintiffs unsuccessfully argued to the special master and the trial court that defendants' claim to title was barred by laches because the defendants had notice of a 1991-1992 processioning that established a boundary line which put the disputed tract within the property claimed by the plaintiffs but defendants did not file a protest.³² While an owner of adjoining land dissatisfied with the lines run and marked by the processioners and surveyors may file a protest to be tried in superior court, it is not mandatory to do so.³³ The Supreme Court affirmed the trial court's determination that the defendants had been in actual possession of the disputed tract and therefore held that laches could not bar their claim.³⁴

II. Jurisdiction and Venue

A quiet title action is an equitable action over which the superior courts have exclusive jurisdiction.³⁵ Appeals of quiet title decisions therefore fall within the Georgia Supreme Court's jurisdiction over all equity cases.³⁶

A conventional quiet title action to remove a cloud on the title to land is not a suit "respecting title to land" so as to give jurisdiction against the resident of another county of Georgia to the superior court of the county where the land is located.³⁷ Instead, a

³¹ 284 Ga. 712, 715 (2008).

³² Id. Processioning is a method of establishing boundaries used in rural areas to settle disputes between coterminous landowners, and the proceeding is not designed as a substitute for an action to settle title, which is not directly involved. Id.

³³ Id.

³⁴ Id. at 715-16. See also Goodson v. Ford, 290 Ga. 662, 667 (2012) (property owners who filed petition to quiet title to property that included a disputed rectangular strip of land running between neighboring properties and connecting to a highway were not guilty of laches, where the owners made repeated requests to the neighbors to stop using the strip for anything other than access from their driveways to the highway, and where the neighbors filed to identify any change in circumstance during the intervening seven years that would qualify as "prejudice"); Tench, 255 Ga. App. at 833 (holding that laches did not bar a property owner's action to quiet title even though the owner delayed five years in bringing action, because the opposing party did not show she was prejudiced, and the owner possessed the property under claim of ownership).

³⁵ Ga. Const. 1983, Art. VI, Sec. 4, ¶ I.

³⁶ See Kemp v. Neal, 288 Ga. 324 (2008) (citing Ga. Const. 1983, Art. VI, Sec. VI, Par. III).

³⁷ Sweat v. Arline, 186 Ga. 460, 464 (1938).

conventional quiet title action sounds in equity and must be “tried in the county where a defendant resides against whom substantial relief is prayed.”³⁸ However, if the only defendant in an equitable petition to quiet title is a non-resident of the state, Georgia courts may take jurisdiction for the purpose of applying equitable principles affecting property located in Georgia to remove a cloud on title and exclude the non-resident from an interest on the property.³⁹

A quiet title action under the Act must be filed in the superior court of the county in which the property at issue lies.⁴⁰

III. Pleading Requirements⁴¹

A. Plaintiff Must Allege Current Actual or Prescriptive Title.

Any person who claims an estate of freehold present or future or any estate for years of which at least five years are unexpired, whether in the actual peaceable possession thereof, may “bring a proceeding in rem against all the world to establish his title to the land and to determine all adverse claims thereto or to remove any particular cloud or clouds upon his title to the land, including an equity of redemption, which proceeding may be against all persons known or unknown who claim or might claim adversely to him, whether or not the petition discloses any known or possible claimants.”⁴² The Act eliminates the requirement of possession; under the conventional quiet title action, the general rule was that a “person had to prove actual possession of the land to bring a petition to cancel an instrument that cast a cloud on the title.”⁴³ Still, to state a claim for quiet title relief under the Act, “a plaintiff must allege more than a right to acquire title; it must allege that it presently holds current title or current prescriptive

³⁸ Skally v. Metts, 287 Ga. 777, 778 (2010) (quoting Ga. Const. 1983, Art. VI, Sec. II, Par. III).

³⁹ Sweat, 186 Ga. at 465 (citations omitted).

⁴⁰ O.C.G.A. § 23-3-62(a). See also Smith v. Georgia Kaolin Co., 264 Ga. 755, 756 (1994) (“[Plaintiff] followed this statutory requirement by filing his petition in Wilkinson County where the disputed land is located.”).

⁴¹ Sections III through IV of this paper focus exclusively on actions brought under the Quiet Title Act of 1966.

⁴² O.C.G.A. § 23-3-61.

⁴³ Byers v. McGuire Props., Inc., 285 Ga. 530, 539 (2009) (citations omitted).

title.”⁴⁴ A plaintiff must have more than the possibility of an interest in title to bring a quiet title action, and the petition must be based upon an estate of freehold or an estate for years; it cannot depend upon an easement.⁴⁵ In “suits regarding title to land the plaintiff’s right to recovery or relief depends upon the strength of his own title to the realty involved, not the weakness of his opponents’ evidence.”⁴⁶

Quiet title actions may not be dismissed for failure to state a claim if they meet the minimum pleading standards under O.C.G.A. § 9-11-12(b)(6). For example, where a quiet title counterclaim plaintiff alleged that he would be entitled to relief if it was determined that he held unencumbered legal title to the property in question and that the defendant bank cast a cloud over that title by filing affidavits of title, a foreclosure, and resulting Deed Under Power, the trial court erred in dismissing the counterclaim to quiet title.⁴⁷

B. Required Contents of Quiet Title Petition

The quiet title petition must be verified by the petitioner.⁴⁸ The petition must contain: (1) a particular description of the land to be involved in the proceeding; (2) a description of the petitioner’s interest in the land; (3) a statement as to whether the interest is based upon a written instrument, adverse possession, or both; (4) a description of all adverse claims of which petitioner has actual or constructive knowledge; (5) the names and addresses, if known, of any potential adverse claimant; and (6) if the proceeding is brought to remove a particular cloud or clouds, a statement as to the grounds upon which the petitioner seeks to remove the cloud or clouds.⁴⁹ The petitioner must file with the petition: (1) a plat of survey of the land; (2) a copy of the immediate

⁴⁴ Dykes Paving & Const. Co. v. Hawk’s Landing Homeowners Assoc., Inc., 282 Ga. 305 (2007) (citations omitted).

⁴⁵ Id. (citations omitted).

⁴⁶ Smith v. Ga. Kaolin Co., 269 Ga. 475, 477 (1998) (quoting N. Ga. Prod. Credit Assoc. v. Vandergrift, 239 Ga. 755, 761 (1977)) (internal punctuation omitted).

⁴⁷ Cronan v. JP Morgan Chase Bank, N.A., 336 Ga. App. 201, 204 (2016) (citing DOCO Credit Union v. Chambers, 330 Ga. App. 633, 637 (2015)).

⁴⁸ O.C.G.A. § 23-3-62(b).

⁴⁹ Id.

instrument(s), if any, upon which petitioner's interest in the land is based; and (3) a copy of the immediate instrument(s), if any, upon which any person might base an interest in the land adverse to the petitioner.⁵⁰ Upon the filing of the petition, the petitioner must contemporaneously file with the clerk of court a notice for record in the lis pendens docket pursuant to O.C.G.A. §§ 44-14-610 through 44-14-613.⁵¹

The Georgia Supreme Court has summarized the requirements of a petition to quiet title as follows:

Under O.C.G.A. § 23-3-62(b), a petition to quiet title must contain a particular description of the land, a specification of the petitioner's interest in the land, and whether that interest is based upon a written instrument, adverse possession, or both. In addition, the petition should be accompanied by a plat of survey and copies of any written instruments upon which petitioner's interest or that of an adverse claimant is based.⁵²

A "petition is subject to dismissal only when on the face of the pleadings it appears that it is in noncompliance with O.C.G.A. § 23-3-62."⁵³ Where the petitioner meets the statutory pleading requirements, he has stated a claim under the Act, and his complaint should not be dismissed, regardless of the ultimate merits of those claims.⁵⁴

For example, in Williamson v. Fain, the quiet title petitioner filed a copy of a 1949 survey and the immediate instrument upon which his interest was based.⁵⁵ The petitioner later amended his petition to state with specificity the defendants' claim to the land and attached to the amendment a copy of the instrument by which the defendants obtained their interest in the land adjoining petitioner's land.⁵⁶ Defendants argued that the copy of the 1949 survey was not sufficient to meet the requirements of O.C.G.A. § 23-3-62(c)(1), and the trial court should have granted their motion to dismiss for failure

⁵⁰ O.C.G.A. § 23-3-62(c).

⁵¹ O.C.G.A. § 23-3-62(d).

⁵² Johnson v. Bank of Am., N.A., 333 Ga. App. 539, 541 (2015), reversed on other grounds, Bank of Am., N.A. v. Johnson, No. S15G1878, 2016 WL 6407261 (Ga. Oct. 31, 2016), (quoting GHG, Inc. v. Bryan, 275 Ga. 336 (2002)).

⁵³ Id.

⁵⁴ Id. at 541-42 (citations omitted).

⁵⁵ 274 Ga. 413, 414 (2001).

⁵⁶ Id. at 414-15.

to state a claim.⁵⁷ The Georgia Supreme Court held that the contents of the petition were sufficient to survive the motion to dismiss. The fact that the plat of survey of the land petitioner attached to his petition was not satisfactory to defendants did not reduce the petition to one which does not state a claim.⁵⁸

The Act “contemplates the problems created in identifying possible claimants, and permits an action to be brought by *any person with a claim of interest* in the land in question.”⁵⁹ “It does not require that all potentially interested persons, adverse or otherwise, be joined as parties to the suit, but only that the petitioner provide descriptions of adverse claims and names and addresses of possible adverse claimants of which petitioner has actual or constructive notice...”⁶⁰

C. Submission of Action to Special Master

“The court, upon receipt of the petition together with the plat and instruments filed therewith, shall submit the same to a special master who shall be a person who is authorized to practice law in this state and is a resident of the judicial circuit wherein the action is brought.”⁶¹ “The master shall examine the petition, plat, and all documents filed therewith and may require other evidence to be filed, including, but not limited to, an abstract of title.”⁶² Where the special master conducted a hearing at which the parties presented argument and evidence, including affidavits, plats, and pictures of the property in question, the special master met the requirements of O.C.G.A. § 23-3-64 in making his decision.⁶³

⁵⁷ Id. at 415.

⁵⁸ Id. (citing O.C.G.A. § 9-11-9.1(d)).

⁵⁹ Resseau v. Bland, 268 Ga. 634, 636 (1997) (citations omitted) (emphasis in original).

⁶⁰ Id. (citing O.C.G.A. § 23-3-62(b), (c)).

⁶¹ O.C.G.A. § 23-3-63.

⁶² O.C.G.A. § 23-3-64. See also Meadows v. Baker, 241 Ga. App. 753, 754 (1999) (“The special master in a quiet title action has the right to require the parties to file pertinent evidence.”).

⁶³ Cernonok v. Kane, 280 Ga. 272, 273 (2006).

D. Procedures Before the Special Master

1. Authority of the Special Master

After the interested parties have been served and have received reasonable notice, the special master “shall have complete jurisdiction within the scope of the pleadings to ascertain and determine the validity, nature, or extent of petitioner’s title and all other interests in the land, or any part thereof, which may be adverse to the title claimed by the petitioner, or to remove any particular cloud or clouds upon the title to the land and to make a report of his findings to the judge of the court...”⁶⁴ The special master is authorized to address all issues related to the petition to quiet title and does not have jurisdiction to address any other claims in the case.⁶⁵ The special master is “arbiter of law and fact” as to all issues related to the quiet title petition unless a party to the proceeding demands a jury trial pursuant to O.C.G.A. § 23-3-66.⁶⁶

The special master has authority to set a deadline for the parties to request an evidentiary hearing; where a party does not request a hearing by the deadline or object to the lack of a hearing prior to the entry of the special master’s order; the party has waived any objection to the lack of a hearing.⁶⁷ Where the respondents did not identify any further evidence they would have presented at an evidentiary hearing and where the record showed that the special master considered all the evidence submitted by the parties and determined that the matter could be resolved without a hearing, the respondents had both waived the opportunity to have an oral hearing and failed to show that they were prejudiced since they were given notice and an opportunity to respond to the petition.⁶⁸

⁶⁴ O.C.G.A. § 23-3-66.

⁶⁵ Rhymes v. East Atlanta Church of God, Inc., 284 Ga. 145, 147 (2008). See also Boyd v. JohnGalt Holdings, LLC, 294 Ga. 640, 643 (2014) (holding that the special master appointed to address a counterclaim for quiet title had authority to handle every aspect of that counterclaim and did not exceed that authority, as shown by the statement in his report that “the only matter” before him was the quiet title counterclaim).

⁶⁶ Paul v. Keene, 272 Ga. 357, 358 (2000) (citing Addison v. Reece, 263 Ga. 631 (1993)).

⁶⁷ Smith v. Mitchell County, 334 Ga. App. 374, 377 (2015) (citation omitted).

⁶⁸ Id. (citing Mitchell v. 3280 Peachtree I, LLC, 285 Ga. 576 (2009)).

“To hold otherwise would not be in the interest of judicial economy and would be contrary to the underlying policy behind the statute – that of providing an efficient, speedy and effective means to settle these disputes.”⁶⁹

“Although the special master does not divest the trial court of overall jurisdiction of the case, once the trial court adopts the special master’s findings and enters judgment, the court’s decision is upheld by the appellate court unless clearly erroneous.”⁷⁰ If there is any evidence supporting the judgment of the trial court, it will not be disturbed, but conclusions of law are reviewed de novo.⁷¹

2. Demand for jury trial

Any party to a quiet title proceeding “may demand a trial by jury of any question of fact; provided, further, that the master on his own initiative may require a trial by a jury of any question of fact.”⁷² The demand for a jury trial must be filed prior to the time the special master hears the case.⁷³ However, a jury demand will be honored only if the evidence presents a question of fact.⁷⁴ Where no question of fact exists, the failure to provide a jury trial, even if timely requested, is not error.⁷⁵

The Georgia Supreme Court has held that if a quiet title action starts out as one under the Act, if the petitioner later amends its petition to omit its reference to the Act,

⁶⁹ Id. at 378 (quoting Griffeth v. Griffin, 245 Ga. App. 619, 620 (2000)).

⁷⁰ McGregor v. River Pond Farms, LLC, 312 Ga. App. 652, 653 (2011) (citations omitted).

⁷¹ Id.

⁷² O.C.G.A. § 23-3-66.

⁷³ Sacks v. Martin, 284 Ga. 712, 714 (2008) (citing Thornton v. Reb Props., 237 Ga. 59 (1976)). See also Wyatt v. Hizer, 337 Ga. App. 767, 771 (2016) (holding that the trial court erred by finding as a matter of fact that a demand for jury trial was not filed before the commencement of the special master’s hearing and reversing the trial court’s order finding that the jury demand was ineffective); GHG, Inc. v. Bryan, 275 Ga. 336 (2002) (holding that a demand for a jury trial that was made after the hearing before the special master was untimely).

⁷⁴ Sacks, 284 Ga. at 714 (citing Watkins v. Hartwell Railroad Co., 278 Ga. 42 (2004); Paul v. Keene, 272 Ga. 357, 358 (2000)).

⁷⁵ Id. at 715. See also Paul, 272 Ga. at 385 (“If there are no genuine issues of material fact, to be resolved, it was not error for the special master to apply the law to the facts of the case.”).

and the matter proceeds only as a conventional quia timet action, the petitioner has no right to trial by jury.⁷⁶ On the other hand, where a case ostensibly filed as a suit in conventional quia timet under O.C.G.A. § 23-3-40 in substance actually was quia timet against all the world, the petitioner was entitled to a jury trial if the evidence presented a question of fact.⁷⁷

3. Special Master’s Report and Court Decree

“Upon the receipt of the master’s report or upon a jury verdict, the court shall issue a decree which shall be recorded in the office of the clerk of the superior court of the county or counties wherein the land affected lies and which, when recorded, shall operate to bind the land affected according to the tenor thereof and shall be conclusive upon and against all persons named therein, known or unknown.”⁷⁸ O.C.G.A. § 23-3-67 does not require a trial court to conduct a hearing before adopting the special master’s report and does not require a trial court to hear objections to a special master’s report.⁷⁹ Indeed, a trial court is entitled to enter judgment at any time it chooses and does not err by doing so before objections have been filed.⁸⁰

“The statutory requirement that a special master make a report to the trial court of the special master’s findings is important to both the trial court’s entry of judgment and the appellate court’s review since a trial court can adopt the special master’s findings and enter judgment thereon and a special master’s findings adopted by the trial court are upheld by the appellate court unless clearly erroneous.”⁸¹ “While the Civil Practice Act authorizes a trial court to grant a motion for summary judgment without setting forth findings of fact and conclusions of law, the special procedures of the Quiet Title Act

⁷⁶ Vatacs Group, Inc. v. U.S. Bank, N.A., 292 Ga. 483, 484 (2013) (citations omitted).

⁷⁷ Gurley v. East Atlanta Land Co., 276 Ga. 749, 750 (2003) (citing Davis v. Merritt, 265 Ga. 160 (1995)).

⁷⁸ O.C.G.A. § 23-3-67.

⁷⁹ MPP Investments, Inc. v. Cherokee Bank, N.A., 288 Ga. 558, 564 (2011) (citing Steinichen v. Stancil, 281 Ga. 75, 76 (2006)).

⁸⁰ Id.

⁸¹ Nelson v. Ga. Sheriffs Youth Homes, Inc., 286 Ga. 192, 193 (2009) (citations omitted).

requiring that findings be reported take precedence over the conflicting requirements of the CPA.”⁸²

E. Joinder of Actions

“Two or more persons having separate and distinct parcels of land in the same county and holding under the same source of title or persons having separate and distinct interests in the same parcel or parcels may join in a petition . . . against the same supposed claimants.”⁸³ “A petitioner may join separate causes of action in one petition; but, if they cannot be conveniently disposed of together, the court may order separate trials.”⁸⁴ For example, where a specific performance claim was added by intervenors to a quiet title action, it was not error for the special master to pass upon this claim, where there were no material issues of fact.⁸⁵ Although the special master had no power to grant specific performance relief or enter a final judgment of any kind in the case, he was obliged and authorized to report his findings to the superior court judge, and his report was sufficient to authorize the court to enter the final decree in the case.⁸⁶

IV. Summons

A. Who Is Entitled To Service?

Upon the filing of all evidence with the special master, he or she must: (1) determine who is entitled to notice, including, but not limited to, all adjacent landowners and all adverse claimants as to whose adverse claims the petitioner has actual or constructive notice; and (2) cause process to issue, directed to all persons who are entitled to notice and to all other persons whom it may concern.⁸⁷ “Any adverse party shall be entitled to have at least 30 days after completion of service to file any pleading he desires in the matter before the court.”⁸⁸ Until such time as proof of reasonable notice to the parties involved after proof of serving notice as required, the special master has no

⁸² Id. (citations omitted).

⁸³ O.C.G.A. § 23-3-70(a).

⁸⁴ O.C.G.A. § 23-3-70(b).

⁸⁵ Heath v. Stinson, 238 Ga. 364, 365 (1977) (citations omitted).

⁸⁶ Id.

⁸⁷ O.C.G.A. § 23-3-65(a).

⁸⁸ O.C.G.A. § 23-3-65(c).

jurisdiction to make any determination regarding the validity of the quiet title petitioner's claim.⁸⁹

Contrary to the procedures that might otherwise be sufficient to effect proper service and require that a responsive pleading be filed under the Civil Practice Act, in a quiet title action under the Act, until the special master determines "who is entitled to notice" and causes process to issue to those persons, there is no requirement for a party to file a responsive pleading to the petition.⁹⁰ Without the appointment of a special master and the completion of proper service, the trial court is not authorized to enter a default judgment against parties that were not yet required to answer.⁹¹ For example, in Simmons v. Community Renewal and Redemption, LLC, the special master did not cause process to issue to the former owner of the land in question, because the special master had found the former owner had divested himself of any interest, claim, or right in the land by conveying it to its current owner.⁹² Therefore, the former owner was not required to answer the quiet title petition, and the trial court properly denied the petitioner's motion for default judgment against the former owner.⁹³

Moreover, where the special master determines that parties are entitled to notice of the quiet title action and those parties file pleadings in the action establishing their interest in the proceeding, this interest is sufficient to invoke the standing of those parties as possible adverse claimants of which the petitioner had actual or constructive notice under O.C.G.A. § 23-3-65(a).⁹⁴

⁸⁹ Pittard v. McMillon, 225 Ga. 239, 240 (1969)).

⁹⁰ Woodruff v. Morgan County, 284 Ga. 651, 652 (2008).

⁹¹ Id. (citing Bonner v. Bonner, 272 Ga. 545 (2000)).

⁹² 286 Ga. 6, 8 (2009).

⁹³ Id. at 7-8.

⁹⁴ Harbuck v. Houston County, 284 Ga. 4, 5-6 (2008) (citing Resseau v. Bland, 268 Ga. 634 (1997)).

B. Methods of Service

“Process shall be served upon known persons whose residence is ascertainable by the sheriff or his deputy as provided by law.”⁹⁵ The statute further contemplates the possibility of service by publication:

In all cases where service by publication is permitted under the laws and where the respondent or other party resides outside this state or whose residence is unknown and it is necessary to perfect service upon such person by publication, upon the fact being made to appear to the judge or clerk of the court in which the action is pending, the judge or clerk may order service to be perfected by publication in the paper in which sheriff’s advertisements are printed, four times within the ensuing 30 days, publications to be weekly. The published notice shall contain the name of the petitioner and respondent with a caption setting forth the court, the character of the action, the date the action was filed, the date of the order for service by publication, and a notice directed and addressed to the party to be thus served, commanding him to be and appear at the court in which the action is pending within 30 days of the date of the order for service by publication, and shall bear teste in the name of the judge and shall be signed by the clerk of the court.⁹⁶

Though service by publication is permitted under the statute, that cannot vitiate that a “fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties that the action is pending and to afford them an opportunity to present their objections.”⁹⁷ “In most circumstances, service must be made upon the defendant personally, or at his residence, or upon his agent.”⁹⁸ The Georgia Court of Appeals has held that the first inquiry under O.C.G.A. § 23-3-65(b) is whether service by publication is permitted under the laws of Georgia, given the facts of the particular case.⁹⁹

⁹⁵ O.C.G.A. § 23-3-65(b).

⁹⁶ Id.

⁹⁷ Floyd v. Gore, 251 Ga. App. 803, 804 (2001) (citing Bethco, Inc. v. Cinema ‘N’ Drafthouse Int’l, 204 Ga. App. 143, 145 (1992) and Johnson v. Mayor & C. of Carrollton, 249 Ga. 173, 175 (1982)).

⁹⁸ Id. (citation omitted).

⁹⁹ Id. at 805.

Regardless of whether a proceeding is in rem or in personam, “due process requires that a chosen method of service be reasonably certain to give actual notice of the pendency of a proceeding to those parties whose liberty or property interests may be adversely affected by the proceeding.”¹⁰⁰ “Because notice by publication is a notoriously unreliable means of actually informing interested parties about pending suits, the constitutional prerequisite for allowing such service when the addresses of the parties are unknown is a showing that reasonable diligence has been exercised in attempting to ascertain their whereabouts.”¹⁰¹ “The circumstances are different in each case, and no sweeping rule applies to all determinations of whether reasonable diligence has been exercised.”¹⁰² The “courts have a duty to determine whether the plaintiff has exercised due diligence in pursuing every available channel of information. And, while the trial court first passes upon the legality of notice, the appellate courts must independently decide whether if, under the facts of the case, the search for the interested party was legally adequate.”¹⁰³

The Court of Appeals determined that the facts of the case before it led to the conclusion that the quiet title petitioners’ search for the respondent served by publication, “if there was any search at all, was not legally adequate.”¹⁰⁴ In their motion to serve by publication, the petitioners alleged only that it was their belief that the respondent could not be found at his last known address, but they gave no basis for that belief and included no information suggesting that they even attempted to find the respondent.¹⁰⁵ The respondent, in contrast, presented an affidavit in support of his motion to set aside the trial court’s quiet title order in which he testified that his home address had not changed in over 32 years and that his home address has been listed in the applicable phone directories the entire time he resided at that address.¹⁰⁶ The respondent had been in

¹⁰⁰ Id. (quoting Abba Gana v. Abba Gana, 251 Ga. 340, 343 (1983)).

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id. at 805-06.

regular communication with the petitioners some years earlier regarding a loan that he made to them, and the petitioners knew his attorney's name and where his attorney's office was located.¹⁰⁷ Thus, it did not appear that an attempt to locate the respondent would have been impractical or fruitless, since there were obvious channels of information available to the petitioners, who did not make any reasonably diligent and honest efforts to find the respondent.¹⁰⁸

The court stated that “notice by publication in a local newspaper is virtually no notice at all to nonresidents and ‘process which is a mere gesture is not due process.’”¹⁰⁹ While Georgia’s “courts have approved service by publication in a class of cases where it is not reasonably possible or practical to give more adequate warning,” the “means employed must be such as one who desires to actually inform the absentee might reasonably adopt to accomplish that goal.”¹¹⁰ Because a plaintiff equipped with the channels of information available to the petitioners and who actually wanted to notify the defendant of the pending action would not have adopted the means of service used in this case, service by publication did not meet the constitutional requirements of due process and was not permitted under the law.¹¹¹

The court noted that a second inquiry under O.C.G.A. § 23-3-65(b) is whether service by publication was necessary.¹¹² The record showed that reasonably available channels of information were open to the petitioners, but that they apparently made no attempts to learn the respondent's location, and thus service by publication was not necessary and not authorized by O.C.G.A. § 23-3-65(b).¹¹³

C. Service Requirement Can Be Waived.

In Brown v. Fokes Properties 2002, Inc., the respondent argued on appeal that he was not properly served and notified of the evidentiary hearing held by the special

¹⁰⁷ Id. at 806.

¹⁰⁸ Id.

¹⁰⁹ Id. (quoting In re: J.B., 140 Ga. App. 668, 671 (1976)).

¹¹⁰ Id.

¹¹¹ Id. (citing Pierce v. Pierce, 270 Ga. 416, 417-18 (1999)).

¹¹² Id.

¹¹³ Id.

master, and that these omissions deprived him of the opportunity to present evidence.¹¹⁴ The petitioner unsuccessfully attempted personal service on the respondent before securing an order from the trial court allowing service by publication.¹¹⁵ The Supreme Court concluded that the respondent waived service by making a general appearance.¹¹⁶ Specifically, the petitioner filed an “omnibus discovery document” on the same day as the quiet title petition, and the respondent filed a timely response, including objections to the petitioner’s requests for admissions, interrogatories, and notice to produce.¹¹⁷ The Supreme Court noted:

A general appearance by a defendant in an action in a court having jurisdiction of the subject matter amounts to a waiver of the issuance of, or defects in the process served, and confers jurisdiction of his person regardless of the fact that process was not served on him or that service may have been defective.¹¹⁸

Where, as here, “the defendant does not ever raise the defense by motion or answer, an objection to interrogatories or other discovery requests is sufficient to constitute a waiver of service.”¹¹⁹

Further, the respondent was not entitled to notice of the hearing before the special master, because “the failure of a party to filed pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment.”¹²⁰

¹¹⁴ 283 Ga. 231, 232 (2008).

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id. (quoting Shepherd v. Shepherd, 239 Ga. 22, 23-24 (1977)).

¹¹⁹ Id. (citing Bigley v. Lawrence, 149 Ga. App. 249, 250 (1979)).

¹²⁰ Id. at 233 (quoting O.C.G.A. § 9-11-5(a)).