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Should The Loser Be The Winner? New Fourth District Court Of Appeal
Decision Holds That A Defendant In A Contract Case Which Obtains
A "Net Zero" Judgment Based Upon Pre Trial Settlements May Be
Considered The "Prevailing Party" And May Recover Attorney's
Fees - In Direct Conflict With The Majority Opinion In The 2006
Sixth District Court Of Appeal Decision In Wakefield v. Bohlin

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In an important decision which may require a ruling from the California Supreme Court, the California Court of Appeal, Fourth Appellate District specifically ruled that a defendant in a contract case which proceeds to trial and obtains a "net zero" monetary judgment based on pre trial settlements with co-defendants can be considered the prevailing party and thereby be entitled to attorney's fees, even though the trier of fact found the defendant liable and awarded damages (albeit less than the sum of pre trial settlements with co-obligors).

As many are aware, attorney's fees can be recovered in contract disputes where the contract provides that the prevailing party is entitled to recover fees. See, Civil Code section 1717 and Santisas v. Goodin (1998) 17 Cal.4th 599. A question arises, however, where the plaintiff has sued a number of defendants and some of the defendant co-obligors settle before trial. In those cases, the nonsettling defendant may enjoy offsets or credits for the amount of the settlements under Code of Civil Procedure section 877 and the plaintiff could, potentially, win a judgment against the nonsettling defendant which results in a "net zero" judgment because the pre trial settlements exceed the award at trial.

As reported in the December 2006 edition of The Morrison Law Journal, the Court of Appeal, Sixth District, ruled in Wakefield v. Bohlin (2006) 145 Cal.App.4th 963 ("Wakefield") that the plaintiff which suffered a "net zero" judgment would still be considered the prevailing party and could still recover attorney's fees. In a case with eerily similar facts, Goodman v. Lozano (2008) DJDAR 2135 ("Goodman"), the Court of Appeal, Third District, ruled that the majority decision in Wakefield was decided in error and affirmed an award of attorney's fees in favor of a defendant who obtained a "net zero" judgment.

In Wakefield, a divided panel of the California Court of Appeal, sixth district, ruled that a plaintiff in a breach of contract case involving the sale of real property was to be considered the “prevailing party” as a matter of right and entitled to recover statutory costs and attorney’s fees under contract against the defendant, even though the plaintiff did not achieve a monetary award against the defendant due to pre trial settlements with co-defendants. That decision was issued on December 19, 2006 and was based in part on the 1989 Court of Appeal decision in Pirkig v. Dennis (1989) 215 Cal.App.3d 1560 which found a plaintiff purchaser in a real estate dispute to be the prevailing party against a defendant broker in spite of the fact that the award against the broker was only \$7,500 and that amount was reduced to zero based on a pre trial settlement with the property sellers in that case.

In Goodman, Randall Goodman and Linda Guinther (herein, collectively the “Goodmans”) purchased a newly constructed home in Laguna Beach, California from Jesus Lozano and Natalia Lozano (the “Lozanos”). The home was constructed by AMPM Construction, which was owned by another couple, Alberto Mobrici and Patricia Mobrici (herein, collectively the “Mobricis”), who had partnered on a number of homes with the Lozanos.

Suit was later filed by the Goodmans against the Lozanos, Alberto Mobrici, AMPM Construction, the architect and real estate brokers based on various construction defects in the home. The Lozanos were sued on the purchase contract, which contained an attorney’s fee clause. Prior to the trial, Alberto Mobrici and AMPM Construction settled for the sum of \$200,000. Other defendants, except for the Lozanos, paid \$30,000 in settlement.

The matter went to a bench trial and the Goodmans obtained a “total damage award” of approximately \$146,000. The trial court then ruled that, under Code of Civil Procedure section 877, the Lozanos would be entitled to a set off in the amount paid by the Mobricis and AMPM Construction (\$200,000) given evidence that they had been in partnership with the Lozanos and may have been jointly liable under the purchase contract (based on California Corporations Code section 16306).

The trial court then exercised its discretion to adjudge the Lozanos who “didn’t have to pay a thing” to be the prevailing party and awarded \$132,000 in fees and \$12,000 in costs to the Lozanos.

The Court of Appeal acknowledged the decision in Wakefield but declined to follow it. In its lengthy ruling, the Court in Goodman focused on Code of Civil Procedure section 1032 which defines a “prevailing party” to include a defendant “where neither plaintiff nor defendant obtains any relief” and held that, based on a plain reading of the statute, a defendant which obtained a net zero judgment could be a prevailing party. The Court noted that the decision as to whether there is a prevailing party is still left to the discretion of the trial court but that, as a matter of law, the plaintiff will not categorically qualify as the victor where it suffers a net zero judgment.

The Goodman decision is an important case which will clearly assist the interest of defendants in breach of contract cases where there are pre trial settlements with settling co-defendants. However, there is a clear conflict with the Wakefield decision, and intervention from the California Supreme Court is likely necessary.

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