

When Settlement Dollars Really Count: California Supreme Court Rules That Set Offs From Pre-Trial Settlements Must Be Considered In Determining Whether A Plaintiff Can Be Considered A "Prevailing Party" For Purposes Of California's Costs Statute

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It is not often the case, but it does happen.

A plaintiff will file an action against multiple (joint tortfeasor) defendants and some defendants, but not all, settle before trial and the "pre-trial" settlements exceed the verdict against the non settling defendants who went to trial. Under California Code of Civil Procedure § 877, since the pre-trial settlements are credited against the verdict against the non settling defendants by way of set offs, the plaintiff is left with a no net dollar recovery against the non settling defendants.

In cases such as this, the question then arises as to whether the plaintiff, saddled with a no net dollar recovery, can still claim the status of a "prevailing" party for purposes of recovery of costs under the California recovery of costs statute found in California Code of Civil Procedure § 1032.¹

This question had previously appeared to have been answered in the California Court of Appeal, 6th District decision in Wakefield v. Bohlin (2006) 145 Cal.App.4th 963 (sometimes herein, the "Wakefield" case). In the Wakefield case, a home buyer had brought an action against a husband and wife team which had remodeled and sold a single family residence. The plaintiff home buyer sued not only the sellers, but the sellers' real estate broker and at least one subcontractor. Prior to the trial of the Wakefield case, the sellers' real estate broker and a subcontractor settled for the sum of \$96,700. At trial, the home buyer achieved a verdict against one of the sellers for the sum of \$33,950, which was little more than a third of the pre-trial settlements.

¹ California Code of Civil Procedure § 1032 provides in pertinent part:

""[p]revailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant..."

In Wakefield, the sellers argued that because the set offs from the pre-trial settlements resulted in a no net monetary recovery to the home buyer, they should be considered a "prevailing" defendant under the costs statute. The Court of Appeal disagreed and ruled that the term "recovery" was broad enough to "encompass any type of award" and concluded:

"the party with the net monetary recovery is determined by comparing the competing damage claims on both sides of the litigation. If both sides have claims, whichever party obtains the most money from the other prevails. If only one party has damage claims, any success in pressing those claims against the losing party results in a net award".

Wakefield v. Bohlin, *supra*, 145 Cal.App.4th at 983. On that basis, the Court of Appeal held that the home buyer "categorically" qualified as a prevailing party under Code of Civil Procedure § 1032 and that the home buyer was entitled, in that case, to attorney fees and costs. The Wakefield case was the subject of a stinging dissent by Justice Mihara who argued, unsuccessfully, that the language of Code of Civil Procedure § 1032 required a "net" monetary recovery for there to be prevailing party status.

This very issue then arose again in the case of Goodman v. Lozano (2010) D.A.R. 1925 (sometimes herein, the "Goodman" case). In Goodman, another residential real estate case, the home purchasers brought an action against a construction partner, its construction financing partners, the architect and brokers alleging negligence, fraud, breach of warranties, negligent misrepresentation and breach of contract. Prior to trial, settlements were reached with certain of the defendants totaling over \$230,000. The non settling defendants offered the sum of \$35,000 in a Statutory Offer to Compromise, which was rejected.

Following a bench trial in the home purchasers' action against the non settling defendants, the trial judge, who was not informed of the plaintiffs' pre-trial settlements with the other defendants, found in favor of plaintiffs and calculated a "total damage award" of just under \$146,000, \$64,000 of which was allocated to the plaintiffs' contract claim. After learning that the prior settlements totaled over \$200,000, the trial judge determined that the non settling defendants should receive set offs for the settlements. Because the pre-trial settlements easily surpassed the \$146,000 award to the home purchasers, the trial judge further found that home purchasers should receive no money. Exercising the Court's discretion under Code of Civil Procedure section 1032(a)(4), the trial court then ruled that the non-settling defendants were the "prevailing" parties because they paid nothing under the judgment and awarded the non settling defendants \$132,000 in attorney's fees and \$12,000 in costs.

On appeal, the Court of Appeal affirmed the decision of the trial court and expressly disagreed with the majority in the Wakefield case. The California Supreme Court then granted review. In the California Supreme Court's decision, following an analysis of the legislative history of Code of Civil Procedure § 1032 as well as § 877, the California Supreme Court commented that the plain meaning and interpretation of "net monetary recovery" is consistent with the statutory language of Code of Civil Procedure § 877 which deals with set offs and found that the Wakefield decision had been improvidently decided. The Supreme Court went on to rule that pre-trial settlements which are the subject of set offs under Code of Civil Procedure § 877 may be considered in determining whether a plaintiff has achieved a net monetary recovery for purposes of being a "prevailing" party. On that basis, the Supreme Court ruled that the trial court did not abuse its discretion in finding the non settling defendants to be the prevailing party.

The Goodman case is important and it will apply in many cases in the future where there are multiple defendants and significant pre-trial settlements. The authors further believe that the Goodman decision was properly decided and presents a common sense interpretation of the California Costs Statute.

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