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Another Bite At The Proverbial Apple: Court of Appeal Holds That Trial Court May Grant A Motion In Limine Disposing Of A Cause Of Action Even Though Another Judge In The Same Case Had Previously Denied A Motion for Summary Adjudication On The Same Claim...

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An issue which the California Courts have dealt with over the years is whether a party which filed a Motion for Summary Adjudication pursuant to Code of Civil Procedure § 437c(f) - and lost, could later file a Motion in Limine before trial on the same facts and law and have the Motion in Limine granted even though the Motion for Summary Adjudication had been denied. In the case of Salehi v. Surfside III Condominium Owners' Association (2011) DJDAR 16552 ("Salehi Case"), the California Court of Appeal, Second District, ruled that such a Motion in Limine could be granted.

The facts of the Salehi Case are common enough. In that case, a homeowner, Susan Salehi, a licensed California attorney, purchased a condominium unit in the Surfside III Condominium Development, a 309 unit condominium and townhome community located in Port Hueneme, California, in March 2004. Later on in 2004, Ms. Salehi filed suit against the Surfside III Condominium Owners Association ("Association") alleging breach of contract, breach of fiduciary duty, negligence and declaratory relief. The gravamen of Ms. Salehi's 2004 Complaint was that the Association had failed to maintain common area plumbing water pipes above her unit and that this failure had resulted in water intrusion into her unit causing toxic mold.

The 2004 litigation was resolved in August 2005 by the parties signing a "Settlement Agreement and Mutual Release" that disposed of the 2004 action. The Association agreed to pay Ms. Salehi \$110,000 and the parties agreed to release each other from all claims "which they ever had, may now have or may ever hereafter have ... by reason of any act or omission, matter, cause or thing arising out of or connected with the [2004] Complaint..." The Settlement Agreement and Mutual Release included an express waiver of the protections afforded under Civil Code § 1542 which provides that a general release will not otherwise extend to claims which the creditor (in this case Ms. Salehi) did not know or suspect to exist in her favor at the time of executing the release.

Ms. Salehi then filed a second lawsuit against the Association in 2008 setting forth ten causes of action. The gravamen of the 2008 lawsuit was that the Association, in violation of the operative Covenants, Conditions and Restrictions, had failed to "appropriately maintain and repair Surfside" and to "maintain an adequate reserve fund for the replacement of the common area facilities." The Fourth and Sixth Causes of Action in the 2008 Complaint alleged negligent misrepresentation and fraud and were based on the Association's alleged failure to disclose the Association's alleged physical and financial problems before Ms. Salehi purchased her unit in March 2004.

After the filing of the 2008 Complaint, the Association filed a Motion for Summary Adjudication on the basis that the August 2005 Settlement Agreement and Mutual Release barred Ms. Salehi's negligent misrepresentation and fraud claims as set forth in the 2008 lawsuit. That Motion was denied. In 2010, the Association's attorneys filed a pre trial Motion in Limine to exclude all evidence of any alleged fraud and misrepresentation which occurred prior to August 2005 based on the Settlement Agreement and Mutual Release. The parties agreed that the Motion in Limine would resolve the Fourth and Sixth Causes of Action contained in Ms. Salehi's 2008 Complaint. Also, since Ms. Salehi had previously dismissed the eight other causes of action in the 2008 Complaint, the Motion in Limine would also resolve the matter in its entirety.

The Association's Motion in Limine was granted by the Trial Court and Judgment was entered in favor of the Association.

On Appeal, Ms. Salehi argued, among other things, that by granting the Motion in Limine, the Trial Court in effect reversed the earlier ruling (by a different Judge) denying the Association's Motion for Summary Adjudication. Ms. Salehi cited Code of Civil Procedure § 1008 which limits a Court's jurisdiction to grant an application to reconsider its prior order. The Court of Appeal rejected Ms. Salehi's argument and affirmed the grant of the Motion in Limine by the Trial Court. In that regard, the Court of Appeal ruled that to read Code of Civil Procedure § 1008 so broadly would unreasonably infringe on the Trial Court's ability to rule on issues of law stating that such a construction would "be a prescription for calcified and pointless trial proceedings grinding inexorably toward reversal on appeal for errors that could easily have been corrected but for a perceived lack of power to do so." The Court of Appeal further noted that Code of Civil Procedure § 437c(n)(2) provides that a grant of summary adjudication shall not operate to bar relitigation of other issues as to which summary adjudication was not sought or denied citing Schmidlin v. City of Palo Alto (2007) 157 Cal.App.4th 728.

The Salehi Case, which is also important for its ruling in regard to the grant of attorney's fees under Civil Code § 1354 (which is not a subject of this article), is important in that it provides explicit authority that, where a Motion for Summary Adjudication has been denied on an issue of law, a later Motion in Limine on the same issue of law can be granted should the Trial Court deem it appropriate.

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