

Newsletters

To Appeal, or Not to Appeal: Good Faith Settlement Determinations

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In lawsuits involving multiple defendants, it is not unusual for the plaintiff to settle with one or more of the defendants as the lawsuit progresses. If, after a hearing, the court determines that such a settlement was made in good faith, a settling defendant is exempt from any claims of contribution or indemnity by the remaining defendants. Consequently, those defendants remaining in the lawsuit may wish to block such settlements, so that they are not left "holding the bag," and responsible for the entirety of any judgment. Once the court makes a good faith settlement determination, is there any recourse for the remaining defendants? May they appeal that determination, or is there another method by which they must contest the trial court's determination?

Last month, the Second District Court of Appeal (Division 8) addressed these questions in *Oak Springs Villas Homeowners Ass'n v. Advanced Truss Sys., Inc.* (June 14, 2012) 206 Cal.App.4th 1304. The court held that aggrieved parties in this situation should file a writ petition under Code of Civil Procedure section 877.6—*not* file an appeal—since a good faith settlement determination is a nonappealable interlocutory ruling.

In *Oak Springs Villas*, a homeowners association was dissatisfied with the construction of its condominium complex, which had defects including a sagging roof. As a result, the homeowners association sued the building developers, the general contractor, and the subcontractors who were involved in constructing the roof. Multiple defendants cross-complained against each other for indemnity.

One by one, the homeowners association began to settle with the defendants. When the homeowners association settled with the developers, one of the remaining defendants, subcontractor Advanced Truss Systems (ATS), opposed the settlement, vigorously arguing that it was not in good faith. The trial court, however, disagreed and determined that the settlement had in fact been made in good faith. ATS's cross-complaint for indemnity against the settling defendants was therefore dismissed.

ATS's next step proved to be a critical error in judgment. Rather than file a writ petition as expressly provided in Code of Civil Procedure section 877.6, ATS instead chose to file a notice of appeal from the court's determination of a good faith settlement. Relying on a Fourth District (Division One) Court of Appeal case, *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, ATS argued that it was authorized to appeal the trial court's determination since that determination resulted in the dismissal of ATS's cross-complaint.

The Court of Appeal disagreed with ATS, dismissing its appeal. The court explained: "ATS has appealed from a non-appealable order," and with regard to ATS, no final judgment existed. Under the one final judgment rule, "a party who remains in the action [cannot] base its appeal on an order involving a different party." Furthermore, the court declared, *Cahill* was wrongly decided. A writ petition filed under Section 877.6 is the *only* means by which a remaining defendant may immediately challenge a trial court's good faith settlement determination. Thus, because ATS had not filed a writ petition within the 20-day time limit of that statute, the good faith determination would not be reviewed.

Oak Springs Villas teaches that remaining defendants can seek prompt appellate review of their good faith settlement challenges, but only if they follow the proper procedure. It is possible that ATS and similarly situated parties might be able to get a good faith settlement determination reviewed on appeal *after* a final judgment has been issued. But why wait? As the court in *Oak Springs Villas* points out, Section 877.6 "expressly permits nonsettling defendants to obtain [prompt] review of a good faith settlement

determination through a writ petition." It seems that a wise defendant would choose to seek immediate review of the determination in the manner expressly authorized by statute, rather than to pursue the alternative of waiting for a final judgment and hoping to have the determination reviewed and overturned on appeal.

Update for Our Readers

As we predicted in our last issue, the California Supreme Court granted review of *Kurwa v. Kislinger* (2012) 204 Cal.App.4th 21. In *Kurwa*, the Second District Court of Appeal interpreted the "one final judgment rule" in a new way, stating that the rule does not prohibit an appeal when a trial court issues a judgment disposing of fewer than all of the causes of action framed by the pleadings, so long as none of the causes of action remain actually pending in the trial court. If the Supreme Court endorses this new interpretation, such judgments may be deemed "final" and appealable.