
New California Law Reveals Winners May Be Losers: Significant Impact on Settlement Strategies?

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In Goodman v. Lozano, the California Supreme Court resolved a split among the state Courts of Appeal, holding that a plaintiff who obtains a monetary judgment that is reduced to zero due to offsets from settlements with other defendants is not automatically entitled to attorneys' fees and costs as the "prevailing party." Indeed, the justices affirmed an award of attorney's fees and costs to the defendants in the underlying case.

The Supreme Court, in *Goodman v. Lozano*, 47 Cal.4th 1327 (2010), was called on to decide whether a plaintiff who obtains a monetary judgment that is reduced to zero by California Code of Civil Procedure Section 877 due to offsets from settlements between the plaintiff and other defendants (a so-called "zero judgment") is a "party with a net monetary recovery" for purposes of an award of attorneys' fees and costs under Code of Civil Procedure Section 1032(a)(4). The Court unanimously held that, when a plaintiff obtains a zero judgment, the answer as to who is the prevailing party is left to the trial court's discretion.

In the wake of the *Goodman* decision, in a multi-defendant case where the plaintiff settles with some but not all of the defendants before trial, the plaintiff may in some circumstances wish to pursue a settlement with the remaining defendant(s) short of trial to avoid the risk that the defendant(s) will be deemed the prevailing party after trial. In contrast, a remaining defendant may have an incentive to proceed to trial if it concludes that the plaintiff is unlikely to obtain an award that exceeds the settlement payments it has already received from the other defendant(s).

California Law Governing an Award of Attorneys' Fees and Costs

For the purpose of determining who is the prevailing party for any award of contractual or statutory attorneys' fees and costs, Section 1032(a)(4) defines a "prevailing party" as "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." Otherwise, the trial court may in its discretion determine who is the prevailing party.

Section 1032(b) further provides that, except as otherwise provided by law, a prevailing party is entitled “as a matter of right to recover costs in any action or proceeding.”

Lower Court Decisions

In *Goodman*, after plaintiffs purchased a \$1.25 million home in Laguna Beach, they sued the contractor, architect, and real estate brokers, alleging that there were construction defects. All of the defendants except for the Lozanos settled with plaintiffs prior to trial, paying in excess of \$230,000. At trial, the plaintiff obtained a “total damage award” of \$146,000. After learning of the prior settlements, pursuant to Section 877, which provides that a good faith settlement reached between a plaintiff and a joint tortfeasor “shall reduce the claims against the others” in the amount of the settlement, the court concluded that the plaintiffs should “receive nothing by the action.” In turn, the court awarded the Lozanos their attorneys’ fees and costs in the amount of \$144,000. Plaintiffs appealed, and the 3rd District Court of Appeal, in *Goodman v. Lozano*, 159 Cal.App.4th 1313 (2008), affirmed the trial court decision, concluding that the plaintiffs were not “the party with a net monetary recovery” under Section 1032(a)(4) because they were not entitled to recover anything from the non-settling defendants due to the settlement offsets. In reaching this result, it disagreed with a previous 6th District Court of Appeal decision in *Wakefield v. Bohlin*, 145 Cal. App. 4th 963 (2006), which disregarded offsets when considering the same question and, instead, agreed with the dissenting opinion in *Wakefield* that the phrase “the party with a net monetary recovery” does not include a plaintiff that gains nothing because settlement offsets reduce the verdict to zero.

The *Goodman* California Supreme Court Decision

The Supreme Court agreed with the 3rd District Court of Appeal and the *Wakefield* dissent, and held that the term “net monetary recovery” in Section 1032(a)(4) means a recovery “after all deductions, including offsets for settlements,” an interpretation consistent with Section 877. It reasoned that “any reduction for prior settlements is made **before** the entry of judgment” and, “[a]ccordingly, when a plaintiff’s prior settlement is more than the award received at trial, the plaintiff ultimately recovers nothing . . . the net recovery is zero” (emphasis in original). It found this interpretation supported by the legislative history of Section 1032 (as amended in 1986) and, in turn, that the *Wakefield* majority “erroneously relied on the reasoning of cases” interpreting the prior version of Section 1032 to conclude that settlement offsets “do not affect a prevailing party determination.” The Supreme Court then held that because neither plaintiffs nor defendants satisfied any of the Section 1032(a)(4) defined categories of “prevailing party,” it was within the trial court’s discretion to award attorneys’ fees and costs, and that the trial court did not abuse its discretion by awarding the defendant its attorneys’ fees and costs.

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