



2nd Guessing Good Faith Settlement Determinations

Law360, New York (June 21, 2012, 8:18 PM ET) -- How, and when, should you seek appellate review of an order finding that a settlement between other parties was made in good faith? This is a high-stakes question: Get the answer wrong, and the court will turn you away without ever reaching the merits.

The short answer: File a writ petition in the Court of Appeal, quickly.

The longer answer: Under California Code of Civil Procedure section 877.6, a trial court's determination that a settlement was made in good faith directly affects the parties who remain in the case: It bars them from suing the settling defendant for contribution or equitable indemnity. But a nonsettling party has one opportunity to avoid this result: Section 877.6 provides that any party "aggrieved" by a good faith settlement determination "may" petition for review via a writ of mandate.

Any party with a basis for challenging the good faith determination should take advantage of the writ petition option. There isn't much time to do this — by statute, the petition is due within 20 days after service of written notice of the good faith determination, subject to a trial court extension of up to 20 additional days. But don't skip the petition and assume that you will be able to get review through an appeal instead. As the newly published decision in *Oak Springs Villas Homeowners Ass'n v. Advanced Truss Systems Inc.* (Cal. Ct. App. June 14, 2012) demonstrates, parties who fail to file a timely writ petition do so at their peril.

Oak Springs Villas stemmed from a dispute about who was responsible for construction defects in a condominium development. The condominium homeowners' association sued the developers and numerous parties involved in the construction, and the defendants cross-complained against each other for indemnity.

The homeowners' association eventually settled with the developers. The developers then moved for a determination that the settlement was in good faith. A nonsettling defendant, subcontractor *Advanced Truss Systems*, opposed the motion. The trial court nonetheless found that the settlement was made in good faith. Under Code of Civil Procedure section 877.6(c), that determination barred the remaining defendants from claiming that the developers were liable for any contribution or indemnity.

The subcontractor could have filed a writ petition challenging the trial court's good faith determination. But it didn't. Instead, it filed a notice of appeal from the good faith order. That procedural choice had a dramatic consequence: The Second Appellate District, Division Eight dismissed the appeal without addressing the merits of the good faith determination.

Oak Springs Villas held that there is no appeal from an order finding a settlement to be in good faith. It rejected the subcontractor's theory that the order was appealable as a final judgment under Code of Civil Procedure section 904.1(a): Although the order was final as to the settling developers, it was not final as to the subcontractor, because the subcontractor remained a defendant in the homeowners' association's suit. And, according to *Oak Springs Villas*, "[t]he final judgment rule cannot be interpreted to allow a party who remains in the action to base its appeal on an order involving a different party."

Oak Springs Villas expressly disagreed with the recent decision in *Cahill v. San Diego Gas & Electric Co.*, 194 Cal. App. 4th 939 (2011), where the Fourth Appellate District, Division One reached the opposition conclusion: Cahill summarily concluded, in a footnote, that a good faith settlement order is a final judgment from which a non-settling defendant may appeal. Cahill relied on the rule that a judgment is final as to a party if it resolves all issues involving that party. Reasoning that a good faith settlement order is final as to the settling party, Cahill apparently assumed that meant any party could immediately appeal from it.

Oak Springs Villas dismissed Cahill's analysis as "bare" and as providing "no legal support" for its conclusion. In particular, Oak Springs Villas pointed out that the general rule is that the party as to whom a judgment is final may immediately appeal that judgment. But that rule does not "stand for the proposition that a party remaining in the action may seek review by appeal." Rather, according to Oak Springs Villas, a nonsettling defendant must wait to appeal until there is a final judgment as to it.

Based on its conclusion that the good faith determination was not appealable and that the subcontractor should not "get a second bite of the apple before its final judgment," Oak Springs Villas dismissed the subcontractor's appeal.

Oak Springs Villas did not decide whether the subcontractor could "get a second bite of the apple" after its final judgment — that is, whether, if the subcontractor eventually lost at trial, it could challenge the good faith determination as part of its appeal from a final judgment. The other courts that have weighed in on that issue have reached different conclusions.

Several courts have held that writ petitions are not the sole way to challenge a good faith determination, and that an appellate court may review the determination as part of an appeal from the final judgment. As described in *Maryland Cas. Co. v. Andreini & Co. of Southern California*, 81 Cal. App. 4th 1413 (2000), this view rests on the language and legislative history of section 877.6.

But so far, the decisions reviewing good faith determinations as part of an appeal share a common fact: In each case, the nonsettling defendant had first filed a timely writ petition that was summarily denied.

How important this fact is remains to be seen. The decisions permitting appellate review do not expressly require a prior writ petition, and it is possible that they would have reached the same result even if the appellant had not filed one. But there is other published authority that suggests that the writ petition matters.

Namely, in *Main Fiber Prods. Inc. v. Morgan & Franz Ins. Agency*, 73 Cal. App. 4th 1130 (1999), a nonsettling defendant that had never petitioned for writ review asked the court to review a good faith settlement determination as part of its appeal from the final judgment. The court refused. It acknowledged that appellate review might have been available if the defendant had first filed a timely writ petition. But there was no such petition, and without one, the court held that it could not review the good faith settlement on appeal.

The bottom line is that a good faith settlement determination is not immediately appealable, and that a court might refuse to review the determination on appeal from the final judgment unless the appellant has already challenged the determination via a timely writ petition. Accordingly, there is only one prudent course of action: If you are aggrieved by a good faith settlement determination and there is a meritorious basis for challenging it, file a writ petition right away.

--By Alana H. Rotter, Greines Martin Stein & Richland LLP

Alana Rotter is a partner at Greines Martin Stein & Richland LLP in Los Angeles, where she focuses on civil appeals. She can be reached at arotter@gmsr.com.

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