

Brawley v J.C. Interiors, Inc.

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Prevailing Party; Application of Settlement Credits to Verdict (CCP 877); Net Monetary Recovery; Award of Costs

Four owners of the Olivewood Medical Arts Center contracted with JC Interiors to rebuild the basic structure of their building after a fire. The contract called for five separate installment payments of 18% plus a 10% retention after completion. When the owners failed to make the third installment the builder walked off the job.

One of the owners, Brawley, sued the builder for lost rents he would have earned if the project had been completed on time. The builder, JC, then sued all of the owners for nonpayment. Three of the owners settled with JC for \$100,000. Brawley, the fourth owner, went to trial. As plaintiff's counsel noted in a post trial hearing, "the jury socked it to both sides."

The jury found **both sides had breached the contract**. The jury awarded Brawley \$19,800 for JC's breach and awarded JC \$32,551 for Brawley's breach. The court offset Brawley's \$32,551 obligation with the \$100,000 settlement received by JC from the other three owners, thus reducing Brawley's obligation to zero. The court then entered Brawley's judgment for \$19,800.

The trial court then found JC to be the **prevailing party** under CCP 1032 and awarded costs to JC. Brawley appealed, contending the court erred in finding JC the "prevailing party" for purposes of an award of costs.

JC also appealed, contending the trial court should have offset JC's judgment of \$32,551 against Brawley with Brawley's \$19,800 judgment against JC for a net award to JC of \$12,751, which then should have been reduced to zero due to credit for the \$100,000 settlement. JC contended the correct judgment should have been **nothing to either side**.

Both sides looked to **CCP section 877** which says that **a settlement made in good faith by one co-obligor "shall reduce the claims against the others in the amount stipulated by the release, the dismissal, ...or in the amount of the consideration, paid for it whichever is the greater."**

The Fifth DCA observed that if the other three owners had not paid \$100,000 to JC, and if the trial court had rendered judgment in the absence of any settlement, the judgment would have been for \$12,751, in favor of JC and against Brawley. The Justices noted the value of JC's claims against Brawley was the amount JC would have recovered in litigation against Brawley if there had been no settlement "before verdict or judgment" (**CCP section 877**) by Brawley's co-obligors-\$12,751.

The jury found that each side **partially breached** the contract and that each party had been damaged by the other's breach. In such a situation, the **proper procedure for the court to take is to offset the jury's damages award against each other**, just as the court would do if there had been no settlement, and to **then apply the settlement credit to any net amount of damages the non-settling defendant would have been liable for if there had been no settlement**. (\$12,751)

The Fifth DCA instructed the trial court to enter on remand a judgment awarding **nothing to Brawley and nothing to JC**. The one and only recovery JC obtained is the settlement it received from Brawley's former co-defendants.

Brawley also contended on appeal that the trial court erred in finding JC to be the **prevailing party** for purposes of an award of costs. Brawley contends that because he received a judgment of

\$19,800, he is the prevailing party as a matter of law. The right to recover costs is wholly dependent on statute. (Crib Retaining Walls, Inc. v NBS/Lowry, Inc. (1996) 47 Cal. App. 4th 886)

CCP section 1032(a)(4) states:

Prevailing 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 the defendant.

Here, the Justices found the trial court should have entered a judgment awarding no damages to either side. They then noted the competing opinions of Wakefield v Bohlin (2006) 145 Cal.App.4th 963 and Goodman v Lozano (2008) 159 Cal.App. 4th 1313, which differed on whether the pretrial settlements of co-defendants should be considered in evaluating prevailing party status. (See Goodman, attached)

Siding with the dissent in Wakefield, and the unanimous opinion in Goodman, the Fifth stated the language of CCP 1032 does not permit a judgment of zero to be fairly construed to be a "net monetary recovery." A litigant cannot actually recover or "gain" anything without an order or a judgment. The fact that the litigant may have had an award or verdict prior to a zero judgment is meaningless for purposes of whether that litigant qualifies as "the party with a net monetary recovery if the award or verdict produces nothing tangible. "Recovery," not "award", is the word chosen by the Legislature.

On remand, the trial court may exercise the discretion conferred upon it by CCP 1032(a)(4) and determine anew whether it wishes to make an award of costs. The judgment awarding Brawley \$19,800 is reversed, and the trial court is **directed to enter a judgment awarding Brawley nothing and JC nothing**. Both sides are to bear their own costs on appeal.

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