

## **Paragon Real Estate Group v Hansen**

10/7

Cross-complaint for equitable indemnity; Good faith settlements

Plaintiff Karen Park brought an action for failure to disclose an easement, burdening her property in favor of the adjoining landowner, naming Paragon and Hansen, among others. Paragon acted as broker for Park, and Hansen represented the sellers in the transaction. Paragon filed a cross-complaint against Hansen for equitable implied indemnity, comparative indemnity, comparative contribution, total equitable indemnity, implied contractual indemnity and declaratory relief.

Hansen demurred to the cross-complaint, arguing that *American Motorcycle Assn. v Superior Court* (1978) 20 Cal.3d 578, only permitted a cross-complaint for equitable indemnity on the basis of comparative fault against an alleged third-party joint tortfeasor **not already named as a defendant by the plaintiff**. Hansen argued that because it was already a party, a determination of comparative fault will be part of plaintiff's judgment, and the cross-complaint was "*improper and unnecessary.*"

After oral argument, the trial court sustained Hansen's demurrer without leave to amend. The court stated: "*Equitable indemnity is properly denied where the same relief is available in the underlying action (See Leko v Cornerstone Bldg. Inspection Service (2001) 86 Cal.App.4<sup>th</sup> 1109).*" The court reasoned that since Paragon and Hansen are already both defendants, Paragon cannot state an independent cause of action for equitable indemnity against this joint tortfeasor. The cross-complaint was ordered dismissed, and this appeal followed.

The First District Court of Appeal referred to Code of Civil Procedure section 428.10(b) which permits "*a party against whom a cause of action has been asserted in a complaint or cross-complaint to file a cross-complaint setting forth any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action.*"

Following its decision in Li v Yellow Cab Company (1975) 13 Cal.3d 804, establishing the rule of comparative negligence, the Supreme Court in American Motorcycle addressed **the all or nothing common law indemnity doctrine**. After rejecting the doctrine in favor of comparative fault, the Court the Court then considered whether a defendant can join another alleged tortfeasor by cross-complaint. The Court determined that the defendant may do so, even when the alleged tortfeasor has not been named in the lawsuit.

Although the Court retains the authority to postpone the trial for the indemnity question if it believes such action is appropriate to avoid unduly complicating the plaintiff's suit, the court may not preclude the filing of such a cross-complaint altogether. (American Motorcycle, at p. 584) Although Paragon referred to American Motorcycle in the trial court proceedings, the court did not refer to it, citing Leko, instead, and impliedly endorsing Hansen's argument.

The First DCA demonstrated that Leko relied on a dubious reading of Jaffe v Huxley Architecture (1988) 200 Cal.App.3d 1188). In that case defendant developers sought to cross-complain against individual directors on the homeowner's board which had sued the developers. Because the association's board of directors was determined to be an entity inseparable from the homeowners association, the board's wrongful conduct would be accounted for in the main action under comparative fault principles *without a cross-complaint being filed* against the individual board members.

Thus, the Justices noted Jaffe **should not** be read as holding that equitable indemnity claims are improperly asserted whenever a named defendant seeks to do so against another named defendant. Jaffe did not even involve a situation where one defendant was seeking to cross-complain against another defendant. Jaffe involved special factors, and the DCA could find no case refusing the right to cross-complain for equitable indemnity simply because the underlying action would allow a defendant to assert principles of comparative negligence.

Paragon argued that a refusal to allow it to preserve its equitable indemnity rights against Hansen made it prejudicially vulnerable to a “day of trial” dismissal of Hansen from the case. If Park chose to dismiss Hansen for any reason, Paragon would be deprived of its right under American Motorcycle to seek an apportionment of Hansen’s fault and the right to equitable indemnity in the case. Paragon would have to pursue new litigation against Hansen instead.

Hansen contended that CCP section 877.6 adequately protects Paragon without the necessity of a cross-complaint. Hansen notes Paragon could challenge the good faith nature of a settlement dismissing Hansen, even if there is no cross-complaint pending against Hansen. The First DCA pointed out, however, that [877.6 provides special and distinct procedures providing extra protection to a non-settling defendant who has a cross-complaint pending against a settling defendant. For example, it is error following a good faith settlement determination to dismiss a cross-complaint in the absence of a separate motion to dismiss. \(See, Shane v Superior Court \(1984\) 160 Cal.App.3d 1237\)](#)

The effect is to focus the court’s attention on two distinct questions, (1) whether the settlement was in good faith, and (2) whether the claim sought to be dismissed is of the kind barred by a good faith settlement. (Shane, at p. 1246) Without a cross-complaint, Hansen would be out of the case before Paragon could bring a motion for determination of the good faith of the settlement between Hansen and plaintiff. The cross-complaint assures that a good faith determination precedes a settling defendant’s exit from the case.

Based on the holdings of American Motorcycle, cross-complaints between tortfeasors are authorized. The trial court erred in sustaining Hansen’s demurrer and in dismissing Paragon’s cross-complaint. The order is reversed and vacated. Costs are awarded to Paragon.

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