

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Steller v Sears, Roebuck and Co. (10/14/2010)

Settlement Agreements; Ambiguous Terms; Extrinsic Evidence

Plaintiff filed a civil action for disability discrimination against defendant, claiming it failed to reinstate her with reasonable accommodation to her disability upon termination of a workers' compensation leave of absence because of her disability, a bad back. She also pursued a workers' compensation proceeding against defendant, a claim which was handled by different lawyers than the civil action, although it arose from the same alleged back injury as the disability discrimination claim.

Defendant served a CCP 998 offer to compromise, making no specific mention of the workers' compensation claim, offering \$95,000 in exchange for satisfaction of all claims for alleged damages asserted by plaintiff, "*... as well as all demands, actions, liabilities, obligations, damages and/or causes of action arising from this lawsuit or relating to plaintiff's employment with defendant.*" Prior to expiration of the offer, while attending a Settlement Conference, plaintiff accepted it and the matter was settled.

Plaintiff filed a section 664.6 motion for entry of judgment in the disability discrimination action, arguing that the offer did not include the workers' compensation claim. Defendant filed a cross motion asserting that the offer included both the civil action and the workers' compensation action. The trial court found the offer "unambiguously" referred to both, and refused to consider extrinsic evidence in the form of declarations filed by the parties. The order stated the offer was broad enough to include any workers' compensation claim plaintiff had arising from the lawsuit or relating to her employment with defendant.

CCP section 664.6 provides that if the parties stipulate, in a writing signed by the parties outside the presence of the court, or orally before the court, to settle the case, the court, upon motion, may enter judgment pursuant to the

terms of the settlement. A judge may receive evidence and determine disputed facts, and enter the terms of the settlement as a judgment, but the judge may not create the material terms of a settlement, as opposed to determining what terms the parties themselves have agreed upon. (*Osumi v Sutton* (2007) 151 Cal.App.4th 1355)

On plaintiff's appeal to the Sixth District, the Justices referenced Labor Code section 5001 which requires appeals board approval to conclude a workers' compensation claim. The effect of the section is to make every compromise invalid until it is approved by the WCAB. (*Chavez v Industrial Acc. Commission* (1958) 49 Cal.2d 701) A tort release is effective upon execution, but a compromise and release of workmen's compensation liability is invalid until approved by the Workmen's Compensation Appeals Board. (*Johnson v Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964)

Accordingly, the Sixth DCA held that where the parties seek to settle both a civil action and a related worker's compensation claim at a superior court settlement conference, it must be conditioned upon WCAB approval. The Court also found the trial court erred in determining the language of the settlement agreement encompassed the plaintiff's worker's compensation claim. It found the language is ambiguous for failing to mention the pending workers' compensation action, failing to require dismissal of the workers' compensation action, and failing to require approval of the WCAB.

The ambiguity presents triable issues of material fact about whether the parties understood the compromise and release would release defendant from liability for claims then pending in the civil proceeding which are not compensable under the workers' compensation act.

The Sixth DCA also observed that extrinsic evidence can be offered not only where it is obvious that a contract term is ambiguous, but also to expose a latent ambiguity. (*Reinsurance Co. v Superior Court* (2008) 161 Cal.App.4th 906) Because the language of the settlement agreement was ambiguous, the trial court was required to consider extrinsic evidence of the parties' intent. Where a word or phrase used in a contract can reasonably be understood in more than one way, the court must admit and consider extrinsic evidence to determine what the parties actually intended the word or phrase to mean. The court should not limit the determination of the meaning of a written instrument to its four corners merely because it seems to the court to be clear and unambiguous when the

language is reasonably subject to multiple interpretations. (Ranier Credit Co. v Western Alliance Corp.(1985) 171 Cal.App.3d 255)

Plaintiff argues that Civil Code section 1654 requires in cases of uncertainty the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The rule of section 1654 is to be used only when there is no extrinsic evidence available to aid in the interpretation. The rule remains that the trier of fact will consider any available extrinsic evidence to determine what the parties actually intended the words of their contract to mean. Only in those instances where the extrinsic evidence is either lacking or is insufficient to resolve what the parties intended the terms of the contract to mean will the rule that ambiguities are resolved against the drafter of the contract be applied. (Ranier Credit Co. v Western Alliance Corp., supra)

Here, the trial court did not consider the parties' declarations. The Justices noted that reversal should be ordered only after a thorough review of the entire record to determine if it is reasonably probable that a result more favorable to plaintiff would be reached in the absence of the error. Otherwise, such error will be found harmless. Defendant's counsel declared that the settlement deal was global, and included the workers' compensation claim. She stated that she told plaintiff's counsel that the funds were derived from both the third party case and the workers' compensation case.

Plaintiff's counsel averred the two cases were not tied together but mentioned that defense counsel stated, "...she had received some money from the workers' compensation attorneys..." He went on to state his uncommunicated "understanding" of the offer. The Justices noted that his belief is irrelevant. The question is what the parties' objective manifestations of agreement or objective expressions of intent would lead a reasonable person to believe. (Winograd v American Broadcasting Co. (1998) 68 Cal.App.624)

Here, a reasonable person could draw only one conclusion: the parties intended the settlement to encompass both the disability discrimination and workers' compensation claims. Where the extrinsic evidence points only one way, the meaning of the language in question may be ascertained as a matter of law and may be reviewed by an appellate court de novo. (Solis v Kirkwood Resort Co. (2001) 94 Cal.App.4th 354) Considering the extrinsic evidence, the only plausible interpretation of the settlement agreement is that it encompassed both the disability discrimination and workers' compensation claims. Because it is not

reasonably probable that a different result would have been obtained if the trial court had properly considered extrinsic evidence, the judgment is affirmed. The judgment is construed as impliedly decreeing that the terms encompass both the third party discrimination claim and the workers' compensation claim, and impliedly decreeing that the validity of the settlement agreement is conditional upon the WCAB's approval of the settlement of the workers' compensation claim. If the WCAB does not grant its approval, the settlement shall be of no force or effect.

As so construed the judgment is affirmed. Defendant shall recover its costs on appeal.

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