
Plaintiff Who Obtains Verdict Less Than Good Faith Settlement Offer Is Not Prevailing Party



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In most defect lawsuits, plaintiff sues multiple defendants. Oftentimes, plaintiff settles with one or more defendants and proceeds to try the case against nonsettling defendants. Pursuant to Code of Civil Procedure section 877, *et seq.*, the settlement monies may be used as an offset against any damages awarded against the nonsettling defendants. If plaintiff obtains an award of less than the settlement offset, is plaintiff the prevailing party? The California Supreme Court answered this question in the negative.

In *Goodman v. Lozano* (Feb. 4, 2010) 47 Cal.4th 1327, plaintiffs sued multiple defendants for breach of contract and tort claims based on construction defects in their house. Plaintiffs settled with all defendants except two. The settlements were determined to be in good faith pursuant to Code of Civil Procedure section 877, and the settlement amounts were used as an offset against any damages awarded against the remaining defendants. At trial, plaintiffs received an award of damages which were less than the good faith settlement offset, resulting in plaintiffs being awarded no damages. The trial court then determined that the defendants were the prevailing parties and awarded them \$12,000 in costs and \$132,000 in attorney fees.

The California Supreme Court upheld the judgment. It reasoned that under Code of Civil Procedure section 1032, a plaintiff is a prevailing party if it receives a "net monetary recovery," while a defendant is a prevailing party against a plaintiff who does "not recover any relief against that defendant." The definition of "net monetary recovery" is to gain money that is "free from... *all* deductions." Here, plaintiffs' award was offset to zero and thus, plaintiffs did not obtain a net monetary recovery. The Court reasoned that because "the [defendants] achieved their goal of proving damages in an amount less than the settlement proceeds, by which they avoided having to pay plaintiffs anything," the trial court did not abuse its discretion by finding the defendants to be the prevailing party. In reaching the decision, the California Supreme Court overturned a decision of the Sixth District Court of Appeal, *Wakefield v. Bohlin* (2006) 145 Cal.App.4th 963, which had held that a party who was awarded damages which were reduced to zero due to a good faith settlement offset was nonetheless a prevailing party.

Bottom line: All parties should be aware that plaintiff may have to pay defendant's litigation costs and possibly its attorneys fees should plaintiff obtain a damages award that is less than the good faith settlement offset.