

WHEN WINNING IS LOSING CALIFORNIA SUPREME COURT CLARIFIES WHO IS A “PREVAILING PARTY”

When the dust settles on a judgment, there is often a debate as to who is the prevailing party. The California Code provides some guidance on this issue, setting out four ways to test who won. One of those asks which party ended up with a “net monetary recovery.” A plaintiff who wins a verdict, even a modest one, will typically be the “prevailing party,” which can then trigger potentially more significant battles about recovering attorneys fees and costs. But as the California Supreme Court has just explained, it is not always apparent who prevailed, even when a plaintiff achieves a positive trial verdict. The key term is “net monetary recovery.” It may seem obvious that a net zero judgment means there is no “net monetary recovery.” In reaching that conclusion, however, the California Supreme Court had to turn away from nearly twenty years of precedent that had suggested differently. The case is *Goodman v. Lozano*, ___ Cal. Rptr. ___ (Feb. 4, 2010), and its holding should clarify when a party can invoke the “net monetary recovery” prong of Civil Procedure Code section 1032(a)(4) to claim the “prevailing party” mantle.

Overview of Goodman v. Lozano. *Goodman* involved a classic custom-home construction defect case. Plaintiffs Goodman purchased a custom home from the Lozanos and after discovering defects, sued the Lozanos, as well as the builder, the architect, and the real estate broker, under theories of breach of contract, negligence, fraud, breach of warranties and negligent misrepresentation.

Plaintiffs settled the claims with all defendants, except the Lozanos, for \$230,000, and the trial court found these settlements were made in good faith. Later, Plaintiffs rejected the Lozanos’ separate pre-trial (Section 998) settlement offer of \$35,000, and the breach of contract action against the Lozanos proceeded to a bench trial. The trial court found in plaintiffs’ favor and calculated a total damage award of \$146,000. Thereafter, pursuant to Civil Procedure Code section 877, the trial court credited the Lozanos for the good faith settlements plaintiffs had already received, which meant a net zero judgment against the Lozanos. Because the Lozanos paid nothing under the judgment, the trial court determined they, and not plaintiffs, were the prevailing party under Civil Procedure Code section 1032(a)(4). The trial court then awarded the Lozanos \$132,000 in attorneys fees and \$12,000 in costs. The Court of Appeal affirmed.

Applying a straightforward, plain language statutory construction analysis, the California Supreme Court concluded that the trial court and Court of Appeal got it right—the “party with a net monetary recovery” means “the party who gains money that is ‘free from . . . all deductions.’” Thus, a “plaintiff who obtains a verdict against a defendant that is offset to zero by settlement with other defendants does not gain any money free from deductions. Such plaintiff gains nothing because the deductions reduce the verdict to zero.” (Quoting *Wakefield v. Bohlin*, 145 Cal. App. 4th 963, 992 (2006) (*Mihara, J., dissenting*)). Because the plaintiffs’ \$146,000 judgment against the Lozanos was completely offset by the good faith settlements totaling \$230,000, plaintiffs were not a “party with a net monetary recovery” and could not rely on that prong of section 1032(a)(4) to obtain prevailing party status. The Lozanos technically lost the verdict. But they ended up winning the case inasmuch as they were the “prevailing party” and recovered \$144,000 in costs and attorneys’ fees.

Departing From Court of Appeals Precedent. Although it found the meaning of the phrase “net monetary recovery” to be plain, the Court nevertheless reviewed the legislative history of Civil Procedure Code section 1032, as amended by the Legislature in 1986, and concluded the Court’s interpretation squared with the legislative history. But this had not always been the prevailing interpretation of “net monetary recovery.” *Goodman*, in fact, departs from, and disapproves, earlier Court of Appeal decisions going back twenty years that had suggested a party can obtain attorneys fees and costs under section 1032 even if its judgment

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is reduced to zero by settlement offsets. See, e.g., *Pirkig v. Dennis*, 215 Cal. App. 3d 1560, 1566 (1989) (holding that the right to recover costs and fees does not change simply because plaintiff failed to obtain a net monetary recovery). After *Goodman*, a zero sum judgment precludes one from relying on Section 1032(a)(4)'s "net monetary recovery" prong to demonstrate it is the "prevailing party" and thus entitled to costs and fees. (In any given case, there may be other grounds to assert prevailing party status, for example, obtaining declaratory or injunctive relief.)

Practical Implications of Goodman. Four points about *Goodman* are worth considering.

- First, it is worth noting *Goodman's* limitations. It dealt only with the meaning of "net monetary recovery" in Civil Procedure Code section 1032(a)(4). It did *not* address any of the other three express paths for determining a "prevailing party" besides the "net monetary recovery" prong: (1) defendant who obtains a dismissal; (2) defendant if no relief is granted to either plaintiff or defendant; or (3) a defendant as against those plaintiffs who do not recover any relief against that defendant. Cal. Civ. Proc. Code § 1032(a)(4). Nor did it meaningfully change a trial court's discretion to determine the prevailing party when none of the four express categories in section 1032(a)(4) applies. Finally, *Goodman* is silent on how to treat the costs and fees spent by plaintiffs to obtain the \$230,000 settlement. Presumably, one would expect a plaintiff to argue that fees and costs to achieve the settlement should be deducted from the overall settlement amount for purposes of determining whether there was a "net monetary recovery." The *Goodman* opinion does not address that point.
- Second, two features of *Goodman* may limit its application in certain cases: (1) it did not appear to involve joint and several liability; and (2) the amount the Plaintiff received in good faith settlement (\$230,000) exceeded both the total award and the total amount allocated to the holdout Lozano defendants (\$64,000). Had it involved joint and several liability, and had the amount of total damages exceeded the good faith settlement amount (even by one dollar), the result may have been much different.
- Third, although *Goodman* did not discuss the likely effect its decision could have on California's strong policy favoring settlements, there is little question that it gives both plaintiffs and defendants in a multi-defendant lawsuit much to think about during settlement negotiations. For example, following *Goodman*, a plaintiff that has reached a significant, good faith settlement with some defendants must carefully weigh the potential ramifications of pursuing trial against the non-settling defendants. Pursuing trial against the Lozanos backfired in *Goodman*, although, as discussed, ample case law supported that strategic decision.

Goodman also raises questions about settlement strategies in multi-defendant actions. Is it better for a plaintiff to focus settlement efforts on obtaining a large sum from the "deep pocket" defendant and to worry about the smaller players later? As *Goodman* illustrates, this approach may prove too successful for its own good by setting a high bar that makes pursuing trial against the holdout defendant(s) risky. In the same vein, *Goodman* could, in some situations, incentivize a defendant not to settle. If for example, the plaintiff has reached a good faith settlement with one defendant for a good portion of the claimed damages, a non-settling defendant with limited exposure might choose to forego settlement altogether, forcing the plaintiff to either walk away (which it cannot do unilaterally without risking a cost/attorneys' fees award), or roll the dice at trial.

- Finally, regardless of how it impacts the policy favoring settlements, *Goodman* has at least clarified the meaning of "net monetary recovery." We now know that it means what it says. And it will be important to a plaintiff seeking damages to carefully evaluate its settlement position with the understanding that a victory on liability that yields no damages could be not only hollow, but pyrrhic. In *Goodman*, the "winning" plaintiffs walked away from the courthouse with *less* in their pocket (\$86,000 after deducting the Lozano's attorneys' fees and costs) than the "losing" Lozanos, who were awarded \$144,000 in costs and fees. *Goodman's* clarification on the meaning of "net monetary recovery" should be helpful to both plaintiffs and defendants in a multi-defendant settlement situation

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