

Appeals, Writs and Post-Trial Motions

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■ Appellate court will not limit its decision to prospective application where supposed “old rule of law” relied upon by litigants consists of a single appellate court case.

Grafton Partners v. Superior Court, 36 Cal. 4th 944 (2005)

Plaintiffs hired an accounting firm to audit certain accounts. The accounting firm’s retainer agreement contained a waiver of the right to jury trial. When plaintiffs sued the accounting firm for negligence, the trial court relied upon the contractual waiver to grant the defendant’s motion to strike plaintiff’s jury demand.

The Supreme Court agreed with the Court of Appeal that because a pre-dispute waiver of jury trial is not one of the approved methods for waiving a jury in Code of Civil Procedure section 631, the accounting firm’s contractual waiver was unenforceable. In doing so, the Supreme Court disapproved the contrary decision in *Trizec Properties, Inc. v. Superior Court*.¹

Based on the *Trizec* decision, the defendant argued that the Supreme Court’s decision should apply prospectively only “because predispute waivers of the right to jury trial...have become commonplace in the commercial context.”² The Supreme Court responded by reiterating the basic principle that “[o]rordinarily, judicial decisions apply retrospectively.” The Court then acknowledged an established exception to this rule “when [a] decision alters a settled rule upon which parties justifiably relied.”³ The Court noted, however, that this exception applies “only when a decision constitutes a ““clear break”” with decisions of *this* court or with practices we

have sanctioned by implication, or when we ‘disapprove[] a longstanding and widespread practice expressly approved by a near-unanimous body of lower-court authorities.’”⁴ The Court concluded that a single intermediate appellate court decision [*Trizec*] “is hardly the kind of ‘uniform body of law that might be justifiably relied on.’”⁵

■ Appellate court reduction of unconstitutional punitive damage award does not violate right to trial by jury.

Simon v. San Paolo U.S. Holding Co., 35 Cal. 4th 1159 (2005)

Plaintiff sued over the purchase of an office building. The jury found defendant liable for promissory fraud and awarded \$5,000 in compensatory damages and \$1.7 million in punitive damages. The Court of Appeal upheld the punitive damage award because it was only about four times the \$400,000 profit plaintiff claimed he would have made if defendant had sold him the property.⁶ The Supreme Court concluded that the \$400,000 claimed profit was not a proper measure of harm to the plaintiff and that “[t]he \$5,000 award of compensatory damages... must be considered the true measure of harm.”⁷

The Court then found the \$1.7 million punitive damage award constitutionally excessive as compared with the \$5,000 in actual harm to the plaintiff. However, rather than return the case to the intermediate Court of Appeal to reduce the punitive damage award, the Supreme Court decided to determine for itself the maximum

1. 229 Cal. App. 3d 1616 (1991).

2. *Grafton Partners*, 36 Cal. 4th at 967.

3. *Id.*

4. *Id.* (emphasis and alteration in original).

5. *Id.*

6. *Id.* at 1171.

7. *Id.* at 1179.

punitive damage award permitted by due process and then order an absolute reduction of that award. To reach this conclusion the Court noted that because “constitutional excessiveness is a legal issue [that] appellate courts determine independently, we do not, in determining the maximum constitutional award ourselves, decide any question of fact plaintiff has a right to have decided by a jury.”⁸

■ Court discusses standard of review of new trial order based on inconsistent special verdict findings

City of San Diego v. D.R. Horton San Diego Holding Co., 126 Cal. App. 4th 668 (2005)

In an eminent domain action, the City of San Diego sought to acquire a parcel of property. By special verdict, the jury determined the fair market value of the taken property, severance damages to the remaining property, and the value of the project’s benefits. Based on these findings, the jury determined a total net compensation award. The trial court found the jury’s determination of the property value was inconsistent with its determination of severance damages, and granted a new trial. The city appealed.⁹

The Court of Appeal affirmed the new trial order.¹⁰ While acknowledging that orders granting a new trial are generally reviewed for abuse of discretion, the court emphasized that ““any determination underlying [the] order is scrutinized under the test appropriate to such determination.””¹¹ The court then found that the new trial order “was based on [the trial court’s] determination that two of the jury’s special verdict findings were inconsistent with each

other,” and that the correctness of the special verdict must be reviewed as a matter of law.¹²

The Court of Appeal affirmed the new trial order. The court noted that while a general verdict implies findings on all issues in favor of the prevailing party, a special verdict implies no such findings and is reviewed only as to the issues actually decided by the verdict. The court observed that while a general verdict decided with special findings will not be set aside unless there is no possibility of reconciling the general verdict with the special findings, this “rule of reconciliation” does not apply to inconsistent special verdicts because, unlike a general verdict, ““there is no...presumption in favor of upholding a special verdict.””¹³ The court held the trial court properly concluded that the jury had reached inconsistent special verdicts by implicitly finding the same property had two different values.¹⁴

■ Code of Civil Procedure section 473 cannot remedy the failure to meet a statutory jurisdictional deadline.

Maynard v. Brandon, 36 Cal. 4th 364 (2005)

Plaintiff sued to recover legal fees. Defendants invoked their right to compel arbitration of the fee dispute under the mandatory attorney fee arbitration act, Business and Professions Code section 6200 *et seq.*¹⁵ After an arbitration panel issued an award to the plaintiff, defendants mailed a “rejection of arbitration award” to plaintiff. However, defendants filed their rejection with the court after expiration of the statutory period for seeking a trial following a fee arbitration.¹⁶ Defendants sought relief from their untimely filing under Code of Civil Procedure

8. *Id.* at 1187 (citations omitted).

9. *Id.* at 673.

10. *Id.*

11. *Id.* at 678 (citations omitted, alteration in original).

12. *Id.*

13. *Id.* at 679 (citations omitted).

14. *Id.* at 681-84.

15. *Id.* at 369.

16. *Id.* at 370.

section 473. The trial court denied relief on the ground that section 473 cannot relieve failure to comply with the statutory deadline for requesting trial after a fee arbitration. The Court of Appeal reversed, acknowledging that the Courts of Appeal were in conflict on this issue.¹⁷

The Supreme Court reversed the Court of Appeal's decision. Noting that section 473 cannot relieve the failure to comply with mandatory, jurisdictional deadlines, the Court likened the deadline for seeking a trial after arbitration to the time for filing a notice of appeal. The Court concluded that strict compliance with the deadline for seeking trial after arbitration advances the goal of the statutory scheme governing attorney fee arbitration. Based on these considerations, the Court concluded that section 473 cannot relieve the failure to timely seek a trial after arbitration of an attorney fee dispute.¹⁸

■ Notice of appeal from nonappealable order denying new trial should be construed as an appeal from the underlying judgment where appellant's intent to appeal from judgment was clear and respondent would not be prejudiced.

Walker v. Los Angeles County Metropolitan Transportation Authority, 35 Cal. 4th 15 (2005)

Plaintiff sued for wrongful termination. The jury returned a defense verdict and judgment was entered. Plaintiff filed motions for new trial and judgment notwithstanding the verdict, both of which were denied. Plaintiff then filed a notice of appeal from the order denying her motion for new trial.¹⁹ The Court of Appeal dismissed the appeal because denial of a motion for new trial is not an appealable order.²⁰

The Supreme Court reversed. Applying the rule that a notice of appeal should be construed liberally in favor of its sufficiency, the Court found plaintiff had a colorable argument that she intended to appeal from the underlying judgment and that the respondent would not be prejudiced by permitting the appeal to proceed.²¹

■ Appeal from denial of anti-SLAPP motion stays proceedings in trial court.

Varian Medical Systems, Inc. v. Delfino, 35 Cal. 4th 180 (2005)

Plaintiffs sued defendants for posting derogatory messages on the Internet. Defendants moved to strike plaintiffs' complaint under the anti-SLAPP statute, Code of Civil Procedure section 425.16. The trial court denied the motions and defendants appealed.²² Defendants also applied to the trial court to stay further trial court proceedings pending the outcome of their appeal pursuant to Code of Civil Procedure section 916.²³ After the trial court and the Court of Appeal refused to issue a stay order, plaintiffs went to trial and recovered a money judgment and injunction against defendants. Defendants appealed. Except for a modification of the injunction, the Court of Appeal affirmed, holding that section 916 did not automatically stay trial court proceedings pending resolution of defendants' anti-SLAPP appeal.²⁴

The Supreme Court reversed. The Court observed that the purpose of the automatic stay provision in section 916 is to "prevent[] the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it."²⁵ The Court concluded that to determine whether this

17. *Id.* at 370-71.

18. *Id.* at 372-73.

19. *Id.* at 18.

20. *Id.* at 19.

21. *Id.* at 20-21.

22. *Id.* at 187.

23. *Id.* at 187-88.

24. *Id.* at 188.

25. *Id.* at 189 (citation omitted).

test has been met requires a finding that (a) further trial court proceedings either “seek to ‘enforce, vacate or modify [the] appealed judgment or order’” or would “substantially interfere with the appellate court’s ability to conduct the appeal,” (b) “the possible outcomes on appeal and the actual or possible results of the [trial court] proceeding are irreconcilable,” or (c) “the very purpose of the appeal is to avoid the need for that [trial court] proceeding.”²⁶

The Court then analyzed the interrelationship between appellate review of anti-SLAPP rulings and further trial court proceedings. The Court noted that reversal of an order denying an anti-SLAPP motion can result in dismissal of a cause of action on the merits, a result that is irreconcilable with the plaintiff’s obtaining a judgment on that cause of action. Moreover, the Court found that allowing trial court proceedings on the merits of a claim under review on appeal from denial of an anti-SLAPP motion “is inherently inconsistent with the appeal because the appeal seeks to avoid that very proceeding,” by examining the merits of the issues raised by the alleged cause of action.²⁷ The Court then examined the legislative history of the anti-SLAPP statute and concluded that the Legislature “clearly intended that the perfecting of an appeal from the denial of an anti-SLAPP motion stay further trial court proceedings on the merits.”²⁸

Having found that further trial court proceedings were automatically stayed under section 916, the Supreme Court held the trial court “lacked subject matter jurisdiction over the matters on trial” and that the resulting trial court judgment was therefore void.²⁹

■ Review of quasi-legislative administrative agency rule is more narrow and deferential than review of agency’s legal opinion.

Megrabian v. Saenz, 130 Cal. App. 4th 468 (2005)

Plaintiffs claimed they were wrongfully denied benefits available to aged, blind and disabled legal immigrants who entered the United States on or after a specified date. The State argued that “entered the United States” means physical entry while plaintiffs argued that “entered the United States” refers to the date an immigrant attained his or her current immigration status. The trial court agreed with plaintiffs’ interpretation and issued a writ of mandate.³⁰

The Court of Appeal reversed, holding that the State’s interpretation of the phrase “entered the United States” was entitled to deference.³¹ The court distinguished the legal standard governing review of quasi-legislative administrative rules and the standard governing interpretive rules. Because quasi-legislative rules “are the product of a delegated legislative power conferred on the agency to make law,” the scope of review for such rules is narrow. “If the rule or regulation lies ‘within the lawmaking authority delegated to the agency by the Legislature,’ and ‘it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.’”³²

By contrast, far less deference is owed an agency’s interpretation of a statute which, however expert, is only the agency’s legal opinion, albeit an opinion entitled to the court’s “consideration and respect.”³³

The court then noted that it is often difficult to classify agency rules as quasi-legislative or interpretive, and that some rules have both

26. *Id.* at 190.

27. *Id.* at 193.

28. *Id.* at 195.

29. *Id.* at 196.

30. *Id.* at 473-74.

31. *Id.* at 474.

32. *Id.* at 478 (citation omitted).

33. *Id.*

quasi-legislative and interpretive characteristics. In the latter instance, a reviewing court must analyze an agency's rule under "both the more deferential standard for quasi-legislative regulations, and under the less deferential standard for purely interpretive regulations."³⁴

■ Supreme Court to decide whether a statement of decision and minute order denying a motion for class certification triggers the 60-day period for filing a notice of appeal.

Alan v. American Honda Motor Co., 131 Cal. App. 4th 886 (2005)³⁵

A trial court denied plaintiff's motion for class certification. The ruling consisted of a minute order and file-stamped statement of decision, both of which were mailed to the parties on January 2, 2003. More than 60 days later, the plaintiff filed a notice of appeal from the minute order and all rulings and findings associated with the order.³⁶

The Second Appellate District, Division Three, granted the defendant's motion to dismiss the appeal as untimely. The court explained that, under rule 2(a)(1) of the California Rules of Court, a notice of appeal must be filed within 60 days after the superior court mails the party filing the notice of appeal a document entitled "notice of entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed.³⁷

The court rejected the plaintiff's contention that compliance with rule 2(a)(1) would have required the trial court to either (a) copy the language from the statement of decision into the minute order and then affix a file stamp to the minute order; or (b) place a certificate

of mailing or a proof of service directly upon the appealable order to show the date it was mailed. The court concluded it was sufficient that the minute order (which, in any event, incorporated the statement of decision) showed the date the order was mailed.³⁸

The court also rejected the plaintiff's contention that the statement of decision was not an appealable order. The court reasoned that a document entitled "statement of decision" may constitute an appealable order or judgment in appropriate circumstances. The court concluded that, because the statement of decision was intended as a final ruling on the motion for class certification, it was an appealable order subject to rule 2(a)(1).³⁹

The Supreme Court has granted review. Its decision is expected in late 2006.

■ Supreme Court to decide whether a new trial order that does not include an adequate specification of reasons should be subject to independent review.

Oakland Raiders v. National Football League, 126 Cal. App. 4th 1497 (2005)⁴⁰; May v. Trustees of the California State University, H024624, 2005 WL 459556 (Cal Ct. App. Feb 28, 2005)⁴¹

The Raiders sued the National Football League (NFL) alleging contract and tort claims arising out of the team's move from Los Angeles to Oakland. After the jury returned a verdict in the NFL's favor, the trial court granted the Raiders' motion for new trial on the ground of juror misconduct. In its order on the motion, the court simply stated, without explanation, that the objectively ascertainable acts of one of the jurors were prejudicial to the Raiders' right to a fair trial.⁴²

34. *Id.* at 479.

35. Review granted Oct. 19, 2005, S137238.

36. *Id.* at 856.

37. *Id.* at 856-57.

38. *Id.* at 857.

39. *Id.* at 857-58.

40. Review granted June 8, 2005, S132814.

41. Review granted June 8, 2005 (briefing deferred pending disposition of *Oakland Raiders v. NFL*).

42. *Oakland Raiders*, 126 Cal. App. 4th at 143.

The Second Appellate District, Division Three, reversed. The court held that the trial court's order failed to comply with Code of Civil Procedure section 657, which requires a trial court to specify grounds upon which a new trial is granted and the court's reasons with respect to each ground. The court further held that, because the order did not comply with section 657, it was subject to an independent standard of review. Applying that standard, the court concluded that a new trial was not justified.⁴³

The Supreme Court has granted review to decide the following question: If the trial court fails to specify its reasons for granting a new trial, is the trial court's order granting a new trial reviewed on appeal under the abuse of discretion standard or is the order subject to independent review? The Supreme Court's decision is expected in late 2006.

43. *Id.*