

IS YOUR SETTLEMENT ENFORCEABLE?

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Although there are thousands and thousands of lawsuits filed all the time, the greater percentages of lawsuits settle prior to an actual trial. Once parties agree to settle a dispute, the settlement is generally reduced to writing and the terms and conditions of the settlement are specifically set forth in a written document typically titled "Settlement Agreement." This procedure occurs regardless of whether or not a lawsuit is filed or the parties settle prior to a lawsuit being filed.

California *Code of Civil Procedure* ("CCP") section 664.6 is the statute that provides for the court to maintain jurisdiction with regard to the settlement. For CCP section 664.6 to apply, the settlement between the parties must have occurred either orally before the court, or in writing signed by the parties outside the presence of the court. More often than not, you will find a term and condition contained within the settlement agreement that allows for the court to retain jurisdiction over the parties until full performance of the terms of the agreement have been satisfied.

It is very important in the preparation of the settlement agreement to include all of the important terms which contains the names of the settlement parties, the obligations of each party, such as who is going to pay who, how much is going to be paid and when the money is going to be paid, etc. If any of the parties breach the settlement agreement, the non-breaching party can make application to the court to enforce the settlement agreement and subsequently turn that settlement agreement into a judgment. The judgment will then allow the judgment creditor to attempt to collect upon the judgment by attaching assets of the judgment debtor.

In order to have the court enforce a settlement agreement and turn it into a judgment, the court must be convinced that there was a meeting of the minds between the parties as to all material terms of the agreement. The following are real life examples.

Several parties were ordered by the court to participate in a settlement meeting. The parties hire a retired judge, who oversaw the settlement discussions. A settlement was ultimately reached between all of the parties and the retired judge recited the terms of the settlement on his pocket tape recorder. The retired judge then asked everyone in the room whether they agreed to the terms of the settlement and each person responded affirmatively. One of the parties agreed to prepare a written agreement pursuant to the tape recorded settlement. The settlement agreement was prepared but one of the parties refused to sign. The other party filed a motion with the court asking the court to enforce the settlement pursuant to CCP section 664.6. The court denied the request to enforce the settlement on the theory that the settlement was not heard before the court and secondly, was not in writing signed by all of the parties. Notwithstanding the fact that everyone agreed, and placed their agreement on a tape recording, the court denied enforcement of the settlement.

A second example is where parties were ready for trial. They were actually in court ready to start their trial. However, before starting the case, they reached a settlement. The settlement was presented to the judge and a court reporter transcribed the settlement. Thereafter, the parties attempted to prepare a more formal written agreement which never occurred due to disagreements. One party tried to enforce the agreement by filing a motion with the court. Because the terms and conditions that were recited on the court's records lacked specificity, the court refused to confirm the settlement agreement as a judgment under the terms upon which the moving party argued.

These are just two examples of many that occur all the time. The moral of the story is that when settling your case, please make sure that you prepare your settlement documentation in sufficient manner in which to have a mutual meeting of the minds so that the court can enforce the settlement agreement should one party or more refuse to adhere to the agreement.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at ksg@agrlaw.com, or at www.agrlaw.com
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