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## Bill will lighten load for trial courts

By Josh McDaniel

Summary judgment is intended to be a quick way of weeding out unmeritorious claims and defenses without the time and expense of a full-fledged trial. The procedure is often the first (and may be the last) chance the parties have to present evidence to the trial court. As such, summary judgment proceedings are an important battleground for evidentiary challenges, especially since "[e]videntiary objections not made at the hearing shall be deemed waived." Cal. Civ. Proc. Code Section 437c(b)(5).

If the stakes are high, and they often are, the evidentiary submissions and objections can number well into the hundreds. In one case, for example, the parties presented 2,200 pages of separate statements and 764 objections set out in 325 pages. *Nazir v. United Airlines Inc.*, 178 Cal. App. 4th 243 (2009).

So what is a trial court to do when there is a mountain of evidence and the parties object to everything under the sun? California courts have long struggled with this question.

One trial judge, balking at the "horrendous, incredibly time-consuming task" of ruling individually on every objection, told the parties he would simply "disregard all those portions of the evidence that I consider to be incompetent and inadmissible." *Biljac Assocs. v. First Interstate Bank*, 218 Cal. App. 3d 1410 (1990). The Court of Appeal approved the trial court's approach and allowed the parties to press their objections on appeal.

Other Courts of Appeal rejected this approach, concluding that trial courts must rule on evidentiary objections raised in summary judgment proceedings or the objections are forfeited. The *Biljac* approach, according to these courts, was an "unacceptable circumvention of the court's obligation to rule on the evidentiary objections presented." *Swat-Fame Inc. v. Goldstein*, 101 Cal. App. 4th 613 (2002).

Still other courts adopted a middle-ground approach, memorably dubbed the "stamp and scream" rule. Under this rule, written objections not ruled on by the trial court were preserved for appellate review only if counsel asked the trial court at least twice for a ruling on the objections. *City of Long Beach v. Farmers & Merchants Bank*, 81 Cal. App. 4th 780 (2000).

The California Supreme Court largely resolved this debate in *Reid v. Google Inc.*, 50 Cal. 4th 512 (2010). The high court reasoned that "Section 437c defines 'waiver' in terms of a party's failure to raise evidentiary objections at the hearing; it does not depend on whether or not the trial court expressly rules on the objections." So, the court held, although the trial court has an obligation to rule on all evidentiary objections made during summary judgment proceedings, objections made at the hearing are not waived on appeal, even if the trial court fails to render a formal ruling on the objections.

*Reid* left some questions unresolved. For example, *Reid* said "the reviewing court must conclude the trial court considered any evidence to which it did not expressly sustain an objection." But what if it is clear from the record that the trial court didn't rule on the evidentiary objections because it considered the evidence irrelevant? See *People v. Superior Court*, 234 Cal. App. 4th 1360 (2015) (distinguishing *Reid* on this basis).

Now the Legislature has weighed in. An amendment to the summary judgment statute, which Gov. Jerry Brown signed into law last week, appears as Code of Civil Procedure Section 437c(q). The new provision clarifies that the trial court, in deciding a motion for summary judgment, "need rule only on those objections to evidence that it deems material to its disposition of the motion." It then adds that "[o]bjections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." S.B. 470, 2015-2016 Reg. Sess. Section 1 (Cal. 2015).

The last part codifies the key holding of *Reid v. Google*. So long as an objection to evidence is made to the trial court, the objection is not forfeited on appeal simply because the trial court declines to rule on the objection. There's no need for the objecting party to "stamp and scream" its objection to preserve it.

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The first part, however, is a change - and from the trial courts' perspective, it's undoubtedly a welcome change. Although Reid was good news for objecting parties, it offered no relief to the trial courts because while recognizing that litigants "flood the trial courts with inconsequential written evidentiary objections," the Supreme Court nevertheless held that "[t]he trial court must rule expressly on those objections."

Reid's interpretation of Section 437c put trial courts in a jam. On the one hand, trial courts had a "duty to rule" on all evidentiary objections. On the other hand, as one court explained, in many cases it would be "practically impossible for the trial court to address each of the innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become." *Mamou v. Trendwest Resorts Inc.*, 165 Cal. App. 4th 686 (2008).

With the new amendment, trial courts can breathe a sigh of relief. If the trial court is flooded with objections to irrelevant evidentiary submissions, the court now has the Legislature's permission to rule only on the objections that really matter. At the same time, although it may never be good advocacy to overwhelm the trial court with a slew of objections, parties can rest assured that the objections they do make will be preserved for appellate review.

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