Is That Your Final Judgment?

By Dean A. Bochner

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The concept of a final judgment seems straightforward enough: At the end of the case, when all disputed issues have been resolved, the court enters a judgment that disposes of all claims between the parties. Simple, right? Not quite.

Almost 85 years ago, the California Supreme Court observed that "[t]here is undoubtedly some confusion existing as to what constitutes a final judgment." (*Middleton v. Finney* (1931) 214 Cal. 523, 525.) Since then, California's appellate courts have provided some guidance on this question, but widespread confusion among judges and lawyers persists. This article examines and tries to clarify the law governing finality of civil money judgments in California.

By statute, a judgment is "the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) Case law explains that a judgment

terminates the litigation and "'leaves nothing to be done but to enforce by execution what has been determined.'" (*Doudell v. Shoo* (1911) 159 Cal. 448, 453.) The California Supreme Court has articulated the following standard to determine whether a judgment is final: "'It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case,…where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.'" (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698.)

— Beware of the Label —

In California, "[t]here can be only one final judgment in a single action, and only [that] judgment is appealable." (*C3 Entertainment, Inc. v. Arthur J. Gallagher & Co.* (2005) 125 Cal.App.4th 1022, 1025.) This rule — known as the "one final judgment rule" — serves several purposes, such as preventing piecemeal disposition of cases, reducing uncertainty and delay in the trial courts, and avoiding multiple appeals. (*Ibid.*)

Under the one final judgment rule, if a court files a document entitled "judgment" before all disputed issues in the case have been resolved, that "judgment" is premature and improper. (See *Roy Brothers Drilling Co. v. Jones* (1981) 123 Cal.App.3d 175, 180 ["'If the court attempts a piecemeal disposition of each claim or issue by rendering a number of "final judgments," the earlier judgments are premature, void and nonappealable'"]; *Horton v. Jones* (1972) 26 Cal. App.3d 952, 958 [""'A trial court has no authority to enter multiple final judgments determining multiple issues between the same parties to an action'""].) In other words, if a court enters an original "judgment" that does not finally determine the parties' rights, but later enters an "amended judgment" that does, the "amended judgment" is the final judgment and the original "judgment" is premature and void. (*Roy Brothers*, at pp. 180-181.)

Thus, the fact that a document is labeled "judgment" is not controlling. (See *Baker v. Castaldi* (2015) 235 Cal.App.4th 218, 224 ["'[a] paper filed in an action does not become a judgment merely because it is so entitled; it is a judgment only if it satisfies the criteria of a judgment'"].)

— Judgment Before — Damages Fixed?

One question that frequently arises is whether a judgment can be entered before the final amount of damages owed by a defendant has been calculated. The answer to this question is no: The amount of damages that a defendant owes a plaintiff must be resolved before any judgment can be entered. A definitive damages calculation is essential to a final determination of the parties' rights. (See, e.g., *Middleton, supra*, 214 Cal. at p. 525 [purported "judgment" that left open "amounts of money to be paid" was not a final judgment]; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 582 [noting that a prior appeal was dismissed under the one final judgment rule because "the issue of damages remained unresolved"]; *Craig of California v. Green* (1949) 89 Cal.App.2d 829, 832-834 [no final judgment could be entered where offset issues remained partially undecided; "the amount owing by one party to the other will remain in doubt until the conclusion of the litigation"]; *Syverson v. Heitmann* (1985) 171 Cal.App.3d 106, 111 ["an approved procedure is for the court to reduce the verdict award by the amount paid in settlement *before* entering judgment on the verdict" (emphasis added)].)

Despite these authorities, two recent

cases illustrate that trial courts persist in entering "judgments" prematurely, before the amount of damages actually owed by the defendant has been finally determined.

In *Baker, supra*, 235 Cal.App.4th 218, the trial court conducted a bifurcated bench trial. In the first phase, the court found the defendants liable for conversion, awarded compensatory damages, and concluded that the defendants acted with malice and oppression, entitling the plaintiff to seek punitive damages. (*Id.* at p. 221.) Before the start of the punitive damages phase, the trial court filed a document entitled "judgment," which stated the defendants were liable for roughly $600,000 in compensatory damages and that they acted with malice and oppression "'warranting an award of punitive damages to be assessed at a separate trial.…'" (*Ibid.*) The Court of Appeal dismissed the appeal from that "judgment" because it was not a final, appealable judgment. (*Id.* at pp. 221-223.) The court explained that the purported "judgment" left open for future consideration the amount of punitive damages, and setting an amount of punitive damages is "a type of judicial action…that is essential to a final determination of the rights of the parties." (*Id.* at p. 223, internal quotation marks omitted; see also *id.* at p. 226, fn. 22 ["whether the damages are compensatory or punitive, their calculation is an issue essential to 'the final determination of the rights of the parties'"].)

Similarly, in *Lee v. Silveira* (2015) 236 Cal.App.4th 1208, 1212, the trial court denied a motion in limine to exclude evidence of the plaintiff's unpaid medical bills, but ordered that any award for past medical expenses would be reduced after trial to reflect the amount of medical bills that were actually paid. After the jury returned a verdict, the trial court filed a document entitled "judgment on jury verdict," which stated the amount of the jury's award and added that the "judgment" was "subject to amendment" after a post-trial hearing on the reduction of past medical expenses. (*Id.* at p. 1213.) The Court of Appeal recognized that this "judgment" was not a final judgment: "Its own terms indicated it was an interim or temporary description of the results of the jury trial and did not constitute a final resolution of the whole controversy." (*Id.* at p. 1220.)

These cases reflect an unfortunate pattern in which trial courts rush to enter judgment after a verdict is returned even though the total amount of money owed by one party to another still remains in doubt. The potential to enter a premature "judgment" exists in many scenarios — not only where punitive damages are tried separately from liability and compensatory damages (as in *Baker*) or where the recoverable amount of medical expenses must be decided after trial (as in *Lee*), but also where settlement offsets must be calculated and applied to the jury's award, or where the trial court must resolve equitable claims after the jury returns a verdict.

— The 24-Hour Myth —

Some trial judges and attorneys mistakenly believe that a judgment must be entered by the clerk within 24 hours after the jury renders a verdict, based on a misconstruction of Code of Civil Procedure section 664. Section 664 requires entry of judgment within 24 hours after a verdict is returned *unless* the trial court reserves jurisdiction to perform some judicial act. (See Code Civ. Proc., § 664 [providing that after a jury trial, "judgment must be entered by the clerk, in conformity to the verdict within 24 hours after the rendition of the verdict,…*unless the court order the case to be reserved for argument or further consideration*" (emphasis added)]; see also *Shapiro v. Equitable Life Assur. Soc.* (1946) 76 Cal.App.2d 75, 98-99 [purported "judgment" entered under section 664 immediately after jury verdict on one cause of action was premature and void because trial court still had

to try a second cause of action].)

— Why it Matters —

Adhering strictly to the rules for finality is important to avoid the adverse consequences that may flow from entry of a premature "judgment." When a trial court purports to enter a "judgment" that is premature, the defendant must act quickly to protect its rights and forestall enforcement of the premature "judgment," typically by filing post-trial motions and posting an appeal bond. These steps can create unnecessary burdens on the parties and the courts. For example, certain post-trial proceedings, like motions for new trial and for judgment notwithstanding the verdict (JNOV), may have to be repeated once the premature "judgment" is ultimately superseded by a proper final judgment. (See *Ochoa v. Dorado* (2014) 228 Cal.App.4th 120, 125, 132-133 [motions for new trial and JNOV, and rulings on those motions, held void and ineffective where motions were filed before all issues had been decided].) Entry of a premature "judgment" is also likely to confuse trial judges and attorneys about which of two (or more) "judgments" triggers the court's 60-day jurisdictional deadline to rule on posttrial motions under Code of Civil Procedure section 660.

In addition, posting an appeal bond to forestall enforcement of a premature "judgment" can be expensive and onerous. The amount of an appeal bond is tied to the amount of the judgment. (See Code Civ. Proc., § 917.1, subds. (a)(1) & (b).) But when a trial court enters a "judgment" while the amount of damages is still uncertain, calculating the proper amount of an appeal bond is impossible. Even worse, if the "judgment" awards a sum of damages that is subject to reduction after further proceedings, the defendant may be forced to post a bond (and incur bond premiums) for an amount much greater than what the defendant will ultimately owe the plaintiff.

Furthermore, a defendant may need to appeal from a premature "judgment" as a precautionary measure, to protect its appellate rights in the event the premature "judgment" is erroneously deemed to be a final judgment. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 [noting that losing party must appeal immediately, even if prematurely, "to avoid waiving rights to appellate review"].) But an appeal from a premature "judgment" is subject to dismissal. (See *Craig, supra*, 89 Cal.App.2d at p. 834; *Baker, supra*, 235 Cal.App.4th at pp. 222-227.) If the defendant does not appeal again from a subsequently filed proper judgment, dismissal of the appeal from the premature "judgment" could deprive the defendant of its right to appellate review. (See *Baker*, at p. 227 ["We understand the result in this case may seem harsh, as appellants are prevented from obtaining review of several unusual orders now and possibly ever"].) And even if the defendant can and does appeal from a subsequently filed proper judgment, dismissal of the first appeal can waste a lot of time and money spent to compile the appellate record, prepare the briefs, and present oral argument. (See *Craig*, at p. 834 [the fact that "appellants had expended large sums of money in preparing a voluminous record and a lengthy brief…does not prevent the dismissal of an appeal from a nonappealable judgment"].)

In sum, trial courts create a host of problems by entering judgment before resolving all disputed issues, including the final amount of damages owed by a defendant. Strict adherence to the rules for finality will avoid the unnecessary problems that may result from entry of a premature "judgment."

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