DailyNews

Lack of Statement of Decision Leads to Reversal

Tim Kowal *December 14, 2023*

One advantage to a bench trial is that you are entitled to a statement of decision. This can be better than a jury verdict because a statement of decision includes findings on all material issues. The cross-defendant in the development dispute in *Casa Verde Landscaping Maint. Corp. v. Lennary Cmtys.* (D4d1 Oct. 24, 2023

D081550) [nonpub. opn.] correctly followed the two-step process for a statement of decision: Casa Verde (1) timely requested the statement of decision by identifying the material issues on which findings were needed; and (2) objected when the trial court failed to make the findings.

But the trial court still refused to make findings, which bore on the amount of damages against Casa Verde for breaching a change order. This was particularly puzzling since the trial court specifically asked the parties to address the issues in their closing arguments.

Upholding the right to a statement of decision, the Court of Appeal reversed. The court made a number of observations about the importance of a statement of decision, including:

- A trial court's failure to issue a complete statement of decision "places the case in a challenging position with respect to appellate review."
- The lack of a statement of decision nullifies the doctrine of implied findings, and "with the nullification of the doctrine of implied findings, we cannot determine whether the court's damages calculations regarding retentions are correct or not as a matter of law."
- The "broad purpose of the amendment [to the statutory statement of decision process] seems to have been to alleviate the frustration of losing litigants and their attorneys confronted with non-communicative trial judges." (*DeArmond v. Southern Pacific Co.* (1967) 253 Cal.App.2d 648, 658.)
- Can't the judgment still be affirmed under the deferential substantial-evidence standard? Not so fast. Lennar posited some computations that could make sense of the judgment, but this left the court puzzled: "what we see above is why the doctrine of implied findings is limited and inapplicable here. The appellate court should not be left guessing about how a trial court reached a conclusion. What the court could have done is not the test."
- "A proper statement of decision is essential to effective appellate review. 'Without a statement of decision, the judgment is effectively insulated from review by the substantial evidence rule,' as we would have no means of ascertaining the trial court's reasoning or determining whether its findings on disputed factual issues support the judgment as a matter of law.' [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 982.)

The erroneous omissions in the statement of decision were prejudicial. "Deciding these questions requires resolving evidentiary conflicts. This we cannot do, and the

trial court's failure to make these findings is not harmless error."

Takeaway

The statement of decision's greatest virtue is to give litigants a tool when "confronted with non-communicative trial judges." Typically, judges do not have to give reasons. And judges are most prone to exercise this privilege when making bad rulings. Most of the time, the most an attorney can do is explain that the ruling is bad and the judge should feel bad. It is small comfort, but the only comfort to be had.

But the statement of decision can provide more than small comfort. Used well, it requires a "non-communicative" judge either to communicate, or face reversal. The non-communicative judge here got reversed.

This article was originally published on the website of Kowal Law Group.

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