

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WILLIAM J. MCGUIGAN,

Plaintiff and Appellant,

v.

CITY OF SAN DIEGO,

Defendant and Respondent,

D055199

(Super. Ct. No. GIC849883)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

The opinion filed April 6, 2010 is modified as follows:

1. Page 27, first full paragraph, third sentence is modified as follows:

"The problem with this analysis, as applied to the record before us, is that this settlement already included a fee award as part of this settlement package, and ~~nothing~~ **there are no significant indications** in the settlement agreement **to suggest** ~~suggests~~ that there was a mutual intent of the parties that the fee obligation would be ongoing into the future, should an appeal by the Objectors be taken."

The sentence will now read:

"The problem with this analysis, as applied to the record before us, is that this settlement already included a fee award as part of this settlement package, and there are no significant indications in the settlement agreement to suggest that there was a mutual intent of the parties that the fee obligation would be ongoing into the future, should an appeal by the Objectors be taken."

2. Page 28, third full sentence, is modified as follows:

"According to Appellant, the ~~only possible~~ **most reasonable** interpretation of that multiplier language is that the parties agreed to restrict any post-signature fee disputes to the multiplier issue alone, and not to restrict any other later fees requests."

That sentence shall now read:

"According to Appellant, the most reasonable interpretation of that multiplier language is that the parties agreed to restrict any post-signature fee disputes to the multiplier issue alone, and not to restrict any other later fees requests."

3. Page 28, first full paragraph, is modified as follows:

"This interpretation is not well taken. We are well aware that both class counsel and the City Attorney's office performed numerous professional duties in finalizing the settlement agreement, such as giving notice and responding to the Objectors, in the course of obtaining the judgment that confirmed the settlement. Appellant would extend his **compensable** post-settlement legal representation duties into the appellate process, based upon his fiduciary duties undertaken to represent the class. He relies on *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 547 (*Barboza*), to argue that

the object of the class representation was not fully accomplished until the appeal resolved all the issues in favor of supporting the settlement. **In his petition for rehearing, he further argues that legal issues may arise during the post-judgment enforcement phase of the litigation."**

That paragraph will now read:

"This interpretation is not well taken. We are well aware that both class counsel and the City Attorney's office performed numerous professional duties in finalizing the settlement agreement, such as giving notice and responding to the Objectors, in the course of obtaining the judgment that confirmed the settlement. Appellant would extend his compensable post-settlement legal representation duties into the appellate process, based upon his fiduciary duties undertaken to represent the class. He relies on *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 547 (*Barboza*), to argue that the object of the class representation was not fully accomplished until the appeal resolved all the issues in favor of supporting the settlement. In his petition for rehearing, he further argues that legal issues may arise during the post-judgment enforcement phase of the litigation."

4. Page 36, at the end of first full paragraph, the following is inserted:

"We emphasize that we are bound to decide the issues on appeal with reference to the existing record, and may not offer broad pronouncements on circumstances that are not before us. Although Appellant earnestly requests us to expand upon the scope of his fiduciary duties to the class in the event future problems occur in enforcing the judgment, we must confine our analysis to the facts

and issues brought before us. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2 ["an opinion is not authority for a proposition not therein considered"].)"

The paragraph shall now read:

"Furthermore, construing section 1021.5 to allow liability against the City would be contrary to the judicial policy that favors settlements. This settlement included an attorney fees clause, which should be interpreted in light of that policy, to end the litigation with Appellant as it began and as it progressed. (See *Connerly, supra*, 37 Cal.4th 1169, 1182.) We emphasize that we are bound to decide the issues on appeal with reference to the existing record, and may not offer broad pronouncements on circumstances that are not before us. Although Appellant earnestly requests us to expand upon the scope of his fiduciary duties to the class in the event future problems occur in enforcing the judgment, we must confine our analysis to the facts and issues brought before us. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2 ["an opinion is not authority for a proposition not therein considered"].)"

The petition for rehearing is denied.

There is no change in judgment.

McCONNELL, P. J.

Copies to: All parties