



Court Dismisses Appeal Arising From Stipulated Eminent Domain Judgment

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Most eminent domain cases don't proceed to a full-blown jury trial. Most get settled somewhere along the way, and those settlements often come in the form of a stipulated judgment. When that happens, people tend to give little thought to a possible appeal down the road; after all, they've settled the case.

But sometimes, a lot remains to implement the stipulated judgment, and where those events are potentially controversial, parties typically state that the trial court retains jurisdiction to administer those future events. In *City of Gardena v. Rikuo Corporation* (Feb. 7, 2011), one such stipulated judgment went awry. The parties left \$750,000 on deposit to address ongoing environmental remediation, agreeing that the trial court would retain jurisdiction over the disbursement of the funds.

When a dispute arose over the court's distribution of the funds, the property owner sought to appeal the court's post-judgment order. The Court of Appeal dismissed the appeal, concluding that the order was not appealable because post-judgment orders are only appealable if they follow a judgment that is itself appealable. Since a stipulated judgment typically is not appealable, any post-judgment orders arising from such a judgment are also not appealable.

The Case

City of Gardena v. Rikuo Corporation arose from a 2004 eminent domain action filed by the City of Gardena. Following a mediation, the parties agreed that the city would pay Rikuo \$11 million for its property, with one key twist: the property had some contamination issues, and the city was going to need to spend considerable time and money cleaning it up. The parties therefore agreed to leave \$750,000 on deposit with the court to be used as a clean-up fund.

The resulting stipulated judgment provided that the trial court would retain jurisdiction over the \$750,000, with the idea being that the city could apply to the court for withdrawals to cover the costs of the ongoing remediation. Any money left over once the remediation was complete would go to the former owner.

As the remediation progressed, a dispute arose. The city sought disbursement of the funds, and the owner objected. When the court allowed the withdrawal over the owner's objection, the owner appealed.

On appeal, neither party questioned the order's appealability, and Code of Civil Procedure section 904.1 specifically provides for appeal from post-judgment orders. But following the briefing, the Court of Appeal raised an interesting issue: was this particular post-judgment order, entered after a stipulated judgment, appealable? Section 904.1 provides for appeal from a post-judgment order where the underlying judgment is itself appealable. In *Rikuo*, the underlying judgment was stipulated, and longstanding California law holds that a consent judgment is not appealable.

Appealability

The Court of Appeal did not stop its analysis merely by reading section 904.1. It walked carefully through any other circumstances that might have created an appealable order. In particular:

Stipulated Judgments Entered to Facilitate an Appeal. The court noted a key exception that allows an appeal from a stipulated judgment. Where the parties stipulate to a judgment for the purpose of facilitating an appeal following an adverse ruling on a critical issue, the judgment is appealable just like any other judgment. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400.) In such cases, any post-judgment orders would also be appealable. In this case, however, it was clear that the stipulated judgment reflected a true settlement, not an effort to facilitate an appeal following a key ruling, so this exception did not apply.

Post-Judgment Orders Concerning a Pre-Existing Deposit of Probable Compensation. The owner cited cases upholding the right to appeal from post-judgment orders related to a deposit of probable compensation. The Court noted, however, that those cases involved "a contested final judgment on the merits," making them no different from any other case in which an appealable, post-judgment order follows an appealable judgment.

Post-Judgment Orders Arising from a Stipulated Judgment that Does not Resolve All Issues. The owner also argued that since major substantive issues remained, the stipulated judgment was not intended as a final resolution of all issues. In other words, since the parties intended to allow the trial court to make post-judgment determinations on the issue of remediation, the parties impliedly reserved the right to appeal on those same remediation issues. The Court rejected this argument as well, because (1) the language of the stipulated judgment expressly stated that it was intended to resolve all issues – including the manner in which disputes over the cost of remediation would be resolved, and (2) even if the judgment could be construed as interlocutory (in effect, a partial judgment), the net result would be that once the remediation process reached a conclusion, the court would enter a final judgment, and that final judgment would still not be appealable since it arose from the same underlying settlement/stipulation.

Judgments Entered Pursuant to Code of Civil Procedure section 664.6. Section 664.6 provides a mechanism for parties to agree that the trial court retains jurisdiction over certain aspects of a case, even after a dismissal. Often, this includes the ability to enforce the terms of a settlement agreement. In the event the court issues an order to enforce the terms of a settlement under its continuing jurisdiction, that order

would be appealable. However, the parties in *Rikuo* agreed that they had not complied with the requirements of section 664.6 and could not, therefore, use it as a basis for appellate jurisdiction.

Lessons Learned

Settlements are a good thing. In many cases, both sides end up better off than they would if they litigated through trial. Still, settlements must be well thought out, and taking a one size fits all approach can create myriad problems. Especially where anything of consequence must happen after the judgment is entered, the parties must take care to think through those issues and take steps to ensure they do not find themselves in a situation where a dispute arises over a significant issue and they have no remedy if the trial court gets it wrong.

It is possible to structure settlements to avoid this problem, using the tools described above – or by creating a separate contractual right through the settlement process. If you are in the position of documenting such a settlement, make sure you have a qualified attorney involved in the process, and talk through what will happen if problems arise in the settlement's implementation.

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