

Memorandum 99-10

Trial Court Unification: Jurisdictional Classification of Good Faith Improver Claim

Code of Civil Procedure Sections 871.1-871.7 set out rights and remedies of one who improves land in good faith and under the erroneous belief that the improver is the owner. These cases arise infrequently. Merryman, *Improving the Lot of the Trespassing Improver*, 11 Stan. L. Rev. 456, 498 (1959) (“court calendars are not overcrowded with trespassing improver litigation”). In its trial court unification report, the Commission recommended further study of the first sentence of Section 871.3, which reads:

A good faith improver may bring an action in the superior court or, subject to Sections 395.9 and 396, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter.

Although this sentence might appear to establish inconsistent rules depending on whether the good faith improver claim is raised in a complaint (brought in superior court) or cross-complaint (brought either in superior or municipal court), it is consistent with general rules of civil practice.

JURISDICTIONAL CLASSIFICATION OF COMPLAINT OR CROSS-COMPLAINT

Under the first sentence of Section 871.3, a complaint under the good faith improver statute is always brought in superior court, regardless of the amount in controversy. This is consistent with the general rule that equitable causes are brought in superior court regardless of the amount in controversy, except in a limited class of cases where equity jurisdiction is given to the municipal court by statute. 2 B. Witkin, *California Procedure Courts* § 211, at 279-80 (4th ed. 1996). Because Section 871.5 authorizes relief “consistent with substantial justice to the parties under the circumstances of the particular case,” remedies under the good faith improver statute more nearly resemble equitable than legal remedies, justifying treating a good faith improver claim as one in equity. *Southern Pac. Transp. Co. v. Superior Court*, 58 Cal. App. 3d 433, 129 Cal. Rptr. 912 (1976) (no

right to jury trial under good faith improver statute); see also *Okuda v. Superior Court*, 144 Cal. App. 3d 135, 139-41, 192 Cal. Rptr. 388 (1983) (court has “broad equitable jurisdiction” under good faith improver statute).

Under the first sentence of Section 871.3, a cross-complaint may be brought in a pending action in municipal court, subject to mandatory transfer to superior court under Section 396 if the jurisdictional limits of the municipal court are exceeded. Although the municipal court does not have general equity jurisdiction, equity may be pleaded in municipal court “as a defensive matter.” Code Civ. Proc. § 86(b)(2). A cross-complaint is defensive if it merely shows the plaintiff is not entitled to recover. *Jacobson v. Superior Court*, 5 Cal. 2d 170, 173, 53 P.2d 756 (1936) (action on insurance policy: cross-complaint seeking cancellation merely showed plaintiff was in default and not entitled to recover); 2 B. Witkin, *California Procedure Courts* § 255, at 330 (4th ed. 1996). In such a case, a good faith improver claim in a cross-complaint will not oust the municipal court of jurisdiction.

Views of State Bar Sections

The jurisdictional issue was raised in letters from the State Bar Committee on Administration of Justice (Exhibit to First Supplement to Memorandum 98-12) and State Bar Litigation Section (Exhibit to Memorandum 98-25). CAJ said the scheme of the first sentence of Section 871.3

may not be consistent. At present, a good faith improver can only bring an action in superior court, regardless of amount, but the cross-claim will be heard in municipal court if it is an under \$25,000 cross-complaint. Thus, there is at present a theoretical inconsistency between requiring under \$25,000 good faith improver claims be brought in superior court but allowing them to be tried in municipal court if they arise out of a cross-complaint.

The letter from the Litigation Section was to the same effect:

[E]xisting law has built in inefficiencies. A good faith improver can only bring an action in superior court, but the claim will be heard in municipal court if it is less than \$25,000. After trial court unification, that should be irrelevant, and, particularly in the case of a cross-complaint, we suggest that the Law Revision Commission should consider whether reclassification should still be required.

POLICY OPTIONS

This question is complicated by trial court unification. The courts in 50 of California's 58 counties have unified. In unified superior courts, the question is one of classification as a limited civil case or otherwise, rather than one of jurisdiction. If, in a unified court, the case is classified as a limited civil case (i.e., within the traditional jurisdiction of the municipal court), the effect will be lower filing fees, application of economic litigation procedures (e.g., limited pleadings and discovery), appeal to the appellate division of the superior court rather than to the court of appeal, and limited relief. In a limited civil case, the court may not grant a permanent injunction or determine title to real property. Code Civ. Proc. § 580(b). However, a good faith improver ordinarily seeks monetary relief. Merryman, *Improving the Lot of the Trespassing Improver*, 11 Stan. L. Rev. 456 *passim* (1959). Thus if the good faith improver's claim for damages is \$25,000 or less, he or she can get complete relief in a limited civil case.

Traditionally, equity jurisdiction of the municipal court was limited because of the potential severity of equitable relief such as a permanent injunction, and the supposed greater experience and ability of superior court judges. But in a unified court, this is no longer a consideration, and it may make more sense to have economic litigation procedures and internal appeal (subject to constitutional limits) if the amount in controversy is small, even though "equitable."

Possible approaches to this problem include the following:

Option 1: Keep and Clarify Existing Law for All Courts

Under this option, a good faith improver complaint would continue to be filed in superior court because it is an equitable matter. A good faith improver cross-complaint could be filed in a pending action in municipal court (or in a limited civil case in superior court), subject to mandatory transfer to superior court (or to reclassification in a unified superior court) if not "defensive." This option has the advantage of keeping the rules the same in unified and nonunified counties, as well as preserving existing law. **The staff thinks this is an acceptable option.**

If the Commission selects this option, it may be helpful to revise Section 871.3 to make more explicit how it applies to a cross-complaint. There is some potential for confusion as to whether it requires transfer or reclassification of all

good faith improver cross-complaints under \$25,000, or only those where equity is not pleaded as a defensive matter.

Option 2: Classify by Amount in Controversy

Under this option, good faith improver claims, however pleaded, would be classified according to the amount in controversy, not the fact that it is equitable in nature. Thus, whether or not damages are claimed, the complaint or cross-complaint would have to allege the amount in controversy to allow proper classification. See Code Civ. Proc. § 85 (“amount in controversy” means “the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, which is in controversy in the action”).

This option has the advantage of having one set of rules for unified and nonunified courts. Moving equity cases to municipal court where the amount in controversy is small, or classifying them as limited civil cases, would apply economic litigation procedures, arguably a desirable change. But to shift the appeal path from the court of appeal to the appellate division of the superior court may be unconstitutional. Article VI, Section 11, of the California Constitution reads:

SEC. 11. (a) . . . [C]ourts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

Thus the Legislature can increase appellate court jurisdiction (“and in other causes prescribed by statute”), but, except for changing the jurisdictional amount in controversy, cannot decrease it. Does subdivision (a) permit the Legislature to diminish the appellate jurisdiction of the courts of appeal by shifting equity jurisdiction from superior to municipal court or by reclassifying small equity cases as limited civil cases? If the answer is “no,” option 2 could apply economic litigation procedures to small equity cases, but could not change the appeal path. **For this reason, the staff recommends against option 2.**

Option 3: Keep Existing law for Nonunified Courts, but Classify by Amount in Controversy for Unified Courts

In nonunified courts, this option is the same as option 1. In unified courts, it is the same as option 2 — the case is classified as a limited civil case or otherwise depending on the amount in controversy as alleged in the complaint or cross-complaint, without regard to whether it is “equitable.” This option has the same constitutional problems as option 2, and has the disadvantage of having different rules in unified and nonunified courts, but has the advantage of not disturbing existing law in municipal courts in nonunified counties. When all counties are unified, this option will be the same as option 2. **Because of the constitutional problems, the staff recommends against option 3.**

Option 4: Give Superior Court Exclusive Jurisdiction of Good Faith Improver Claims

This option has the advantage of having one uniform set of rules for unified and nonunified courts. And, because the Legislature can increase the appellate jurisdiction of the courts of appeal by statute, this option would not be prohibited by the California Constitution. However, moving “defensive” equity cases from municipal to superior court or classifying them as other than limited civil cases would have the effect of applying full pleading and discovery procedures, arguably an undesirable change. **The staff is not enthusiastic about this option.**

Option 5: Defer Until All Courts Are Unified and Consider Abolishing the Law/Equity Distinction for Jurisdictional Purposes

When courts in all counties are unified, the traditional law/equity distinction may no longer be useful. We could study this question now. However, to diminish the appellate jurisdiction of the courts of appeal will probably require a constitutional amendment. It is probably better to defer this until there are no more municipal courts.

Staff Recommendation

The staff recommends either option 1 (keep and clarify existing law) or option 5 (defer).

Respectfully submitted,

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