

Study J-1303

August 9, 1999

**Memorandum 99-56****Trial Court Unification:  
Jurisdictional Classification of Good Faith Improver Claim**

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One of the items identified for further study in the Commission's trial court unification report was the procedure for good faith improver claims. In particular, Code of Civil Procedure Section 871.3 includes confusing language on the appropriate forum for a good faith improver cross-complaint. At the June meeting, the Commission considered this matter and decided to pursue two of the options identified in Memorandum 99-10: (1) Revise Section 871.3 to make more explicit how it applies to a cross-complaint, and (2) After all the trial courts have unified, revisit the question of whether the law/equity distinction makes sense for purposes of jurisdictional classification. A draft of a tentative recommendation clarifying Section 871.3 is attached for the Commission's review.

**The staff recommends the Commission approve the attached draft as a Tentative Recommendation for distribution for comment.**

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel

## SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would revise Code of Civil Procedure Section 871.3 to clarify the appropriate forum for a good faith improver cross-complaint. This would not be a substantive change in the law.

This recommendation was prepared pursuant to Government Code Section 70219.

JURISDICTIONAL CLASSIFICATION OF GOOD  
FAITH IMPROVER CLAIM

Code of Civil Procedure Sections 871.1-871.7 set out rights and remedies of one who makes an improvement to land in good faith and under the erroneous belief that the improver is the owner.<sup>1</sup> Code of Civil Procedure Section 871.3 states in part that 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.”<sup>2</sup> This provision requires clarification, because it is susceptible to differing interpretations.

Specifically, the provision could be interpreted to mean that a good faith improver claim for \$25,000 or less (the jurisdictional limit in municipal court and maximum for a limited civil case in superior court) must be brought in superior court if it is asserted in a complaint, but may be brought in municipal court if it is asserted by way of cross-complaint.<sup>3</sup> This scheme may be regarded as illogical and inconsistent.<sup>4</sup>

A more satisfactory construction is that the provision is consistent with general rules of practice governing equitable claims. A good faith improver claim is essentially equitable in nature.<sup>5</sup>

In general, an equitable complaint must be filed in superior court, regardless of the amount in controversy.<sup>6</sup> But an equitable claim for \$25,000 or less may be asserted in a cross-complaint in municipal court (or a cross-complaint in a limited

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1. These provisions were enacted in 1968 on recommendation of the Law Revision Commission. See 1968 Cal. Stat. ch. 150, § 3; Recommendation relating to *Improvements Made in Good Faith Upon Land Owned by Another*, 8 Cal. L. Revision Comm’n Reports 1373 (1967).

2. The reference to Code of Civil Procedure Section 395.9 was added in 1998, to accommodate trial court unification. 1998 Cal. Stat. ch. 931, § 99; Code Civ. Proc. § 871.3 Comment. Code of Civil Procedure Section 396 governs transfer of a case from one court to another (e.g., from municipal court to superior court) due to a lack of subject matter jurisdiction. Code of Civil Procedure Section 395.9 is a comparable provision applicable in a unified superior court. It sets forth a procedure for reclassification of a case that is misclassified (e.g., reclassification of a case that is improperly filed as a limited civil case).

3. See letter of March 11, 1998, from Paul N. Crane to Nathaniel Sterling (attached to First Supplement to Memorandum 98-12, on file with California Law Revision Commission); letter of March 9, 1998, from Jerome Sapiro, Jr., to David C. Long (attached to Memorandum 98-25, on file with California Law Revision Commission).

4. See sources cited in note 3, *supra*.

5. Because Code of Civil Procedure 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).

6. 2 B. Witkin, *California Procedure Courts* § 211, at 279-80 (4th ed. 1996). A few equitable causes may be asserted by complaint in municipal court or as a limited civil case in a unified superior court. Code Civ. Proc. §§ 85.1, 86(b)(1), (b)(3).

1 civil case in a unified superior court), if it is defensive.<sup>7</sup> A cross-complaint is  
2 defensive if it merely shows that the plaintiff is not entitled to recover.<sup>8</sup>

3 Likewise, under Section 871.3 a good faith improver claim must be filed in  
4 superior court, regardless of the amount in controversy. But a good faith improver  
5 claim for \$25,000 or less may be asserted in a cross-complaint in municipal court  
6 (or a cross-complaint in a limited civil case in a unified superior court), if it is  
7 defensive.

8 Section 871.3 should be amended to make this more explicit and thereby prevent  
9 confusion. The proposed legislation would not be a substantive change in the law,  
10 but would be declarative of existing law.

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7. Code Civ. Proc. §§ 85.1, 86(b)(2).

8. *Jacobson v. Superior Court*, 5 Cal. 2d 170, 173, 53 P.2d 756 (1936) (in an action on an insurance policy, cross-complaint seeking cancellation of the policy merely showed plaintiff was in default and not entitled to recover); 2 B. Witkin, *California Procedure Courts* § 255, at 330 (4th ed. 1996).

## PROPOSED LEGISLATION

1 **Code Civ. Proc. § 871.3 (amended). Good faith improver**

2 SECTION 1. Section 871.3 of the Code of Civil Procedure is amended to read:

3 871.3. (a) A good faith improver may bring an action in the superior court or,  
4 subject to Sections 395.9 and 396, may file a cross-complaint in a pending action  
5 in the superior or municipal court for relief under this chapter.

6 (b) A cross-complaint for relief under this chapter may be tried in municipal  
7 court, or as a limited civil case in superior court, only if it is defensive and the  
8 amount in controversy in the action or proceeding does not exceed the maximum  
9 for a limited civil case. If a cross-complaint for relief under this chapter filed in  
10 municipal court, or in a limited civil case in superior court, does not satisfy these  
11 requirements, the action or proceeding shall be transferred to superior court  
12 pursuant to Section 396, or reclassified pursuant to Section 395.9.

13 (c) In every case, the burden is on the good faith improver to establish that he or  
14 she is entitled to relief under this chapter, and the degree of negligence of the good  
15 faith improver should be taken into account by the court in determining whether  
16 the improver acted in good faith and in determining the relief, if any, that is  
17 consistent with substantial justice to the parties under the circumstances of the  
18 case.

19 **Comment.** Section 871.3 is amended to clarify the appropriate forum for a good faith improver  
20 cross-complaint. This is declarative of existing law. See Section 85 (limited civil cases). For  
21 guidance on whether a cross-complaint is defensive, see *Jacobson v. Superior Court*, 5 Cal. 2d  
22 170, 173, 53 P.2d 756 (1936) (in an action on an insurance policy, cross-complaint seeking  
23 cancellation of the policy merely showed plaintiff was in default and not entitled to recover); 2 B.  
24 Witkin, *California Procedure Courts* § 255, at 330 (4th ed. 1996); see also Code Civ. Proc. §  
25 86(b)(2).

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