Study H-851 May 4, 2001

Memorandum 2001-43

Nonjudicial Dispute Resolution Under CID Law: Jurisdiction of Small Claims Court

In connection with its work on nonjudicial dispute resolution under common interest development law, the Commission has decided to investigate possible expansion of small claims court jurisdiction. The concept is that the small claims court could be a forum in which to obtain a quick and neutral decision in an accessible and lawyer-free environment, at least with respect to some types of disputes.

This memorandum reviews the existing law governing jurisdiction of the small claims court and examines the suitability of the small claims process for dispute resolution in the common interest development context. It concludes with possible revisions of the law governing small claims jurisdiction that the Commission may wish to pursue.

OUTLINE OF MEMORANDUM

EXISTING LAW

California's current small claims court law ("The Small Claims Act") is found at Code of Civil Procedure Sections 116.110 to 116.950. Generally speaking, the jurisdiction of the small claims court is limited to monetary recovery in an amount not exceeding $5,000. Code Civ. Proc. § 116.220(a).

The concept behind limited jurisdiction of this nature is that these claims are most amenable to quick and inexpensive justice. In the ordinary case, all that is needed is a neutral decision on the dispute, and that will be the end of it.

Over the years there has been some expansion of small claims court jurisdiction into hazier realms, but in a limited manner. For example, the small claims court's jurisdiction has consistently been construed to encompass claims in tort, provided the monetary recovery is limited to the jurisdictional amount. The court may also award damages not exceeding $5,000 in a civil rights enforcement action under the Unruh Act. Civ. Code § 52.2. An innkeepers lien may be enforced by a writ of possession (provided the amount of the demand does not exceed $5,000). Code Civ. Proc. § 116.220(a)(3).

The small claims court has been used effectively to attack conduct that traditionally would be the subject of equitable relief, such as nuisance. This has been achieved by mass filing of complaints (such as 170 neighbors filing small claims complaints for damages caused by airport noise), as well as by successive filing of "waves" of complaints. If the defendant is able to abate the nuisance, the defendant cannot complain of the plaintiff's successive actions as damages accrue until abatement takes place. *Spaulding v. Cameron*, 38 Cal. 2d 265 (1952).

The small claims court jurisdiction has also been expanded over the past few decades to permit limited equitable relief (Code Civ. Proc. § 116.220(b)):

> In any action seeking relief authorized by subdivision (a) [monetary recovery not exceeding $5,000], the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

This provision is elaborated below.

Equitable Relief

The provision of Code of Civil Procedure Section 116.220(b) authorizing equitable relief "in the form of rescission, restitution, reformation, and specific performance" was first added to the law in 1978. This was considered to be a major innovation at the time, that would facilitate the ability of the court to afford complete and fair relief.

It appears that the equitable relief authorized is not limited by the $5,000 money damages provision. In a dispute over the sale of a car, for example, a plaintiff could seek rescission of the contract and return of a $1,000 down payment, even though the car's value is $10,000. "At the same time, the concept of the small claims court as a court for 'small' claims necessitates some limit on the value of the item or relief in dispute, even if that limit can only be expressed in common sense, but not dollar, terms." *Consumer Law Sourcebook for Small Claims Court Judicial Officers* § 5.26 at 52 (Dep't Cons. Aff. 1996).

It also appears that a plaintiff may not seek equitable relief as the exclusive remedy — the request for equitable relief must accompany a claim for money damages. Presumably, the claim for money damages could be nominal.

The equitable remedies provided by this statute appear to relate primarily to contractual obligations. The rescission, restitution, reformation, and specific performance remedies may be somewhat limited in scope. The utility of this sort of equitable relief in the homeowner v. board context is discussed below.

There are no cases and no readily-available data indicating the extent to which the equitable relief provision is being used, or the types of cases for which it is being used.

Conditional Judgment

The small claims court may issue a "conditional judgment" under Code of Civil Procedure 112.220(b). The authorization of a conditional judgment was enacted in 1992. Legislative intent language in the enactment declares (1992 Cal. Stat. ch. 142, § 1):

> The Legislature finds that small claims judgments are sometimes inadequate to redress certain types of disputes, such as neighborhood disputes involving barking dogs or other disturbances. Specifically, the Legislature finds that when a small claims court believes that a conditional judgment is appropriate, the court should be empowered to order the performance or cessation of acts by a party, consistent with the equitable powers of

> the court, and to condition an award of damages on noncompliance with the court's order.

The legislative intent language appears to grant the court greater leeway than traditional conditional judgment theory would allow. Under traditional theory, a conditional judgment would give the successful party relief on compliance with conditions imposed to protect the rights of the losing party. Typical examples are quiet title (plaintiff entitled to decree but only after paying mortgage debt), specific performance (conveyance of property ordered after payment by plaintiff of contractual amount), and injunction (injunction prohibiting use of city streets unless defendant applies for franchise within specified time). See generally discussion in 7 B. Witkin, *California Procedure*, Judgment §§ 23-28, at pp. 558-62 (4th ed. 1997).

The type of relief envisioned in the legislative intent language, however, could be construed to go well beyond traditional conditional judgment theory. It would appear to authorize the court to make a direct order of equitable relief, enforceable by an award of damages (as opposed to contempt) for noncompliance with the court order.

The foregoing analysis may overstate the case, however. The legislative intent language would authorize the court to order prohibitory or mandatory relief "consistent with the equitable powers of the court". As we know, the equitable powers of the court appear to relate primarily to contractual remedies.

Nonetheless, the *Consumer Law Sourcebook for Small Claims Court Judicial Officers* states that the conditional judgment "is useful in situations in which an injunction might be an appropriate remedy in other courts but is not available in small claims court." *Id.* § 11.12 at 157.

The *Consumer Law Sourcebook* gives an example of a conditional judgment:

> For instance, if A's tree branches unreasonably overhang B's property and cause undue risk of injury to B's person or property, a court might award a judgment in favor of B and against A for the cost of removal of the branches by a professional, but provide that judgment is effective only if A has not removed the branches before a certain date. In that situation, the judgment also must establish a process to determine whether the condition had been met.

The *Consumer Law Sourcebook* notes that the power to issue conditional judgments gives small claims courts power to issue judgments that have some of the

qualities of injunctions, the major difference being that no party is directly ordered to do or not do anything.

Small claims judges are cautioned to use the conditional judgment device carefully. The California Judges Benchbook, *Small Claims Court and Consumer Law* § 7.12 at p. 201 (12th ed. 2001) notes: "Most judges agree that conditional judgments often pose problems and should be used sparingly, or only when absolutely necessary, especially by pro tem judges. They note that the judge should make it clear whether a final judgment is intended. Not making this clear can cause confusion on when a notice of appeal must be filed. Pro tem small claims judges need to be especially careful because the case may come back on calendar when they are no longer sitting."

As with equitable relief jurisdiction, we do not have any information about the types of cases or frequency with which conditional judgments are used. The utility of the conditional judgment in the homeowner v. board context is discussed below.

Mediation in Small Claims Court

Many courts have implemented mediation programs in conjunction with the small claims court. This may take many different forms. Some courts offer mediators on the spot at the small claims hearing so that the case can be diverted to mediation if appropriate. Other courts request a showing of prior efforts to mediate at the time a small claims case is filed. Some of these programs are offered by the court; others are tied into local mediation programs run by the county, the county bar association, or another group.

We do not have good information about the various programs and their success. However, efforts are currently underway to gather this type of information.

TYPES OF ISSUES FOR WHICH SMALL CLAIMS JURISDICTION MAY BE APPROPRIATE

In Memorandum 2001-31 (nonjudicial dispute resolution under CID laws), we attempted to catalog the categories of cases into which association v. homeowner disputes typically fall:

(1) Financial disputes (maintenance, common charges, special assessments, fines and penalties, restrictions on resale or transfer, access to books and records).

(2) Architectural controls (repairs, alterations, painting, decor, landscaping).

(3) Pet issues (barking dogs, wandering cats, animal waste).

(4) Use of private space (leasing / subleasing, commercial or professional use).

(5) Personal interactions (facilities use, parking, noise, rudeness).

Financial Disputes

The first category — financial disputes — is the type for which small claims court has traditionally been considered appropriate. The $5,000 jurisdictional limit should ordinarily be adequate to cover the typical dispute over non-payment of an assessment or other charge.

In fact, the only references we could find in the legal literature to use of the small claims court in the CID context relates to enforcement of delinquent assessments. See, e.g., Sproul & Rosenberry, Advising California Condominium and Homeowners Associations § 4.19 at 170-71 (Cal. Cont. Ed. Bar 1991):

> To save associations the time and expense of bring a civil action in [superior] court, their attorneys usually recommend that associations themselves bring actions on delinquent assessments in small claims court, if they are below the jurisdictional limits for small claims court ($5000 as of January 1, 1991 (CC §116.220)). A small claims action brought under CCP §§116.110-116.950 is often the fastest and most cost-effective method of collecting a delinquent assessment. In fact, because the small claims jurisdictional limits are likely to be well in excess of the amount of a regular assessment, a need to file a [superior] court action is probably indicative of negligence on the association's part in pursuing delinquent accounts.

What about a fine such as that imposed by the board in the snowplowing access case that has been brought to the Commission's attention — a daily fine of $500 imposed by the board for each day the roads were plowed, totaling $35,000? Arguably that could be contested by the homeowner (or enforced by the board) by viewing each $500 fine as a separate incident. As we know, the ability of a person to bring successive claims in the small claims court for a continuing nuisance has been upheld.

However, the Small Claims Act does contain limitations on frequency of use of the small claims court by a person. A person may not bring more than two cases exceeding $2,500 in any calendar year. Code Civ. Proc. § 116.231. Filing fees are also scaled — $20 per filing, unless 12 or more filings have been made within the previous 12 months, in which case the fee is $35 for each additional filing during that period. Code Civ. Proc. § 116.230(a).

Architectural Controls, Pet Issues, Use of Private Space, Personal Interactions

Disputes involving architectural controls, pet issues, use of private space, and personal interactions are somewhat more problematic than financial issues, in terms of traditional small claims court theory. These tend to be types of problems for which monetary damages are not a complete solution. The issues are often not economic. but involve quality of life, and may be more emotional than a purely economic dispute. An award of monetary damages of $5,000 or less may be small consolation for having to live in circumstances of ongoing misery.

Equitable Relief

What about the equitable relief currently authorized under The Small Claims Act? As we have noted, that type of relief appears to be geared more towards contract disputes than towards homeowner-association interactions. The rescission, restitution, reformation, and specific performance remedies would generally be irrelevant to a dispute about whether the board has exceeded its authority or whether the homeowner is in violation of the association's governing documents.

On the other hand, it is arguable that the association's governing documents — CC&Rs, articles, bylaws, operating rules, and the like — are in some degree "contractual" in nature. The covenants and restrictions are enforceable equitable servitudes that benefit and bind all owners in the development. There is something of a mix of real property and contract principles here. In a sense, disputes between the association and an individual homeowner all come down to enforcement of the parties' rights under the governing documents. From that perspective, application of equitable remedies for enforcement of contractual rights could be considered appropriate.

Equitable remedies tend to be farther reaching than monetary damages. The thought of a small claims court rescinding or reforming the association's governing documents, which affect an entire community, is somewhat unsettling.

Conditional Judgment

The conditional judgment was designed precisely for the constellation of issues involving architectural controls, pets, use of private space, and personal interactions. The legislative intent language accompanying its enactment refers

specifically to "neighborhood disputes involving barking dogs or other disturbances." 1992 Cal. Stat. ch. 142, § 1.

However, there is a substantial difference between these types of disputes in a public community and these types of disputes in a private community. In a public community there are public laws, including local ordinances, governing the rights of the parties. In a private community the rules are found in the association's governing documents. Resolving the dispute in the context of a common interest development can be a difficult process requiring review and construction of complex and unique sets of CC&Rs and other governing documents.

It is not clear whether the small claims court as presently constituted is suited for this task. The time that may be required to determine the rights of the parties, the relative complexity of issues involved, and the need to weigh equities in awarding equitable relief, all tend to put this sort of dispute beyond the cut-and-dried context of the small claims court.

Other Disputes

Although not listed among the typical types of homeowner v. association disputes above, we know other types of disputes are not uncommon. For example we have heard complaints about governance issues such as inadequate notice of meetings, improper elections, and the like. These are the types of complaints that the Attorney General might have jurisdiction over. See Memorandum 2001-44 (role of Attorney General). In many cases, the issue at the core of the dispute is not the procedural failure of the board, but a decision that the homeowner is unhappy about. This spills over into questioning the process by which the decision was reached.

Some issues of this type may be easily within the competence of the small claims court to determine. For example, Corporations Code Section 7510, relating to membership meetings and elections, applies to homeowner associations in a number of contexts. That section provides that if the corporation fails to hold a required meeting or election, the superior court "may summarily order the meeting to be held or the ballot to be conducted" on application of a member and after notice to the corporation and an opportunity to be heard. Corp. Code § 7510(c). The determination of such a failure would be a relatively routine one for the small claims court, and injunctive relief would be appropriate.

However, it is debatable whether this sort of relief would be available under existing law. It might be argued that the court order merely mandates specific performance of the meeting and election requirements of the bylaws. thereby falling within the small claims court's equitable jurisdiction. But if the bylaws are silent on the matter, it would stretch specific performance doctrine beyond recognition to make it a remedy for enforcement of a statutory mandate.

A conditional judgment would not be particularly useful in this situation. If a runaway board refuses to call meetings and elections, it would probably not be deterred by the prospect of having to pay $5,000 money damages out of community assessments.

Probably direct injunctive relief authority would be necessary to provide an adequate remedy. Alternatively, this might be a situation where personal liability of a director may be an appropriate remedy. See Memorandum 2001-42 (general approach).

EVALUATION

As we have seen, existing California law has made significant encroachments on the traditional doctrine that small claims court jurisdiction is limited to monetary damages of small amount.

Traditional Concerns

There are a number of concerns traditionally cited for denying the small claims court equitable jurisdiction:

(1) The need to keep the procedure as simple as possible.

(2) Concern about limitations arising from the use of temporary judges in the small claims court.

(3) Concern about the potentially far-reaching consequences of equitable relief (particularly injunctive relief) after only an informal, speedy hearing.

(4) Concern about the ability of the parties to understand and deal effectively with equitable relief issues without the representation of counsel.

(5) Inadequacy of the small claims court to maintain the continuing supervision necessary for equitable relief.

Modern Theory

The modern theory appears to be, however, that some limited equitable remedies are necessary in order to enable the court to fully and adequately

resolve the dispute. “In the small claims courts it is virtually essential that an adjudicator at least be able to order repairs, recision, replacement, or reformation. Consumer cases especially often practically involve ordering of repairs or recision. Forcing an adjudicator to put a money value on a product that could be repaired might well end up costing the defendant more and giving the plaintiff less value.” Gould, *Staff Report on the Small Claims Courts*, 35 (Nat. Inst. Cons. Just. 1972).

This theory is reflected in the current California statute providing expressly for the remedies of rescission, restitution, reformation, and specific performance in lieu of or in addition to money damages. Code Civ. Proc. § 116.220(b). However, these remedies are limited and ancillary to the claim of monetary damages. They do not include mandatory or prohibitory injunctive relief.

The California statute specifically addresses the need for the small claims court to maintain continuing jurisdiction to enforce equitable relief. “The court shall retain jurisdiction until full payment and performance of any judgment or order.” Ibid.; see also Code Civ. Proc. § 116.240, Cal. Const. art. VI, § 21 (temporary judge empowered to act until final determination of the cause.).

Injunctive Relief

While modern theory admits of the need for some equitable jurisdiction in the small claims court, that does not extend to injunctive relief. The National Institute for Consumer Justice report effectively summarizes a number of the arguments against injunctive relief (*Id.* at 36):

> Though it is important and pragmatic to give small claims courts adjudicators some equitable power, it would be wise to stop short of giving them power to issue an injunction or temporary restraining order. The injunction and temporary restraining order have such a large impact that their issuance should come only after a formal procedure, even if the hearing is only *ex parte*. Moreover, if the adjudicators of the small claims courts are inferior to those of the regular civil court where the injunction can normally be obtained, even if only because of their lack of judicial experience, it would be dangerous to vest such far-reaching power in such a person. It is one thing to allow a judge to be able to tell a businessman to repair a watch; it is quite another to enable that judge to enjoin that businessman from making watches. For the most part small claims courts should deal with personal one-to-one relationships. Once a case becomes far-reaching or complex enough to warrant the issuance of an injunction, the case should probably

> be treated with a formal procedure. And, if for no other reason than appearance, it would not be wise to give a small claims court judge injunctive power. One could imagine the impact of a wide ranging injunction being handed down by a small claims court judge, even if that same judge *qua* civil court judge could have issued the same injunction.

Another argument against injunctive relief is that it makes the case much more difficult to resolve, by implicating such complex factual determinations of probability of success and irreparability of harm.

One other concern with injunctive relief relates to enforcement issues. The standard remedy for violation of a court injunction is contempt. But should we imprison persons in a small-claims dispute for violation of an injunction ordered in an informal context by a temporary judge?

Notwithstanding these concerns, the *Consumer Law Sourcebook for Small Claims Court Judicial Officers* reminds us that the subject matter jurisdiction of the small claims court is not affected by the complexity of the legal issues raised in the case. That source cites as an example *City and County of San Francisco v. Small Claims Division*., 141 Cal. App. 3d 470 (1983), involving airport noise and continuing nuisance damages. Judged by the criteria expressed in that case, the following kinds of nuisance claims might lie within the subject matter jurisdiction of the small claims court:

(1) Physical interference with land use, whether encroachment, obstruction or deposit of material or pollution.

(2) Interference with enjoyment of land, such as smoke, odors, dust, noise, etc.

(3) Blockage of view.

(4) Failure to act to abate a nuisance.

The *Consumer Law Sourcebook* concludes that small claims court may be the forum of choice for disputes of this type. "Often the small claims court will provide the best solution to a problem. In many situations, there may be no feasible alternative. The reported decisions hold that courts may not create artificial barriers to the use of small claims court. Disputes that do not involve money are not good candidates for resolution by the regular courts because they do not generate funds to pay attorney's fees. Moreover, the absence of attorneys in small claims court may promote non-monetary settlements that otherwise might not occur." *Id.* § 5.6 at 46.

Conditional Judgment

As we have seen, the conditional judgment authorized in California comes very close to injunctive relief. It avoids the enforcement problems inherent in injunctive relief by providing as an alternate remedy monetary damages not exceeding $5,000.

Other than that, the conditional judgment, at least as it is envisioned in the small claims context, bears most of the hallmarks of injunctive relief and would be subject to the same criticisms in the small claims context.

Are the concerns real, as the small claims conditional judgment has been applied in practice? Unfortunately, we have no empirical data at this point. The staff is still seeking information, and will present anything we are able to obtain at the Commission meeting.

Temporary Judges

A general concern with the use of the small claims court for equitable relief, both under traditional and modern theory, is its staffing by temporary judges. That sort of staffing may be satisfactory where resolution of a small monetary claim is involved, but not necessarily where complex governing documents must be analyzed, equities must be weighed, and judgment calls made. Moreover, there may be enforcement difficulties where the temporary judge no longer sits as a judge when an equitable or conditional judgment returns to the court calendar for further enforcement.

Problems Unique to CID Context

In addition to the general concerns about injunctive relief in the small claims court, there are specific concerns peculiar to the CID context.

In many cases, the claim in a CID dispute will come down to a question of interpretation and enforcement of the association's governing documents, such as CC&Rs. This may be far more complex than a routine question of whether a bill has been paid or whether goods delivered are defective. Such a complex determination may be inappropriate in the small claims court context, with its temporary judges and its prohibition of legal representation.

CONCLUSION

Summary

Historically, the small claims court has been available for quick and inexpensive resolution of small monetary claims. In the CID context, that translates to disputes over fines and assessments.

Many of the most contentious disputes between homeowners and boards do not grow out of monetary issues, but relate to life-style issues that have escalated to full-scale warfare. Typically these issues involve the rights of the parties as determined by the governing documents of the association, and whether the board has acted within its authority. For their resolution they require mandatory or prohibitory relief, which is traditionally beyond the jurisdiction of the small claims court.

Concerns about expansion of small claims court jurisdiction beyond resolution of simple money claims include:

(1) Resolution of these issues is complex and will complicate small claims procedure.

(2) Personnel used in small claims court may not be qualified to make these types of determinations.

(3) Equitable relief is more far-reaching than monetary relief and should only be awarded with due care and appropriate legal representation.

(4) Equitable relief can have a major impact on parties not before the court, which makes it particularly inappropriate for the small claims context.

Despite these concerns, existing California law does provide for some types of equitable relief in the small claims court, particularly in the contractual context — rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The law also authorizes the small claims court to make a "conditional judgment"; that type of relief appears to share many of the characteristics of injunctive relief, except that it is enforceable by money damages not exceeding $5,000 rather than by contempt.

We do not have any good data on the extent to which these non-monetary remedies are employed in the small claims court, or the types of cases in which they are awarded. We are currently seeking to obtain that information, however.

These types of equitable remedies could be useful to resolve some of the common types of problems we have seen arise in common interest developments. However, it is not clear how large a role small claims litigation

can or should play in this area. The nature of the life-style issues, the complexity of the legal rights and weighing of equities involved, and the fact that the parties will necessarily continue to interact with each other after the dispute is resolved, all argue for the primacy of mediation rather than litigation, even in the small claims context. And in fact, mediation experts tell us that community and neighborhood dispute resolution is much more sensitive and highly specialized than mediation generally.

One impediment to use of these equitable remedies is that their availability is not generally known. Moreover, the conditional judgment concept itself is relatively obscure and its application somewhat vague.

Possible Improvements in the Law

If the Commission concludes that use of the small claims court ought to be encouraged as a way of efficiently resolving CID disputes before they escalate into full-blown litigation, we may want to consider a number of options:

(1) Flesh out the conditional judgment in some way. The current bare-bones statutory authority ("The court may issue a conditional judgment.") is not particularly helpful. This is especially so since the conditional judgment as used in The Small Claims Act appears to differ significantly in character from the conditional judgment as used by the courts at common law.

(2) Determine whether any other equitable remedies may be helpful for the types of disputes that arise in the CID context and also appropriate for the small claims court, and provide for them explicitly by statute.

(3) Add an express reference in the Davis-Stirling Act to the availability of these small claims court remedies. This may be particularly important if it is intended that the remedies apply to enforcement of the association's governing documents.

(4) Limit assessment disputes to the small claims court. This suggestion is made by Marjorie Murray, who comments, "If the association has let the figure get higher than $5,000, then there is something wrong with the directors' management of the association." See Memorandum 2001-42, Exhibit p. 4. This is normally done anyway, and would tend to level the playing field between the board and the homeowner.

(5) Tie into or further develop existing programs that provide for mediation in conjunction with the small claims court. This would be consistent with the

Commission's general concept of a stepped approach to dispute resolution in the CID context. See Memorandum 2001-42 (general approach).

(6) If we further develop the concept of designating a governmental body to act as a center for dissemination of information about the law and about nonjudicial dispute resolution options to homeowners and associations, ensure that small claims court material is included.

Political Considerations

One other consideration in all this is political. There will be resistance to further expansion of small claims jurisdiction into equitable areas because of the basic concerns about the propriety of that type of relief in the simplified litigation context of small claims court. The degree of resistance may depend on the extent to which the existing equitable jurisdiction is being exercised successfully.

There may also be resistance from within the court system itself, due to workload concerns and the likelihood that expanding the role of the small claims court will burden the judicial system. Of course the argument can be made that expansion of the small claims court's role will have the opposite effect — it will relieve some of the full scale litigation that would otherwise occur in superior court. However, the staff's sense is that the current burden of homeowner v. association litigation in superior court is relatively small. The disincentive of the cost of superior court litigation is real. Encouragement of small claims litigation will undoubtedly increase the workload in the small claims court without a concomitant reduction of workload in other divisions of the superior court.

Respectfully submitted,

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