

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Jurisdictional Classification of Good Faith Improver Claim

August 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 15, 1999.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would revise Code of Civil Procedure Section 871.3 to clarify the jurisdictional classification of a case that includes a good faith improver claim. 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 a person who makes an improvement to land in good faith and under the erroneous belief that the improver is the owner.¹ Section 871.3 states in part that a good faith improver “may bring an action in the superior court or, subject to Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter.”² 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 must be brought in superior court if it is asserted in a complaint, even if the amount in controversy is \$25,000 or less (the jurisdictional limit in municipal court and maximum for a limited civil case in superior court), but may be brought in municipal court if it is asserted by way of cross-complaint and the amount in controversy is \$25,000 or less.³ This scheme may be regarded as illogical and inconsistent.

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.⁴

In general, an equitable complaint must be filed in superior court, regardless of the amount in controversy.⁵ But an equitable claim may be asserted in a cross-complaint in municipal court (or a cross-complaint in a limited civil case in a

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. 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 Sections 403.010-403.090 set forth procedures for reclassification of a case that is misclassified in a unified superior court (e.g., reclassification of a case that is improperly filed as a limited civil case).

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

4. 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. A good faith improver claim should therefore be treated 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).

5. 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 unified superior court), if it is defensive and the case satisfies the \$25,000 limit
2 and other requirements for a limited civil case under Code of Civil Procedure
3 Section 85.⁶ A cross-complaint is defensive if it merely shows that the plaintiff is
4 not entitled to recover.⁷

5 Likewise, under Section 871.3 a complaint that includes a good faith improver
6 claim must be filed in superior court, regardless of the amount in controversy. But
7 a good faith improver claim may be asserted in a cross-complaint in municipal
8 court (or a cross-complaint in a limited civil case in a unified superior court), if it
9 is defensive and the case satisfies the \$25,000 limit and other requirements for a
10 limited civil case under Code of Civil Procedure Section 85.

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

⁶. Code Civ. Proc. §§ 85.1, 86(b)(2).

⁷. *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

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

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

871.3. ~~A good faith improver may bring an action in the superior court or, subject to Section 396 and Chapter 2 (commencing with Section 403.010) of Title 4, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter.~~ (a) An action for relief under this chapter shall be treated as an unlimited civil case, regardless of the amount in controversy. A case in which a defendant cross-complains for relief under this chapter shall be treated as a limited civil case if the cross-complaint is defensive and the case otherwise satisfies the amount in controversy and other requirements of Section 85.

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

Comment. Section 871.3 is amended to clarify the jurisdictional classification of a good faith improver claim. This is declarative of existing law.

If a good faith improver claim is asserted by way of complaint, the case is an unlimited civil case regardless of the amount in controversy. This treatment is consistent with the equitable nature of such a claim. See *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); *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).

If a good faith improver claim is asserted by way of cross-complaint, the proper treatment depends on whether the cross-complaint is defensive and whether the case satisfies the amount in controversy and other requirements for a limited civil case. A case may be transferred from municipal court to superior court if it includes a good faith improver cross-complaint that is not defensive. See Section 396 (court without jurisdiction); see also Cal. Const. art. VI, § 10 (original jurisdiction of trial courts); Sections 85 (limited civil cases) & 85.1 (original jurisdiction in limited civil case) & Comments. Likewise, a limited civil case in a unified superior court may be reclassified if it includes a good faith improver cross-complaint that is not defensive. See Section 403.030 (reclassification of limited civil case by cross-complaint); see also Section 403.040 (motion for reclassification). For guidance on whether a cross-complaint is defensive, see *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); see also Section 86(b)(2). For authority to sever a cross-complaint, see Section 1048.

See Section 88 (unlimited civil case). See also Section 32.5 (jurisdictional classification).