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Do Costs Go With That Settlement?

As part of a settlement, defendant agrees to pay plaintiff money in exchange for a dismissal of the action. But, is the settlement payment a “net monetary recovery” for plaintiff, making her a prevailing party entitled to an award of costs? The answer is yes, according to the California Supreme Court in *DeSaulles v. Community Hospital of the Monterey Peninsula* (2016) 62 Cal.4th 1140.

DeSaulles sued her employer (the Hospital), for wrongful termination and related claims. By the Hospital’s motions, the trial court dismissed five causes of action. On the eve of trial the parties announced their settlement on the record: DeSaulles agreed to dismiss two of her seven causes of action for \$23,500 and reserved the right to appeal dismissal of the other five causes of action. The parties’ settlement was silent as to costs.

DeSaulles argued that the Hospital’s settlement payment made her a prevailing party entitled to costs, while the Hospital asserted that settlement payments must be disregarded under *Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175, 188-189 (*Chinn*). *Chinn* held that the defendant is the prevailing party where a settlement results in a dismissal, and that settlement proceeds do not qualify as a “net monetary recovery” that would make the settling plaintiff the prevailing party.

The trial court awarded costs to the Hospital, and the Court of Appeal reversed, granting deSaulles her costs. The Supreme Court affirmed the Court of Appeal, reasoning that the Hospital paid deSaulles a sum of money in exchange for a dismissal of the action, resulting in a “net monetary recovery” for deSaulles. Thus, deSaulles was entitled to mandatory costs under the statutory definition of “prevailing party.” (Code Civ. Proc. §1032, subd. (a)(4).)

The takeaway is:

1. Don’t overlook the issue of costs in your settlement agreements. Otherwise, the *deSaulles* rule will apply, namely: When a defendant pays money to a plaintiff to settle a case, the plaintiff obtains a “net monetary recovery,” and a dismissal pursuant to such a settlement is not a dismissal “in [the defendant’s] favor.” (§1032, subd. (a)(4).)
2. State in the agreement that each party shall bear its own attorney fees and costs, if that is the intent, or stipulate to alternate procedures for awarding costs.
3. The *deSaulles* rule also applies to compromise offers under section 998, and stipulated judgments contemplating payment by defendant and dismissal of the action by plaintiff.
4. Review any settlement templates to avoid unintended consequences.