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To Dismiss or Not

Most settlement agreements include a dismissal of the entire action, with the court to retain jurisdiction under Code of Civil Procedure section 664.6 to enforce the settlement. Before dismissal, a party may bring a motion to enforce settlement under section 664.6. But if you dismiss your case before the other side fully performs under the agreement, does the court have jurisdiction to enforce the settlement? The answer is no, as recently explained in *Sayta v. Chu* (2017) 17 Cal.App.5th 960.

Sayta involved a landlord-tenant dispute that resolved with a settlement agreement. The terms included dismissal of the action, and for the court to retain jurisdiction pursuant to section 664.6 to enforce the agreement, until fully performed. After dismissing the case, Sayta moved to enforce the agreement pursuant to section 664.6, alleging breach of a confidentiality clause and liquidated damages. The trial court denied the motion on the merits and Sayta appealed.

The court of appeal held that because the parties failed to request, before dismissal, that the trial court retain jurisdiction to enforce the settlement, or alternatively seek to set aside the dismissals, the trial court lacked jurisdiction to entertain the motion. The trial court's order was void for lack of subject matter jurisdiction.

Practice Tips:

- 1. Three Requirements:** The request for retention of jurisdiction for section 664.6 enforcement of the settlement must be made (a) during the pendency of the case, not after the case has been dismissed in its entirety; (b) by the parties themselves; and (c) either in a writing signed by the parties or orally before the court. (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440.)
- 2. Court Approval:** *Sayta* instructs that a "request" for the court to retain jurisdiction under section 664.6 is not made by "a secret handshake of the parties" in their settlement agreement. Instead, the parties should stipulate to a judgment of dismissal that expressly provides that the court retains jurisdiction to enforce the settlement agreement (thus requesting the trial court to retain jurisdiction before the dismissal deprives the court of that jurisdiction).
- 3. Conditional Settlement:** In the alternative, dismiss only after the settlement terms are performed. If full performance will not occur within 45 days of settlement (including payment in installment payments), agree to a conditional dismissal under California Rules of Court, rule 225(c). (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1009.) Filing the notice of conditional settlement causes the court to vacate any hearing or proceeding that requires a court appearance. The case will be dismissed after the settlement terms are completed.
- 4. Vacate Dismissal:** If the dismissal fails to provide for retained jurisdiction, plaintiff's remedy is to move to vacate or modify the dismissal under Code of Civil Procedure section 473(b) for "mistake, inadvertence or excusable neglect." (*Basinger v. Rogers & Wells* (1990) 220 Cal.App.3d 16, 21.)