

Arriagarazo v. BMW of North America, LLC, 64 Cal. App. 5th 742 (2021)

An offer to compromise under Code of Civil Procedure section 998 must make clear of any intention to stray from the usual path of entry of judgment. Absent specific terms and conditions in the offer stating otherwise, entry of judgment is the standard procedural result.

FACTS/PROCEDURE

In January 2014, appellants' son was injured in a car accident. He died in March 2016 and appellants filed a wrongful death action against BMW in September 2016. In 2019, appellants accepted an offer to compromise their suit against BMW pursuant to California Code of Civil Procedure section 998, agreeing to sign a general release in exchange for \$15,000. Judgment was entered on the compromise.

On October 10, 2019, BMW moved to vacate the judgment pursuant to section 437, subdivision (d). The trial court granted its motion, finding the judgment was void because it was not contemplated by the terms of the settlement offer. Appellants appealed on the ground that the trial court erred in vacating the judgment because the court abused its discretion in interpreting the section 998 offer as requiring appellants to dismiss their case against BMW as part of their agreement.

HOLDING/DISCUSSION

The Court of Appeal for the Third District reversed. Because the section 998 process is contractual, the Court applied “well-established contract law principles,” whereby “the mutual intention of the parties at the time of the contract was formed governs.” (*Moss Dev. Co. v. Geary* (1974) 41 Cal.App.3d 1, 9.) Where an offer to compromise under section 998 fails to specify whether acceptance would result in judgment, an award, or dismissal, “the offer, by virtue of default to the statutory language, is simply intended as one to ‘allow judgment to be taken’ in exchange for the specified amount of funds.” (*Berg v. Darden* (2004) 120 Cal.App.4th 721, 728.) Under section 998, entry of judgment is “the expected and standard procedural result unless specific terms and conditions stated in the offer provide otherwise.” (*Id.* at p. 730.)

Here, the Third District reasoned the section 998 offer at hand never specified appellants would be required to file a dismissal in exchange for the \$15,000 settlement. Although the offer did require appellants to sign a *general release*, BMW cited no authority indicating the Court should treat “general release” as a technical term requiring appellants to file a dismissal rather than allow judgment to be entered. **A general release does not necessarily require dismissal of the underlying lawsuit.** As the drafter, BMW had the duty to make clear in its section 998 offer any intention to stray from the usual path under section 998 entry of judgment. The Court stated:

“If BMW wished to deviate from the standard procedural result of section 998, it could have proposed a general release coupled with a dismissal or otherwise stated clearly in the offer that dismissal was required.”

In finding that *the section 998 offer did not contemplate judgment*, the Court held the trial court abused its discretion and modified the offer's terms. Therefore, the Court reversed the trial court's order vacating the judgment.