

PROFESSIONAL LIABILITY UPDATE

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MALICIOUS PROSECUTION

California Law

By Jessica B. Rudin

Siebel v. Mittlesteadt (2004) 118 Cal.App.4th 406 (rev. granted 09/01/04)

The California Supreme Court accepts a case from the Sixth District that holds that post-judgment settlements do not automatically preclude a finding that a matter terminated favorably.

Carol Mittlesteadt and E. Rick Buell represented Deborah Christoffers in a lawsuit against her former employer, SSI, and its president and CEO, Thomas Siebel. The Christoffers complaint contained ten causes of action. Siebel obtained dismissal of five causes of action and Christoffers voluntarily dismissed three causes of action. Christoffers did not prevail in her remaining causes of action against Siebel and SSI for fraud, but was awarded commissions the jury found SSI failed to pay her. Christoffers also successfully defended the cross-complaint filed by SSI. Both Christoffers and Siebel/SSI appealed.

While the appeal was pending, Christoffers, Siebel and SSI reached a settlement where they released each other from liability, but Siebel and SSI did not release Christoffers' attorneys, Mittlesteadt and Buell. The agreement specifically provided it did not modify the "final termination of the action" rule for purposes of pursuing claims against Mittlesteadt and Buell.

When Siebel sued Mittlesteadt and Buell for malicious prosecution they obtained summary judgment on two grounds. First, that under *Ferreira v. Gray, Carey, Ware & Freidenrich* (2001) 87 Cal.App.4th 409 [PL Update No. 113] the settlement between Christoffers and Siebel precluded a finding that the underlying action terminated in Siebel's favor. Second, that they had probable cause to file the claims against Siebel because of the unsettled law relating to liability of a supervisor or officer. The trial court granted summary judgment based on Mittlesteadt and Buell's favorable termination argument and did not reach the probable cause argument.

The Court of Appeal distinguished *Ferreira* in two ways. First, the settlement in *Ferreira* called for an amended judgment, whereas the settlement in the Christoffers action left the judgment in favor of Siebel intact. Second, in his settlement agreement with Christoffers Siebel reserved the right to pursue an action against her attorneys.

The Court of Appeal reversed after finding the action against Siebel lacked probable cause. As a matter of law there was no authority or argument that supported causes of action against Siebel in his capacity as a supervisor, manager or officer of his company.

Comment: The Siebel decision erodes strong language in ***Ferreira*** and seems to be at odds with California public policy favoring settlements and discouraging continued litigation. Practitioners negotiating post-judgment settlement agreements should read ***Siebel*** and ***Ferreira*** carefully to ensure such agreements preclude future malicious prosecution actions.