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Preserving Evidentiary Objections on Appeal: *Reid v. Google, Inc.*

Last month, the California Supreme Court decided *Reid v. Google, Inc.*, (Case No. S158965, Aug. 5, 2010), which addressed a source of many headaches for appellate lawyers in California: ensuring that evidentiary objections are properly preserved in summary judgment proceedings so that they may be raised on appeal. In summary judgment proceedings, the central issue is usually whether the material facts are undisputed based on the evidence presented. So, whether the evidence presented is admissible can determine whether summary judgment is granted or denied.

Until *Reid* was decided by the California Supreme Court, many decisions had held that the failure to obtain a ruling on evidentiary objections in a summary judgment proceeding waived those objections on appeal. This rule often foreclosed appellants from arguing on appeal that the trial court erred by relying on inadmissible evidence in granting summary judgment, even where they had filed proper and timely evidentiary objections. *Reid* holds that so long as a party submits objections in the manner specified under the statute, the trial court has a duty to rule on those objections; even if the court fails to do so, the objections are properly preserved on appeal.

The Prior Law: A Dilemma for Lawyers

Before *Reid* was decided, courts had struggled with ruling on voluminous evidentiary objections in summary judgment proceedings. In *Biljac Associates v. First Interstate Bank*, 218 Cal.App.3d 1410, 1419 n.3 (1990), the trial court declined to rule on each of the numerous evidentiary objections submitted; in the court's view, this would be "a horrendous, incredibly time-consuming task" and "would serve very little purpose." The appellate court affirmed, holding that a court could decline to rule on specific objections so long as the court relied only on "competent and admissible evidence" in deciding the summary judgment motion. *Id.* at 1424.

Later, the Supreme Court decided *Ann M. v. Pacific Plaza Shopping Center*, 6 Cal.4th 666 (1993). There, the trial court did not rule on the defendant's objections to evidence submitted by the plaintiff in opposition to a summary judgment motion. Relying on Code of Civil Procedure § 437c(b) and (c), the Court held that "[b]ecause counsel failed to obtain rulings, the objections are waived and are not preserved for appeal." *Id.* at 670 n. 1. Therefore, even though many of the objections appeared to be meritorious, the Court would "view the objectionable evidence as having been admitted in evidence and therefore part of the record." *Id.* This principle was later affirmed in *Sharon P. v. Arman, Ltd.*, 21 Cal.4th 1181, 1186-1187 (1999). Interestingly, neither of these cases mentioned *Biljac*.

Lawyers, therefore, faced a dilemma under these cases. According to *Biljac*, a court was not required to rule on individual evidentiary objections, but under *Ann M.* and *Sharon P.*, if the court did not rule on the objections, the objections would be waived and not preserved for appeal. While *Biljac* began to be criticized by some courts based on this problem, the courts were somewhat divided on this issue.

An exception emerged later that allowed objections to be preserved under certain circumstances. In *City of Long Beach v. Farmers & Merchants Bank*, 81 Cal.App.4th 780, 783-785 (2000), the court held that where written objections were submitted and counsel had twice requested a ruling on those objections at the hearing, the objections were preserved on appeal. This exception has been referred to as the "stomp and scream" rule—if the attorney makes a concerted effort to obtain the rulings by repeatedly requesting that the court do so, the court's failure to rule does not preclude raising those objections on appeal. Of course, in reality, a lawyer could not literally "stomp and scream" at a judge, but would have to delicately attempt to obtain rulings even where a judge was reluctant to do so. So, while this exception provided a way to preserve rulings on appeal, it was not an easy task and put the lawyer in a difficult position.

***Reid v. Google, Inc.*: No More Stomping and Screaming**

In *Reid*, the Court resolved the dilemma for lawyers by holding that "a finding of waiver does not depend on whether a trial court rules expressly on evidentiary objections and that Google's filing of written evidentiary objections before the summary judgment hearing preserved them on appeal." Slip op., at 2. "If a trial court fails to rule after a party has properly objected, the evidentiary objections are not deemed waived on appeal." *Id.*

In reaching this decision, the Court looked to the language and legislative history of the statute, Code of Civil Procedure § 437c(b)(5) and (d). Subdivision (b)(5) states that "[e]videntiary objections not made at the hearing shall be deemed waived" and (d) provides that objections "shall be made at the hearing or shall be deemed waived." Ultimately, the Court concluded that a party may make choose to submit written objections before the hearing or present objections orally at the hearing; "either method of objection avoids waiver." Slip op., at 23. The trial court then has a duty to "rule expressly on those objections" and if it fails to do so, "the objections are preserved on appeal." *Id.*

Avoid Submitting Too Many Objections

Despite this rule, the Court acknowledged the burden on trial courts in ruling on individual evidentiary objections in summary judgment proceedings, which is what led to the *Biljac* approach. The Court recognized that "it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical." *Id.* The Court warned parties not to engage in this practice, and instead

to "raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count." *Id.* at 24. At a minimum, counsel should "specify the evidentiary objections they consider important" at the hearing. *Id.* Litigants who do not follow this path "may face informal reprimands or formal sanctions for engaging in abusive practices." *Id.*

In conclusion, in summary judgment proceedings, it is no longer necessary for counsel to "stomp and scream" to get rulings on individual evidentiary objections or risk waiver on appeal. *Reid* makes clear that so long as the objections are properly made, whether they are submitted in writing before the hearing or presented orally at the hearing, the objections are preserved on appeal. If the trial court fails to rule on each objection, the objection is not waived. However, counsel should exercise caution in objecting to evidence. Avoid presenting every possible objection that could be made, but instead consider which objections are the important ones. This will assist the court, will help focus the court on the objections that are crucial to the client, and will avoid sanctions for abusive practices.

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