STARE DECISIS IN CALIFORNIA STATE COURTS: THE DECISIONS THAT BIND US

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Background

Under the doctrine of stare decisis, a published decision of the California Supreme Court is binding on all inferior state courts. "Stare decisis" is an abbreviation of the Latin phrase "stare decisis et quieta non movere" –to stand by and adhere to decisions and not disturb what is settled.

The policy behind stare decisis . . . "is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law." (Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287, 296.) However, the Supreme Court also observed in Moradi-Shalal that the policy "is a flexible one which permits this court to reconsider, and ultimately to depart from, our own prior precedent in an appropriate case." (Ibid.) Thus, the Supreme Court may revisit its older decisions and, if appropriate, elect to not follow its own precedent. (Sierra Club v. San Joaquin Local Agency Formation Com. (1999) 21 Cal.4th 489, 505.)

The Scope of Stare Decisis

Only published decisions are given precedential effect in state court. (CRC, Rule 8.1115 (a) [subject to enumerated exceptions, an unpublished case may not be cited.].) And, concurring and dissenting opinions are not binding— as to the opinions of the Supreme Court, at least four justices must concur in the opinion in order for it to constitute binding precedent. (Berg v. Davi (2005) 130 Cal.App.4th 223, 232.)

Not everything stated in an appellate opinion is entitled to stare decisis effect. Only the "ratio decidendi," i.e., the reason for the ruling on a point of law, is subject to stare decisis. (Gogri v. Jack in The Box Inc. (2008) 166 Cal.App.4th 255, 272.) Even if the point that is decided is contained only in a footnote, it still warrants stare decisis effect and must be followed by an inferior court. (Mercury Interactive Corp. v. Klein (2007) 158 Cal.App.4th 60, 77.) On the other hand, those parts of a decision that are not necessary to the decision are considered "obiter dicta" (yet another Latin term—for "said by the way") and are not binding precedent. (See Mattco Forge, Inc. v. Arthur Young & Co. (1997) 52 Cal.App. 4th 820, 850, in which the appellate court observed, "[D]icta is not authority upon which we can rely."].)

It often is not easy to tell ratio decidendi from obiter dicta—in other words, sometimes whether a point is appropriate authority on which to rely can reasonably be argued either way.

The Trial Court Must Follow Appellate Precedent.

A published decision of the Court of Appeal is binding on all trial courts, irrespective of which appellate district or division rendered it. (Auto Equity Sales, Inc. v. Super. Ct. (Hesenflow) (1962) 57 Cal.2d 450, 455 [appellate department of superior court acted in excess of jurisdiction by refusing to follow a decision of the Court of Appeal.].) A trial court may not rule contrary to an appellate opinion simply because it thinks that the appellate decision was "wrongly decided." (Cuccia v. Super. Ct. (People) (2007) 153 Cal. App. 4th 347, 353.)

But where intermediate appellate decisions conflict on the point that is before the trial court, the trial court "can and must make a choice between the conflicting decisions." (Auto Equity Sales, supra, at p. 456.) This freedom of choice may be viewed by a trial court judge as academic, however, when one of the conflicting decisions is from the trial court's own district. In practice, "a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (McCallum v. McCallum (1987) 190 Cal. App. 3d 308, 315, fn.4.)

There Is No Horizontal Stare Decisis Within The Court of Appeal.

A published decision of the Court of Appeal is not binding precedent on a different panel of the Court of Appeal—even within the same district or division. Thus, even though a published decision of the Court of Appeal is binding on a trial court, it is not binding on any other panel, district or division of the Court of Appeal, because

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attention to quality control was given, perhaps enough to overcome the conclusory and self-serving declarations of the plaintiff's experts on a motion for summary judgment. Notably, there was no discussion in Acosta of the fact that the allegedly grossly defective work had all presumably passed the inspections of the local building officials.

Special inspections have actually been fairly common for the past five years or so on condominium projects in California, as most such projects were built with wrap OCIP insurance policies, which typically require such inspections as part of the OCIP program. However, OCIP policies typically also have a ten year "tail" coverage following substantial completion. Under Acosta, construction defect actions can be brought even after the expiration of the 10 year tail, leaving developers, contractors and subcontractors completely exposed to liability for construction defects, with absolutely no insurance coverage, the unfortunate effect of which is to further chill the market for construction of single family housing in California.

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(Stare Decisis, continued from page 6.)
there is no "horizontal stare decisis" within the Court of Appeal. (Marriage of Shaban (2001) 88 Cal.App.4th 398, 409.) That said, ordinarily the decisions of other districts or divisions of the Court of Appeal are followed—to the extent consistent with California Supreme Court precedent. (Apple Valley Unified School Dist. V. Vavrinek, Trine, Day & Co., LLP (2002) 98 Cal.App.4th 934, 947.) And, in appellate districts that do not have divisions, there must be a "compelling reason" to overrule a decision of another panel of that same district. (Opsal v. United Services Auto. Ass'n (1991) 2 Cal.App. 4th 1197, 1203-1204.)

Persuasive v. Binding Authority

Even when an opinion does not have precedential effect, it may still, under certain circumstances, be considered "persuasive" authority. For example, a dictum in a decision of the California Supreme Court "should be followed" if it is the result of thorough analysis and compelling logic. (State of Calif. V. Super. Ct. (Underwriters at Lloyd's of London) (2000) 78 Cal.App.4th 1019, 1029, fn. 13.) Another example pertains to federal court decisions. While California state courts are bound by U.S. Supreme Court authority on federal questions, they are not bound by U.S. Supreme Court authority on nonfederal questions or by lower federal court decisions on issues of state or federal law. Nevertheless, the federal court decisions may be treated as persuasive authority where, for example, a state statute is being reviewed that derives from a federal statute or where the issue of federal law has already been addressed consistently in numerous lower federal court opinions. (Adams v. Pacific Bell Directory (2003) 111 Cal.App.4th 93, 97-98; Etcheverry v. Tri-Ag Service, Inc. (2000) 22 Cal.4th 316, 320-321.)

Comment

Stare decisis makes sense. It would wreak havoc on the law if an appellate court were to "disregard Supreme Court authority in favor of a lower court ruling that it prefers." (Jeld-Wen, Inc. v. Superior Court (2005) 131 Cal. App.4th 853, 858.) As for the trial court, it must follow the holdings in published appellate decisions. And, lawyers, as advocates for their clients, may respectfully point out their disagreement with a decision of an appellate court, but they cannot urge the trial court to not follow the law. (Cuccia, supra, at page 352, fn. 3.) Instead, lawyers "should make a record and preserve the issue for appeal." (Ibid.) When the trial court refuses to follow appellate precedent, the party prejudiced by that refusal may also seek extraordinary writ relief to correct the error. (See e.g., Jonathon M. v. Super. Ct. (People) (2006) 141 Cal.App.4th 1093 [trial court judge refused to follow published appellate decision].)

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