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After more than two decades, the editors are pleased to debut this updated design for the California Labor and Employment Law Review. We are working on other plans to improve the content of the Law Review as well. We welcome your comments. Please direct them to Section Coordinator Edward Bernard at edward.bernard@calbar.ca.gov.

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MCLE Self-Study

SUMMARY JUDGMENTS RECONSIDERED:

The California Supreme Court Resolves a Conundrum

By Phyllis W. Cheng

The California Supreme Court's recent decision in *Le Francois v. Goel*[1] (*Le Francois*) resolved the question about reconsideration of failed motions for summary judgment. Specifically, the court addressed this question: Does a trial court have the inherent power to rule on a second motion for summary judgment or, in the alternative, for summary adjudication, even though the second motion did not meet the requirements of Cal. Code. Civ. Proc.[2] § 1008 (a) relating to applications for reconsideration, or the requirements of § 437c (f)(2) relating to motions for summary judgment following an unsuccessful motion for summary judgment?

Section 437c(f)(2) limits a party's ability to renew a motion for summary judgment. It provides: "[A] party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion."

"Section 1008, the general statute governing motions for reconsideration, allows the trial court to reconsider and modify, amend, or revoke its prior order upon new or different facts, circumstances or law, or when the court determines that there has been a change of law that warrants reconsideration on its own motion.[3] Like section 437c(f)(2), '[§] 1008 is designed to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over.'[Citation.]"[4]

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Summary Judgments

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In *Le Francois*, the trial court denied the original motion for summary judgment filed by an employer and three of its officers in a former employees' action alleging certain injurious misrepresentations and false promises by the officers. The next year, the officers again moved for summary judgment based on the same law and evidence. The trial court granted the second motion for summary judgment. The Court of Appeal held that, although the second motion violated §§ 437c(f)(2) and 1008, the trial court had inherent power to exercise its constitutionally derived authority to reconsider the prior ruling and correct an error of law. The Supreme Court granted review and reversed.[5]

Until *Le Francois*, there was a split of opinion about reconsideration of unsuccessful motions for summary judgment. The earlier line of cases, including the leading case of *Scott Co. v. United States Fidelity & Guaranty Ins. Co.*, found the jurisdictional limitation of section 1008(e) to be an impermissible interference with the core functions of the judiciary.[6] These cases held that a trial court always has the inherent power under the California Constitution to reconsider an interim ruling, a power that is "neither confined by nor dependent on statute."[7] Under this scenario, failed summary motions can be renewed by parties and reviewed by the court even without new law or facts.

The later line of cases also supported the view that a court has the jurisdiction to reconsider its earlier decisions. However, they differentiated between sua sponte action by the court and actions by the parties that fall under an express legislative determination.[8] *Darling, Hall & Rae v. Kritt*, for example, found the line of cases holding section 1008 jurisdictional to be inapplicable, because § 1008(a) applies only to applications made to the court by parties, not only by its very terms, but also because the intent of the Legislature was "to conserve the court's resources by constraining litigants who would attempt to bring the same motion over and over."[9] The only requirement is that the trial court exercise due consideration before modifying, amending, or revoking its prior orders.[10] Similarly, reconsideration was deemed proper in *Abassi v. Welke*, where the court expressly invited the parties to file a second summary judgment motion because it wanted to reassess its prior ruling.[11] More recently, *Schachter v. Citigroup, Inc.* further explained: "the Legislature enacted a specific limitation on the parties out of a concern for abuse of the summary adjudication process, and the burden such motions can impose on a party's resources. The Legislature did not, however, attempt to limit the court's sua sponte authority. Thus, for example, were a party to suggest that the court reconsider a motion, the court would have every right to do so, even if that required the party to bring a new motion. In that circumstance, the responding party would not bear the burden of preparing opposition unless the court indicated an interest in reconsideration."[12]

The California Supreme Court adopted the latter view in *Le Francois*. It held that "sections 437c and 1008 limit the parties' ability to file repetitive motions but do not limit the court's ability, on its own motion, to reconsider its prior interim orders so it may correct its own errors."[13] The court further explained: "We cannot prevent a party from communicating the view to a court that it should reconsider a prior ruling (although any such communication should never be ex parte). We agree that it should not matter whether the 'judge has an unprovoked flash of understanding in the middle of the night' [citation] or acts in response to a party's suggestion. If a court believes one of its prior interim orders was erroneous, it should be able to correct that error no matter how it came to acquire that belief . . . But a party may not file a written motion to reconsider that has procedural significance if it does not satisfy the requirements of section 437c, subdivision (f)(2), or 1008. The court need not rule on any suggestion that it should reconsider a previous ruling and, without more, another party would not be expected to respond to such a suggestion."[14]

Operationally, the *Le Francois* court makes clear that "[u]nless the requirements of section 437c, subdivision (f)(2), or 1008 are satisfied, any action to reconsider a prior interim order must formally begin with the court on its own motion. To be fair to the parties, if the court is seriously concerned that one of its prior interim rulings might have been erroneous, and thus that it might want to reconsider that ruling on its own motion—something we think will happen rather rarely—it should inform the parties of this concern, solicit briefing, and hold a hearing. [Citations.] Then, and only then, would a party be expected to respond to another party's suggestion that the court should reconsider a previous ruling. This procedure provides a reasonable balance between the conflicting goals of limiting repetitive litigation and permitting a court to correct its own erroneous interim orders."[15]

The *Le Francois* court resolved the role of parties and the court on the reconsideration of summary judgment motions under §§ 437c and 1008. Any party wishing to have a motion reconsidered should carefully consult the procedures outlined in the decision.

ENDNOTES

1. *Le Francois v. Goel*, 35 Cal. 4th 1094 (2005).
2. All further statutory references are to Cal. Code Civ. Proc. unless otherwise indicated.
3. Section 1008 provides: "(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. [¶] (b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be

revoked or set aside on ex parte motion. [¶] (c) If a court at any time determines that there has been a change of law that warrants it to re-consider a prior order it entered, it may do so on its own motion and enter a different order. [¶] (d) A violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7. In addition, an order made contrary to this section may be revoked by the judge or commissioner who made it, or vacated by a judge of the court in which the action or proceeding is pending. [¶] (e) This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section. [¶] (f) For the purposes of this section, an alleged new or different law shall not include a later enacted statute without a retroactive application. [¶] (g) This section applies to all applications for interim orders."

4. *Schachter v. Citigroup*, 126 Cal. App. 4th 726, 735 (2005), citing *Darling, Hall & Rae v. Kritt*, 75 Cal. App. 4th 1148, 1157 (1999).
5. *Le Francois*, 35 Cal. 4th at 1097.
6. *Scott Co. v. United States Fidelity & Guaranty Ins. Co.*, 107 Cal. App. 4th 197, 207 (2003); *see* also *Remsen v. Lavacot*, 87 Cal. App. 4th 421, 426-427 (2001) [order granting interest to beneficiaries of trust properly modified]; *Kollander Construction, Inc. v. Superior Court*, 98 Cal. App. 4th 304, 311-314 (2002) [agreeing with *Remsen* but finding satisfaction of § 1008 requirements in any event]; accord *Blake v. Ecker*, 93 Cal. App. 4th 728, 739, n. 10 (2001), [inherent power to reconsider exists even after end of 10-day period to bring motion]; *Wozniak v. Lucutz*, 102 Cal. App. 4th 1031, 1042 (2002) [irrelevant whether the court acts sua sponte or pursuant to a party's motion].
7. *Kollander Construction, Inc. v. Superior Court*, 98 Cal. App. 4th at 311; *accord, Scott Co. v. United States Fidelity & Guaranty Ins. Co.*, 107 Cal. App. 4th 207 [jurisdictional limitation of subdivision (e) constitutes an impermissible interference with the core functions of the judiciary] (2003).
8. *See Darling, Hall & Rae*, 75 Cal. App. 4th 1148 [section 1008 does not govern the trial court's ability, on its own motion, to reevaluate its own interim rulings]; *Case v. Lazben Financial Co.*, 99 Cal. App. 4th 172 (2002) [§ 1008 restricts only litigants' motions, not court's sua sponte reconsideration of its own orders]; *Bernstein v. Consolidated American Ins. Co.*, 37 Cal. App. 4th 763, 774 (1995), disapproved on another ground in *Vandenberg v. Superior Court*, 21 Cal. 4th 815, 841, n. 13 (1999) [upon request for clarification, correction of prior ruling denying summary adjudication permissible on court's own motion]; *Kerns v. CSE Ins. Group*, 106 Cal. App. 4th 368 (2003) [§ 1008 was jurisdictional and controlling only when a party has renewed a motion or requested reconsideration, not when the trial court reconsiders its ruling sua sponte]; *Abassi v. Welke*, 118 Cal. App. 4th 1353 (2004) [the trial court may sua sponte invite a second summary judgment motion following its denial of a previous summary judgment motion notwithstanding § 1008].
9. *Darling, Hall & Rae*, 75 Cal. App. 4th at 1157.
10. *Id.*
11. *Abassi v. Welke*, 118 Cal. App. 4th at 1358 (1999).
12. *Schachter v. Citigroup*, 126 Cal. App. 4th at 739.
13. *Le Francois*, 35 Cal. 4th at 1107.
14. *Id.* at 1108.
15. *Id.* at 1108-1109.