KAUFMAN DOLOWICH LLP

KD Alert: Win the Battle, Lose the War – Offers of Judgment (FRCP 68) Can Be Accepted After A Grant of Summary Judgment in the Ninth Circuit, May 25, 2022

It turns out, a plaintiff can have his cake and eat it too. In the Ninth Circuit's May 3, 2022, decision on Kubiak v. County of Ravalli, et al (21-35542), the Court concluded a plaintiff can still accept a Rule 68 Offer of Judgment, even when the defendant has been granted summary judgment. The Court found this holding consistent with other circuit courts, when faced with similar questions about when a Rule 68 Offer of Judgment can be accepted.

How did this happen? In March 2020, Plaintiff Robert Kubiak sued the County of Ravalli, its sheriff, and a sheriff deputy for violation of his First and Fourth Amendment rights, as well as state law claims, when he was arrested for violating a temporary protection order. Kubiak spent one night in jail.

County Defendants filed a motion for summary judgment seeking dismissal of all of Kubiak's claims on April 20, 2021. The County Defendants then served a Rule 68 Offer of Judgment on June 3, 2021. The offer stated: "judgment would be entered against the defendants for $50,000 plus costs, including reasonable attorney's fees." The offer stated that if it was "not accepted within the time prescribed by Rule 68(a), Fed. R. Civ. P., it [would be] deemed withdrawn pursuant to Rule 68(b)." Rule 68(a) provides a fourteen-day window for acceptance of an offer of judgment. (Kubiak Slip Op. at 5). Therefore, Plaintiff had until June 17, 2021, to accept the Offer.

On June 9, 2021 at 4:09 p.m., the District Court issued its ruling and granted summary judgment for the County Defendants. The Order stated "Defendants' motion for summary judgment . . . is GRANTED." The Order further provided, "A reasoned decision will follow in due course. Judgment will be entered at that time." (Ibid.) County Defendants sent an email withdrawing the Offer at 4:15 p.m., less than 10 minutes after the summary judgment ruling. Within the hour, at 5:11 p.m., Plaintiff filed his acceptance of the Offer. The Clerk entered the Order in favor of Plaintiff based on the accepted Offer. (Ibid.)

The Ninth Circuit reasoned that because there was a non-final judgment on the County Defendants' summary judgment, the Offer was still valid and therefore could be accepted by Plaintiff. The 14-day timeframe was applicable and there were no other conditions in the Offer to prevent Plaintiff from accepting it, even with the grant of summary judgment. (Kubiak Slip Op at 16-17). It is important to note, the Ninth Circuit "made clear, we express no view on whether an entry of final judgment would nullify an outstanding Rule 68 offer…"(Kubiak Slip Op. at 17).

Practice Tips:

1. Carefully phrase your Rule 68 Offer if you have a motion pending
2. Carefully calculate the 14-day window to avoid conflict with a potentially favorable ruling on a dispositive motion

In sum, despite successfully defeating all of Kubiak's claims and "winning the battle," the County Defendants are bound by their Rule 68 Offer and have "lost the war."

KD IS HERE TO HELP

The experienced attorneys at Kaufman Dolowich & Voluck, LLP are available to assist you in understanding the impact of this decision on your organization in California or throughout the United States. You can contact the author, Aimee Hamoy, Esq. at ahamoy@kaufmandolowich.com or reach another experienced attorney in your area at Professionals - Kaufman Dolowich Voluck LLP (kaufmandolowich.com).

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