Filed 6/6/18 Lolachi v. Alstate Ins. Co. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JAMSHID LOLACHI et al., Plaintiffs and Appellants, v. ALLSTATE INSURANCE COMPANY, Defendant and Respondent.	B282469 (Los Angeles County Super. Ct. No. SS026340)

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Abir Coehn Treyzon Salo, Boris Treyzon, Cynthia Goodman, Alexander Cohen and Darren D. Darwish for Plaintiffs and Appellants.

Byron & Edwards, Thomas W. Byron for Defendant and Respondent.

I. INTRODUCION

Plaintiff Yasaman Lolachi appeals from an April 19, 2017 order denying her petition to vacate an appraisal award.[1] She argues the appraisal award should have been vacated because the umpire: (1) exceeded his authority by making coverage and causation determinations; (2) engaged in ex parte communications with defendant Allstate Insurance Company's appraiser; and (3) did not give plaintiff's appraiser the opportunity to comment on the valuations after agreeing to do so. Seeing no error, we affirm the order.

II. BACKROUND AND PROCEDURAL HISTORY

On August 31, 2013, plaintiff's Los Angeles home suffered fire and smoke damage. Her home was insured by defendant under a deluxe homeowners policy, which contained an insurance appraisal provision: "If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. . . . [¶] The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to you and us the amount agreed upon shall be the

---

[1] Plaintiff's husband, Jamshid Lolachi, was an appellant but passed away after the appeal was filed.

amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss." (Emphasis omitted.)

After the parties could not agree on the amount of loss, plaintiff demanded an insurance appraisal. Plaintiff appointed Michael Nedobity as her impartial appraiser, and defendant appointed Scott Vivian as its impartial appraiser. Nedobity and Vivian selected Steven Wright as the appraisal umpire.

On November 30, 2015, the appraisal panel—comprised of Nedobity, Vivian, and Wright—deliberated for over four hours and analyzed various areas of plaintiff's home. At some point (the record does not specifically reflect when), Nedobity, Vivian, and Wright created a spreadsheet called "Appraiser's Value Comparison," ("award spreadsheet") that listed approximately 1045 items, for which plaintiff requested a loss valuation. The spreadsheet contained three columns. The first column, titled "MNCS" represented Nedobity's valuation of the loss for the corresponding items. The second column, titled "PCMI," represented Vivian's valuation of the loss for the items. Nedobity and Vivian disagreed about the valuation of every single item, except for those items for which both assigned a value of zero. The variance between the two sets of valuations ranged from pennies to thousands of dollars. The third column, labeled "Agreed" represented Wright's final valuation for the loss. Only the third column included two different values, labeled "RCV," for "replacement cost value," and "ACV," for "actual cash value."[2]

---

[2] Under the policy, plaintiff is paid the actual cash value if she decides not to repair or replace damaged property: "If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there

The appraisal panel concluded their deliberation on item 444 of the award spreadsheet. According to Nedobity, the panel agreed Wright would assign the replacement cost values for the remaining line items (Nos. 445-1085). Wright would provide his valuations to Nedobity and Vivian, and they would comment and agree upon the valuations prior to finalization of the appraisal. "After deliberations ended on November 30, 2015, I was led to believe that the Appraisal Panel would have a follow-up meeting and I would be given an opportunity to review Mr. Wright's valuations and comment."

On December 2, 2015, Wright e-mailed Vivian, requesting an Excel spreadsheet of the appraiser comparisons. Tracie Maxwell, a member of Wright's staff, was copied on the e-mail. On December 9, 2015, Wright signed the appraisal award. The appraisal award calculated the replacement cost value for the fire loss to be $123,267.11, and the actual cash value to be $96,306.81. The award stated: "[T]his award is made without consideration of any policy limits, deductable amount, . . . non-covered items or other provisions of the [policy] which might

---

may be a deduction for depreciation." If plaintiff decides to replace the damaged property, defendant agrees to pay the replacement cost value: "[W]e will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 12 months of the actual cash value payment. . . . This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss." (Emphasis omitted.)

affect the existence and/or amount of the insurer's liability thereunder."

On December 9, 2015, Maxwell e-mailed the appraisal award to Vivian and asked if she should send anything else. Vivian replied to Maxwell in a December 13, 2015 e-mail: "The backup list of line items that [Wright] used to calculate the totals must be included in this award, as well. Please include them and then publish them to both Mike Nedobity and I at the same time."

On December 14, 2015, Maxwell sent the award spreadsheet to Nedobity and Vivian. She did not send Nedobity the appraisal award. On December 15, 2015, Vivian signed the appraisal award with the attached award spreadsheet. The appraisal award became final after Vivian signed it because the award required only the signatures of two of the appraisers. Nedobity did not receive the appraisal award until December 20, 2015.

On July 6, 2016, plaintiff filed a petition to vacate the appraisal award. On August 5, 2016, defendant filed an opposition and moved to confirm the appraisal award. The trial court held a hearing on both petitions on March 3, 2017. The court sustained defendant's objections to the declarations of two of plaintiff's counsel, and to paragraphs 5, 8, and 9 of Nedobity's declaration.[3] The court, however, overruled objections to the attached e-mail exchanges among the appraisers.

---

[3] Plaintiff does not challenge the trial court's evidentiary rulings, yet relies upon excluded evidence in her opening brief. We disregard the excluded evidence.

Defendant contends the trial court erred by overruling most of its objections to the Nedobity declaration. Defendant asserts

On April 19, 2017, the trial court denied plaintiff's petition to vacate the appraisal award, and granted defendant's petition to confirm it. The court concluded that there was "[n]o showing of fraud, corruption or misconduct." The appraisal award was modified to correct certain mathematical errors. The replacement cost value award was reduced from $123,267.11 to $122,670.94. The actual cash value award was increased from $96,306.81 to $96,307.41.

III. DISCUSSION

A. *Standard of Review*

"Appraisal hearings are a form of arbitration and are generally subject to the rules governing arbitration." (*Kacha v. Allstate Ins. Co.* (2006) 140 Cal.App.4th 1023, 1031 (*Kacha*).) Courts will not review the merits of the controversy or the

---

the objections should have been sustained because Evidence Code section 703.5 prohibits an appraiser from testifying about the appraisal process. "As a general rule, respondents who fail to file a cross-appeal cannot claim error in connection with the opposing party's appeal." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1121.) Code of Civil Procedure section 906, however, provides a limited exception to this rule and allows a court to review orders or rulings "for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken." Accordingly, we review the evidentiary ruling and pursuant to Evidence Code section 703.5, disregard those portions of Nedobity's declaration that describe the panel's deliberations. (*Khorsand v. Liberty Mutual Fire Ins. Co.* (2018) 20 Cal.App.5th 1028, 1036-1037).

sufficiency of the evidence supporting the appraisal award. (*Ibid.*) We review de novo the trial court's ruling on a challenge to an appraisal award, drawing every reasonable inference to support the award. (*Lee v. California Capital Ins. Co.* (2015) 237 Cal.App.4th 1154, 1164 (*Lee*).) "To the extent the court's ruling rests on issues of disputed fact, however, we apply the substantial evidence test." (*Kacha, supra*, 140 Cal.App.4th at p. 1031.)

B. *There Was No Ground for Vacating the Appraisal Award*

Fire insurance policies issued in California must include an appraisal provision as set forth in Insurance Code section 2071. (*Lee, supra*, 237 Cal.App.4th at p. 1165.) The insurance policy in this case included an appraisal provision consistent with that section.[4] Under the statutorily mandated appraisal provision,

---

[4] Insurance Code section 2071 provides in relevant part: "In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, 'informal' means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and

the insurer and insured must participate in an informal appraisal proceeding if there is disagreement about the actual cash value or the amount of loss, and one of the parties makes a written request for appraisal. (*Lee, supra*, 237 Cal.App.4th at p. 1166.)

"The exclusive grounds for vacating an appraisal award are set forth in Code of Civil Procedure[5] section 1286.2, subdivision (a)." (*Lee, supra*, 237 Cal.App.4th at p. 1165.) "An appraisal award may be vacated on the following grounds: '(1) The award was procured by corruption, fraud or other undue means. [¶] (2) There was corruption in any of the arbitrators. [¶] (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. [¶] (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title. [¶] (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of

---

no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss."

[5] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in [Code of Civil Procedure] Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision.' (Code Civ. Proc., § 1286.2, subd. (a).)" (*Lee, supra*, 237 Cal.App.4th at p. 1165.)

1. No Evidence That Umpire Exceeded His Authority

Plaintiff argues the appraisal award should have been vacated pursuant to section 1286.2, subdivision (a)(4) because the umpire exceeded his authority by making coverage determinations. Although an appraisal is a specific form of arbitration, an appraiser's authority is more limited than that of an arbitrator. (*Kirkwood v. California State Automobile Assn. Inter-Ins. Bureau* (2011) 193 Cal.App.4th 49, 58-59 (*Kirkwood*).) An arbitrator exercises "'essentially judicial functions,'" and decides issues of law and fact. (*Id.* at p. 58.) By contrast, "[u]nder [Insurance Code] section 2071, an appraiser has authority to determine only a question of fact, namely the actual cash value or amount of loss of a given item." (*Id.* at p. 59.) "'The function of appraisers is to determine the amount of damage resulting to various items submitted for their consideration. It is certainly not their function to resolve questions of coverage and interpret provisions of policy.'" (*Jefferson Ins. Co. v. Superior Court* (1970) 3 Cal.3d 398, 403.)

Accordingly, where an appraisal panel assigns no, or zero, value for items based on its conclusion that the damage to the item was not caused by the fire, the panel exceeds its authority. (*Kacha, supra*, 140 Cal.App.4th at pp. 1035-1036.) But an

appraisal panel is not required to "assign a value to every item submitted by the insured for appraisal—regardless of whether the item existed or was damaged." (*Lee, supra*, 237 Cal.App.4th at p. 1172.) In other words, "while an appraisal panel exceeds its authority by awarding nothing for damaged items based on causation or other coverage determinations, a panel does not exceed its authority by awarding nothing for items that are not damaged or never existed, where the nature or existence of the item is readily ascertainable." (*Id.* at p. 1173.)

According to plaintiff, when the appraisal panel assigned a zero value to numerous items, it was necessarily making coverage and causation determinations. Plaintiff cites *Kacha, supra*, 140 Cal.App.4th at pages 1035-1036, in support. In that case, plaintiff owned a home and personal property that was damaged by a fire. (*Id.* at p. 1026.) Prior to the appraisal, the plaintiff and defendant insurance company disputed the existence and scope of damage. (*Id.* at pp. 1027-1028.) That dispute was not resolved prior to the appraisal. (*Ibid.*) During the appraisal, the parties stipulated to the amount of loss for certain enumerated items but disagreed whether the loss had been caused by the fire. (*Ibid.*) The appraisal panel awarded zero for certain items. (*Id.* at pp. 1035-1036.) The award specifically noted that the panel members "'have made the following determination and award *of damage, if any, to the insured's residence attributable to the fire.*'" (*Kacha, supra*, 140 Cal.App.4th at p. 1028.)

The insurance company argued that the arbitration panel had awarded zero for certain items because it concluded that the items had no damage, not because the panel concluded the loss had not been caused by the fire. (*Kacha, supra*, 140 Cal.App.4th

at p. 1035.) The Court of Appeal disagreed, citing two examples where the appraisers had specifically agreed items were damaged but concluded that the damage was "'not related to the fire,'" or "'could have been caused by sunlight, weather and/or a breakdown of the factory applied finish.'" (*Id.* at 1036.) Based on these facts, the Court of Appeal concluded: "[I]t is apparent that the appraisal panel made at least some coverage determinations, thereby exceeding its authority." (*Id.* at 1036.)

Here, the facts differ significantly from those in *Kacha*. First, unlike the appraisal award in *Kacha*, which stated the document was "'an award *of damage, if any*,'" suggesting that the panel had made coverage determinations, the appraisal award here stated that it was made without consideration of any such coverage determinations.

Second, unlike in *Kacha*, there is no record of a stipulation between the parties regarding loss to any items. Defendant disputes the existence of any such stipulation; and plaintiff, in her reply brief, seems to concede that there was no "formal stipulation." Rather, plaintiff argues that because "Allstate's appraiser" assigned values to specific items, defendant essentially stipulated to loss on these items. Plaintiff's assertion lacks merit. Our review of the award spreadsheet demonstrates 179 instances where Nedobity assigned a zero value to an item, while one or both of the other panel members assigned values. Just as we would not infer that plaintiff stipulated there was no loss to the items assigned no valuation by Nedobity, we will not infer a stipulation by defendant of loss for items for which Vivian assigned a value but the award did not. Nedobity's statement that during deliberations, the appraisers assigned values that the

umpire ultimately rejected, does not demonstrate the existence of a stipulation by the *parties* that the items should be covered loss.

Plaintiff further argues the umpire exceeded his authority when he failed to assign values for ten items for which both Nedobity and Vivian gave cost estimates.[6] But plaintiff provides no authority to support her contention that the umpire must assign values for items where the party-appointed appraisers have provided estimates. To the contrary, an umpire may make an independent appraisal of the items submitted to him or her by the appraisers and is not bound by their estimates. In *Canadian Indem. Co. v. Ohm* (1969) 271 Cal.App.2d 703, 706, the umpire not only considered the appraisers' estimates but also made trips to the fire-damaged house and independently obtained bids from subcontractors. The Court of Appeal rejected the insurer's contention that the umpire's independent investigation of the fire loss constituted misconduct. (*Id.* at p. 708.)

Other states, which have appraisal provisions similar to the one in Insurance Code section 2071, have held that umpires may determine the amount of loss independent of the findings of the party-appointed appraisers.[7] In *Kirkham v. German*

---

[6] Plaintiff specifically refers to items 34, 47, 72, 83, 119, 121, 123, 255, 1027, and 1029. Nedobity assigned a zero value to item 255.

[7] The umpire is involved in the appraisal only when the party-appointed appraisers cannot agree on the valuation of the loss: "The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire." (Ins. Code, § 2071.) This language has been in the appraisal provision of Insurance Code section 2071 since that section was amended in

American Ins. Co. (1914) 92 Kan. 941, 1012-1013, the Supreme Court of Kansas held it was improper for the umpire to confine his valuation within the limits of the appraisers' estimates: "It is suggested that as the agreement provided that the appraisers should submit to the umpire their 'differences' it was entirely proper for him to confine his estimates within the limits fixed by them. We think, however, that 'differences' as here used means matters about which they were unable to agree, and that when he was called upon to fix a sum he acted as a juror and was to exercise his own untrammeled judgment." Likewise, in *Atlas Constr. Co. v. Indiana Ins. Co.* (Ind.Ct.App. 1974) 309 N.E.2d 810, 815-816, the Indiana Court of Appeals reasoned umpires must exercise independent judgment because they function as the third appraiser in resolving the differences between the two party-appointed appraisers.

An umpire has authority to assign zero value to an item even where the two appraisers have provided estimates. In instances "where the appraisers have disagreed, it was entirely proper for the umpire to disregard their estimates, if, in his

---

1949. (Stats. 1949, ch. 556, § 2, p. 959.) The California standard form fire insurance policy was modeled after the policy form adopted in New York and 44 other states. (The National Board of Fire Underwriters, letter to Governor's Office re Senate Bill No. 1282 (May 24, 1949); Legis. Sect., Governor's Off., analysis of Sen. Bill No. 1282 (June 2, 1949), pp. 1-2.) Because other states have similar appraisal statutes, we may consider their case law and regulations. "'[I]t is well settled that decisions of sister state courts are particularly persuasive when those decisions construe similar statutes or a uniform act.'" (*PGA West Residential Assn., Inc. v. Hulven Internat., Inc.* (2017) 14 Cal.App.5th 156, 174, fn. 10.)

honest opinion there was no loss." (*Dennis v. Standard Fire Ins. Co.* (1919) 90 N.J.Eq. 419, 425.) In *Providence Lloyds Ins. Co. v. Crystal City Indep. Sch. Dist.* (Tex.Ct.App. 1994) 877 S.W.2d 872, 876-877 (*Providence Lloyds*), the umpire exercised independent judgment on five items (assigning zero to one of the items), instead of agreeing with one or the other appraiser. The Texas Court of Appeals ruled the umpire did not exceed his authority by acting independently as to the disputed values. (*Id.* at pp. 877-878.) The *Providence Lloyds* court explained: "[I]t was the duty of the umpire under the terms of the contract of insurance to ascertain and determine, in the exercise of his own judgment and as the result of his own investigation, the cost values of the disputed items, independent of the findings of the appraisers, or either of them." (*Id.* at p. 878.)[8]

Nor are we persuaded by plaintiff's suggestion that we vacate the arbitration award because the appraisal panel failed to follow the "better practice" described in *Lee*: "[I]nstead of simply placing a 'zero' next to certain items of loss, thus leaving open to debate whether the panel based its decision upon an improper coverage determination, the panel could indicate 'undamaged' next to a particular item, or it could clarify in notes accompanying the award that items assigned a loss value of zero were not damaged or did not exist at the property." (*Lee*, *supra*,

---

[8] *Providence Lloyds* is consistent with Texas Administrative Code, title 28, section 5.4218(d), which provides: "The umpire's work may only cover items about which the two appraisers disagree. The umpire must review the differences and seek agreement with one or both appraisers regarding the disputed items. The umpire may accept either appraiser's scope, quantities, values, or costs on items in dispute or may develop an independent decision on an item."

237 Cal.App.4th at p. 1174.) We decline to interpret the "better practice" described in *Lee* as a requirement for appraisers who assign a zero value to items. Indeed, the court in *Lee* specifically held that "a court cannot assume that an appraisal panel exceeded its authority by awarding nothing for a particular item. Where a reasonable inference can be drawn that the item was undamaged, a court may not vacate the award simply because nothing was awarded for that item." (*Lee*, *supra*, 237 Cal.App.4th at p. 1173.)

Plaintiff also contends the umpire made an improper coverage determination by not assigning valuations for the garage roof. She asserts she is entitled to a replacement garage roof to match the new house roof, under California Code of Regulations, title 10, section 2695.9(a)(2), which provides: "When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all items in the damaged area so as to conform to a reasonable uniform appearance." Plaintiff claims the umpire effectively decided the coverage issue by failing to assign values for the garage roof. But she presents no evidence the garage roof was damaged by the fire. Instead, she contends the garage roof is a covered loss item because the garage roof must match the new house roof. The issue of whether plaintiff is entitled to a replacement garage roof to make it uniform with a new house roof is a coverage determination, which the umpire appropriately did not decide.

Plaintiff fails to demonstrate the umpire necessarily made coverage and causation determinations when he awarded zero for certain items. Moreover, the umpire did not exceed his authority by awarding zero for items where both appraisers gave estimates.

Accordingly, plaintiff fails to show the umpire acted in excess of his authority.

2. The Award Was Not Procured by Undue Means

Plaintiff also asserts the appraisal award should be vacated under section 1286.2, subdivision (a)(1) because the award was procured by "undue means." The term "undue means" connotes immoral or illegal behavior. (*Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 825.) Improper ex parte communications between an arbitrator and a litigant can serve as a basis for vacating an award. (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 372-375.) But an award will not be vacated merely because there were ex parte communications between the arbitrator and a party. "'In the absence of a showing that the arbitrator was improperly influenced or actually considered evidence outside the original arbitration proceedings such that appellants needed a further opportunity to be heard on the . . . claim, appellants cannot demonstrate that the [award] was procured by corruption, fraud, undue means, or misconduct of the arbitrator within the meaning of section 1286.2, subdivisions (a), (b) or (c). [Citation.]'" (*Comerica Bank v. Howsam, supra*, 208 Cal.App.4th at p. 825.)

Here, there was no ex parte communication between Wright and either of the parties. The only ex parte communications were between Wright, his staff member Maxwell, and another member of the appraisal panel, Vivian. The e-mail exchanges among Wright, Vivian, and Maxwell show: Wright requested an Excel version of the appraiser comparison spreadsheet from Vivian; Maxwell initially sent the appraisal award only to Vivian; and Vivian requested that Maxwell send

the award spreadsheet to both Nedobity and him (which Maxwell did). Plaintiff admits the ex parte communications do not amount to collusion between the umpire and defendant's appraiser, but suggests the award was procured by undue means. We disagree. The e-mail exchanges do not demonstrate that Wright was improperly influenced by Vivian or considered evidence outside the appraisal process. We conclude section 1286.2, subdivision (a)(1) does not provide a basis for vacating the appraisal award.

3. No Deprivation of Fair and Impartial Hearing

Finally, plaintiff asserts the appraisal award should be vacated under section 1286.2, subdivision (a)(5) because the umpire and his staff substantially prejudiced plaintiff by depriving her of a fair and impartial hearing. Plaintiff contends she was deprived of a fair and impartial hearing because of the ex parte communications between Wright and Vivian, and Wright's failure to permit Nedobity to review Wright's valuations before the award became final. There is no dispute that plaintiff chose Nedobity as her appraiser or that he provided valuations for items. There is also no dispute that Wright, who was chosen by Nedobity and Vivian, resolved the disagreements between Nedobity and Vivian. We agree that Wright and Vivian's finalization of the award, without providing Nedobity an opportunity to comment on Wright's valuations, fell short of a best practice. But we conclude that on these facts, plaintiff has not demonstrated she was deprived of a fair and impartial hearing.

IV. DISPOSITION

The order denying the petition to vacate the appraisal award is affirmed. Defendant Allstate Insurance Company shall recover its costs incurred on appeal from plaintiff Yasaman Lolachi.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.