S234617

CASE NO.:

IN THE
SUPREME COURT OF CALIFORNIA

BADRUDIN KURWA,

Plaintiff and Appellant,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

MARK KISLINGER, et al., Real Parties in Interest

After a Decision By The Court of Appeal
Second Appellate District, Division 5
Case Number: B264641

Superior Court of Los Angeles
The Honorable Dan Thomas Oki
Case Number: KC 045 216

PETITION FOR REVIEW

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PETITION FOR REVIEW

Petitioner Badrudin Kurwa petitions this Honorable Court for review of the decision of the Court of Appeal of the State of California, Second Appellate District, Division Five, filed herein on April 7, 2016, dismissing Petitioner's appeal herein. A copy of the

opinion is attached as Appendix A.

ISSUES PRESENTED FOR REVIEW

Does this Court's decision in *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, allow a prevailing party in the trial court to deprive the losing party of the right to appeal permanently by refusing to take further action on a cause of action previously dismissed without prejudice, and with an agreement to waive the statute of limitations?

STATEMENT OF THE CASE

Dr. Kurwa first brought this action against Dr. Kislinger and others on November 23, 2004 (AA 9). On April 7, 2005, Dr. Kurwa filed the operative Second Amended Complaint against Dr. Kislinger, his professional corporations, and Physician Associates. It included causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty, all on behalf both of Dr. Kurwa as an individual and derivatively on behalf of Trans Valley, causes of action for fraud, an accounting and defamation on behalf of Dr. Kurwa individually, and for tortious interference and removal of a corporate director derivatively on behalf of Trans Valley (AA 11).

On August 11, 2005, Appellant amended his Second Amended Complaint to substitute Respondent's Attorney, Dale B. Goldfarb and Mr. Goldfarb's firm, Harrington, Foxx, Dubrow & Canter as DOES 1 and 2 (AA 1421). Those parties filed an anti-SLAPP motion (AA 1421) the denial of which was upheld by this Court in *Kurwa v. Harrington, Foxx, Dubrow & Canter* (2007) 146 Cal.App.4th 841.

On September 26, 2007, the trial court granted summary judgment to all defendants save Dr. Kislinger and his associated professional corporations (AA 1239). The Court of Appeal affirmed in an unpublished opinion filed on January 14, 2009 (AA 1177-1184). The September 26, 2007 order also granted Dr. Kislinger's motion for summary adjudication as to the claim for tortious interference with contractual relations (AA 1239-41).

The case against the remaining defendants, Dr. Kislinger and his medical corporations, was called for trial on March 2, 2010. On that date, the trial court heard Dr. Kislinger's *in limine* motions. At the hearing, Dr. Kurwa voluntarily dismissed his causes of action for fraud, breach of contract, and breach of the implied covenant of good faith and fair dealing, electing to pursue only his claims for breach

fiduciary duty, and for an accounting (RT 9-11).

The trial court then proceeded to grant three of Dr. Kislinger's motions *in limine*, including one precluding Dr. Kurwa from presenting evidence of fiduciary duty, another precluding him from presenting evidence of the capitation contract with Physician Associates, or the 1997 written form of the contract with Dr. Kislinger, and a third holding that he had no standing, thus precluding him from presenting any evidence at all (AA 1402-03).

The parties also stipulated to dismiss the remaining cross-claims for defamation they had against each other without prejudice, agreeing that they could be reinstated only if the judgment was reversed on appeal, and waiving the statute of limitations. The stipulation was entered as an order of the trial court on March 22, 2010. (RJN 212, Ex. N).

On August 23, 2010, the trial court purportedly entered judgment for Dr. Kislinger and his professional corporations. (AA 1404). Dr. Kurwa filed timely notice of appeal on October 12, 2010 (AA 1406).

On appeal, the Court of Appeal determined that the judgment

was final and appealable. (AA 1431-34). Proceeding to the merits of the case, the court reversed the judgment in full. (AA 1435-39). Justice Kriegler dissented, contending that the appeal should have been dismissed. (AA 1440).

This Court, having granted review, held that a trial court disposition could not be final and appealable if there remained a cause of action which a party had dismissed without prejudice, subject to an agreement to waive the statute of limitations. On that basis, that Court dismissed the appeal, nullifying the Court of Appeal's decision. *Kurwa v. Kislinger*, (2013) 57 Cal. 4th 1097. (AA 1441).

On remand, Dr. Kurwa filed a Motion for Order Re-setting Case for Final Status Conference and Trial Upon Remand. (See RJN 9, Ex. A).

In the motion, Dr. Kurwa asked the trial court either (1) to rescind the parties' stipulation as to dismissal of the defamation causes of action as the result of mutual mistake, which would have had the result of making the trial court's order a final, appealable judgment by operation of law, or (2) to reconsider its decision on the

motions *sua sponte* in light of the Court of Appeal's earlier opinion in this matter under *Le Francois v. Goel* (2008) 35 Cal. 4th 1094.

The trial court denied the motion (See RJN 14, Ex. A), and another motion which sought to set aside the stipulation as void for impossibility under Section 1441 of the Civil Code. (RJN 89, Ex. D), on November 7, 2014.

On November 13, 2014, the Court of Appeal denied Dr. Kurwa's writ petition from that decision, commenting that "Dr. Kurwa is not without other means to attempt to make the judgment reviewable." B259558 (RJN 9, Ex. E). This Court denied review. (RJN 118, Ex. G).

Thereafter, Dr. Kurwa moved to amend his complaint by addition of a cause of action to rescind the stipulation because it had been entered into under a mistake of law. (See RJN, 132, Ex. H). The trial court denied that motion as well *(Ibid.)*

Dr. Kurwa then petitioned the Court of Appeal a second time for a writ of mandate, seeking relief from that decision, as well as the previous decisions of the trial court which together barred Dr. Kurwa from obtaining appellate review. In the alternative, Dr. Kurwa asked

that, if it found no other remedy available, the Court of Appeal consider on its merits the question of whether the trial court should have granted Dr. Kislinger's motions *in limine* (the basis for the judgment this Court found not to be final or appealable). (RJN 134-37, 140-59, Ex. H).

The Court of Appeal denied the Second Petition on July 10, 2015, by a two-to-one vote. Making no further comment as to "other means to attempt to make the judgment reviewable," the majority found no abuse of discretion in the trial court's denial of leave to amend, and rejected the requests for relief from the trial court's prior actions as "untimely and repetitive." (RJN 162, Ex. I)

The dissenter would have granted the alternative writ directing the trial court to vacate its order granting Dr. Kislinger's motions *in limine* and allowing Dr. Kurwa to proceed to trial, or to show cause why "Dr. Kurwa's claims should not be granted."

In the dissenter's view, the majority has placed Dr. Kurwa in the "seemingly Kafkaesque situation" of being unable to correct a miscarriage of justice, though the court had earlier told him that he was "not without other means to attempt to make the judgment

reviewable." *(Ibid.)*. This Court denied review (RJN 211, Ex. M).

Meanwhile, Dr. Kurwa had dismissed his defamation cause of action *with* prejudice on April 23, 2015 (AA 1457), and thereafter filed notice of appeal June 1, 2015. (AA 1461).

The Court of Appeal, however, dismissed the appeal for failure to satisfy the one final judgment rule as stated in this Court's earlier decision of this case. (App. A).

STATEMENT OF FACTS

(NOTE: With the exception of a few undisputed facts presented in support of Dr. Kislinger's motions, the facts as stated below are drawn from the allegations of Dr. Kurwa's Second Amended Complaint, by page and ¶ number.)

Drs. Kurwa and Kislinger are licensed ophthalmologists (AA 13, ¶¶12-13). Prior to 1991, Dr. Kurwa and Dr. Kislinger each had his own separate practice (AA 13, ¶15). In about 1991, Dr. Reginald Friesen brought them together for the purpose of creating a joint venture capable of handling large capitation agreements for the provision of ophthalmological services to medical groups (AA 13-14, ¶16). Acting through Trans Valley Eye Associates, Inc., a corporation they had created for the purpose, they eventually obtained

several such capitation contracts, including one with Huntington Provider Group (AA 14, ¶18).

On July 30, 1992, Drs. (Bud) Kurwa and (Mark) Kislinger both signed a handwritten "Agreement between Bud and Mark" in which they outlined the structure within which they would jointly pursue and share such business (AA 1295). The venture was successful. As stated by this Court, "in the year prior to termination the Capitation Agreement [with Physician Associates] resulted in receipts of approximately $1.9 million dollars." *Kurwa, supra,* 146 Cal.App.4th at 843.

There was also a document entitled "Agreement Between Dr. Kurwa and Dr. Kislinger," dated April 29, 1997, which was attached to the Second Amended Complaint as an exhibit. It further develops the structure of the relationship between the two ophthamologists, stating their understanding that they were "partners in TransValley," that, if any of their managed-care contracts were lost, the remaining contracts would be equally split between them, and that any new managed-care contracts obtained by either party would be jointly administered (AA 29-30).

In 1999, a new corporation, Physician Associates, was established to buy Huntington Provider Group. Drs. Kurwa and Kislinger each made capital contributions of $100,000 to the new venture based on the assurance that Physician Associates would take over Huntington Provider Group's contract with Trans Valley and continue it permanently (AA 14-15).

In 2001, Trans Valley entered into a new contract with Physician Associates (AA 15, 31). The contract included a term providing for automatic termination in the event a group physician's license was "revoked, expired or suspended...," or subject to probation (AA 43).

By an order of the California Medical Board, Dr. Kurwa was suspended from the practice of medicine for 60 days beginning 16 days after September 26, 2003, and placed on 5 years probation (AA 1280).

Later in 2003, Dr. Kislinger's attorney, Dale Goldfarb, sent a letter to the president of Physician Associates pointing out that (1) Dr. Kurwa had been suspended from the practice of medicine, and (2) Trans Valley was not a professional corporation which could lawfully

engage in the practice of medicine. The letter invited the HMO to make Dr. Kislinger's own recently formed medical corporation the exclusive ophthalmology provider for Physician Associates (AA 15-16, 55). See *Kurwa, supra* at 843-844.

Thereafter, on October 31, 2003, the president of Physician Associates informed Dr. Kurwa that the contract with Trans Valley had been terminated because Trans Valley was not organized as a medical corporation (AA 55). The contract with Physician Associates was taken over by Foothill EyeCare Services effective December 1, 2003 (AA 58). The complaint alleges that Foothill EyeCare Services is owned and/or controlled by Dr. Kislinger (AA 16).

NECESSITY FOR REVIEW

THIS COURT SHOULD GRANT REVIEW IN ORDER TO DECIDE WHETHER *KURWA V. KISLINGER* (2013) 57 CAL.4TH 1097, SHOULD BE APPLIED TO ALLOW PREVAILING PARTIES TO DEPRIVE LOSING PARTIES OF THEIR RIGHT TO APPEAL PERMANENTLY.

It is a maxim "as old as the law" that there cannot be a right without a remedy. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal. 3d 94 at 112; Civil Code section 3523 ("For every right there is a remedy."). The question here is whether a decision of this Court,

Kurwa v. Kislinger (2013) 57 Cal.4th 1097, should be read to enable the prevailing party in trial court to deprive a losing party claiming error of the remedy of appeal.

Adopting the reasoning of *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115, this Court decided in *Kurwa* that there can be no final, appealable judgment where the parties have dismissed causes of action without prejudice, and with an agreement to waive the statute of limitations. Because both parties in this case had dismissed causes of action without prejudice, and with a waiver agreement, this Court dismissed Petitioner's prior appeal, setting aside the Court of Appeal's decision in Petitioner's favor.

Since this Court's decision, Petitioner has made repeated efforts to set aside the stipulation under which the causes of action were set aside and the waiver agreed to, but with no success (see pp. 4-7, *supra*). Now, Dr. Kurwa has voluntarily dismissed the cause of action he previously dismissed without prejudice. It is only Dr. Kislinger, the party which will be respondent if this appeal goes forward, that now has a cause of action dismissed without prejudice.

For the first time in this case, therefore, this question can now

be raised:

Does the presence of a cause of action dismissed without prejudice by a *prevailing* party, accompanied by an agreement to waive the statute of limitations, make it impossible for a trial court to render a final, appealable judgment?

As the history of this case has shown, there is a critical difference between a case in which the losing party has dismissed a cause of action without prejudice and with a waiver of the statute, and one in which the prevailing party has done so.

Losing parties can go forward to appeal by simply dismissing their causes of action *with* prejudice, so that the judgment becomes a final, appealable judgment.

On the other hand, where the prevailing party (the prospective respondent) has dismissed a cause of action without prejudice, and the losing party has agreed to waive the statute, that prevailing party can permanently block the losing party from appealing. It can do so by refusing to dismiss with prejudice, and holding the losing party to its waiver agreement.

Application in the first instance fulfills the purpose of the one

single judgment rule: to stop parties from bringing piecemeal appeals by requiring them to resolve their claims fully before appeal. Application in the second allows parties to deprive their opposition of the ability to appeal at all. That is the difference at issue here.

In the only opinion which has directly considered the difference, *Vedanta Society of Southern California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525, footnote 8, the author of the seminal *Don Jose's Restaurant* opinion concluded that *Don Jose's Restaurant* and its progeny "have no application where the party dismissing causes of action without prejudice is the *respondent* on appeal." *Id.* The question here is whether this Court should now adopt the reasoning of *Vedanta* as it did the reasoning of *Don Jose's Restaurant.*

The history of this case since this Court's reversal and remand provide a powerful illustration of why it should do so. During the intervening years, Respondent here has (1) refused either to dismiss with prejudice or go forward to adjudicate its own defamation action, and (2) held Petitioner strictly to their stipulation, including the agreement to waive the statute of limitation. The result is an

insurmountable barrier to appeal. Petitioner asks this Court to grant review in order to decide whether that is a necessary consequence of the single final judgment rule this Court reaffirmed in *Kurwa*, or a perversion of it.

The Court of Appeal here concluded that this Court had already decided the issue against Petitioner, by citing with approval *Hill v. Clovis* (1998) 634 Cal.App.4th 434, a case in which only the respondent on appeal had a cause of action dismissed without prejudice. (Opn., p. 3). But Petitioner does not understand that citation to be a rejection of the *Vedanta* approach by this Court.

It is familiar law that "[a] decision is authority only for the point actually passed on by the court and directly involved in the case," *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977 at 985 and that

> [g]eneral expressions in opinions that go beyond the facts of the case will not necessarily control the outcome in a subsequent suit involving different facts.
>
> *Id.*

So here, the issue of whether a respondent's dismissal of a cause of action without prejudice, and with a waiver of the statute,

would alone prevent the judgment from becoming final and appealable was not presented to this Court by the facts in *Kurwa*. Given that, at the time this Court decided *Kurwa*, both appellant and respondent here had such causes of action, *Kurwa* cannot be taken to decide what the result *would* have been if the only cause of action dismissed without prejudice had been respondent's.

Nor, indeed, was the issue explicitly raised by the *Hill* court. On the contrary, the *Hill* court, following *Four Point Entertainment, Inc. V. New World Entertainment, Ltd.* (1997) 60 Cal.App.4th 79, found a way to avoid the problem.

In *Hill*, the parties had stipulated to a judgment against the plaintiff despite the fact that two causes of action in a cross-complaint remained dismissed without prejudice. The stipulation also included a waiver of the statute of limitations. *Id.*, 446. Recognizing the danger that the losing party in such a situation could be precluded from appealing entirely, the *Hill* court decided it would "not leave appellants entirely without recourse." It dismissed the appeal, but also directed the trial court to "vacate the judgment and on which it was based." *Id.*

By that means, the *Hill* court ensured that the appellant in *Hill* would not be bound by his waiver of the statute of limitations as to the causes of action dismissed without prejudice, and therefore that he would ultimately be able to force the respondent either to dismiss its causes of action with prejudice, to proceed to litigate them, or to face dismissal under the statute of limitations. In short, the *Hill* extricated the plaintiff there from the dilemma in which Petitioner here finds himself.[1]

The question expressly raised by *Vedanta* remains, therefore: can a prevailing party, as here, permanently deprive the losing party of his right to appeal by hanging on to its causes of action dismissed without prejudice and holding the losing party to its waiver of the statute as to those causes of action? Petitioner asks this Court to grant review in order to decide that question.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests

---

[1]As this Court decided in *Kurwa* that appellate courts lack jurisdiction to hear appeals that violate the one final judgment rule, 57 Cal.4th 1097, 1104, it is not clear from what source the *Hill* and *Four Points* courts drew their jurisdiction to vacate the so-called judgments, and stipulations.

that review be granted.

Dated: May 16, 2016

LAW OFFICES OF ROBERT S. GERSTEIN
LAW OFFICES OF STEVEN H. GARDNER

By: _____

ROBERT S. GERSTEIN
Attorneys for Plaintiff/Appellant
Badrudin Kurwa

CERTIFICATE OF WORD COUNT

Pursuant to Rule of Court 8.204(c)(1), I certify that the PETITION FOR REVIEW is proportionately spaced, has a typeface of 14 points or more, and contains 3158 words.

DATED: May 16, 2016

LAW OFFICES OF STEVEN H. GARDNER
LAW OFFICES OF ROBERT S. GERSTEIN

By: _____
ROBERT S. GERSTEIN
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Badrudin Kurwa

Filed 4/7/16

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BADRUDIN KURWA,

Plaintiff and Appellant,

v.

MARK B. KISLINGER, et al.,

Defendants and Respondents.

B264641

(Los Angeles County
Super. Ct. No. KC045216)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan Thomas Oki, Judge. Appeal dismissed.

Robert S. Gerstein and Steven H. Gardner, for Plaintiff and Appellant.

Harrington Foxx Dubrow & Canter, Dale B. Goldfarb, for Defendants and Respondents.

Plaintiff, cross-defendant, and appellant Badrudin Kurwa filed a June 1, 2015 notice of appeal (the 2015 appeal) from the judgment entered on August 23, 2010 (the 2010 judgment), in favor of defendants, cross-complainants, and respondents Mark Kislinger, et al. This court issued an order to show cause to determine if Kurwa's 2015 appeal should be dismissed. We conclude that Kurwa has taken an untimely appeal from a nonfinal judgment. The appeal is dismissed.

The trial court in 2010 made in limine rulings adverse to Kurwa as to some causes of action contained in Kurwa's complaint. The parties thereafter stipulated that defamation causes of action in both the complaint and cross-complaint would be dismissed without prejudice with waivers of the statute of limitations. Kurwa then filed a notice of appeal from the 2010 judgment. A majority of this court determined that Kurwa had taken an appeal from a final judgment, disagreeing with a line of cases beginning with *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115 (*Don Jose's*). The *Don Jose's* court had held that a dismissal without prejudice combined with a waiver of the statute of limitations resulted in a non-final judgment for purposes of appeal. Our Supreme Court granted review and reversed, holding that "the parties' agreement holding some causes of action in abeyance for possible future litigation after an appeal from the trial court's judgment on others renders the judgment interlocutory and precludes an appeal under the one final judgment rule." (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100 (*Kurwa*).)

The cause returned to the trial court after issuance of the remittitur. Kurwa attempted to perfect a final judgment. In 2014, Kurwa sought to extricate himself from the 2010 stipulation waiving the statute of limitations by (1) moving to rescind the stipulation, (2) having the trial court reconsider its adverse rulings made in 2010 judgment, and (3) having the court set aside the stipulation on the ground of impossibility. The trial court rejected Kurwa's efforts. This court denied Kurwa's petition for writ of mandate, and review was unanimously denied by the Supreme Court.

Taking a different approach in 2015, Kurwa moved to amend his operative complaint to add a cause of action for rescission of the stipulation due to mistake of law. The trial court denied Kurwa's motion, and a majority of this court again denied Kurwa's petition for writ of mandate. Review was denied by the Supreme Court.

On April 23, 2015, Kurwa filed a dismissal of his defamation cause of action with prejudice. On June 1, 2015, Kurwa filed the current notice of appeal, specifying that the appeal is taken from the 2010 judgment. We again conclude Kurwa is before this court on a defective notice of appeal.

First, the 2015 notice of appeal from the 2010 judgment is untimely. A notice of appeal must generally be filed within 60 days of a judgment, but in no instance more than 180 from entry of judgment. (Cal. Rules of Court, rule 8.104 (a)(1)(A)-(C).) On its face, the notice of appeal filed five years after judgment is untimely as a matter of law.

Second, even if the appeal can be construed as timely, the problem in *Kurwa* continues to exist because Kislinger's defamation cause of action *in the cross-complaint* remains outstanding with a waiver of the statute of limitations. The impact of an extant cause of action *in a cross-complaint* with a statute of limitations waiver was specifically addressed in *Hill v. City of Clovis* (1998) 63 Cal.App.4th 434 (*Hill*), a case cited with approval in *Kurwa*. The *Kurwa* court described *Hill* as follows:

"In *Hill* [], after the superior court decided for the defense on certain causes of action, the parties stipulated that two causes of action in a cross-complaint were to be '"[d]ismissed without prejudice and the statute of limitations is tolled until 30 days after remittitur to the Superior Court."' (*Id.* at p. 442.) The Court of Appeal, following *Don Jose's* and the other cases discussed above, held the judgment nonfinal and nonappealable. 'In effect, the judgment keeps these causes of action undecided and legally alive for future resolution in the trial court. If we allowed the instant appeal to proceed, Clovis would remain free to refile the dismissed claims and try them in the superior court if our opinion made such action necessary or advisable. As such, the stipulated "judgment" from which this appeal was taken is not final.' (*Hill* [], *supra,* at p. 445.)" (*Kurwa*, *supra*, 57 Cal.4th at p. 1104.)

Kurwa contends the issue is not controlled by *Hill*, but instead by *Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 525 fn. 8 (*Vedanta*), which states: "Because Vedanta prevailed, the fact that it dismissed certain claims in its complaint without prejudice does not make the judgment any less appealable. *Don Jose's Restaurant, Inc. v. Truck Ins. Exchange* (1997) 53 Cal.App.4th 115 and its progeny have no application where the party dismissing causes of action without prejudice is the *respondent* on appeal." According to Kurwa, "Assuming that the *Vedanta Society* decision remains good law following [*Kurwa*], the order of August 23, 2010 became a final judgment on April 23, 2015, and Appellant's June 1, 2015 notice of appeal from that judgment was timely."

Vendanta is not controlling. The question of appealability was not a disputed issue on appeal in *Vendanta*. An appellate opinion is not authority for everything stated in it, and cases are not authority for issues not in dispute. (*People v. Knoller* (2007) 41 Cal.4th 139, 155; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) Moreover, *Vedanta* did not include a waiver of the statute of limitations, and as a result, the footnote discussion of appealability does not address the scenario in this case. Finally, our Supreme Court's approval of *Hill* in *Kurwa* makes clear that the *Don Jose's* line of cases applies when a cause of action *in a cross-complaint* is dismissed without prejudice with a waiver of the statute of limitations. That is precisely what happened here.

Kurwa argues that *Hill* is not entitled to such deference, because in *Hill's* disposition the appellate court ordered the trial court to "vacate the judgment and the stipulation on which it is based." (*Hill*, *supra*, 63 Cal.App.4th at p. 446.) The *Hill* court noted that the appellants "may still challenge the trial court's rejection of their . . . contention if and when Clovis's first and third causes of action are adjudicated or otherwise disposed of and appellants file a timely appeal from the ultimate judgment[,]" and that the "appellants retain the right of appellate review at the appropriate time, but not earlier." (*Ibid.*) In a subsequent appeal stemming from the same action, the appellate court noted, "The parties added provisions to the stipulated judgment which resolved the first and third causes of action in the city's cross-complaint, which had not been

addressed earlier," resulting in a final and appealable judgment. (*Hill v. City of Clovis* (2000) 80 Cal.App.4th 438, 445.)

We fail to see how the developments following the dismissal of the initial appeal in *Hill* provide support for Kurwa's position. Our Supreme Court in *Kurwa* did not order the trial court to vacate the judgment and stipulations. As *Hill* itself cautioned, the appellants could obtain appellate review, but not until all causes of action were resolved. (*Hill*, *supra*, 63 Cal.App.4th at p. 446.) Kurwa bargained for Kislinger to dismiss his defamation cause of action without prejudice with a waiver of the statute of limitations, and he is bound by that agreement, the result of which is that Kislinger's defamation cause of action has not been resolved. "When, as here, the trial court has resolved some causes of action and the others are voluntarily dismissed, but the parties have agreed to preserve the voluntarily dismissed counts for potential litigation upon conclusion of the appeal from the judgment rendered, the judgment is one that 'fails to complete the disposition of all the causes of action between the parties' [citation] and is therefore not appealable." (*Kurwa*, *supra*, 57 Cal.4th at p. 1105.)

Finally, we deny Kurwa's request to treat the appeal as a petition for writ of mandate. This court has twice before denied mandate relief. Treating this appeal as a petition for writ of mandate, allowing pretrial review of rulings on in limine motions which do not resolve all causes of action, would be inconsistent with the reasoning in *Kurwa* and the numerous cases cited therein.

The appeal is dismissed. Costs on appeal are awarded to respondents.

KRIEGLER, Acting P. J.

We concur:

BAKER, J.

KUMAR, J.*

---

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

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 12400 Wilshire Boulevard, Suite 1300, Los Angeles, California 90025.

On May 17, 2016, I served true and correct copies of the foregoing document described as **PETITION FOR REVIEW** on the interested parties in this action addressed as follows:

SEE ATTACHED MAIL SERVICE LIST

[X] BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing I know that the correspondence is deposited with the U.S. Postal Service on the same day this declaration was executed and in the ordinary course of business. I know that the envelope was sealed, and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practice, at Los Angeles, California.

[ ] SUBMISSION OF AN ELECTRONIC COPY provided to the Court of Appeal for service on the Supreme Court is provided to satisfy the requirements under rule 8.212(c)(2).

[ ] BY PERSONAL SERVICE: I delivered such envelope by hand to the addressee mentioned above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17TH Day of May, 2016, at Los Angeles, California.

Luda Rosenbaum

SERVICE LIST

Kurwa v. Superior Court Los Angeles County et al.
Case Number: KC 045 216

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