

Appellate Law

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Don't Moot Your Own Appeal

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If a party is unhappy with the outcome of litigation in the trial court, that party generally has the right to appeal the decision. But what happens if the dissatisfied party voluntarily complies with the trial court's judgment, so that a reversal on appeal would have no practical effect? May that party still appeal? The Second District Court of Appeal considered this question recently and said "No."

In *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, the nonprofit organization Building a Better Redondo ("BBR") brought a petition for writ of mandate and declaratory relief claim against the City of Redondo Beach. BBR sought to compel the City to seek voter approval before passing proposed major changes in allowable land use in the City. The trial court ruled in favor of BBR and issued a writ ordering the City to submit the proposed changes to a public vote.

The City appealed the judgment, but it also voluntarily complied with the writ of mandate, adding the proposed changes to the November 2, 2010 ballot. The voters approved the ballot measure by a 52.5% majority, and the proposed changes were implemented.

On appeal, Division 8 of the Second District ruled that the City's actions had rendered its appeal moot. It noted that the City had had two options: to accept the judgment and comply with it, or to appeal the judgment. By voluntarily complying with the judgment, the City had waived its right to challenge the judgment. Any reversal of the judgment would have no effect on the results of the past election. Thus no actual controversy remained. Quoting from a prior decision, the court reiterated: "We will not render opinions on moot questions or abstract propositions, or declare principles of law which cannot affect the matter at issue on appeal." The court dismissed the City's appeal.

In light of *Building a Better Redondo*, appellants must remember that they have two options after an unfavorable trial court judgment: (1) accept and comply with the judgment, or (2) appeal it. Beware that by choosing option one, an appellant may be closing the door to option two. Although there are limited exceptions to the rule that compliance moots an appeal, it is important to realize that appealing when there is no actual controversy could lead to monetary sanctions for prosecuting a "frivolous" appeal. If there is any possibility of wishing to appeal, avoid taking steps that would render the appeal moot.

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