

**Appellate Case of First Impression: Defendant’s Cross-Claim Must Meet Probable Validity Test to Offset Amount of Plaintiff’s Writ of Attachment**

*Lydig Construction, Inc. v. Martinez Steel Corporation*  
Court of Appeal, Fourth Appellate District, Division One  
No. D066854, 2015 WL 798557 (Cal. Ct. App. Feb. 26, 2015)  
<http://www.courts.ca.gov/opinions/documents/D066854.PDF>

Lydig Construction, Inc. (“Lydig”), the general contractor on a California public works project, terminated a subcontractor, Martinez Steel Corporation (“Martinez”) for default, and sued Martinez for the costs incurred (approximately \$200,000) by Lydig to complete Martinez’s scope of work. Lydig also applied for a writ of attachment to freeze Martinez’s assets in the amount of Lydig’s claim while the litigation was pending. Lydig’s writ application included declarations and documentation to support its claim. Martinez opposed the writ application and filed a cross-complaint, alleging that Lydig breached the subcontract and owed Martinez close to \$600,000; Martinez therefore argued that the amount to be secured by Lydig’s attachment was less than zero and as a result, Lydig failed to establish the probable validity of its claim, a requirement for obtaining a writ of attachment. Martinez’s opposition to the writ application was supported by a declaration. The trial court found that Martinez did not establish the probable validity of its cross-claim and granted Lydig’s application and issued writs of attachment in the amount of \$203,315.

Martinez appealed, arguing that it did not have to establish the probable validity of its cross-claim in order to offset the amount to be secured by the writ of attachment. *Code of Civil Procedure* section 483.015(b)(2) provides that the amount to be secured by an attachment shall be reduced or offset by any amount the plaintiff owes the defendant as claimed by the defendant in a cross-complaint, if the claim is one upon which an attachment could be issued. Martinez argued that it did not have to establish the probable validity of its cross-claim in order to meet this requirement, but rather only had to satisfy the four elements of *Code of Civil Procedure* section 483.010 (a claim for money on a contract in an amount over \$500 that is not secured by real property).

In a case of first impression in California, the Court of Appeal disagreed with Martinez and affirmed the trial court’s orders in full, holding that as a matter of law, Martinez was required to establish the probable validity of its cross-claim in order to obtain the offset permitted by *Code of Civil Procedure* section 483.015, and that Martinez failed to do so. The Court noted

that if a defendant could offset a plaintiff's claim with a cross-claim that was *not* probably valid, a defendant could always and easily defeat a plaintiff's right to prejudgment attachment, and that this was not what was intended by the Legislature.

<http://www.courts.ca.gov/opinions/documents/D066854.PDF>.

For more information about this topic please contact:

[Richard J. Wittbrodt, Esq.](#)

[Sara H. Kornblatt, Esq.](#)

Gibbs Giden Locher Turner Senet & Wittbrodt LLP

1880 Century Park East 12<sup>th</sup> Floor

Los Angeles, CA 90067

email: [rwittbrodt@gibbsgiden.com](mailto:rwittbrodt@gibbsgiden.com)

[skornblatt@gibbsgiden.com](mailto:skornblatt@gibbsgiden.com)

The content contained herein is published online by Gibbs Giden Locher Turner Senet & Wittbrodt LLP ("Gibbs Giden") for informational purposes only, may not reflect the most current legal developments, verdicts or settlements, and does not constitute legal advice. Do not act on the information contained herein without seeking the advice of licensed counsel. For specific questions about any of the content discussed herein or any of the content posted to the Gibbs Giden website please contact the article attorney author or send an email to [info@gibbsgiden.com](mailto:info@gibbsgiden.com). The transmission of information by email, over the Gibbs Giden website, or any transmission or exchange of information over the Internet, or by any of the included links is not intended to create and does not constitute an attorney-client relationship. For a complete description of the terms of use of this information and the Gibbs Giden website please see the Legal Notices section at <http://www.ggltsw.com/ggltsw-legal>. This publication may not be reproduced or used in whole or in part without written consent of the firm.

Copyright 2015 Gibbs Giden Locher Turner Senet & Wittbrodt LLP ©

Attorney Newsletter Advertisement