

So...Who Can Oppose Summary Judgment? California Court of Appeal Rules That Co-Defendant With Adverse Interest Has Standing To Oppose Co-Defendant's Motion for Summary Judgment - Without Filing A Cross-Complaint

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Very often, particularly in personal injury cases, a plaintiff will sue various parties as co-defendants. For a variety of reasons, many personal injury defendants choose not to file Cross-Complaints against the co-defendants. One issue that can arise then is when a defendant to a multiparty personal injury case files for Summary Judgment, the plaintiff does not oppose the Motion for Summary Judgment and a co-defendant seeks to oppose the Motion for Summary Judgment without filing a Cross-Complaint.

The California Court of Appeal, Second Appellate District, addressed that question in Bonnie Bean v. City of Thousand Oaks (2025) Lexis 607 ("Bean case"). The Bean case concerned a trip and fall on a raised portion of a sidewalk in front a residence owned by Gerardo and Carie Rodriguez, City of Thousand Oaks residents. Bean sued the Rodriguezes, as well as the City of Thousand Oaks (sometimes herein "City") for negligence. The City of Thousand Oaks filed an Answer alleging "sole or partial negligence of third parties" but did not file a Cross-Complaint. Bean then amended the Complaint to add Gina Goode, who owned the residence next door to the Rodriguezes. Bean's claim against Goode was based on the theory that the damage to the sidewalk was caused by a tree in the parkway (a landscaped area between the curb and the sidewalk) located in front of Goode's residence whose roots extended below the sidewalk in front of the Rodriguez' property. According to a memorandum from the City of Thousand Oaks Public Works Department, "in the parkway ... is a privately-owned, City-maintained White Mulberry street tree" whose "roots ... may have caused or contributed to the sidewalk damage."

Goode filed a Motion for Summary Judgment. Goode contended she did create the dangerous condition, nor did she own or control the sidewalk. Bean did not Oppose Good's Motion. The City of Thousand Oaks then filed an Opposition to the Motion, a Request for Judicial Notice, Evidentiary Objections, and a Statement of Undisputed Material Facts. Goode Replied, contending in part that the City of Thousand Oaks did not have standing to Oppose her Summary Judgment Motion because the City of Thousand Oaks had failed to file a Cross-Complaint. Three weeks later, when the Motion was heard, the City advised the Court it had filed a Cross-Complaint that same morning, but the Court Clerk then issued an Order stating it rejected the filing of the Cross-Complaint. The Trial Court ruled that the City lacked standing to Oppose the Motion for Summary Judgment and declined to consider the City's Opposition documents.

The City of Thousand Oaks appealed. At issue before the Court of Appeal is the interpretation of *Code of Civil Procedure* § 437c, subdivision (p)(2), which deals with a defendant or cross-defendant showing a cause of action has no merit. In its holding, the Court of Appeal ruled that the City of Thousand Oaks and Goode were adverse parties even if no Cross-Complaint had been filed. The Court of Appeal further ruled that, even if the City of Thousand Oaks was required to file a Cross-Complaint to oppose Summary Judgment, the City of Thousand Oaks had done so here. The Court further ruled that the City's failure to file a Cross-Complaint did not disqualify it from opposing Goode's Summary Judgment Motion.

The Court of Appeal then ruled that the City's Opposition was before the Court and that the City had established that it had exercised an element of control. The Court then ruled that the uncontradicted evidence regarding control of the tree was such that Summary Judgment to Goode should be granted.

Although the City of Thousand Oaks failed to prevail on the Motion for Summary Judgment, the Bean case is significant in that it holds that a co-defendant with an adverse interest has standing to oppose a Motion for Summary Judgment whether or not it has filed a Cross-Complaint or not.¹

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¹ This holding is consistent with the holding in RND Contractors v. Superior Court (2025) 112 Cal.App.5th 697, 699, which we also recently published an article on.