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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CAPITAL ONE N.A., as successor to
CHEVY CHASE BANK, F.S.B.,

Defendant and Appellant,

v.

DENNIS MEURER et al.,

Defendants and Respondents.

A130527

(Napa County
Super. Ct. No. 26-45044)

Capital One N.A., as successor to Chevy Chase Bank, F.S.B. (jointly, Chevy Chase) appeals the trial court’s entry of judgment, pursuant to Code of Civil Procedure section 664.6 (section 664.6), in favor of defendants and respondents Dennis Meurer et al. (collectively, the Meurers).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2009, Hardin Enterprises, Inc. (Hardin) filed a second amended complaint (SAC) against Adaweh Meadows Homeowners Association and other named defendants,

¹ Section 664.6 provides: “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

including Chevy Chase and the Meurers (Adaweh Meadows action).² In the Adaweh Meadows action, Hardin sought, among other things, enforcement of a bonded stop notice and foreclosure of a mechanic's lien on the unpaid balance of \$115,093.65 allegedly due on a construction contract for roadway and building site improvements on real property known as the Adaweh Meadows Project in St. Helena, Napa County.

Chevy Chase was made a party to the Adaweh action by way of Hardin's claim to enforce a bonded stop notice on the construction loan between Chevy Chase and defendant Papera. The Meurers, who paid a large portion of the overall costs of the roadway construction, cross-complained against various parties, including Chevy Chase, for contribution pursuant to a recorded roadway easement and maintenance agreement (CC&Rs).

On January 5, 2010, the parties engaged in a full day of court mediation supervised by the Honorable Raymond A. Guadagni, at the conclusion of which the parties arrived at a settlement agreement covering the Adaweh Meadows action and the Meurer action. At 6:30 p.m., the parties convened in court before Judge Guadagni to place the settlement agreement on the record. The agreement was recited by counsel for Chevy Chase as follows: "Hardin [] will receive \$47,500 from Chevy Chase Bank and the Meurers. . . . [¶] The Hardins will release all liens and stop notice claims on Meurer, Papera, and other Adaweh Meadow Properties. The payment will be made in the form of \$27,500 from Chevy Chase Bank, and money unrelated to the Meurer property. And \$20,000 will be paid from the Meurer construction loan. That money will be released by Chevy Chase Bank, and paid directly by Chevy Chase Bank to Hardin, but will be added to Meurer principal balance owing on the Meurer construction loan, between Chevy Chase Bank and Meurer. The fact that [an] advance is being made on the construction loan does not imply or expressly create any obligation to make further advance on the construction loan by Chevy Chase Bank.

² Apparently, Hardin also filed a similar complaint in a companion case, *Hardin v. Meurer*, et al., Napa County Superior Court Case No. 26-492-85 (the Meurer action).

“The Meurers will be released claims against Chevy Chase Bank [sic], including any claims that they have for roadway construction under CC&R’s or otherwise.

“There’s an outstanding loan between Chevy Chase Bank and the Paperas, and this agreement does not effect the parties rights or obligation under that loan. There’s not any forbearance agreement expressed or implied, or any express modification of the terms.

“In the settlement of the Adaweh action . . . a [finding of] good faith is necessary for the settlement to be implemented in its entirety.

“The Hardin plaintiff has preserved its claim in the Adaweh action against Danforth, and Danforth related entries [sic], and Papera and Papera related entities.

“There will be a Civil Code Section 1542 release between, on the one hand, Chevy Chase Bank and the Meurers, and on the other hand Hardin Enterprises. Each side will bear its own attorney fees and costs.

“There will be a dismissal with prejudice as to the Meurers, and Chevy Chase Bank only in the Adaweh action, and dismissal in its entirety in the Meurer action, again, subject to confirmation by good faith settlement. And I believe once we confirm all the terms we will have a binding settlement. But nonetheless, we will circulate a written agreement to confirm, in writing, the terms of the binding settlement [agreement] that we have entered into here today.”

Following counsel’s oral recitation of the terms of the settlement agreement, the court asked Mr. and Ms. Meuer, “Is that the agreement?” Both replied in the affirmative. Counsel for Chevy Chase stated he “volunteered to take the first effort at drafting a written confirmation of the binding oral settlement agreement that we are reaching here today.” Counsel also stated that Capital One “is aware of these terms . . . and authorized me to agree to them on behalf of Capital One successors for Chevy Chase Bank.” Thereafter, the court stated that it “approves this settlement agreement, specifically orders the parties to carry it out, and approves it under 664.6 of the Code of Civil Procedure. I will reserve jurisdiction to resolve any dispute. And this settlement is subject to a good faith settlement.”

Unfortunately, subsequent efforts by the parties to reduce the oral settlement agreement to writing proved fruitless. The stumbling block was the scope of the release between the Meurers and Chevy Chase, stated as follows in the oral recitation of the settlement agreement—“*The Meurers will be released claims against Chevy Chase Bank [sic], including any claims that they have for roadway construction under CC&R’s or otherwise*” [italics added]. To illustrate, the initial Settlement and General Release Agreement drafted and circulated by Chevy Chase states: “The Meurers release *any and all claims against Chevy Chase* and its affiliates . . . and assigns, including, but not limited to, any claim that Chevy Chase owes the Meurers for roadway contribution under the CC&Rs or otherwise” [italics added]. The Meurers objected to the breadth of the release as drafted by Chevy Chase, took the position that their release of claims against Chevy Chase pertained only to roadway construction costs at issue in the Hardin suits, and suggested the following: “The Meurers and Chevy Chase hereby mutually release any and all claims against one another and their affiliates . . . and assigns, *solely with respect to the Adaweh and Meurer actions* outlined above including, but not limited to, any claim that Chevy Chase owes the Meurers for roadway contribution under the CC&Rs” [italics added].

After the parties were unable to reach agreement on the wording of the release, the Meurers filed a motion for entry of judgment pursuant to section 664.6. Chevy Chase opposed the Meurers’ proposed judgment. In May 2010, following a hearing on the Meurers’ section 664.6 motion, the trial court issued its Ruling on Submitted Matter (ruling). In pertinent part, the ruling states: “The language pertaining to the settlement between the Meurers and Chevy Chase Bank (CCB) as recited on the record was clearly incorrect grammatically and needs to be revised to finalize the settlement. The evidence before the court makes it clear that the settlement between the Meurers and CCB pertained only to the claims raised in the action and not to all potential claims, including those related to the outstanding \$6 million construction loan between these two parties. The only consideration provided to the Meurers by CCB was an additional loan of \$20,000 used to fund the settlement with plaintiff. It is simply not credible that the

Meurers were willing to waive any and all potential claims against Chevy Chase Bank unrelated to the issues involved in the instant lawsuit simply in exchange for a relatively small loan from CCB. Moreover, the understanding that the Meurers were only settling claims against CCB related to the construction issues involved in the Hardin lawsuits comports with the court's recollection of the settlement negotiations, as well as a February 26, 2010 email correspondence sent by counsel for CCB. Thus, the Meurers' motion is properly granted."

Subsequently, on October 4, 2010, judgment was entered, reflecting, in pertinent part, the trial court's section 664.6 ruling on the release clause: "The Meurers will release claims against Chevy Chase for contribution for payments made by the Meurers related to the roadway construction which is the subject of the following two actions: *Hardin Enterprises, Inc. v. Adaweh Homeowners Association, et al.*, Napa Superior Court Case No. 26-45044 . . . and *Hardin Enterprises, Inc. v. Dennis L. Meurer, et al.*, Napa Superior Court Case No. 26-49285. . . ." Hardin served Notice of Entry of Judgment on October 11, 2010, and Chevy Chase filed a timely Notice of Appeal on November 30, 2010.

DISCUSSION

Chevy Chase asserts the trial court "exceeded its jurisdiction" by entering a judgment materially different to the terms of the binding agreement made orally before the court. Specifically, Chevy Chase argues the trial court's fact-finding authority under section 664.6 is confined to determining whether the parties entered into a binding settlement of the case. If the court determines the parties entered a binding agreement, so the argument goes, it must enter judgment pursuant to the terms of the agreement. According to Chevy Chase, the trial court did not enter judgment pursuant to the terms of the agreement; rather, the court improperly revised and materially altered the terms of the agreement by significantly limiting the scope of the release clause at issue. Moreover, Chevy Chase contends that the applicable standard of review is *de novo* because the issue is whether the court complied with its legal duty under section 664.6. Chevy Chase's

contentions regarding the court's authority under section 664.6 and the applicable standard of review are unpersuasive.

First, Chevy Chase misconstrues the role of the trial court in section 664.6 proceedings. "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. (Citations.)" (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809 (*Weddington*)).) When a settlement qualifies for expeditious enforcement pursuant to section 664.6, the trial court may enter an order approving the settlement on motion of an affected party, and may retain jurisdiction to enforce the settlement until its terms are fully performed. (See § 664.6.) Furthermore, it is well settled that the court may proceed under section 664.6 "*even when issues relating to the binding nature or terms of the settlement are in dispute*, because, [under section 664.6] the trial court is empowered to resolve these disputed issues and ultimately determine whether the parties reached a binding mutual accord as to the material terms." (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905 (*Assemi*) [italics added]; see also *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182 (*Hines*) [in ruling on a section 664.6 motion, the court "may consider the parties' declarations and other evidence in deciding *what terms the parties agreed to*" [citing *Assemi, supra*] [italics added]; *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622 [in ruling on section 664.6 motion, the trial court is empowered to resolve dispute regarding terms of settlement and determine that "the parties reached a binding mutual accord as to the material terms"]; *Skulnick v. Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 889 [trial court acts as a trier of fact when ruling on a section 664.6 motion and section 664.6's " 'express authorization for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement' (citation);" thus the trial court could determine whether the settlement incorporated forfeiture of indemnification rights].) On the other hand, " " "nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding *what terms the parties themselves have previously*

agreed upon.” [Citation.]’ [Citation.]” (*Steller v. Sears, Roebuck and Co.* (2010) 189 Cal.App.4th 175, 180 [italics added].)

Second, in regard to the applicable standard of review, the trial court’s factual determinations on a section 664.6 motion are reviewed under the substantial evidence standard. (*Assemi, supra*, 7 Cal.4th at p. 911 [“The standard governing review of [section 664.6] determinations by a trial court is *whether the court’s ruling is supported by substantial evidence.*” [italics added]; *Hines, supra*, 167 Cal.App.4th at p. 1182; *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454; *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1533-1534.) Moreover, in making factual determinations on a section 664.6 motion, “the trial court may consider declarations of the parties and their counsel, any transcript of the stipulation orally presented and recorded by a certified reporter, and any additional oral testimony. [Citations.]” (*Assemi, supra*, at p. 911.)

Here, the binding agreement the parties stipulated to orally before the court (hereafter, oral contract) contained the following release clause: “The Meurers will be released claims [sic] against Chevy Chase Bank, including any claims that they have for roadway construction under CC&R’s or otherwise.”³ In attempting to reduce this clause in the oral contract to writing, a dispute arose between the parties as to its scope: according to Chevy Chase, the Meurers agreed to “release any and all claims against Chevy Chase . . . including, but not limited to, any claim that Chevy Chase owes the Meurers for roadway contribution under the CC&Rs or otherwise,” whereas the Meurers asserted they agreed to a mutual release of “any and all claims . . . solely with respect to the Adaweh and Meurer actions . . . including, but not limited to any claim that Chevy Chase owes the Meurers for roadway contributions under the CC&Rs.” In proceedings pursuant to section 664.6, the trial court resolved the dispute and entered judgment, in pertinent part, as follows: “The Meurers will release claims against Chevy Chase for

³ It is reasonable to assume that the clause contains a reporter’s error, and that what was actually stated in court was: “The Meurers will release claims against Chevy Chase Bank, including any claims that they have for roadway construction under CC&R’s or otherwise.”

contribution for payments made by the Meurers related to the roadway construction which is the subject of the following two actions: *Hardin Enterprises, Inc. v. Adaweh Homeowners Association, et al.*, Napa Superior Court Case No. 26-45044 . . . and *Hardin Enterprises, Inc. v. Dennis L. Meurer, et al.*, Napa Superior Court Case No. 26-49285. . . .” Accordingly, casting the issue in terms of the legal principles and standards discussed above, we must ascertain whether substantial evidence supports the trial court’s determination that the release clause in the oral contract applied only to the Adaweh and Meurer actions.⁴ We conclude that it does.

In this regard, the parties negotiated the contract during the process of court supervised mediation and reached a comprehensive settlement resolving Hardin’s claims in the Adaweh and Meurer actions against the Meurers and Chevy Chase for monies allegedly owed on roadway construction. Thus, the circumstances surrounding the formation of the contract and the object and subject matter of the contract both indicate that it related only to the Adaweh and Meurer actions. This is borne out by the trial court’s observation that “[i]t is simply not credible that the Meurers were willing to waive any and all potential claims against Chevy Chase Bank unrelated to the [Adaweh and Meurer actions] simply in exchange for a relatively small loan from CCB” of \$20,000, added to the “outstanding \$6 million construction loan” the Meurers had already obtained from Chevy Chase. The limited nature of the release is also suggested by the fact that the oral contract provided for “a Civil Code Section 1542 release between, on the one hand, Chevy Chase Bank and the Meurers, and on the other hand Hardin Enterprises,”⁵ but did not provide for a Civil Code section 1542 release from the Meurers in favor of Chevy Chase.

⁴ In this regard, we note Chevy Chase submitted no evidence to the trial court in opposition to the Meurers’ section 664.6 motion; rather Chevy Chase insisted the trial court should impose judgment according to the oral contract as stated on the record.

⁵ Civil Code section 1542 states: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Moreover, the trial court's stated recollection of the settlement negotiations is that "the Meurers were only settling claims against CCB related to the constructions issues involved in the Hardin lawsuits." The trial court's own recollection constitutes further substantial evidence in support of its section 664.6 ruling. (See *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1533 [acting as a trier of fact in connection with a motion to enter judgment, "[i]f the same judge presides over both the settlement and the section 664.6 hearing, he may avail himself of the benefit of his own recollection"].) In addition, the uncontroverted declarations submitted by the Meurers and their counsel state that the Meurers did not intend to release Chevy Chase from any claims arising from their multi-million dollar construction loan from Chevy Chase as part of the settlement of Hardin's actions.

In sum, we conclude the trial court's determination regarding the scope of the release clause at issue is supported by substantial evidence. Chevy Chase has failed to affirmatively show error or any basis for reversing the court's enforcement of the parties' voluntary pretrial resolution of their dispute. (See *Casa de Valley View Owner's Assn. v. Stevenson* (1985) 167 Cal.App.3d 1182, 1190 ["public policy of this state supports pretrial settlement of lawsuits and enforcement of judicially supervised settlements"]; accord, *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1359 ["strong public policy of this state [is] to encourage the voluntary settlement of litigation"].)

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.