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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

<p>JAMES W. JAMES,  Plaintiff and Appellant,  v.  BAYWALK HOMEOWNERS  ASSOCIATION et al.,  Defendants and Respondents.</p>
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<p>A133894  (Alameda County  Super. Ct. No. RG09474806)</p>
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Pro per appellant James W. James appeals from an order dismissing his case without prejudice, pursuant to an enforceable settlement agreement. This appeal follows entry of judgment in which the case was dismissed. He argues that because the terms of settlement were in dispute or changed, the trial court had no power to dismiss the case. We disagree and affirm.

I.  
FACTUAL AND PROCEDURAL  
BACKGROUND

This case arises from two verified complaints asserting claims arising out of appellant’s alleged ownership in a property managed by respondents Baywalk at Heron Bay Homeowners Association, Heron Bay Homeowners Association, Professional Association Services, Inc., and Cathy Mount. Appellant represented himself in the trial court and in this appeal. The gravamen of appellant’s claims is that the respondents failed to manage the homeowners association accountings properly, causing damages, which the respondents denied in their answers. The trial court determined that the two

cases were related and ordered them to be heard in that department over appellant's objections, as a May 4, 2010 order reflects. On July 5, 2011 the trial court set August 26, 2011, for a jury trial and August 19, 2011, for an issues/pretrial conference.

At the August 19, 2011 issues/pretrial conference the case was settled in open court, and the terms of the settlement clearly were set forth on the record. In exchange for a dismissal, with prejudice of all claims, respondents agreed to waive costs, attorney fees, and any malicious prosecution claims. Respondents agreed to make an offer to appellant's ex-spouse to allow payments on outstanding dues owed as of September 2011, in six equal payments starting from October 2011. The court clarified that the case would be dismissed even if appellant's ex-spouse did not accept the offer, explaining that the agreement required only that an offer be made—not accepted. The court explained that the court would dismiss the actions if appellant did not do so himself. Appellant acknowledged that he fully understood. A compliance hearing was set for October 4, 2011, and rescheduled to October 18, 2011.

A dispute arose between appellant and respondents over the language of the release and the offer to appellant's ex-spouse, which resulted in another continuance of the compliance date to November 8, 2011. The trial court ordered the respondents to submit a written offer to appellant's ex-spouse. The settlement offer was made by respondents as required. At the November 8, 2011 compliance hearing the court dismissed the case *without* prejudice. Even though the court's dismissal of the case without prejudice was for appellant's benefit, appellant argues that the court was without authority to make such an order.<sup>1</sup>

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<sup>1</sup> Appellant made the same argument in a petition for a writ of mandate or prohibition filed in this court the day after the court received his notice of appeal. This court denied the petition by order dated December 14, 2011, for failure to provide an adequate record (Cal. Rules of Court, rule 8.486(b).) (*James v. Superior Court* (A133920) [nonpub. order]).

## II. DISCUSSION

1. *The dismissal did not exceed the trial court's authority under Code of Civil Procedure section 664.6.*

Appellant argues the dismissal of his lawsuits exceeded the bounds of the trial court's authority to enforce a settlement under Code of Civil Procedure section 664.6.<sup>2</sup> “Factual determinations made by a trial court on a section 664.6 motion to enforce a settlement must be affirmed if the trial court's factual findings are supported by substantial evidence. [Citation.] Other rulings are reviewed de novo for errors of law. [Citation.]” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 815 (*Weddington*)).

Appellant contends that it is possible that, but unclear whether, the trial court relied on section 664.6 in dismissing the action, whereas respondent claims it is clear that the trial court did not rely on the statute. Neither party is correct. 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.*” (§ 664.6, italics added.) While no party specifically requested that the court retain jurisdiction to enforce the agreement, everyone proceeded on that assumption. The court set and then conducted two separate compliance hearings to enforce the settlement, and no party objected. The parties wanted expeditious enforcement of their settlement. Therefore, section 664.6 provided the authority for the enforcement of the settlement and its dismissal.

“Prior to the enactment of section 664.6, a party seeking to enforce a settlement agreement had to file a new action alleging breach of contract and seeking either contract damages or specific performance of the settlement terms, or alternatively had to

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<sup>2</sup> All statutory references are to the Code of Civil Procedure.

supplement the pleadings in a pending case. [Citations.] . . . Expedient enforcement of a settlement agreement was therefore not always possible.” (*Weddington, supra*, 60 Cal.App.4th at p. 809.) “Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit.” (*Ibid.*)

2. *The court enforced the material terms of the agreement.*

At the August 19, 2011 settlement hearing, the parties contemplated a six-month repayment period for appellant’s ex-spouse, starting in October 2011. With the disputes over enforcement, the start and effective dates were delayed by two months. Appellant argues that the difference in the terms meant that the court had no authority to enforce the settlement because the settlement had changed. The assumption in this argument is that the change is material.

“Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment ([Citation]; *Fiore v. Alvord* (1985) 182 Cal.App.3d 561 [court may interpret terms of settlement agreement]), 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.” (*Weddington, supra*, 60 Cal.App.4th at p. 810.) “A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. (See, e.g., *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988 [‘Compromise settlements are governed by the legal principles applicable to contracts generally’].)” (*Id.* at pp. 810-811.)

Here, the trial court did dismiss the case on the terms agreed to by the parties. The respondents were to make an offer to appellant’s ex-spouse to repay the dues over a six-month period in equal installments. The parties agreed, in essence, that each party would waive known and unknown claims and dismiss the case. They did so. Appellant argues without support that the two-month delay somehow prejudiced him. We, accordingly, reject his claim of prejudice.

3. *The court properly ordered that the cases were related and denied a continuance.*

Appellant also argues that the trial court abused its discretion in ordering the cases to be related. Managing related cases is a basic function of a trial court. Section 1048 grants discretion to the trial courts to consolidate and manage actions involving common questions of law or fact. The trial court's decision will not be disturbed on appeal absent a clear showing of abuse of discretion. (*Estate of Baker* (1982) 131 Cal.App.3d 471, 485; *Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.) There is nothing shown here to suggest that the court erred in ordering the two cases to be related.

Finally, appellant argues that the court erred somehow in denying a continuance he sought of the trial date. However, that issue is moot as the case settled, and the trial date, for which the continuance was sought, was vacated.

Even if not moot, we would review the court's decision to grant or deny a continuance under the abuse of discretion standard. (*People v. Mungia* (2008) 44 Cal.4th 1101, 1118; *Pham v. Nguyen* (1997) 54 Cal.App.4th 11, 18, 19 (conc. opn. of Sonenshine, J.))<sup>3</sup> The issue is not whether this court would have exercised its discretion in the same manner as the trial court, but rather whether the court's ruling "exceeds the bounds of reason, all circumstances being considered." (*People v. Beames* (2007) 40 Cal.4th 907, 920.) No such abuse of discretion has been shown here.

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<sup>3</sup> The same standard applies to requests for continuance in both civil and criminal proceedings. (*People v. Ranger Ins. Co.* (2000) 81 Cal.App.4th 676, 679.)

III.  
DISPOSITION

The trial court's order is affirmed, and respondents are awarded costs.

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Baskin, J.\*

We concur:

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Ruvolo, P. J.

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Rivera, J.

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