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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

BETH KILIAN et al.,

Plaintiffs, Cross-defendants and
Appellants,

v.

PRASHANTH MACHAIAH et al.,

Defendants, Cross-complainants and
Respondents.

A137331

(Contra Costa County
Super. Ct. No. MSC08-01602)

Prashanth and Neetu Machaiah (Machaiahs) and Beth and Brian Kilian (Kilians) own adjoining parcels of property located at 1321 Dewing Lane in Walnut Creek, California. They have been in litigation since 2008 over whether the Kilians are entitled to an easement appurtenant to their parcel for vehicular access over the Machaiahs' property. The parties executed a written settlement agreement after a mediation in 2010 (2010 settlement agreement), but the trial court declined to enforce it, finding the parties had failed to agree on all material terms. Following discovery and a court trial, the trial court entered judgment in favor of the Machaiahs on all issues.

The Kilians contend the trial court erred in denying enforcement of the 2010 settlement agreement and in its adjudication of the parties' underlying claims. We agree with the former contention, and reverse the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Creation of Original Easement*

In 1966, a record of survey was recorded in Contra Costa County dividing the single parcel located at 1321 Dewing Lane, Walnut Creek, California into parcel A and parcel B (the ROS). The map depicts a 15-foot-wide path with a centerline that crosses in a generally southwesterly direction from Dewing Lane over parcel A to a point south of an “Existing Garage” depicted on the map where the path turns in a more westerly direction to the boundary of parcel B. The path is labeled on the map as a “Proposed R/W.” The two segments of the centerline, designated on the map as being 195 feet and 34.70 feet in length, respectively, are each marked with a metes and bounds description of their direction, and it is possible to determine from the distance markings written onto the map where the centerline of the Proposed R/W begins on the eastern boundary of parcel A and ends on the eastern boundary of parcel B.

It is undisputed that the recording of the ROS effected a legal subdivision of the property located at 1321 Dewing Lane into the two lots (parcels A and B), under the applicable requirements in 1966, and that the intent of the Proposed R/W was to provide an access corridor for parcel B to Dewing Lane, without which parcel B would have been landlocked and the subdivision would not have been approved.

In 1991, Fred and Eleanor (Ellen) Minning purchased 1321 Dewey Lane as one piece of land described by metes and bounds, which encompassed both parcels A and B. In 1994, the Minnings recorded a correcting deed attesting to the recording of the ROS and subdivision of the property into a parcel A and parcel B, both “as shown on the [ROS].” In July 2001, Fred Minning executed an interspousal grant deed of parcel A to Ellen. The legal description of parcel A in the July 2001 deed describes it as “Parcel A as shown on [the ROS] [¶] EXCEPTING THEREFROM: [¶] A private driveway and utility easement as an appurtenance to Parcel B of said [ROS], being a strip of land 15 feet in width,” the southerly line of which was then described by metes and bounds. There is no

dispute that the metes and bounds description in the July 2001 deed does not in fact correctly describe the location of the Proposed R/W as depicted on the ROS.¹

The Minnings thereafter made a series of transfers of these parcels between and to themselves. In August 2001, Fred recorded an interspousal grant deed granting Ellen both parcels A and B, both “as shown on the [ROS],” but this deed did not specifically refer to the easement appurtenant to parcel B as described in the July 2001 deed. In February 2002, Ellen recorded two deeds: one transferring both parcels from “ELLEN H. MINNING, A MARRIED WOMAN,” to “ELLEN H. MINNING, AN UNMARRIED WOMAN,” and one transferring the parcels from “ELLEN H. MINNING, AN UNMARRIED WOMAN” to her trust, both of which included the same metes and bounds description of the easement that was used in the July 2001 deed. In April 2003, she recorded a deed granting parcel A, this time described as “as shown on the [ROS],” without the easement language, to herself as “Ellen Hansen, an unmarried woman.”²

B. Conveyances to Current Owners

Three transactions were recorded on April 21, 2004. Ellen Hansen as trustee of her trust transferred parcel B “as shown on the [ROS]” to “Ellen Hansen, an unmarried woman.” On the same day, Ellen Hansen conveyed parcel A to Nosrat Kermaninejad (known as “Ned”), and parcel B to the Kilians. The parcels were both described with the “as shown on the [ROS]” language, and without specific reference to the easement. At the time of their purchase of parcel B, the Kilians owned a home on adjoining property on Blade Way through which they had pedestrian access to the parcel, but no vehicular access without having to build a second driveway across the side yard of their Blade Way property.

Mr. Kilian testified that before he bought parcel B, Ellen showed him what the access was to parcel B and he and Ellen walked the dirt road that existed from Dewing Avenue through parcel A to parcel B as depicted on the ROS. He was given the ROS

¹ The parties were apparently unaware of this discrepancy until 2010.

² Hansen was apparently Ellen Minning’s maiden name which she began using again after her divorce from Fred Minning.

before the purchase. In deposition testimony read into the record at trial, Ellen Hansen testified she intended the Kilians would continue to have the easement over parcel A.

In May 2006, Ned sold parcel A to the Machaiachs. The Machaiachs bought the property planning to build an in-law unit for Mr. Machaiah's parents to live in at the site of a dilapidated barn located near the northwestern corner of the property. The deed described parcel A as "Parcel 'A,' as shown on the [ROS]." A preliminary title report prepared for the Machaiachs' brokers listed several exceptions to coverage, including any rights pertaining to the " 'Proposed R/W' " shown on the ROS, as well as "Any easement by necessity in favor of the owner of Parcel 'B,' as shown on the [ROS]." However, the title report also noted that the April 2003 deed of parcel A and April 21, 2004 deed of parcel B to Ned "contained no reservation of an easement for access purposes."³ The title report included a copy of the 1966 ROS. The Machaiachs read the title report, were concerned about these portions of it, and contacted the title company to try to get clarification about them.

C. The 2007 Agreement

The Machaiachs reviewed the ROS with their agents and had seen the " 'Proposed R/W' language" in it. They understood from their review and discussions of the preliminary report with the title company that the ROS did not create an easement and no granted or reserved easement in favor of the Kilians had been found in the record. Before closing escrow, the Machaiachs had discussions with Mr. Kilian and specifically asked him if he had a conveyed and recorded easement. According to the Machaiachs, Mr. Kilian told them he had a document providing an easement which had not been recorded "for some odd reason," and promised to provide it. The Machaiachs testified they asked Mr. Kilian for a copy of the document several times, but never received it.

³ The report states it is "not a written representation as to the condition of title." (See *Soifer v. Chicago Title Co.* (2010) 187 Cal.App.4th 365, 372 [preliminary report specifies the liens and encumbrances the insurer's offer of title insurance will not cover, but it is not an abstract of title which may take months to prepare, and it may not be relied upon as an affirmative representation as to the status of title].)

Mr. Kilian testified that when the Machaijahs asked him for proof of the easement, he gave them the ROS and they seemed satisfied and did not ask him for further documentation beyond that.

Mr. Kilian testified the Machaijahs approached him prior to their purchase of the property and inquired whether he would be willing to relocate the easement to the northern boundary of parcel A so they could build a new home. The Machaijahs confirmed they had discussions with Mr. Kilian on this point and this was important in their decision to go forward with the purchase. Mr. Machaijah testified: “[M]y specific request to Mr. Kilian was, well, if you could show me that you had a recorded granted easement, and if you are willing to consider moving this to the northern side . . . then we would simply consider . . . purchasing this house. . . . and that was our basis for going ahead with closing on escrow.”⁴

Although the Kilians provided no further documentation of the easement, the Machaijahs nonetheless closed on their purchase, and approximately two months later entered into an oral agreement with the Kilians to relocate the easement to the northern edge of parcel A.⁵ According to the Machaijahs, one of the terms of the oral agreement was that Mr. Kilian was going to provide them with documentation that he actually had an easement. There was some discussion between Mr. Kilian and the Machaijahs that part of an old garage on the property would overlay a portion of the 15-foot-wide easement by a foot or two. The Machaijahs agreed they would at some point cut the garage wall that was potentially encroaching onto the easement because they already had plans to redo the garage into an in-law unit. The Machaijahs were given assurances by the county that this was feasible and, based on that, made the oral agreement with the Kilians. The

⁴ This testimony was directly contradicted by declarations the Machaijahs had submitted in opposition to the Kilians’ motion to enforce the 2010 settlement agreement. There, the Machaijahs averred that “[w]hen we purchased the Property there was no mention of an easement . . .” and that the Kilians did not tell them about the easement until after they purchased the property.

⁵ Mr. Machaijah could not recall if the oral agreement was reached before or after escrow was closed.

Machaiahs understood they would have to pay for a surveyor to draft a legal description of the easement.

On May 31, 2007, 10 months after the Machaiahs purchased the property, they executed a written agreement with the Kilians to relocate the easement to a path along the northern boundary of parcel A (May 2007 agreement). During that 10-month period, the Machaiahs had discussions with the county about what needed to be done to cut back the garage. The written agreement provided: “The Kilians have agreed to abandon all rights associated with their existing right of way over and across Parcel A and the Machaiahs have agreed to execute in recordable form a non-exclusive easement across Parcel A and appurtenant to and for the benefit of Parcel B.” It further provided that the portion of the garage that jutted out into the new northern easement would be removed at the sole cost and expense of the Machaiahs within six months and the Machaiahs would pay the Kilians \$2,100 upon execution of the agreement.

On the day the agreement was signed by the parties, the Machaiahs recorded a deed granting the Kilians a nonexclusive easement for ingress and egress and utilities along the northern boundary of parcel A. The legal description provided that the centerline of the 15-foot easement would run nine feet south of the northern boundary for most of its 300-foot length. Thus, rather than adjoining the northern property line, the easement was set-off 18 inches below the property line for most of its length.⁶ Simultaneously, the Kilians recorded a quitclaim deed releasing any rights pertaining to easements affecting parcel A as shown on the ROS. The legal description of the easement being relinquished under the 2010 settlement agreement described it as the easement shown as “Proposed R/W” on the ROS, but also by reference to the “Private

⁶ The parties dispute whether the 18-inch set-off of the recorded easement was agreed to in advance or unilaterally placed in the document by Mr. Kilian without the Machaiahs’ knowledge.

driveway and utility easement” described by metes and bounds in the July 2001 and February 2002 deeds involving the Minnings.⁷

D. *The 2010 Settlement Agreement*

The Machaiahs did not remove the portion of the garage that extended into the northern easement within six months or at any time thereafter. They testified the county would not allow them to remove just a portion of the garage but required them to tear down the entire structure, which would have triggered other county requirements making it impossible for them to build an in-law unit on the site. The Machaiahs did obtain a demolition permit to take down the garage completely, but ultimately changed their minds about doing that.

After subsequent attempts by the Kilians to obtain full performance of the May 2007 agreement failed, they filed this lawsuit in June 2008, which included claims for specific performance of the May 2007 agreement, and breach of contract. The Machaiahs answered and filed a cross-complaint denying any right-of-way easement appurtenant to the Kilians’ property ever existed and alleging the Kilians fraudulently induced them to sign the May 2007 agreement by assuring the Machaiahs they would provide proof of an existing right-of-way easement granted to the Kilians by Ellen Hansen.

At a mediation held in March 2010, at which both sides were represented by counsel, the parties negotiated and signed a written agreement settling the lawsuit (the 2010 settlement agreement). It included the following terms: The Kilians agreed to abandon the northern easement granted to them under the May 2007 agreement. In return, the Machaiahs agreed to grant the Kilians an easement in the same location as the easement based on the ROS the Kilians had relinquished by quitclaim deed as part of the May 2007 agreement. However, the Machaiahs also reserved an option for three years from the date of the agreement to have the Kilians’ easement over parcel A returned to

⁷ The parties were apparently still unaware at that point that the metes and bounds description of the easement in the 2001 and 2002 deeds did not in fact accurately describe the location of the Proposed R/W depicted on the ROS.

the northern boundary of the parcel, which would be clear of or routed around any obstruction. The Machaiachs were to prepare all documents required for these transactions to occur, including a recordable memorandum of their three-year option to relocate the easement. Other terms of the 2010 settlement agreement included mutual releases of claims, and a prevailing party attorney fee clause. The 2010 settlement agreement included the following: “The parties intend that this document be admissible pursuant to Evidence Code [section] 1123; that it be enforceable pursuant to [Code of Civil Procedure section] 664.6; and, that it constitutes a binding contract, and the court shall retain jurisdiction to enforce the terms of this agreement.” It was signed by the parties and their respective attorneys.

E. Motion to Enforce the 2010 Settlement Agreement

The parties could not agree on whether certain terms contained in the documentation ultimately furnished by the Machaiachs complied with the 2010 settlement agreement, and the Kilians ultimately moved for an order enforcing the 2010 settlement agreement under Code of Civil Procedure section 664.6 (section 664.6).⁸ The trial court held an evidentiary hearing on the motion in December 2010.

Most importantly, the Kilians objected that the new easement grant deed the Machaiachs proposed to record in the Kilians’ favor did not describe an easement in the same location as the original easement the Kilians agreed to abandon in 2007, as required by the settlement. Instead of reaching the eastern boundary of parcel B 4.75 feet *north* of parcel B’s southernmost property line, consistent with the right-of-way drawn on the ROS, the Machaiachs were proposing an easement that reached parcel B *at* its southeastern corner. According to Mr. Kilian, this displacement of the easement would adversely affect his building plans for parcel B and his ability to provide privacy

⁸ 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.”

screening of the property from the Machaiahs' house and garage. The Machaiahs testified they chose not to follow the precise path of the original easement, and moved its terminus south by 4.75 feet to the southeast corner of parcel B to avoid having to move pilasters constructed along the fence line between the properties that would otherwise be in its path. There were also disagreements over whether the 2010 settlement agreement allowed the Kilians to pave over the Machaiahs' paved driveway, and when the Machaiahs were required to furnish the Kilians with an access device for opening the electronic gate to their driveway.

The trial court ruled as follows: "Plaintiffs['] Motion is denied based on the fact that there was no meeting of the minds. The weight of the evidence presented is that the respective parties had different concepts of the terms and conditions of the settlement. Moreover, plaintiffs' evidence was insufficient to establish that they had the right to enforce the alleged easement across the defendants' property." The court did not specify the issues on which it found "no meeting of the minds."

F. Court Trial and Judgment

Following a court trial on the complaint and cross-complaint, the trial court ruled as follows: (1) the Kilians failed to establish any easement in favor of parcel B existed when they purchased it from Ellen Hansen in 2004; the prior easement terminated during the Minnings' ownership of the parcels and, based on the title report, the deeds to the Machaiahs and Kilians failed to contain any reservation of an easement for access purposes over parcel A for the benefit of parcel B; (2) the May 2007 agreement established no easement; it concerned an easement that did not exist, and was the result of mistake or possibly fraud; and (3) the Machaiahs were entitled to damages of \$26,578 on their cross-complaint, plus prejudgment interest thereon, and \$49,732.90 in costs and attorney fees as the prevailing parties on the complaint and cross-complaint.

The Kilians timely appealed from the ensuing judgment.

II. DISCUSSION

The Kilians contend the court erred in denying their motion to enforce the 2010 settlement agreement, and contest the trial court's subsequent rulings and judgment

on the complaint and cross-complaint. We agree the trial court erred in finding the settlement agreement unenforceable and do not reach the other issues.

A. *Relevant Legal Principles*

The trial court’s factual findings on a motion to enforce a settlement under section 664.6 “are subject to limited appellate review and will not be disturbed if supported by substantial evidence.” (*Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.) However, questions of law on a section 664.6 motion are reviewed de novo. (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 35.) “A settlement is enforceable under section 664.6 only if the parties agreed to all material settlement terms.” (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182, fn. omitted.) “A settlement is enforceable so long as it is ‘sufficiently certain to make the precise act which is to be done clearly ascertainable.’ (Civ. Code, § 3390, subd. 5.) Because this is a legal question we review it de novo.” (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1301.)

“A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. [Citation.] An essential element of any contract is ‘consent.’ [Citations.] The ‘consent’ must be ‘mutual.’ [Citations.] . . . [¶] ‘The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.’ [Citation.] Outward manifestations thus govern the finding of mutual consent required by Civil Code sections 1550, 1565 and 1580 for contract formation. (See also 1 Witkin, Summary of Cal. Law [(9th ed., 1987)] Contracts, § 119, p. 144 [‘. . . the outward manifestation or expression of assent is controlling. Mutual assent is gathered from the reasonable meaning of the words and acts of the parties, and not from their unexpressed intentions or understanding.’].)” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810–811.)

“[I]n determining whether the material factors in a contract are sufficiently certain for specific performance, the modern trend of the law favors carrying out the parties’ intention through the enforcement of contracts and disfavors holding them unenforceable

because of uncertainty. [Citations.] The defense of uncertainty has validity only when the uncertainty or incompleteness of the contract prevents the court from knowing what to enforce.” (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 500, fn. omitted.) Moreover, the settlement of litigation is “ ‘highly favored’ ” under longstanding California public policy. (*Gopal v. Yoshikawa* (1983) 147 Cal.App.3d 128, 130–131 [affirming a judgment enforcing a settlement agreement].)

Here, the trial court made two operative findings: (1) the parties had different concepts of the terms and conditions of the settlement, and (2) there was insufficient evidence to establish the Kilians had the right to enforce the alleged easement over the Machaiahs’ property. Neither is supportable on the record before us.

B. *Meeting of the Minds*

As to the first finding, the Machaiahs maintain the parties “never reached agreement on several material points.” They specify three issues as to which the written settlement agreement was ambiguous or indefinite: (1) the exact location of the new easement the Kilians were to be granted; (2) whether the Kilians had a right to pave over the Machaiahs’ newly paved driveway; and (3) when and under what circumstances the Kilians were entitled to receive an access mechanism for opening the Machaiahs’ front gate in order to use the new easement.⁹

1. *Location of the Easement*

We find no ambiguity in the written agreement as to the location of the new easement. The easement abandoned by the Kilians under the May 2007 agreement, which was to be restored under the 2010 settlement agreement, was the Proposed R/W as shown on the ROS. There was no ambiguity about its location or correct legal description, either as shown on the face of the ROS or as understood by the parties. This

⁹ The Machaiahs also mention that the Kilians did not fulfill their obligations under the settlement to repay them \$2,100 or clear rubbish from the southeast corner of parcel B. However, these are issues of breach or enforcement which *assume* the settlement agreement was valid and enforceable. They do not affect whether the parties made a valid settlement in the first place.

was demonstrated in the correspondence between counsel for the parties over the form of the easement the Machaiahs offered for recording following the settlement. Mr. Kilian and his attorney objected that the metes and bounds description in the document did not follow the location depicted on the ROS. The Machaiahs' attorney responded that their surveyor had in fact determined the metes and bounds description of the easement in the 2001 and 2002 Minnings' deeds was "completely wrong," and had drafted a "correct meets [*sic*] and bounds accurately describing the 'old' assumed easement (RW) that we have always believed never existed." However, rather than use the correct metes and bounds description of the "assumed easement," the Machaiahs' attorney explained the Machaiahs had *altered* the description to provide that the Kilians' easement would end at the southernmost corner of parcel B instead of 4.75 feet north of that point as clearly shown on the ROS. The Machaiahs' counsel stated: "*Other than that* there is no difference. The easement is exactly where the old easement of the recorded survey depicts" (Italics added.) Mrs. Machaiah confirmed at the section 664.6 hearing that the Machaiahs knew the location of the easement they proposed to record did not match the location of the Proposed R/W shown on the ROS.

It is simply not true as the Machaiahs maintain on appeal that the "ROS description of the 'Proposed R/W' met the corner of Parcel B," and that it was the Kilians who insisted on moving it 4.75 feet off of its location as shown on the map. The boundary length markings on the map show (1) the eastern boundary of parcel B is 80.01 feet in length and (2) the centerline of the 15-foot-wide Proposed R/W intersects that boundary 67.75 feet south of parcel B's northern boundary. As a matter of geometry, the southerly boundary of the Proposed R/W must therefore intersect the eastern boundary of parcel B 4.76 feet north of the parcel's southeastern corner (80.01 feet minus 67.75 feet minus 7.5 feet equals 4.76 feet). The distance markings match up with the drawing and centerline bearings on the map which show that the intersection point is just north of the corner. The settlement was not "*patently ambiguous*" as to the location of the easement, as the Machaiahs contend.

“ ‘A contract must be interpreted to give effect to the mutual, expressed intention of the parties. Where the parties have reduced their agreement to writing, their mutual intention is to be determined, whenever possible, from the language of the writing alone.’ ” (*Fire Ins. Exchange v. Hammond* (2000) 83 Cal.App.4th 313, 321.) While the Machaiahs’ testimony at the hearing established why they wanted the easement to cross into parcel B 4.75 feet south of the right-of-way shown on the ROS, that testimony failed to explain why they, and their attorney, signed off on a written settlement agreement that was inconsistent with that result.

2. Right to Pave Over the Machaiahs’ Driveway

The paving issue arose from a misunderstanding that was resolved by the time of the section 664.6 hearing. There is no dispute the Machaiahs had paved their driveway with paving stones, which fully covered the path of the southern easement granted under the 2010 settlement agreement. The path of the northern easement was not paved, although the Machaiahs had graded and graveled it. The 2010 settlement agreement provided the easement to be granted to the Kilians—which the Machaiahs would have a three-year option to relocate back to the northern boundary of their property—would be granted under “the same terms and conditions” as the easement on the northern boundary granted to them by the May 2007 agreement. One of the terms and conditions in the 2007 easement was that the Kilians would have “the right to grade, construct and maintain a driveway paved with asphalt, compacted paving material or pavers” over that easement. Another term of the 2007 easement grant was that any improvement such as repaving had to have the approval of the Machaiahs or their successors.

As the Kilians’ counsel testified at the hearing on the section 664.6 motion, the purpose of the “same terms and conditions” language in the 2010 settlement agreement was not to permit the Kilians to pave over the Machaiahs’ newly paved driveway. The purpose was to ensure the Kilians would not lose the right to pave the northern easement *if* the Machaiahs timely exercised their option to replace the southern easement with the northern easement. Initially, there was a misunderstanding over whether the documents prepared by the Machaiahs accomplished that objective. However, the issue was

resolved once the Kilians and their counsel saw the exhibits to the “Memorandum of Understanding” prepared by the Machaijahs for recording pursuant to the 2010 settlement agreement. The documents specifically provided, in a manner acceptable to the Kilians, that they would have a right to pave the northern easement under the same terms and conditions provided to them in 2007 if the Machaijahs chose to exercise their option to re-grant it in substitution for the southern easement. The Kilians’ right to pave the northern easement in that event would be subject to the Machaijahs’ approval, which was just as in the 2007 easement grant.

There was no failure to reach agreement about the paving issue.

3. Access Mechanism

The Machaijahs installed an electronic gate to provide access to their driveway, which is opened by use of an access mechanism. Without having the necessary gate opening device, access to parcel B via the Proposed R/W route would be impossible. Further, the Machaijahs built a fence on the property along the eastern boundary of parcel B. That fence includes a latchable gate where the northern easement ends on the boundary of parcel B, which the Kilians use to access their property via the northern easement. No such gate is installed at the south end of the fenced north-south boundary line between the properties. In addition to an access mechanism for opening the electronic entry gate to the Machaijahs’ driveway, a second gate allowing vehicular passage between the driveway and parcel B would also be required in order for the Kilians to use the southern easement.

In light of the location of the fences and gates on parcel A, and the contemplated replacement of the northern easement with the old Proposed R/W through the Machaijahs’ driveway, paragraph No. 2 of the 2010 settlement agreement (paragraph No. 2) provided in relevant part as follows: “[The Machaijahs] will provide [the Kilians] with an access mechanism to permit [the Kilians] to enter [the Machaijahs’] electronic gate by April 15, 2010. . . . [The Machaijahs] at their own expense shall move the gate between the Parcels so that the gate is located at the end of the easement. Until the gate is moved [the

Machaiahs] agree to allow [the Kilians] to use the easement abandoned in Paragraph 1 as if the easement had not been abandoned.”¹⁰

The Machaiahs did not provide the Kilians with an access mechanism by April 15, 2010, and no steps were taken by them to relocate the northern gate. When the Kilians’ counsel pointed this out after April 15, the Machaiahs responded, “there is no current need for the Kilians to have a key/electronic opener” because the Kilians were going to continue using the northern easement under paragraph No. 2 unless and until the Machaiahs relinquished their option to permanently relocate the easement to the northern boundary or the option expired after three years without being exercised. Nonetheless, the Machaiahs ultimately changed their position on this, perhaps in view of the 2010 settlement agreement’s unconditional requirement that an access mechanism be provided by a specified date. The Machaiahs’ counsel agreed to provide one if the Kilians insisted on having it. In any event, there was no ambiguity in the 2010 settlement agreement about when the Kilians were to be provided an access device.¹¹

“[F]ew contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached.” (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 352.) The record before us shows no more than subsequent disputes about what the parties agreed to, not a failure to reach an enforceable agreement in the first instance.

C. Existence of an Enforceable Easement

The trial court also declined to enforce the 2010 settlement agreement because it believed the evidence was “insufficient to establish [the Kilians] had the right to enforce

¹⁰ Paragraph No. 1 of the 2010 settlement agreement concerns the Kilians’ abandonment of the northern easement granted to them in 2007.

¹¹ Although the Machaiahs are required to grant and record a new easement replicating the route of the Proposed R/W as shown on the ROS, as we read the settlement agreement they are not required to move the gate at the end of the northern easement as long as (1) the option of making that the permanent easement over parcel A has not expired or been relinquished by the Machaiahs, and (2) the Kilians are allowed and able to use the northern easement and gate for vehicular access to parcel B.

the alleged easement over [the Machaiahs'] property.” We assume this refers to the assertion in the Machaiahs’ opposition to the motion to enforce that the Kilians “never had a right to enforce an alleged easement across [the Machaiahs’] property and fraudulently induced them into agreeing to grant them one”

This is a puzzling reason to deny enforcement of an agreement settling the parties’ dispute over issues *including* whether the Kilians obtained a valid easement over parcel A when they acquired parcel B from Ellen Hansen in 2004, *and* whether the Kilians fraudulently induced the Machaiahs to grant them an easement in 2007. Both of those issues were framed by the complaint, answer, and cross-complaint in this action. These issues and others were *settled* by the parties when they, with their attorneys, attended a mediation and executed a written settlement agreement on March 4, 2010. The 2010 settlement agreement included a standard mutual release of *all* claims and causes of action connected with the lawsuit and purported to settle *all* disputes and differences concerning parcel A and parcel B raised in the lawsuit.

The Kilians had no burden of proving they would *prevail* in the lawsuit as a condition of obtaining enforcement of the settlement agreement. They did not have to convince the trial court that Ellen Hansen conveyed a valid, enforceable easement over parcel A to them. Further, any claim the 2010 settlement agreement was induced by or the product of fraud by the Kilians would be entirely frivolous. The Machaiahs’ cross-complaint, filed six months before the mediation, specifically alleged that no legally valid right-of-way easement over their property “ever existed” before the May 2007 agreement. Counsel for the Machaiahs represented to the Kilians’ attorney after the 2010 settlement agreement was executed that he and his clients “always believed” the easement the Kilians claimed had “never existed.” Despite their asserted beliefs about the true facts, and represented by counsel, the Machaiahs entered into a written settlement agreement with the Kilians granting them certain easement rights as reflected in the agreement. The

trial court erred by not enforcing it regardless of its views as to the ultimate merits of the lawsuit.¹²

III. DISPOSITION

The amended judgment nunc pro tunc filed on May 6, 2013 is reversed and the matter is remanded to the trial court with directions to enter judgment pursuant to the terms of the March 4, 2010 settlement agreement, and to retain jurisdiction to enforce the terms of the agreement as provided in paragraph No. 14 thereof. The time deadlines and start of the three-year option period in the settlement agreement shall be reset to run from the date the remittitur is filed in this case rather than the date of the settlement.

Margulies, Acting P.J.

We concur:

Dondero, J.

Becton, J.*

¹² Our reversal of the court's ruling on enforcement of the settlement agreement makes it unnecessary to reach the Kilians' remaining contentions.

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