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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

EDEN RUIZ ARI,

Plaintiff and Appellant,

v.

OYLER AND WOLDMAN et al.,

Defendants and Respondents.

B238988

(Los Angeles County
Super. Ct. No. SC106110)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Jacqueline A. Connor, Judge. Affirmed.

Raymond N. Haynes for Plaintiff and Appellant.

Waxler, Carner, Brodsky, Barry Z. Brodsky, Jodi L. Girten for Defendants and Respondents.

Plaintiff Eden Ruiz Ari sued her divorce lawyers, defendants Oyler and Woldman, Donald Woldman and Connolly Oyler, claiming that, due to their deficient handling of her dissolution action, she entered into a settlement which awarded her ex-husband virtually all of her interest in the couple's community property. The trial court entered summary judgment in favor of the defendants, which plaintiff challenges on appeal. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and Dennis Needleman married in 1995 and separated in 2003. Mr. Needleman entered the union with a net worth of approximately \$3 million, in the form of family real estate holdings; he acquired additional commercial properties during the course of the marriage. Mr. Needleman was compensated for his efforts in managing these properties in an amount sufficient to support the couple's lavish lifestyle.

In 2001, the couple purchased a residence in Los Feliz for \$2,725,000; Mr. Needleman used \$1.75 million inherited from his father as a down payment, and the couple took out a mortgage for the \$1 million balance. The residence and the commercial properties constituted the bulk of the assets of the Needlemans, both individually and collectively. According to plaintiff, at the time the parties separated in 2003, the residence was worth approximately \$9 million and the commercial properties were worth approximately \$40 million.

At a mandatory settlement conference in June of 2006, plaintiff and Mr. Needleman agreed to the division of property and payment of spousal support, which settlement was accepted in open court before Commissioner Ann Dobbs. The settlement acknowledged that all of the commercial real estate was Mr. Needleman's separate property; that the residence was the couple's community property, but that Mr. Needleman was entitled to reimbursement of his \$1.75 million separate property contribution; that plaintiff would continue to live in the house while listing it for sale at a price of \$7,900,000; and that Mr. Needleman would continue to make the temporary support payments then in place (approximately \$18,500 per month) until the house sold,

after which time no additional spousal support would be payable. A stipulated judgment was entered on November 7, 2006.

The house remained unsold for a number of years. Not surprisingly, plaintiff and Mr. Needleman blamed each other for the failure either to sell the property to a third party or to refinance and buy the other out. Plaintiff was forcibly removed from the house by the Sheriff in March of 2009, after which it was sold to a third party for \$3.55 million. After satisfaction of the existing mortgages and reimbursement to Mr. Needleman of his separate property contribution, no money remained to be distributed to plaintiff.

In April 2010, plaintiff moved to set aside the November 7, 2006 stipulated judgment, as well as stipulated orders filed on April 30, 2008 and September 11, 2008, based on fraud and duress. That motion was denied, which ruling was affirmed on appeal, in an unpublished opinion, by our colleagues in Division Four. (*Needleman v. Needleman* (B220967, filed January 4, 2012).)

After failing in her efforts to set aside the dissolution settlement, plaintiff filed the instant complaint for professional malpractice against her former attorneys. Defendants moved for summary judgment, contending that plaintiff could not establish that they caused her claimed damages, and further maintaining that, as a matter of law, the doctrine of judicial estoppel precluded plaintiff from establishing that she did not freely and voluntarily consent to the alleged inadequate underlying settlement negotiated on her behalf by defendants. The trial court accepted the defendants' arguments, and entered summary judgment in their favor. Plaintiff appeals that judgment.

DISCUSSION

In order to prevail in this lawsuit, plaintiff must establish that defendants' purported breach of duty – the inadequate settlement – caused her claimed damages – the loss of her community property assets. To prove legal malpractice damages, a plaintiff "must show that *but for* the alleged malpractice, it is more likely than not that the plaintiff

would have obtained a more favorable result." (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1244.)

In *Marshak v. Ballesteros* (1999) 72 Cal.App.4th 1514, the plaintiff was dissatisfied with the settlement to which he had agreed in his marital dissolution action. He sued his attorney for malpractice, claiming that the attorney settled the case for less than it was worth, by overvaluing the accounts receivable from his medical practice and undervaluing the family residence, which was awarded to his ex-wife in the settlement. This court stated that it is not enough for the plaintiff to simply allege that it was possible, with the right evidence, to establish a community property interest; he must produce the evidence which would establish the community property interest.

Here, in order to recover damages for defendants' alleged failure to properly assess the community attributes of the commercial property awarded to Mr. Needleman, it was not enough for plaintiff to simply allege that she had a community property interest in the properties, or that the property was purchased with commingled funds. Rather, plaintiff was required to come forward with evidence to prove this essential fact. This plaintiff did not do. Instead, relying on *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, plaintiff argues that she "was entitled to rely on the presumption that all the property acquired during the marriage was community property." However, the presumption upon which plaintiff relies does not take precedence over the "form of title" presumption.

"According to the 'form of title' presumption, the description in a deed as to how title is held is presumed to reflect the actual ownership interests in the property. [Citations.] This common law presumption is codified in Evidence Code section 662, which provides: "'The owner of legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.'" [Citation.] The presumption is based 'on promoting the public "policy . . . in favor of the stability of titles to property.'" [Citation.] "Allegations . . . that legal title does not represent beneficial ownership have . . . been historically disfavored because society and the courts have a reluctance to tamper with duly executed instruments and documents of legal title." [Citation.]' (*Ibid.*) Thus, 'in the absence of any showing to the

contrary, the status declared by the instrument through which [the parties] acquired title is controlling.' (*Knego v. Grover* (1962) 208 Cal.App.2d 134, 141; see generally Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2008) ¶ 8:32, p. 8-8.1.)" (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 184-185.)

In *Marriage of Brooks, supra*, the title at issue was to the residence acquired by a couple during marriage. The money for the down payment came from the husband's earnings, as did the payments on the loans secured by deeds of trust on the property. However, at the suggestion of the couple's real estate agent, title was held in the wife's name, as "a Single Woman." After the couple separated, the wife sold the property to a third party without the knowledge or consent of her husband. The husband argued that "the general community property presumption that arises when property is acquired during marriage" rebutted the form of title presumption.

In ruling that the form of title presumption takes precedence over the general community property presumption, the *Brooks* court found the following language of *In re Marriage of Lucas* (1980) 27 Cal.3d 808 to be dispositive: "'The presumption arising from the form of title is to be distinguished from the general presumption set forth in [Family Code section 760] that property acquired during marriage is community property. *It is the affirmative act of specifying a form of ownership in the conveyance of title that removes such property from the more general presumption.*' (*Id.* at pp. 814-815, italics added; see also *Siberell v. Siberell* (1932) 214 Cal. 767, 773 [community property presumption "'has no application to a case where "a different intention is expressed in the instrument"']).)" (*In re Marriage of Brooks, supra*, at p. 186.)

The form of title presumption affects the burden of proof, so that the party asserting that title is other than as stated in the deed must establish that fact by clear and convincing evidence. (*In re Marriage of Brooks, supra*, at p. 189.) "The presumption can be overcome only by evidence of an agreement or understanding between the parties that the title reflected in the deed is not what the parties intended. [Citations.] Significantly, 'the presumption cannot be overcome solely by tracing the funds used to

purchase the property, nor by testimony of an intention not disclosed to the grantee at the time of the execution of the conveyance.' [Citations.]" (*Id.* at pp. 189-190.)

In sum, the mere fact that the commercial property here at issue was acquired during the marriage, even if community funds were used to acquire it, cannot rebut the form of title presumption. Because plaintiff presented no evidence that she had a community interest in the properties, defendants' failure to account for that non-existent interest in negotiating the settlement between plaintiff and Mr. Needleman caused plaintiff no compensable damages.¹

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

FERNS, J.*

¹ Because we resolve this appeal based on the absence of evidence of causation, we have no need to address the issue of judicial estoppel, the trial court's alternative ground for granting summary judgment to defendants.

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