

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

BRUCE DWAIN COPELAND,

Plaintiff and Appellant,

v.

RASCHAND MERRIMAN,

Defendant and Respondent.

B265485

(Los Angeles County
Super. Ct. No. BC505299)

APPEAL from an order of the Superior Court of Los Angeles County, Suzanne G. Bruguera, Judge. Affirmed.

Bruce Dwain Copeland, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Bruce Dwain Copeland, representing himself, sued Raschand Merriman in April 2013 for payment of overdue rent. The parties resolved their dispute four months later, and Copeland dismissed the lawsuit. Copeland subsequently moved to enforce a purported settlement agreement pursuant to Code of Civil Procedure section 664.6 (section 664.6). The trial court denied the motion on the grounds service was improper and it lacked jurisdiction to hear Copeland's motion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Copeland's Lawsuit

In a complaint filed April 9, 2013 Copeland sought recovery of more than \$70,000 from Merriman, who was a tenant on property Copeland owned in Torrance, California. Shortly after the complaint was filed, the parties apparently agreed Merriman would pay Copeland \$35,000 in back rent in monthly installments. On August 13, 2013 Copeland filed a request for dismissal of his lawsuit. That request is not part of the record on appeal, but the trial court's order on the motion to enforce the settlement agreement states Copeland's request was for a dismissal with prejudice.

2. The Promissory Note

On July 26, 2013 Merriman signed a promissory note in which she agreed to pay Copeland \$35,000 in monthly installments of \$250. Payments were to start July 15, 2013 and end March 15, 2025 with no interest owed or accruing. The promissory note contained provisions regarding late fees, prepayment, default, governing law and other standard terms. The note did not refer in any way to Copeland's then-pending lawsuit.

3. The Motion To Enforce Settlement

According to Copeland, beginning in July 2014 Merriman ceased paying the monthly installments due under the promissory note. Unable to reach Merriman directly, Copeland filed a motion in the dismissed action pursuant to section 664.6 to enforce what he described as the settlement agreement between the parties. In support of the motion Copeland submitted the promissory note and a letter from Merriman dated May 15, 2014 in which she stated she was vacating the Torrance property and sought to have her security deposit applied to payments due under the promissory note. Although his

memorandum of points and authorities asserted the promissory note was executed as part of an agreement to resolve his lawsuit, Copeland did not file a declaration with his motion or any other evidence of a settlement agreement between the parties.

Merriman filed no opposition to Copeland's motion.

4. *The Trial Court's Order*

The trial court ruled Copeland's request for dismissal with prejudice in 2013 deprived the court of jurisdiction over the motion to enforce. The court also found Copeland's motion, premised on a promissory note that did not refer to the underlying litigation, was not supported by evidence the parties had entered into a settlement agreement. Finally, the court ruled Copeland had failed to submit a proper proof of service showing Merriman was timely served with the motion to enforce.

DISCUSSION

1. *Governing Law and Standard of Review*

Section 664.6 contains two substantive provisions.¹ It permits the court, upon motion, to enter judgment pursuant to the terms of a settlement agreement: "Section 664.6 creates . . . a summary procedure for specifically enforcing certain types of settlement agreements by converting them into judgments." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 797.) Section 664.6 also authorizes the court to retain jurisdiction to enforce the settlement until full performance of its terms if requested by the parties. However, there must be an express agreement that conforms to the requirements of that provision—that is, it must be made by the parties themselves either in a writing they have signed or orally before the court. (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440 ["the second sentence of section 664.6 must be read to have equal dignity with the first sentence"; "a request that jurisdiction be retained until the

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."

settlement has been fully performed must be made either in a writing signed by the parties themselves, or orally before the court by the parties themselves”).)

Because the interpretation of section 664.6 and its application to the undisputed facts in this case are questions of law, we review the trial court’s decision denying Copeland’s motion de novo. (*Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 437; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 491; *Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1162.) Since Merriman filed no respondent’s brief, we decide Copeland’s appeal on the record, the opening brief and oral argument by Copeland. (Cal. Rules of Court, rule 8.220(a)(2).)

2. *The Trial Court Properly Denied Copeland’s Motion To Enforce the Settlement*

Again representing himself, Copeland argues on appeal the trial court erred in ruling it had no jurisdiction over his motion because section 664.6 requires only that the parties request jurisdiction and does not give the court discretion to deny that request. Although Copeland’s contention may be correct if the parties have properly invoked the court’s continuing jurisdiction under section 664.6, several fatal deficiencies in his motion and supporting evidence fully justified the court’s order denying it for lack of jurisdiction.²

First, although Copeland asserts Merriman agreed to pay him \$35,000 in return for the dismissal of his lawsuit for back rent, he presented no evidence there was, in fact, a settlement agreement to be enforced, as the trial court ruled, an essential element of a motion under section 664.6. (See *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 994 [“[i]n acting upon a section 664.6 motion, the trial court must determine whether the parties entered into a valid and binding settlement of all or part of the case”]; see also *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360 [“[i]t is for the trial court to determine in the first instance whether the parties have entered into an enforceable”).) The promissory note Copeland submitted with his motion may be a legally enforceable

² Because we affirm the trial court’s order denying the section 664.6 motion for lack of jurisdiction, we do not address the issue of improper service.

document, but it is not a settlement agreement. To enforce the note, Copeland must file a new lawsuit. (See *Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 441 [court’s lack of continuing jurisdiction to utilize section 664.6 does not preclude a party’s enforcement of a settlement agreement by means of a separate action]; see also *Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1011.)

Second, nothing in the record established, or even suggested, that Merriman had agreed, either in writing or orally before the court, for the court to enter judgment based on her apparent agreement to pay \$35,000 to Copeland, let alone to ask the court to retain jurisdiction to enforce her obligation to make monthly payments into the future, an additional prerequisite for a successful section 664.6 motion. (See *Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 440 [request to retain jurisdiction must be made by the parties themselves and either in a writing signed by the parties or orally before the court].)

Third, once the trial court dismissed Copeland’s lawsuit, its jurisdiction over the parties ended. (*Hagan Engineering, Inc. v. Mills, supra*, 115 Cal.App.4th at p. 1007 [“The dismissal with prejudice of the lawsuit deprived the superior court of subject matter jurisdiction. Absent a pending lawsuit, a court cannot issue judgments or orders. . . . A dismissal terminates an action”].) Thus, even if there were a settlement agreement between Copeland and Merriman and the parties had requested in writing that the court retain jurisdiction to enforce its unfulfilled terms, that request had to be presented to the court before the dismissal was entered. (*Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 440 [a request for the court to retain jurisdiction to hear and decide a section 664.6 motion for enforcement of a stipulated settlement after a dismissal has been entered must be made “during the pendency of that litigation . . . ‘the court cannot “retain” jurisdiction it has lost”]; see *Hagan Engineering, Inc.* at p. 1011 [“[b]ecause the court was not presented with any request to retain jurisdiction, jurisdiction was not retained”].) No such pre-dismissal request was made in this case.

DISPOSITION

The order denying the motion to enforce settlement is affirmed. Copeland is to bear his own costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

KEENY, J.*

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