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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Mono)

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ANTONY P. DETHLOFF,

Plaintiff, Cross-defendant and  
Appellant,

v.

KRUMP CONSTRUCTION, INC.,

Defendant, Cross-complainant and  
Respondent.

C069381

(Super. Ct. No. 15835)

After opening statements in the trial of this construction dispute, the parties announced they had reached a stipulation “to resolve this matter” and placed on the record their stipulation that each party was damaged on its respective breach of contract claim, resulting in a “net award” to defendant of \$2.2 million. In response to the trial judge’s questions, the parties characterized their agreement as a stipulation “[t]o a judgment as to the principal amount of damages,” plus a possible attorney fees award.

Notwithstanding the stipulation, plaintiff's counsel asserted moments later that defendant is entitled to no damages because it had failed to prove its compliance with the licensing requirements of the Contractors' State License Law. (CSLL; Bus. & Prof. Code, § 7000 et seq.)<sup>1</sup> The trial court rejected plaintiff's argument and found that there had "been a stipulation for judgment" in defendant's favor; it excused the jury and entered judgment in defendant's favor.

Plaintiff appeals from the judgment and contends (among other things) that the court erred in construing the parties' stipulation as an agreement for judgment, and plaintiff "properly and timely" raised the issue of defendant's licensure in the trial court.

There was no error. We shall affirm the judgment.

## **BACKGROUND<sup>2</sup>**

### **Underlying Dispute and Prior Appeal**

Metco Engineering & Construction (Metco) entered into a subcontract with defendant Krump Construction, Inc. (Krump), in October 2005 to perform work on a condominium project in Mammoth Lakes (the contract), at a contract price exceeding \$4 million. Metco contracted to provide (among other things) site work, concrete and rebar, framing, and sheeting for the project. Plaintiff Antony P. Dethloff signed the contract on behalf of Metco.

A dispute between the parties arose after work under the contract began. Dethloff (as an individual doing business as Metco) sued Krump for breach of contract and to recover the reasonable value of work under a theory of quantum meruit, claiming damages in excess of \$974,466. Krump answered and admitted that the reasonable value of the work rendered by Dethloff on the project was \$974,466 (though it denied

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<sup>1</sup> Undesignated statutory references are to the Business and Professions Code.

<sup>2</sup> We take some of the following facts from our nonpublished opinion in an earlier appeal in this case. (*Dethloff v. Krump Construction, Inc.* (Jan. 15, 2010, C059798).)

Dethloff's contract claim in that amount). Krump also cross-complained for breach of contract.

In answer to the cross-complaint, Dethloff raised as an affirmative defense that Krump is barred from any recovery for its failure to comply with the CSLL's requirements regarding contractor licensure.

Krump moved for summary judgment on the grounds that Metco is not a licensed contractor and, pursuant to the CSLL, is precluded as a matter of law from maintaining any action for contracting work performed. The trial court agreed and granted summary judgment in Krump's favor. It reasoned that because Dethloff (as an individual) held the valid contractor's license in the name of Metco rather than in his own name, Dethloff could not bring an action to recover under the subcontract.

Dethloff appealed, and this court reversed the summary judgment and remanded the matter. (*Dethloff v. Krump Construction, Inc., supra*, C059798.)

### **The Stipulation**

Trial began. The parties made their motions in limine, chose a jury, and made their opening statements on their respective breach of contract claims.

When the parties and counsel reconvened after opening statements, the following colloquy occurred outside the presence of the jury (which, in light of the contentions on appeal, we quote extensively):

“The Court: . . . I've had discussions with counsel, which leads meto [*sic*] believe that there may be a stipulation to resolve this matter. Is that correct?

“[Krump's Counsel]: That's correct, Your Honor.

“[Dethloff's Counsel]: Yes.

“The Court: Very well. If you would please state. [*Sic.*] Your agreement for the record.

“[Dethloff’s Counsel]: The parties stipulate that Krump was damaged, on its breach of contract claim, in the amount of \$3,200,000. Metco is damaged, on its breach of contract claim, in the amount of \$974,466. Net award to Krump is \$2,225,534.

“The Court: Very well. And that’s the agreement of[] the parties?

“[Krump’s Representative]: That’s correct, Your Honor.

“Mr. Dethloff: That is correct, Your Honor.

“The Court: Mr. Dethloff, you’ve heard what your[] attorney’s told me. You’re in agreement with this?

“Mr. Dethloff: Yes.

“The Court: And I take it the representative from[] Krump Construction is also in agreement with this . . . ?

“[Krump’s Representative]: Yes, I am.

“The Court: Very well. If that’s the agreement of the parties, the Court will accept that stipulation for judgment in this matter and --

“[Dethloff’s Counsel]: I didn’t say judgment. He wants to do a cost bill. I’m sure his attorney’s fees are two hundred grand.

“The Court: I thought this was a stipulation.

“[Krump’s Counsel]: It is a stipulation, Your Honor.

“The Court: To a judgment as to the principal amount of damages.

“[Krump’s Counsel]: Right. We will submit a judgment in that amount and no more, Your Honor.

“[Dethloff’s Counsel]: I’m just stipulating to that. I want to see his cost bill. I’m curious. His attorney’s fees.

“[Krump’s Counsel]: I’ll tell him our cost bill but I’m not going to submit it to the Court, Your Honor, under the stipulation. I think this resolves the matter fairly and accurately.

“The Court: Very well. Which party’s going to prepare the judgment?

“[Krump’s Counsel]: I will prepare the judgment and make sure that [Dethloff’s counsel] sees it and agrees that it’s --

“[Dethloff’s Counsel]: Fine. One final thing, though. I need to see your papers. The papers.

“[Krump’s Counsel]: The papers? I’m not sure what you mean.

“[Dethloff’s Counsel]: I’ve asked you six times, formally in writing, for the papers.

“[Krump’s Counsel]: What papers?

“[Dethloff’s Counsel]: Your Honor --

“The Court: Now I’m confused because I thought we had a stipulation for judgment.

“[Dethloff’s Counsel]: To ski the mountain you need a lift[] ticket. Right. I’ve asked six different times, in writing, for the original certificate of licensure from Krump.

“The Court: Wait a minute. We either have a deal or we don’t.

“[Dethloff’s Counsel]: No. We have stipulation. It’s been stipulated to. The parties have been asked, that’s the stipulation. You accepted it.” But, he argued, the parties’ agreement was only to a “stipulation,” not to a “judgment.”

In fact, Dethloff argued, Krump is not entitled to judgment in its favor “as a matter of law” because it failed to plead and prove it is licensed under the CSLL and Krump’s damages thus “don’t exist as a matter of law.”

Apparently confused, Krump’s counsel offered to put on evidence that Krump is a licensed contractor, “[b]ut I don’t think there’s any need to because I think the case is resolved. I think that’s what the stipulation was.”

The trial court agreed and expressly found that there had been a stipulation for judgment.

Dethloff then moved for nonsuit on the issue of Krump’s failure to prove it was a licensed contractor. He also sought to introduce into evidence his own certificate of

licensure. The trial court refused Dethloff's offer to prove his own licensure, noting that it was "not accepting any further evidence in this case." The court excused the jury.

Thereafter, the court admitted into evidence a handwritten note from Dethloff's counsel to Krump's counsel:

"Tim:

"We want to go home, you win.

"Chuck

"The parties stipulate that:

"Krump was damaged on its breach of contract claim in the amount of \$3,200,000.00.

"Metco was damaged on its breach of contract claim in the amount of \$974,466.00.

"Net award to Krump is \$2,225,534.00.

"So stipulated."

### **Posttrial Motion**

Dethloff moved to vacate the judgment on the grounds that (1) the parties' agreement did not represent a stipulation for entry of judgment, but only a stipulation of proof as to damages, and (2) because Krump failed to prove it was a duly licensed contractor, it cannot recover any damages. (Code Civ. Proc., §§ 663, 663a.)

At the hearing, Krump offered to produce a certificate showing its licensure status, and the trial court agreed to continue the hearing so that it could do so. Dethloff argued it was "unfair" to allow Krump to present the certificate, which "wasn't presented at the time[] it was controverted, at trial," because evidence of Krump's licensure "would have changed the entire stipulation, the entire mode of how my client put on its case, the entirety of everything."

The trial court disagreed. "I disagree with you that it's unfair. What's unfair is to proceed as you have with trial by ambush. [¶] You had every opportunity to raise the

licensure issue in pretrial motions. You could have brought a motion for summary adjudication or summary judgment that would have raised the issue. You could have given notice. And you could have raised it as a trial issue in any pretrial matter and you never did. [¶] You never said a word in your opening statements about Krump’s licensure. So there was no issue for the jury to determine with regard to licensure.”

Pending continuation of the hearing so that Krump could produce its certificate of licensure, Dethloff filed a notice of appeal from the judgment and withdrew the motion to set aside the judgment, arguing (among other things) that the trial record is “closed” and Krump should not be allowed to file evidence of licensure.

Krump nonetheless served on Dethloff a certificate showing it was a licensed general contractor in California during the relevant periods.

### **DISCUSSION**

Although Dethloff raises a number of claims of error, the threshold question on appeal is whether the trial court correctly determined that the parties intended to resolve the jury trial in which they were engaged, not merely to circumvent the need for presenting evidence on the question of damages.

A stipulation is a contract and is sometimes said to be governed by the usual rules of construction of other contracts. (*Winograd v. American Broadcasting Co.* (1996) 68 Cal.App.4th 624, 632 (*Winograd*); see also *Sy First Family Ltd. Partnership v. Cheung* (1999) 70 Cal.App.4th 1334, 1341 and cases cited therein.) A contract must be interpreted so as to give effect to the mutual intent of the parties. (Civ. Code, § 1636.) But the terms of a stipulation, like any contract, “are determined by objective rather than by subjective criteria. The question is what the parties’ objective manifestations of agreement or objective expressions of intent would lead a reasonable person to believe.” (*Winograd*, at p. 632; see *Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 184-185.) “ ‘The parties’ undisclosed intent or understanding is irrelevant to contract

interpretation.’ [Citation.]” (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 980 (*Cedars-Sinai*).

When, as here, the trial court has resolved a disputed factual issue in the course of interpreting a stipulation between the parties, appellate courts review the ruling according to the substantial evidence rule. If the trial court’s resolution of the factual issue is supported by substantial evidence, it must be affirmed. (*Winograd, supra*, 68 Cal.App.4th at p. 632.)

Based on the parties’ objective manifestations of agreement and expressions of intent, a reasonable person could draw only one conclusion: that the parties intended their “stipulation” to resolve the pending case in its entirety and to allow judgment to be entered according to its terms. The parties agreed that there was “a stipulation to resolve this matter” that would result in a “[n]et award” to Krump. When the court announced it would “accept that stipulation for judgment in this matter,” Dethloff’s counsel agreed he was “stipulating to that” and only questioned whether the stipulation for judgment would include Krump’s costs. When Krump’s counsel announced he would “prepare the judgment,” Dethloff’s counsel agreed that was “[f]ine.”<sup>3</sup> The record thus contains substantial evidence that could lead a reasonable person to construe the parties’ agreement as a stipulation for judgment. (Cf. *Winograd, supra*, 68 Cal.App.4th at p. 632; see also *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911 [when a judge interprets and applies a stipulation under Code of Civil Procedure section 664.6, the governing standard of review is substantial evidence].) At no time prior to the exchange set forth above did either party suggest that theirs was a stipulation as to amount of damages only, or an

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<sup>3</sup> In his reply brief, Dethloff suggests his counsel might, in making this response, have been thinking to himself, “‘fine,’ [go ahead and prepare your fantasy judgment and let me see it][.]” (First set of brackets in original.) It is this sort of “‘undisclosed intent or understanding [that] is irrelevant’” to the interpretation of the stipulation. (Cf. *Cedars-Sinai, supra*, 137 Cal.App.4th at p. 980.)

agreement only to limit the scope of the issues remaining for trial. (Cf. *Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 733.) Rather, the trial court repeatedly used the word “judgment,” and the parties did not contradict it. Under the circumstances, it was not necessary that the stipulation itself use the words “judgment” or “settlement.”

The trial court does not appear to have relied upon the only extrinsic evidence of the parties’ negotiations, i.e., a single sheet of hotel stationery on which appear the handwritten settlement terms and Dethloff’s counsel’s message, “We want to go home, you win.” Consideration of the extrinsic evidence, however, would have reinforced the only plausible interpretation of the stipulation: that the parties intended to resolve the case in its entirety by stipulating to entry of judgment, allowing Krump to “win.”<sup>4</sup>

But Dethloff’s counsel’s handwritten words to Krump’s attorney when he broached the stipulation proposal -- “We want to go home, you win” -- *are* relevant to our assessment of whether Krump reasonably understood Dethloff’s proposal to “determine all rights of the parties” or merely to “narrow[] the range of litigable issues.” Nothing about that sentence suggests Dethloff intended to require Krump to produce evidence of licensure. Indeed, the note’s proposal that the case promptly resolve with a “win” by Krump -- with no reservation for the presentation of evidence -- represents an “objective expression” which would reasonably lead Krump to believe that, by accepting,

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<sup>4</sup> Having concluded that the parties intended to stipulate to the resolution of the case in its entirety, we nonetheless refuse Krump’s invitation to dismiss the appeal on the theory that one who has consented to judgment cannot challenge it on appeal. The case relied upon by Krump, *Hibernia Savings and Loan Society v. Waymire* (1907) 152 Cal. 286, 287, is not on point because it dealt with a written waiver of the right to appeal, and we are more persuaded by authorities that “any waiver of the right to appeal must be clear and express” (*Guseinov v. Burns* (2006) 145 Cal.App.4th 944, 952 and cases cited therein; see also *Pangborn Plumbing Corp. v. Carruthers & Skiffington* (2002) 97 Cal.App.4th 1039, 1046, fn. 3 [a judgment enforcing a settlement agreement is appealable]).

it would be entering a stipulation for judgment. (See *Winograd, supra*, 68 Cal.App.4th at p. 632.)

Having concluded the trial court correctly determined the parties stipulated to resolve the case, we also conclude there was no need thereafter for Krump to put on any evidence to demonstrate it had complied with the licensing requirements of the CSLL. Generally, the CSLL requires all persons engaged in the business or acting in the capacity of a contractor to be licensed. (§ 7026.) Its primary enforcement mechanism is section 7031, subdivision (a), which provides that “no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person . . . .” If licensure (or proper licensure) is controverted, then “proof of licensure . . . shall be made by production of a verified certificate of licensure from the Contractors’ State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action” and “the burden of proof to establish licensure or proper licensure shall be on the licensee.” (§ 7031, subd. (d).) Read together, subdivisions (a) and (d) of section 7031 provide that the contractor must plead licensure, and if licensure is “controverted,” it must also prove licensure by producing a verified certificate.<sup>5</sup>

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<sup>5</sup> We disagree with the trial court that Dethloff failed to controvert Krump’s licensure because he did not raise the issue by pretrial motion; it was sufficient that Dethloff raised it as an affirmative defense to Krump’s cross-complaint. (See *Advantec Group, Inc. v. Edwin’s Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 629-630 and cases cited therein)

Dethloff insists he “did not waive the right to demand that Krump comply with section 7031.” But neither did he reserve it when he stipulated to resolve the case, or otherwise manifest any outward sign after the stipulation that he intended to require trial on his affirmative defense of Krump’s failure to comply with the licensing requirements of the CSLL. As we have explained, the question here “is what the parties’ objective manifestations of agreement or objective expressions of intent would lead a reasonable person to believe” (*Winograd, supra*, 68 Cal.App.4th at p. 632), not what his “ ‘undisclosed intent’ ” might be (*Cedars-Sinai, supra*, 137 Cal.App.4th at p. 980). It is immaterial that Dethloff apparently secretly intended to require Krump, the cross-complainant, to produce evidence of its licensure out of regular trial order or be forever precluded from doing so.<sup>6</sup> Dethloff admits he “prepared [his] written motion for nonsuit” on the grounds of nonlicensure before entering into the stipulation, and effectively kept it under wraps until he had induced Krump to enter into the stipulation by leading Krump and the court to believe Dethloff intended to resolve the case without any presentation of evidence.

Dethloff insists it is never too late -- even on appeal -- to assert that the parties’ contract was illegal because Krump was not a licensed contractor. But neither the case he cites, *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, nor the authority upon which that case relies for support (*id.* at pp. 148-149) involves a purported challenge to

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[nonlicensure may be raised as an affirmative defense or by the denial of a complainant’s allegation of proper licensure].)

<sup>6</sup> Dethloff argues that because “Krump has had one fair adversary hearing on the issues, Krump should be precluded from again drawing the license issue into controversy . . . .” In our view, Krump has not had a fair adversary hearing on the issue of its licensure, and Dethloff’s posttrial tactics are more evidence of that: Dethloff withdrew his motion to set aside the judgment and filed the notice of appeal in an effort to prevent the trial court from admitting any evidence of Krump’s licensure, so that this court would take no notice of the fact on appeal.

licensure after the parties stipulated to resolve the case. By doing so, Dethloff impliedly agreed to release Krump from its obligation to produce any evidence, and Krump had no further obligation to plead and prove it was a duly licensed contractor.

**DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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BLEASE, J.

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HULL, J.