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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAROSH PHARAD IRANI,

Defendant and Appellant.

D060541

(Super. Ct. No. SCD230353)

APPEAL from a judgment of the Superior Court of San Diego County,
Laura W. Halgren, Judge. Judgment affirmed.

Sarosh Pharad Irani pleaded guilty to grand theft. The trial court sentenced him to three years of probation on the condition that he serve 270 days in jail and ordered him to pay restitution. Irani contends the trial court should have subtracted the amount paid by the victim's insurance company and considered the victim's settlement of a civil action as foreclosing any criminal restitution. We reject his contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

While serving as controller for General Coatings Corporation (GCC), Irani embezzled \$237,725.21 in stolen payroll checks. GCC and its insurer, Hartford Fire Insurance Company (Hartford), filed a civil action against Irani which was stayed pending the outcome of the criminal proceedings. GCC, Hartford and Irani settled the civil action. The settlement agreement provided that Irani would pay GCC and Hartford \$75,000 in full satisfaction of the action and that he would be discharged "from any and all past, present or future claims, demands, obligations, causes of action, expenses and compensation of any nature whatsoever which are known or by reasonable investigation should be known, in any way related to" his employment at GCC.

Hartford paid GCC \$243,459.18 to cover its losses. As part of his plea bargain, Irani agreed to pay \$75,000 in restitution. He submitted a check in that amount to the district attorney with the understanding that further restitution would be determined at a later date. At a restitution hearing, the court heard argument regarding the impact of the settlement agreement on criminal restitution.

The trial court concluded that Irani was entitled to credit for the \$75,000 payment, but that the settlement agreement did not bar the People from seeking criminal restitution. The trial court noted that if Irani paid any additional money to GCC, there might be an argument that GCC was receiving "unjust or double recovery. It doesn't preclude [Hartford] from seeking subrogation or indemnification from [GCC] if [GCC] receive[s] more than what [its] losses were.

So that's an issue between Hartford and [GCC], but that's not an issue for the court." The parties then stipulated, without waiving Irani's right to appeal the court's ruling regarding the effect of the settlement agreement, to \$297,479.05 in criminal restitution payable to GCC, with credit for the \$75,000 already provided. The trial court reiterated that Hartford could seek subrogation from GCC. Irani timely appealed.

DISCUSSION

Irani contends that the trial court erred in ordering any additional criminal restitution because (1) GCC suffered no economic loss, and (2) the settlement agreement he reached with GCC and Hartford in the civil lawsuit precludes GCC from collecting anything above the \$75,000 he paid under that agreement. We address each argument in turn after reviewing the general legal principles governing criminal restitution.

In California, crime victims have the constitutional right to restitution for losses resulting from criminal acts against them. (Cal. Const., art. I, § 28, subd. (b).) "When probation is *granted* to a defendant, [Penal Code] sections 1203.1 and 1203.04 govern restitution imposed as a condition of probation." (*People v. Foster* (1993) 14 Cal.App.4th 939, 949, superseded by statute on other grounds as noted in *People v. Sexton* (1995) 33 Cal.App.4th 64, 70, *Sexton* overruled on another ground in *People v. Birkett* (1999) 21 Cal.4th 226, 247.) (Undesignated statutory references are to the Penal Code.) In both sections 1203.1 and 1202.4, restitution

serves the dual purpose of criminal rehabilitation and victim compensation. (*People v. Anderson* (2010) 50 Cal.4th 19, 29.)

We review the restitution order for an abuse of discretion. (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) "A trial court abuses its discretion when it determines [a restitution] award amount using other than 'a rational method that could reasonably be said to make the victim whole' or when an award is arbitrary or capricious." (*People v. Draut* (1999) 73 Cal.App.4th 577, 582, italics deleted.) "We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citations.]" (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.)

Irani points out that at the time of the restitution hearing, he had already paid \$75,000 to GCC and Hartford had paid \$243,459.18 to GCC, for a total of \$318,459.18, which exceeds the stipulated restitution amount of \$297,479.05. Thus, he claims GCC suffered no economic loss and the trial court abused its discretion by requiring him to pay any further criminal restitution. We reject his contention.

"A restitution order has objectives beyond simply indemnifying the victim. It also seeks to rehabilitate the defendant and deter defendant and others. [Citation.]" (*People v. Bernal* (2002) 101 Cal.App.4th 155, 161–162 (*Bernal*).) Here, GCC suffered an economic loss. Although GCC subsequently received payments from Irani and Hartford to cover this economic loss, Irani presented no authority showing that the timing of these payments has any impact on his

obligation to pay criminal restitution. Rather, the question presented is whether Irani is entitled to an offset for these payments. Although Irani attempts to couch his argument in a way that avoids arguing entitlement to an offset, stripped to its essence, Irani's argument turns on whether he is entitled to an offset for these payments. Here, the trial court properly allowed an offset for the \$75,000 payment that Irani made to GCC. Thus, we address whether Irani is entitled to an offset in the amount of the insurance payment made by Hartford.

When a crime victim has obtained a settlement payment from a company that insured the defendant for civil liability, the amount of the restitution order in a criminal action must be offset by money paid to the victim by the insurance company. (*Bernal, supra*, 101 Cal.App.4th at pp. 165–168.) The relationship between the defendant and the insurance company is such that the victim is deemed to have received the civil settlement payment "'directly from the defendant'" within the meaning of section 1202.4, subdivision (a)(1). (*Bernal*, at p. 168.) The rule is that the defendant receives credit for items of economic loss included in a restitution order only to the extent that the defendant or the defendant's insurer has paid those economic losses in payment of the judgment in, or in settlement of, the civil action. (*Id.* at pp. 165–168; *People v. Jennings* (2005) 128 Cal.App.4th 42, 53–57; *People v. Short* (2008) 160 Cal.App.4th 899, 905 (*Short*).

Irani's reliance on *Short* for the proposition that he is entitled to an offset because GCC purchased the insurance to cover acts of its employees is misplaced. In *Short*, a settlement payment by the insurer for defendant's employer was required

to be offset from the restitution award where payment was on behalf of defendant as an unnamed insured driving the employer's insured vehicle. (*Short, supra*, 160 Cal.App.4th at pp. 902–905.) Critically, in *Short*, the defendant was considered a member of the class of insureds covered under his employer's policy, even though he was not actually named therein. (*Id.* at p. 905.) Here, however, Irani presented no argument that he is a member of the class of insureds under GCC's insurance policy with Hartford. Rather, payments to a victim by the victim's own insurer as compensation for economic losses attributed to a defendant's criminal conduct will not offset a defendant's restitution obligation. (*People v. Hume* (2011) 196 Cal.App.4th 990, 999–1000; *People v. Hamilton* (2003) 114 Cal.App.4th 932, 935; *People v. Hove* (1999) 76 Cal.App.4th 1266, 1272.)

We next consider the impact of the global settlement Irani entered into with GCC and Hartford. Irani concedes that he cannot be released from his obligation to pay restitution to the state. He contends, however, that the global settlement he entered into with GCC and Hartford precludes GCC from collecting anything above the \$75,000 he paid pursuant to that agreement because GCC has no remaining economic loss and any additional criminal restitution he paid would be a windfall to GCC. He also asserts that GCC would be put in a position of breaching the settlement agreement if it accepted any further payment from him.

A victim is not a party to a criminal action (*People v. Pitts* (1990) 223 Cal.App.3d 606, 872), and "a release by the victim cannot act to release a defendant from his financial debt to the state any more than it could terminate his prison

sentence." (*Bernal, supra*, 101 Cal.App.4th at p. 162.) Thus, the settlement agreement does not reflect the People's willingness to accept no restitution "in satisfaction of [Irani's] rehabilitative and deterrent debt to society." (*Ibid.*)

We reject Irani's argument that the trial court abused its discretion in ordering additional restitution because the criminal restitution order results in a windfall to GCC. Restitution is available "regardless of that victim's reimbursement from other sources." (*People v. Birkett, supra*, 21 Cal.4th at p. 246; see also *People v. Hamilton, supra*, 114 Cal.App.4th at p. 944; § 1202.4, subd. (f)(2).) Additionally, "[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Moreover, "a third party source which has reimbursed a direct victim for his or her loss may pursue its civil remedies against the victim or perpetrator. '[T]he possibility that the victim may receive a windfall because the third party fails to exercise its remedies does not diminish the victim's right to receive restitution of the full amount of economic loss caused by the perpetrator's offense.' [Citation.]" (*People v. Hume, supra*, 196 Cal.App.4th at p. 996, italics deleted.) Here, as the trial court noted, Hartford is entitled to seek its civil remedies, if any, from GCC. (*Ibid.*; *People v. Birkett, supra*, 21 Cal.4th at p. 246.) Finally, the issue whether GCC would be in breach of its settlement agreement with Irani if it accepted any further payment from him is not properly before us.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.