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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ALBERTO LANDIN, JR., et al.,

Plaintiffs and Respondents,

v.

LUIS BARQUERO et al.,

Defendants and Appellants.

E056293

(Super.Ct.No. RIC501383)

OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia and Gary B. Tranbarger, Judges. Affirmed with minor modifications.

The Law Office of Curtis W. Herron and Curtis W. Herron, for Defendants and Appellants.

No appearance for Plaintiffs and Respondents.

Plaintiffs and respondents Alberto Landin, Jr., and Karla Guerrero-Landin filed an action below against defendants and appellants Luis Barquero, Pedrina Barquero,¹ Jennifer Barquero, and Zoila Rose Vega,² alleging causes of action for injunctive relief (stay-away orders), intentional and negligent infliction of emotional distress, and conspiracy, arising out of alleged harassment of plaintiffs by the defendants. The parties had a settlement conference in 2009, and the trial court put the terms on the record. However, when plaintiffs moved in 2012 to enforce the agreement, a dispute arose: defendants objected to enforcement on the ground that they never agreed to the specific term being enforced. That is, the agreement as announced by the court was for a different (greater) stay-away distance from the distance the parties had agreed to during settlement negotiations. The trial court determined that defendants had, in fact, agreed to the stay-away distance as announced by the court in 2009, and enforced the agreement as announced. Defendants now appeal. With a minor modification, we affirm.

¹ Erroneously sued as Patrina Barquero, hereinafter referred to as Pedrina Barquero.

² Ms. Vega is referred to as Zoila Rose Vega, as well as Zoila Rosa Vega.

FACTS AND PROCEDURAL HISTORY

Background

Plaintiff Alberto Landin, Jr. (Alberto),³ is the father of a minor child, C. Defendant Jennifer Barquero (Jennifer) is the minor child's mother. Alberto and Jennifer are not married; Alberto is married to plaintiff Karla Guerrero-Landin (Karla). Defendants Luis Barquero (Luis) and Pedrina Barquero (Pedrina) are the parents of Jennifer, and the grandparents of the minor child. Defendant Zoila Rose Vega is the sister of Luis.

In 1999, Jennifer attempted to kill the minor child by stabbing her in the throat, cutting her wrists, and giving her poison. The minor child was taken into protective custody by Children's Protective Services in Los Angeles County, and juvenile proceedings were opened in Los Angeles County, where all the pertinent parties lived at that time. Criminal proceedings were also filed against Jennifer. Jennifer was held criminally liable for her conduct and sentenced to prison for eight years.

In March 2001, in an exit order from the juvenile dependency court, Alberto was given sole legal and physical custody of the minor child. The maternal grandparents, Luis and Pedrina, were given monitored visitation rights.

The juvenile court had entered "no contact" orders, which remained in effect at all the relevant times, ordering all parties not to allow Jennifer to have contact with the

³ Because the parties include more than one person with the same surnames, we will refer to individuals by their first names for clarity and convenience. No disrespect is intended.

minor child, including ordering the parties not to give or show any photographs, letters, or other information about Jennifer to the minor child.

In February 2003, grandparents Luis and Pedrina petitioned the Los Angeles Superior Court for an order to show cause (OSC) for unmonitored visits with the minor child. Alberto opposed, requesting that visitation with the grandparents be terminated. Alberto contended that the grandparents, in violation of the court order, had used their monitored visitation to tell the minor child about Jennifer, and even allowed telephonic contact between Jennifer and the minor child. The court found that it would be in the best interest of the child to terminate visitation with the grandparents. The grandparents appealed, but the appellate court upheld the order terminating the grandparents' visitation.

In pursuing these actions, Luis and Pedrina made clear that they intended to "keep the matter alive," so that Jennifer would be able to pursue contact with the minor child after her release from prison. Jennifer herself, even before her release from custody, petitioned the Los Angeles court for permission to have contact with the minor child, by sending written materials or by telephone. The court denied this request.

In November 2004, the parties stipulated to a restraining order, in anticipation of Jennifer's release from prison. Jennifer was to have no contact with the minor child and was to stay 100 yards away from the minor child. Jennifer was released from custody in March 2005. She then renewed her petition for contact with the minor child. The court denied this request.

In May 2006, Alberto and Karla filed a petition for a stepparent adoption; the petition also sought termination of Jennifer's parental rights to the minor child. The stepparent adoption was filed in Riverside County; Alberto and Karla had moved there with the minor child in 2002. The trial court ordered Jennifer's parental rights terminated, and approved the stepparent adoption of the minor child by Karla.⁴

One of the requirements of the restraining order was that Alberto's and Karla's address be kept confidential from Jennifer, Luis and Pedrina. However, the attorney for defendants transmitted a document to Luis and Pedrina which revealed the confidential address. Alberto and Karla saw Pedrina and Jennifer drive past their house in Riverside County; this was a violation of the restraining order and of Jennifer's conditions of parole. Alberto and Karla complained to authorities, but nothing was done.

In June 2008, Alberto and Karla first became aware that Luis and Pedrina were moving into a home on the same street, five lots away, as their own residence. The property was purchased in the name of defendant Zoila Rosa Vega. Luis and Pedrina are real estate agents; Alberto and Karla believed the purchase of the property in the name of Luis's sister was to conceal that Luis and Pedrina were the real owners. Alberto and Karla also believed that Jennifer was attending college and living with her parents, and that she would therefore also be occupying the house, all in an effort to circumvent the restraining orders.

⁴ Although Jennifer appealed the termination of her parental rights, the appeal was eventually dismissed as abandoned. (*In re C.L.* (Mar. 27, 2009, E045122 [nonpub. opn.]); order of dismissal.)

The Action Below

Alberto and Karla filed an action below in June 2008, for injunctive relief, and for damages for intentional infliction of emotional distress, negligent infliction of emotional distress, and conspiracy, all relating to the persistent stalking, violation of restraining orders, and attempts to maintain contact with the minor child. A year later, in June 2009, the parties attended a settlement conference before Judge Tranbarger. Apparently, Luis, Pedrina and Jennifer were not, at that time, actually occupying the house near plaintiffs' home, because it had been damaged by fire.

The court outlined the terms of the agreement, which had been reached in chambers: the house had been damaged by fire and was not habitable. Luis and Pedrina were undertaking repairs. The completion of repairs would be indicated by a certificate of occupancy from the city. Once the city had issued a certificate of occupancy, Luis and Pedrina could occupy the house for up to 90 days. They agreed to use their best efforts to sell the house. If it could not be sold, then it could be rented. But upon either the sale or the expiration of 90 days, they could no longer occupy the house. In exchange for a dismissal of the suit for injunctive relief and emotional distress damages, the court would issue an injunction, effective for three years, for defendants to stay away from plaintiffs' residence.

At this point, the court noted that it would make the stay-away distance provided in the injunction 1,000 feet, rather than 200 feet as the parties had discussed in chambers, "[s]o it will definitely include that house. You'll have to be out of that house and not return to that house. You can still be the owner, but no member of the family can be

there within a thousand feet at the 90 days. That will be by an agreement that you'll be asked to sign agreeing to that injunction. And as part of that agreement, the entire case will be dismissed."

Jennifer was not subject to the injunction, but the court cautioned her that, "you'll have no reason to go to the house, and of course, you know that if [you] do go to the house or nearby, we'll be back here with another lawsuit, and that won't do anyone any good." Defense counsel brought up the distance requirement: "I had discussed the three-year injunction being a distance of 200 feet." The court responded that "It's going to be 1,000 feet," but indicated that he would get defendants' assent to the injunction agreement. Luis also raised the question, "We were talking [about] 200 feet, not 1,000?" The court explained: "Well, during the 90 days, it's 200 feet when you come to and from the house to the other direction. That's fine. But we're talking about after that 90 days, we're anticipating that you're gone. You're going [to] move out. And it's just giving assurance to the Landins, that, yes, you're going to be moving out. You're not going to come back to the neighborhood."

Defense counsel was concerned that Luis and Pedrina would not be able to go to the house while it was on the market. "[T]he practical problem [is] that he . . . now has a house on the market that he can't go to." The court asserted that "He can go [to] it for 90 days, after it becomes habitable. He can go to it right now . . . [t]o supervise construction. That's all fine. The 200 doesn't become a thousand until after the 90-day period. Then it becomes a thousand."

Counsel raised the further objection that a nearby shopping mall was within 1,000 feet of the plaintiffs' residence. Upon determining that the mall was about 500 feet away from the plaintiffs' residence, the court modified the intended injunction to 500 feet. The court was not going to preclude anyone from going to the mall as a member of the general public. The court set a further hearing, but the parties would not be required to attend if it received the papers for the stipulated injunction and stipulated dismissal.

Although the settlement contemplated that the repairs to the damaged house would take two to four months, the reconstruction went on for more than two years after the settlement. This caused further disputes, including bankruptcy proceedings by the defendants and the attendant bankruptcy stay against plaintiffs' action, plaintiffs' opposition to imposition of the bankruptcy stay, defendants' request by OSC to dismiss the action, and other related matters. A declaration of plaintiffs' counsel in 2011 explained the state of affairs: "Under the settlement [agreement], the parties agreed that the Defendants could . . . go to their property to 'supervise construction' to make the property habitable. . . . After the Defendants had made the property habitable (which may not have yet occurred), which Defendant's [*sic*] estimated over two years ago would be approximately four months, . . . the Defendants would be allowed to enter the Defendants' property for ninety days, but avoid coming within two hundred feet of Plaintiffs' residence Further, . . . after [the] expiration of this ninety day period, whether or not the Defendants had sold the property, the Defendants would be subject to a three-year injunction to stay at least five hundred feet away from Plaintiffs' residence (encompassing the entire residential street). In exchange for this agreement, the Plaintiffs

agreed to dismiss the instant action upon expiration of the initial ninety day period, and the parties would enter into a stipulated injunction and stipulated dismissal effecting these terms.”

However, over two years after the settlement conference, defendants had failed to complete repairs to make their property habitable. Luis and Pedrina were seen at the property far more than necessary to supervise construction. “The initial ninety-day 200 feet injunction never began, nor the subsequent three-year 500 feet injunction.” Then, in February 2011, Luis and Pedrina filed a petition in the bankruptcy court. Plaintiffs’ counsel took the view that the bankruptcy stay did not apply, because the settlement terms did not involve any monetary payment, but only the execution of agreements for injunction and dismissal. The genesis of the action was violence by Jennifer against the minor child, and the subsequent stalking and harassment of Alberto and Karla by Luis, Pedrina and Jennifer in subsequent years. In any event, by the time of the OSC proceedings in which plaintiffs’ counsel filed the quoted declaration, defendants’ bankruptcy had been terminated. Luis and Pedrina received a discharge in bankruptcy on May 26, 2011, and the proceeding was closed on June 22, 2011. Therefore, any bankruptcy stay had expired. Accordingly, plaintiffs asked that defendants’ OSC proceeding be dismissed.

Luis filed a declaration averring that the final inspection on repairs to the house occurred on June 14, 2011. He did try to sell the property but was unable to do so. He rented the property to tenants on June 14, 2011, but the rental income does not fully cover the mortgage payment. Luis represented that he had skills in maintenance and repair and

wanted to be able to go to the property to make any needed repairs, without having to hire another tradesman.

Luis also claimed that “We have been out of plaintiffs’ life for the last 8 years. We don’t call them, we don’t visit them, we don’t ring their bell, we don’t follow them, we don’t drive in front of their house because we may drive from the other direction” to their own house, which he represented was 220 feet away from plaintiffs’ house. Jennifer no longer lived with Luis and Pedrina, but lived in Orange County, an hour away. Luis claimed, therefore, that there was no evidence of harassment to support any injunctive relief and asked that plaintiffs’ action be dismissed.

Plaintiffs’ counsel responded that Luis’s contention, that the bankruptcy stay and the bankruptcy discharge somehow vitiated the stipulated settlement, was incorrect. There were no monetary payments or damages involved in the agreed disposition of the lawsuit; the bankruptcy stay did not apply, and there was nothing to be discharged in bankruptcy. Luis had effectively admitted that the property had finally been repaired, but had not been sold. “Thus, the only remaining matter to effect the settlement agreement is for the defendants to enter into a stipulated injunction.” Plaintiffs’ counsel requested that the court not dismiss the complaint, but rather enforce the settlement agreement as announced in open court in 2009.

In February 2012, plaintiffs filed a formal motion to enforce the settlement agreement. Because Luis and Pedrina refused to enter into a stipulated injunction, plaintiffs asked the court to enter an injunction in the terms as set forth in the mandatory settlement conference proceedings of 2009.

Luis and Pedrina opposed the motion for enforcement. Defense counsel contended, “The purported oral settlement on the record is not enforceable under CCP 664.6 because all parties did not consent on the record to the terms orally recited by the court. Indeed, it was apparent from the parties that the court did talk to, that the terms imposed by the Court were not what had been discussed and agreed to in the settlement conference. Specifically, the Court unilaterally imposed a stay-away distance of 500 feet, rather than the 200 feet that had been negotiated and agreed to. It is clear from the record that this change made a difference to Defendants, who would now be unable to return to their house which is less than 500 feet from Plaintiff’s [*sic*] residence, whereas the settlement they negotiated only required them to stay away 200 feet. [¶] Since the record does not show the consent of all parties to the action to the terms recited by the Court, the law provides the settlement is unenforceable under CCP 664.6.”

Plaintiffs’ counsel responded, “Almost three years after the defendants stood in open court after a lengthy Mandatory Settlement Conference and assented to the settlement agreement before Judge Tranbarger, defendants now imply that they never agreed to the settlement in the first place. Defendants themselves provide no declaration or other evidence that they did not agree to the settlement in open court. Rather, defendants admit that they agreed to the settlement ‘in order to put an end to this case.’ ” Defense counsel had instead submitted a hearsay declaration, purporting to set forth Luis’s and Pedrina’s state of mind, that they “ ‘felt’ the settlement was ‘harsh’ because it required them to stay 1,000 feet rather than 200 feet away from the plaintiffs’ residence. [Fn. omitted.] . . . [T]he sole basis for defendants’ assertion that they did not

agree to the settlement was that they did not want to be prohibited from staying 1,000 feet away from plaintiff's [*sic*] residence. . . . In fact, defendants were able in open court to get the judge and the plaintiffs to agree to reduce the distance to 500 feet. Thus, the defendants clearly assented to the settlement by negotiating a compromise with the plaintiffs in open court, to which defendants now assert (without evidence) that they never agreed. In fact, over a year after the settlement was entered, defendants filed a declaration in this Court stating that they were complying with the settlement terms . . . , and later unsuccessfully attempted to have the settlement agreement discharged by a bankruptcy filing" Plaintiffs maintained that the transcript of the in-court settlement proceedings clearly demonstrated that defendants did agree to the settlement terms.

The trial court granted the motion to enforce the settlement agreement. The court accordingly entered judgment for plaintiffs in their action, including an injunction, valid for three years, that Luis and Pedrina must stay 500 feet away from plaintiffs' residence. The court also dismissed the action, while reserving jurisdiction to modify, dissolve or enforce the injunction.

Defendants filed their notice of appeal on May 16, 2012.

ANALYSIS

I. Contentions and Standard of Review

Defendants Luis and Pedrina argue that the trial court erred in granting plaintiffs' motion to enforce the settlement. They contend both that the evidence was insufficient to

support the trial court's findings as to the agreement, and that the legal requirements of Code of Civil Procedure section 664.6 had not been met.

Code of Civil Procedure 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."

"[I]n ruling upon a section 664.6 motion for entry of judgment enforcing a settlement agreement, and in determining whether the parties entered into a binding settlement of all or part of a case, a trial court should consider whether (1) the material terms of the settlement were explicitly defined, (2) the supervising judicial officer questioned the parties regarding their understanding of those terms, and (3) the parties expressly acknowledged their understanding of and agreement to be bound by those terms. In making the foregoing determination, the trial court may consider declarations of the parties and their counsel, any transcript of the stipulation orally presented and recorded by a certified reporter, and any additional oral testimony. [Citations.] The standard governing review of such determinations by a trial court is whether the court's ruling is supported by substantial evidence. [Citations.]" (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911 (*Assemi*)). "We make such a determination," as to the trial court's factual findings, "however, only after deciding whether the parties meet the statutory conditions of section 664.6. Construction and application of a statute involve

questions of law, which require independent review. [Citation.]” (*Murphy v. Padilla* (1996) 42 Cal.App.4th 707, 711-712 (*Murphy*).

II. The Trial Court Properly Enforced the Oral Settlement Agreement as to Defendants Luis and Pedrina Barquero, But the Judgment Must Be Modified as to Other Parties

A motion to enforce a settlement under Code of Civil Procedure section 664.6 is only one of several methods available to enforce an oral agreement to compromise and settle a lawsuit. Such oral agreements may also be enforced by means of a motion for summary judgment, a separate lawsuit for breach of contract or in equity, or by amending the pleadings to raise the settlement as an affirmative defense, for example. (*Gorman v. Holte* (1985) 164 Cal.App.3d 984, 989; see also *Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293.) “The statutory procedure for enforcing settlement agreements under section 664.6 is not exclusive. It is merely an expeditious, valid alternative statutorily created.” (*Nicholson v. Barab* (1991) 233 Cal.App.3d 1671, 1681.) The purpose in enacting Code of Civil Procedure section 664.6 was to provide a streamlined, summary procedure for specifically enforcing a settlement contract, without the need for a new lawsuit. The reason for the strict requirement of signature or verbal acknowledgement by the parties themselves is that settlement is such a serious step that requires knowledge and express consent. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809-810.) “Because of its summary nature, strict compliance with the requirements of section 664.6 is prerequisite to invoking the power of the court to impose a settlement agreement.” (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.)

Here, any stipulated settlement was not in writing. It was made, if at all, orally before the court.

Judge Tranbarger conducted the hearing to place the agreement on the record. The oral settlement proceeding thus satisfies the requirement that it be made “before the court.” (See *Murphy, supra*, 42 Cal.App.4th 707, 712 [“[A]n oral agreement recited to a judge in the course of a settlement conference supervised by that judge satisfies the ‘before the court’ requirement,” and “Oral stipulations before a subordinate court officer meet the ‘before the court’ requirement if: 1) the court officer was empowered to act with an adjudicatory function, and 2) the court officer did, in fact, act in that capacity.”].)

Code of Civil Procedure section 664.6 requires that any stipulation be made by the “parties.” This term has been construed to require the assent of the litigants themselves. (*Kirby v. Southern Cal. Edison Co.* (2000) 78 Cal.App.4th 840, 844; *Elnekave v. Via Dolce Homeowners Assn.* (2006) 142 Cal.App.4th 1193, 1198 [“The term ‘parties to the litigation’ has been strictly construed to mean the parties themselves, not their lawyers or other agents.”].)

Defendants urge that there was no personal agreement by Jennifer Barquero. This is not surprising, however, because the agreement did not contemplate that she would be bound by the proposed stipulated stay-away order. The court stated, “As for Jennifer Barquero, you will not be part of the injunction.” Defendants also argue that no settlement agreement is binding against defendant Zoila Rose Vega. We agree. She was not present at the settlement conference. There are also indications in the record that she

was not served with the summons and complaint until July 13, 2011, long after the settlement had been reached.

However, defendants Luis and Pedrina, appellants here, were both present at the settlement hearing in open court, as were plaintiffs Alberto and Karla. They were the proper “parties,” i.e., the litigants themselves, who were empowered to enter into the settlement, as far as the present dispute is concerned.

Not only must the litigants themselves agree, their agreement must be expressed “orally before the court.” Actual verbal expression of assent is necessary; a “nod of the head” is not enough. (*Conservatorship of McElroy* (2002) 104 Cal.App.4th 536, 550-551 [“A nod simply does not comply with the statutory requirement of oral consent.”].)

Defendants maintain that no one except Alberto expressly consented on the record to the 1,000-foot restriction, and that no one expressly consented on the record to the modified, 500-foot restriction. We disagree, and for this portion of the discussion, it is necessary to advert to the factual findings of the trial court.

The trial court, on the motion to enforce the settlement, made a factual finding that the entire context of the settlement proceeding demonstrated actual assent by all the bound parties.⁵ It is settled that, “ “nothing in section 664.6 authorizes a judge to *create*

⁵ At the hearing, the following proceedings took place: First, the court laid out the terms of the settlement.

“THE COURT: . . . I want all the parties to listen very carefully. This is something that the lawyers have worked out. I’m going to ask each of you in a moment whether or not if you have any questions about this, because this is going to be a binding resolution of how this lawsuit is going to proceed.” The court indicated, first of all, that repairs to defendants’ house would take “another two to three months.” Luis apparently

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shook his head and was invited by the court to clarify. He believed it would take four months to complete the repairs.

“THE COURT: Okay. We’ll say two to four months of uncertainty. Now, under this agreement, [Luis and Pedrina] will be permitted to re-enter the home for a 90-day period of time and only a 90-day period of time.” Defendants’ attorney would be required to give notice to plaintiffs when defendants would be going to the house during the 90-day period following repairs. Defense counsel explained that the 90-day period “starts with the certificate of occupancy being issued.”

“THE COURT: We understand that you can’t move in until the City says the house is habitable. That’s when the 90 days will start. . . . But, again, no surprises, advance notice.

“It’s anticipated that you will be making a good faith effort to get the house sold as soon as you can. If you get the house sold before the 90 days, that’s wonderful. But if not, even after the end of the 90 days, you have to leave, sold or unsold. If you want to turn it into a rental, you are free to do so under this, but you have to leave at the end of 90 days.

“The other thing that’s going to happen at the end of that 90-day period is two things: The lawyers will be drafting documents to this effect. One will be an agreement to drop this lawsuit. It will be over. But two, there will be a three-year injunction, staying away from [plaintiffs’] residence, and it will be a thousand feet, not 200 feet. So it will definitely include that house. You’ll have to be out of that house and not return to that house. You can still be the owner, but no member of the family can be there within a thousand feet at the 90 days. That will be by an agreement that you’ll be asked to sign agreeing to that injunction. And as part of that agreement, the entire case will be dismissed. That will be the end of it.”

The court admonished Jennifer Barquero that she would not be a party to the injunction, “But then you’ll have no reason to go to the house, . . .”

The court invited further comment from counsel:

“THE COURT: . . . [¶] So, Counsel, are there any loose ends or anything that I have left out?

“[DEFENSE COUNSEL]: Curtis Herron for defendants, Luis and [Pedrina] Barquero. I had discussed the three-year injunction being a distance of 200 feet. So I think that it’s necessary that I obtain my clients’ expressed assent to the - -

“THE COURT: I’m going to do all that. I just want - -

“[DEFENSE COUNSEL]: If you’re going to do that, that’s great. Thank you.

“THE COURT: It’s going to be 1,000 feet. Anything else, counsel? All right.

“Mr. Landin, did you understand . . . everything I just said?

“MR. ALBERT LANDIN: Yes, sir.

“THE COURT: Do you understand they’re going to be back in the house - - Mr. and Mrs. Barquero will be back in the house for up to 90 days, and you understand that?

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“MR. ALBERT LANDIN: Yes, sir.

“THE COURT: And you agreed with that?

“MR. ALBERT LANDIN: Yes, sir.

“THE COURT: And you agree to dismiss this entire case with the three-year injunction after the 90 days; do you agree with that?

“MR. ALBERT LANDIN: Yes.

“THE COURT: Mr. and Mrs. Barquero, do you understand everything I just said?

“MR. LUIS BARQUERO: Yes.

“MRS. [PEDRINA] BARQUERO: Yes, sir.

“THE COURT: Do you have any questions about it?

“MRS. [PEDRINA] BARQUERO: No.”

Then Luis interjected a point:

“MR. LUIS BARQUERO: We were talking about 200 feet, not 1,000?”

The court explained:

“THE COURT: Well, during the 90 days, it’s 200 feet when you come to and from the house to the other direction. That’s fine. But we’re talking [about] after that 90 days, we’re anticipating that you’re gone. You’re going [to] move out. And it’s just giving assurance to the Landins, that, yes, you’re going to be moving out. You’re not going to come back to the neighborhood.”

Defense counsel explained defendants’ concern:

“[DEFENSE COUNSEL]: Your Honor, the practical problem that he is probably thinking about is now [he] has a house on the market that he can’t go to.

“THE COURT: He can go to it for 90 days, after it becomes habitable. He can go to it right now.

“[DEFENSE COUNSEL]: Right.

“THE COURT: To supervise construction. That’s all fine. The 200 doesn’t become a thousand until after the 90-day period. Then it becomes a thousand.

“[DEFENSE COUNSEL]: Your Honor, apparently there’s a mall that’s within a thousand feet of the house that they’d like to be able to go to.

“THE COURT: Do you know the approximate distance of that mall?

“MR. LUIS BARQUERO: 500 feet.

“THE COURT: 500 feet, that’s fine. We just want a distance that’s going to take care of the entire residential street.

“Mrs. Landin?

“MS. KARLA LANDIN: My kids and I go to that mall. We are there consistently.

“ . . . [¶] “THE COURT: It’s a public place. We’re not going to restrict anyone’s ability to use the Moreno Valley Mall.

“MS. KARLA LANDIN: Okay.

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the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” [Citation.]’ [Citation.]” (*Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 180 [italics added].) However, it is equally well settled that the trial court may proceed under section 664.6 “even when issues relating to the binding nature or terms of the settlement are in dispute, because, [under section 664.6] the trial court is empowered to resolve these disputed issues and ultimately determine whether the parties reached a binding mutual accord as to the material terms.” (*Assemi, supra*, 7 Cal.4th 896, 905.)

When resolving such disputed issues on a section 664.6 motion, the court may “consider the parties’ declarations and other evidence in deciding what terms the parties agreed to.” (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182; accord, *Assemi, supra*, 7 Cal.4th 896, 905.) The trial court has the power, taking into consideration the evidence presented, to resolve disputes regarding the terms of settlement, and to determine that “the parties reached a binding mutual accord as to the material terms.” (*Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622.) The “ ‘express authorization [in the statute] for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement.’

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“THE COURT: Any other questions? All right. Then we’re going to set this for further proceedings in this department on December 11th at 9:30. It’s the expectation of the Court that everything that I just laid out will come to pass and that before that date, I’ll be receiving paperwork for a stipulated injunction and a stipulated dismissal. And if I receive that, there’s no reason for anyone to come here on December 11th. . . .”

[Citation.]” (*Skulnick v. Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 889.) In *Skulnick*, the trial court was therefore entitled to determine whether the settlement incorporated an agreement to forfeit indemnification rights.

As we have previously noted, when the trial court makes factual findings, those findings are binding if supported by substantial evidence. Here, substantial evidence supports the trial court’s finding that the parties entered into an oral settlement, including the term that the three-year injunction, which would go into effect after the construction period and the 90-day occupancy period had elapsed, would require defendants to stay 500 feet away from plaintiffs’ home.

First, to the extent that defendants point to a lack of affirmative, express assent on the record, their contention is inconsistent with their tacit agreement that an accord was in fact reached, as to all terms except the final stay-away distance. The declaration of defense counsel, submitted in opposition to the motion to enforce the settlement, essentially concedes that there was an agreement (with the exception of the stay-away distance of 500 feet). That is, defendants’ opposition papers to the motion to enforce the settlement admitted that settlement negotiations had taken place on June 9, 2009, and the parties went into the courtroom “to memorialize the agreement.” Luis and Pedrina had, “in order to avoid further litigation,” actually agreed “to submit to an order requiring them to stay away from Plaintiffs at a distance of 200 [feet].” Counsel’s declaration described the negotiations, including counsel’s explanation to his clients of the costs of litigation. The in-chambers discussion contemplated a three-year injunction that defendants would stay away from plaintiffs’ home “at a distance of 200 feet.”

Defendants “reluctantly agreed in order to put an end to this case.” Defendants therefore admitted that, whatever their oral expression in court, they did in fact agree to the stipulated judgment in every particular, except for an ultimate (i.e., the three-year injunction) stay-away distance other than 200 feet.

Second, additional evidence supports the view that defendants did, in fact, agree to the injunctive term to stay away from plaintiffs’ home at a distance of 500 feet, once the repair period and the occupancy period (90 days) had elapsed. As defendants concede, plaintiff Alberto Landin expressly stated on the record that he agreed to the terms of the settlement. Although at that point the trial court had specified the stay-away distance would be 1,000 feet from plaintiffs’ home, Alberto’s oral acquiescence was express. Defendants also personally expressed more than a mere “nod of the head.” Pedrina affirmatively indicated that she understood the proposed agreement terms and that she had no questions about those terms. Luis affirmatively indicated his understanding of the terms. When the court asked if he had any questions, he verbally asked about the 1,000-foot distance. The colloquy identified two objections: One, if the distance were greater than 200 feet, defendants would be unable to go to their house to effect the repairs or undertake to sell the property. Two, if the distance were 1,000 feet, defendants would be unable to use a commercial shopping mall in the neighborhood.

The trial court specifically addressed both of these concerns. The 200-foot distance would apply during the two to four months of repairs, as well as the 90-day occupancy period, when defendants would be getting ready to sell or rent the property. Defendants would therefore have full access to their property during any period in which

they could expect their presence there to be necessary. The increased distance would not go into effect until after all the repairs were completed (signified by the issuance of a certificate of occupancy) and after the 90-day occupancy period had expired. Defendants would be allowed the 200-foot limit—full access to their property—up until they would have no further reason to enter the property. At that point, the lawsuit would be dismissed, and defendants would be subject to the increased limit for a period of three years.

As to the measure of the increased limit, Luis specifically and personally brought up the issue, and his attorney explained that defendants wanted to be able to use a nearby mall. The court ascertained that the mall was about 500 feet away from plaintiffs' house, and so decreased the post-judgment injunction limit to 500 feet, specifically to accommodate defendants.

The only other objection raised at the hearing was the issue of the length of time it would take to make the repairs. Luis estimated that repairs could be completed in four months, rather than two as initially contemplated. The court directly addressed this objection also, stating that two to four months would be allowed for repairs, and also specifying that the 90-day occupancy period would not begin to run until a post-repair certificate of occupancy was issued for the house.

Defendants' affirmative indications on the record that they understood the terms of the agreement, and that they either had no questions, or that they personally raised questions that were specifically addressed by the trial court by making changes to

accommodate the concerns expressed, are evidence of the fact of actual verbal assent to the terms of the oral settlement agreement.

Third, defendants behaved at all times as if they believed they were bound by the terms of the oral settlement agreement. As it turned out, defendants were able to parlay the repairs-plus-occupancy period into an additional two years during which the increased limit did not apply. Along the way, they made repeated appearances at hearings before the court to show their ongoing attempts to comply with the terms of the settlement. Then, in February 2011, they filed a bankruptcy petition and attempted to discharge the judgment in this case during the bankruptcy proceedings. Defendants received a discharge from the bankruptcy court in May 2011, and their bankruptcy case was closed on June 22, 2011. Then, defendants sought an OSC why the instant action should not be dismissed, as having been discharged in the bankruptcy proceedings; defendants alleged that plaintiffs had not sought relief from the bankruptcy stay. The hearing on the OSC was set for July 2011. Plaintiffs successfully argued, however, that they were not required to seek relief from the bankruptcy stay, because the terms of the settlement agreement contemplated no exchange of money.⁶ The judgment was for injunctive relief only, and not for money damages, despite the initially pleaded causes of action for negligent infliction of emotional distress and intentional infliction of emotional distress. The conduct of the parties after the oral settlement agreement was wholly

⁶ In addition, defendants had received their discharge in bankruptcy and the bankruptcy proceedings were closed before the hearing on defendants' OSC to dismiss the instant action. Whatever bankruptcy stay had been in place had been terminated by the time of the OSC hearing here.

consistent with the view that all parties had actually agreed to the terms of the settlement, including the 500-foot distance to be incorporated into the three-year injunction.

Substantial evidence supports the trial court's factual finding that all the relevant parties personally agreed to the terms of the oral settlement before the court at the hearing of June 9, 2009. Given this finding, the conclusion naturally follows that the statutory requirements of Code of Civil Procedure section 664.6, including the express assent of the relevant parties, were met.

Defendants complain that judgment entered by the court does not conform to the 2009 oral settlement agreement, however, in certain respects. That is, the injunction restrains not only Luis and Pedrina from coming within 500 feet of plaintiffs' property, but also purports to enjoin defendants' "employees, agents, and persons acting with them or on their behalf" from coming within 500 feet of plaintiffs' property. As defendants point out, there was no such term included in the 2009 settlement, and this term of the injunction effectively bars defendants even from sending someone to repair the tenants' premises or allowing a real estate agent to enter the property on defendants' behalf to sell or rent the house. We order the injunction modified to strike the language enjoining defendants' "employees, agents, and persons acting with them or on their behalf" from coming within 500 feet of plaintiffs' home.

DISPOSITION

The judgment and orders of the trial court are affirmed, except that the injunction shall be modified to strike the words "and their employees, agents, and persons acting with them or on their behalf," from the enjoining language.

Plaintiffs and respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

RAMIREZ
P. J.

KING
J.