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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BOYETT PETROLEUM,

Plaintiff and Respondent,

v.

AHMAD NIKAKHTAR et al.,

Defendants and Appellants.

F062502

(Super. Ct. No. 377747)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Timothy W. Salter, Judge.

Tuchman & Associates, Aviv L. Tuchman, and Andrew C. Jhun for Defendants and Appellants.

Klein DeNatale Goldner Cooper Rosenlieb & Kimball, Bonnie J. Anderson and Connie M. Parker for Plaintiff and Respondent.

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INTRODUCTION

A party who obtains a money judgment may create a judgment lien on real property owned by the judgment debtor by recording an abstract of judgment with a county recorder. (Code Civ. Proc., §§ 674, 697.310.)¹ The abstract of judgment attaches

¹ All further statutory references are to the Code of Civil Procedure unless noted otherwise.

to all of the judgment debtor's ownership interests in real property in the county where the abstract is recorded and makes the judgment creditor a secured creditor. (§ 697.340; *Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070 (*Charlton*)). The judgment lien created by the recording of an abstract of judgment can be extinguished by the recording with the county recorder an acknowledgment of satisfaction of judgment or a clerk's certificate of satisfaction of judgment. (See §§ 697.400, 724.060, and 724.100.) The judgment creditor may also release from the judgment lien all or a part of the real property subject to the lien by recording with the county recorder a properly executed release. (§§ 697.400, subd. (c), 697.370; *Charlton, supra*, 17 Cal.App.4th 1066.)

In matter before us, respondent Boyett Petroleum (Boyett) obtained a judgment, filed in June 2010, for \$659,713.85 in its civil action against appellants Ahmad Nikakhtar and Sahar Nikakhtar (collectively Nikakhtar). In an apparent effort to facilitate recovery from Nikakhtar, Boyett entered into a post-judgment "Stipulated Agreement for Payment of Judgment and Post-Judgment Interest, Fees and Costs" (the Post-Judgment Agreement) in October 2010, where the parties agreed that Nikakhtar's indebtedness to Boyett would be satisfied by Nikakhtar's payment to Boyett of \$242,159.97 in accordance with a described plan of past and future periodic payments. That agreement also provided that so long as Nikakhtar was not in default under the agreement "there shall be a stay of BOYETT'S post Judgment collection actions from and after October 1, 2010." Boyett's abstract of judgment was recorded with the Los Angeles County Recorder's Office on December 16, 2010.

In February 2011, Nikakhtar filed a motion in superior court to expunge the abstract of judgment, contending that the recording of the abstract of judgment was a "post-Judgment collection action" and violated the Post-Judgment Agreement. Boyett contended that that the recording of the abstract was not a "post-Judgment collection action" within the meaning of the agreement and that, in any event, the court had no

authority to expunge the abstract. The court agreed with Boyett that the court had no authority to expunge the abstract and denied the motion. Nikakhtar appeals. As we shall explain, we agree with the trial court and affirm the order denying the motion to expunge.²

FACTUAL AND PROCEDURAL BACKGROUND

Boyett filed an action against Nikakhtar for breach of contract and fraud arising out of a 2004 agreement for the sale of gas and related services to Nikakhtar. At a mandatory settlement conference in February 2010, the parties agreed to settle the case. A handwritten three-page settlement agreement dated February 16, 2010, was signed by the parties. The February 16 settlement agreement (which is not to be confused with the later Post-Judgment Agreement at issue in this appeal) called for the payment of \$200,000 by Nikakhtar according to a payment schedule, and contained other provisions, including the following: “In the event of default, defendants get 5 days to cure - no notice required by Plaintiff of default or proceeding to obtain judgment by Stipulation. Plaintiff may elect to accept late payment without waiving any right to proceed to obtain judgment by Stipulation. If default, the full amount claimed by Plaintiff less payments, plus interest, fees and costs from inception of case become the amount of judgment sought by Plaintiff in the Request for Judgment by Stipulation.” Boyett, contending that Nikakhtar was in breach of the February 2010 settlement agreement, applied to the court for a judgment of \$659,713.85 plus interest, pursuant to section 664.6, and obtained the requested judgment, dated May 18, 2010, and entered on June 3, 2010.

² Because we conclude there is no authority to expunge the abstract under the facts of this case, we need not determine whether recordation of the abstract was a “post-Judgment collection action” under the terms of the Post-Judgment Agreement. However, we note the trial court’s comment that “the recording and maintenance of the lien ... is maintained by plaintiffs at their peril.... [T]he Court does view this as a collection action”

Nikakhtar moved for relief from the judgment pursuant to section 473. The motion was contested by Boyett, and ultimately denied by the trial court on September 30, 2010. That ruling was apparently not appealed, but it did set the stage for the events which followed and which resulted in the appeal presently before us.

In October 2010, the parties entered into the agreement which is the subject of this appeal--the Post-Judgment Agreement. Under paragraph 2, Nikakhtar acknowledged that “they are indebted to BOYETT in the total amount of \$711,878.38, which includes the amount of the Judgment” plus other interest, fees and costs. As mentioned, the agreement provided that Nikakhtar’s indebtedness to Boyett would be satisfied by payments totaling \$242,159.97 in accordance with a detailed plan of periodic payments. It also stated, “provided that the Defendants are not in default under the terms of any provision of this Post Judgment Stipulation or in any other obligation to BOYETT, there shall be a stay of BOYETT’s post Judgment collection actions from and after October 1, 2010.” The agreement also provided, in part “8” entitled “Remedies for Failure to Pay Required Payment” (underlining omitted): “Defendants [s]tipulate that if any payment by certified funds or EFT is rejected and/or returned unpaid on the date such payment is due, BOYETT shall have the right to declare a default and proceed with its post Judgment collection of the entire amount due and set forth under paragraph 2, above, less any payments plus interest, fees and costs incurred from and after October 1, 2010.”

Boyett recorded its abstract of judgment on December 16, 2010. There is no evidence in the record that Nikakhtar was in default of the October 2010 agreement when this abstract was recorded. Nikakhtar subsequently filed the motion to expunge the abstract, which the trial court denied, and this appeal ensued.

DISCUSSION

“[A]n abstract of judgment is recorded by the prevailing party *after* a court has awarded judgment and it attaches to all of the losing party’s ownership interests in real property in the county in which the abstract is recorded. (§ 697.340.) It makes the

judgment creditor a *secured creditor* (*Laubisch v. Roberdo* (1954) 43 Cal.2d 702, 707) and, by statute, can be extinguished *only* by the recording of an acknowledgment of satisfaction of the underlying judgment or by the judgment creditor's release of the lien (§ 697.400, subds. (a), (c); *Songer v. Cooney* (1989) 214 Cal.App.3d 387, 391-393). There is no statutory procedure for 'expunging' an abstract of judgment." (*Charlton, supra*, 17 Cal.App.4th at p. 1070, original italics.) Notwithstanding this authority, Boyett contends that three statutes authorize the expungement order he has sought: sections 664.6, 697.410 and 187. As we shall explain, these sections do not authorize such an expungement order.

SECTION 664.6

When certain prerequisites are met, section 664.6 allows a party, by motion, to have judgment entered to enforce the terms of a settlement agreement. The purpose of section 664.6 "is to permit a court, via a summary proceeding, to finally dispose of an action when the existence of the agreement or the terms of the settlement are subject to reasonable dispute, something not permissible before the statute's enactment. [Citation.]" (*Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 206.) Before its enactment, a party who sought to enforce a settlement agreement would file a separate action for specific performance or seek permission to file a supplemental pleading in the original suit, (*id.* at p. 208) and then bring a motion for summary judgment. (*Casa de Valley View Owners's Assn. v. Stevenson* (1985) 167 Cal.App.3d 1182, 1189.) "Since the enactment of section 664.6, a motion for summary judgment is no longer required, and thus, the party moving for judgment on a settlement agreement need not be concerned that triable issues of material fact can prohibit the granting of such a motion. Rather, the trial court, in deciding a section 664.6 motion, can determine disputed facts, either solely on declarations or with oral testimony. (*Casa de Valley View Owners's Assn. v.*

Stevenson, supra, 167 Cal.App.3d at p. 1189.)” (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 432, fn. 1.)³

Nikakhtar argued to the superior court that “[t]he agreement between the parties was made pursuant to [Code of Civil Procedure section] 664.6.” It was not. The only mention of section 664.6 in the Post-Judgment Agreement is in the “RECITALS,” which explain the circumstances that led to the agreement. Paragraphs “M.” and “N.” of the Recitals state:

“M. On February 16, 2010, at the Mandatory Settlement Conference, the parties entered into a written Stipulated Settlement Agreement (‘Stipulated Agreement’) pursuant to California Code of Civil Procedure Section 664.6, which was executed by the parties, their respective authorized representatives and the Court.

“N. Subsequent to the execution of the written Stipulated Agreement, Defendants defaulted under its terms and the Court thereafter entered Judgment in the total amount of \$669,718.41, against Defendants, jointly and severally.”

The judgment entered in June of 2010 was the product of the section 664.6 procedure, which was utilized to enforce the February 2010 settlement agreement. The Post-Judgment Agreement, which Nikakhtar now contends was breached by Boyett, had nothing to do with section 664.6. It was simply an agreement the parties reached because, according to its own terms, “[t]he Defendants [Nikakhtar] now seek to revive the initial monetary terms of the [February 2010] Stipulated Agreement subject to the modified terms of this Stipulation for Payment of Judgment and Post Judgment Fees and Costs,” and Boyett sought to avoid “further collection expense.” The parties never

³ Section 664.6 states: “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.”

intended that the June 2010 judgment be vacated and be replaced with a new judgment in accordance with the Post-Judgment Agreement, and nothing in that agreement even remotely contemplates such a result.

The very first clause of section 664.6 states “[i]f parties to pending litigation stipulate” Here, there was no “pending litigation” when the Post-Judgment Agreement was reached because Boyett had already obtained the judgment, which was entered in June of 2010. “By its very terms, section 664.6 is limited to settlements reached in *pending* litigation.” (*Viejo Bancorp, Inc. v. Wood, supra*, 217 Cal.App.3d at p. 206; in accord, see also *Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 438.) “When a court has jurisdiction over the parties and subject matter of a suit, its jurisdiction continues until a final judgment is entered.” (*Wackeen v. Malis, supra*, 97 Cal.App.4th at p. 437.) Final judgment was entered in June of 2010. Section 664.6 thus provides no statutory authority for the court to enforce and to remedy, in this case, what Nikakhtar contends is a breach of the Post-Judgment Agreement.

Nikakhtar argues that there should be a remedy for a breach of that agreement. Nikakhtar is correct, and the agreement itself provides for such a remedy. Paragraph “9.f.” states “[i]t is expressly understood and agreed by the parties that none of the releases set forth herein are intended to or do release any claims arising out of a breach of this Stipulation by any of the parties to this Post Judgment Stipulation.” Paragraph “17.a.” states “[t]his Post Judgment Stipulation shall be construed in accordance with the laws of the State of California and any action venued in Stanislaus County.” Thus, the agreement expressly contemplates that an action for its breach may be maintained in Stanislaus County. The Post-Judgment Agreement, like any other contract, may be the subject of an action for breach of contract brought by a party to the agreement who contends that the agreement has been breached.

SECTIONS 697.410 AND 187

Section 697.310, subdivision (a), states: “Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.” Subdivision (b) of this same statute provides: “Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.” Thus, a “judgment lien on real property continues for 10 years from the date of entry of the judgment, unless the judgment is satisfied ... or the lien is released” (8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment, § 69, p. 112.) In the present case, the judgment was entered less than two years ago. It has not been satisfied (see §§ 724.010, 724.040, and 697.400), and the lien has not been released (see §§ 697.370 and 697.400). Nikakhtar nevertheless contends that the abstract should be expunged because, in Nikakhtar’s view, the recording of the abstract was a “collection action,” which Boyett agreed not to undertake.

Section 697.410 provides for a procedure to be utilized “[i]f a recorded abstract of a money judgment ... appears to create a judgment lien on real property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor.” (*Ibid.*) “[T]he erroneously identified property owner may deliver to the judgment creditor a written demand for a recordable document releasing the lien” (*ibid.*) and “[t]he demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.” (*Ibid.*) Under this procedure, if the judgment creditor does not deliver to the property owner a recordable document releasing the lien, “the property owner may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner.” (§ 697.410, subd. (c).) Nikakhtar urges us to utilize section 187 as

authority to adopt a procedure authorizing a court to expunge an abstract of judgment upon a showing satisfactory to the court that the judgment creditor had agreed not to record such an abstract.⁴ We see nothing in section 187 or in any other statute, however, that evidences any jurisdiction of the court to expunge a recorded abstract of judgment on a valid judgment when that judgment has not been satisfied and the judgment creditor has not released the lien created by the recorded abstract. Indeed, as we have pointed out, the Legislature has specifically declared otherwise.

Nikakhtar points out that some courts have expunged abstracts of judgment, but those cases appear to involve situations in which the abstract was a fraud or was otherwise not in compliance with certification requirements for abstracts of judgment under section 674. In *Sanai v. Saltz* (2009) 170 Cal.App.4th 746, for example, a court “recalled and quashed the abstract of judgment, finding ‘Plaintiff Cyrus Sanai ... fraudulently obtained from this Court on October 18, 2006 an Abstract of Judgment in the amount of \$143,469.96, and wrongfully caused this Abstract of Judgment to be recorded with the Los Angeles County Recorder’s Office’” (*Id.* at p. 759, fn. 7.) In *Sanai*, there was no actual \$143,469.96 judgment when Mr. Sanai fraudulently obtained the abstract of judgment. An abstract of judgment “shall contain ... [¶] ... [¶] (5) The amount of the judgment or decree as entered or last renewed.” (§ 674, subd. (a).) An abstract of judgment that asserts the existence of a judgment of \$143,469.96 when there is no such judgment is not in compliance with section 674. In the case presently before us, however, no one disputes the existence of a valid judgment entered on June 3, 2010.

⁴ Section 187 states: “When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.”

In *In re Michael S.* (2007) 147 Cal.App.4th 1443, the court stated “an abstract of judgment filed pursuant to section 674 of the Code of Civil Procedure which gives the ‘name and last known address of the judgment debtor’ and the ‘amount of the judgment or decree as entered’ (Code Civ. Proc., § 674, subd (a)(3), (5)), must be for the amount of the judgment specifically against that judgment debtor, not more.” (*Id.* at p. 1456.) In *Michael S.* “a county collection officer simply applied for an abstract of judgment in excess of what the judgment debtor owed pursuant to the judgment itself.” (*Id.* at p. 1456, fn. 9.) The judgment against Catherine S. was for \$25,000, but the abstract of judgment listed the total amount of the judgment as \$127,038.63. (*Id.* at p. 1448.) The court held: “An abstract of judgment filed against the mother indicating that she is a ‘judgment debtor’ under a judgment in excess of \$127,000 - the amount of the restitution award against her son ... - should be expunged.” (*Id.* at p. 1447.) Again, this was an abstract of judgment that was simply not in compliance with section 674 in the first place.

“It does not appear ... that there is any statutory provision authorizing the court to grant a motion compelling a recorder to expunge from his records an abstract which has been properly recorded.” (*Crevolin v. Crevolin* (1963) 217 Cal.App.2d 565, 575.) Here, there was a valid judgment against Nikakhtar in the amount listed in the abstract of judgment, which complied with the requirements of section 674.

DISPOSITION

The trial court’s order denying the motion to expunge is affirmed.

Franson, J.

WE CONCUR:

Wiseman, Acting P.J.

Cornell, J.