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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ARDIS MOHRSCHLADT et al.,

Plaintiffs and Respondents,

v.

ALIREZA PANAHPUR,

Defendant and Appellant.

G049292

(Super. Ct. No. 30-2009-00323131)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andrew P. Banks, Judge. Affirmed.

Fink & Steinberg and S. Keven Steinberg for Defendant and Appellant.

David J. Wilzig for Plaintiffs and Respondents.

* * *

After granting a motion to enforce a settlement agreement pursuant to Code of Civil Procedure section 664.6,¹ the court entered judgment in favor of plaintiffs Ardis and Henry Mohrschladt. Defendant Alireza Panahpour claims the court erred for three independent reasons. First, the document put forth as an agreement did not actually reflect all material terms of the parties' settlement. Second, even assuming the document at issue was an enforceable agreement, the court lacked jurisdiction to enforce it. Third, again assuming the document was a valid settlement agreement, the judgment did not accurately reflect all terms in the agreement. We reject each of these contentions and affirm the judgment.

FACTS

Plaintiffs filed their complaint in November 2009. More than three years of litigation ensued. Trial was scheduled for February 19, 2013, before Judge Andrew Banks. Engaged in another trial, Judge Banks referred the matter to Judge Jomoa Moberly.

The parties engaged in settlement discussions in Judge Moberly's court room. Before the day ended, the parties and their respective counselors signed a one-page handwritten document entitled "Settlement." This document, dated February 19, 2013, referenced the case name and trial court case number in the top margin. The document prefaced its substantive terms with the phrase "Settlement of this case."

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All statutory references are to the Code of Civil Procedure.

The document included the following terms: (1) payouts to each plaintiff in the amount of \$9,999.99; (2) \$3,000 delivered to plaintiffs' counsel within 30 days; (3) \$16,999.98 delivered to plaintiffs' counsel within 15 months of the date of the document; (4) "Dismissal to be filed upon receipt of final payment"; and (5) "This constitutes release of all claims by all parties."

Apparently, the court reporter had departed by the time the parties signed this document. Both sides agree Judge Moberly participated in the settlement discussions, but there is no record of the settlement discussions or what Judge Moberly may have stated or read in open court. On March 5, 2013, plaintiffs filed a notice of settlement. This notice specified that the settlement was conditioned upon the receipt of final payment pursuant to the settlement agreement signed by the parties and attached to the notice. Nothing in the record indicates this case was ever dismissed, whether by plaintiffs or the court.

On March 22, 2013 (i.e., the due date for the first \$3,000 payment), counsel for defendant e-mailed counsel for plaintiff: "[Defendant] advised me this morning that prior to him paying the initial settlement payment, he needs a confidentiality provision similar to the one used in the Haynes matter. Once such an agreement is signed by you and your client, he said he can deliver the check to you. If you would like, the signed agreement and the check can be simultaneously exchanged today." Counsel for plaintiffs responded: "Inasmuch as [defendant] has now breached the Settlement Agreement by refusing to make payment when due, we will request the Court to take action to enforce the Settlement. [¶] My client is unwilling to reenter negotiations for a new and different Settlement Agreement."

Shortly thereafter, plaintiffs moved to enforce the settlement agreement. In opposing the motion, counsel for defendant declared that defendant "required confidentiality as to the settlement." But counsel's declaration did not indicate that the issue of confidentiality was raised in the parties' settlement discussions in Judge

Moberly's courtroom or, indeed, at any time prior to the March 22 e-mail. The declaration instead emphasized the lack of a record for the courtroom settlement discussions and the fact that defendant had extracted a confidentiality clause in other settlement agreements negotiated with plaintiffs' counsel. In contrast, a declaration filed by plaintiffs' counsel affirmatively represented that a confidentiality clause was "never the subject of settlement discussions in this case, [and] was not part of the written agreement or referenced in the oral representations made by the parties to Judge Moberly." "The first notice [plaintiffs' counsel] had that there was any objection to the terms of the settlement agreement . . . was not an objection to the Notice of Settlement, but rather an email from [defendant's counsel] on the day the first payment was due"

The court granted the motion to enforce the settlement agreement. The court thereafter entered judgment for plaintiffs and against defendant in the amount of \$19,999.98.

DISCUSSION

"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." (§ 664.6.)

Terms of Settlement Did Not Include Confidentiality Clause

Defendant claims the court erred because its enforcement of the parties' settlement of the case did not include all of the "terms of the settlement." (§ 664.6.) He insists an obligation to keep the terms of the settlement confidential was either included

within the terms of the parties' settlement or its absence from the settlement document meant the parties did not actually reach an agreement.

Defendant correctly notes that the document put forth as a settlement agreement did not include an integration clause. He also accurately points out that courts are "authorize[d] . . . to entertain challenges to the actual terms of the stipulation, that is, whether there actually was a settlement, upon a motion." (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 565.) Trial courts "may consider evidence beyond [a written agreement] in deciding a section 664.6 motion, but only to determine what settlement terms the parties *previously* agreed upon." (*Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1123.) "The proper standard of review . . . is whether the trial court's ruling was supported by substantial evidence." (*Fiore*, at p. 565.)

Defendant failed to present any evidence establishing the parties included the issue of confidentiality in their settlement discussions. All of the evidence in the record suggests the issue was not raised in Judge Moberly's courtroom on February 13. Instead, one month later, defendant regretted the omission of this issue from the settlement discussions and the written agreement concluding those discussions. We agree with the court's characterization of the evidence at the hearing: "That's a big change. I looked at the settlement agreement. It contains all the material terms to be an enforceable settlement agreement. [Defendant] didn't negotiate for [a confidentiality clause] and . . . doesn't have a right to have [plaintiffs] change the contract he entered into when he signed that settlement agreement at the courthouse." The court's factual findings are supported by substantial evidence and, by enforcing the settlement agreement, the court did not err in its application of the law to its factual findings.

Court Had Jurisdiction to Grant Motion

Defendant also contends the court lacked jurisdiction to provide relief to plaintiffs because the parties did not specifically request that the court retain jurisdiction over the matter until “performance in full of the settlement” agreement. (§ 664.6.)

The court rightly rejected this argument because this case had never been dismissed. The settlement agreement specifically authorized plaintiffs to withhold filing a dismissal of the action until final payment by defendant of all amounts owed. The notice of settlement filed by plaintiffs informed the court of the terms of the settlement agreement. No dismissal of the action was ever filed by the parties or the court. Hence, there was no need to preserve the court’s jurisdiction to enforce the settlement agreement by way of a separate section 664.6 stipulation.

This is not a case like *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, cited by defendant in his appellate brief. There, a lawsuit was dismissed after the parties reached a settlement. (*Id.* at p. 434.) One of the defendants alleged the plaintiff did not live up to the settlement. (*Id.* at pp. 434-435.) The appellate court reversed relief provided to the defendant by the trial court. The trial court lost jurisdiction over the matter because it had been dismissed and because the parties had not made an adequate request for retention of jurisdiction under section 664.6. (*Wackeen*, at pp. 437-442.) By authorizing the court to retain jurisdiction upon request of the parties, section 664.6 addresses the problem of trial courts losing jurisdiction over settled matters once a dismissal is filed. (*Wackeen*, at p. 439.) In the instant case, the court never was in danger of losing jurisdiction because the matter was never dismissed.

The Judgment Accurately Reflects the Settlement Agreement

Finally, defendant suggests the judgment did not incorporate all terms included in the written settlement agreement. The “failure to enter a judgment reflecting all of the material terms of settlement that have yet to be fully performed could defeat the

purposes of the settlement and spawn further litigation.” (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185.)

Defendant identifies three aspects of the settlement agreement that he claims are not included in the judgment: (1) the mutual release of all claims; (2) the requirement that a dismissal be filed upon receipt of final payment; and (3) the amount each plaintiff was entitled to out of the total settlement fund.

The first two points obtusely ignore basic principles of civil procedure. A judgment is the final determination of the parties’ rights with regard to the claims at issue in a lawsuit and is *res judicata* as to the matters necessarily adjudged. (§§ 577, 1908, subd. (a)(2), 1911.) To separately state in a *judgment* (as opposed to a settlement agreement) that the parties release their claims against one another would be pointless. Similarly, plaintiffs’ obligation to file a dismissal of the action upon receipt of final payment became moot by the entry of final judgment. Absent reversal of the judgment (which is not happening here), the case is over. All that remains is enforcement of the money judgment. Filing a dismissal at this point would be nonsensical. Perhaps defendant will be entitled to have a notice of satisfaction of judgment filed should he meet his obligations as a judgment debtor (see § 724.010 et seq.), but he is not entitled to a “dismissal.”

Defendant’s third point is not moot, but he failed to raise it below and arguably lacks standing to make it at all. Plaintiffs (who, by their shared last names and shared counsel, seem to have a common interest in this case) made no effort to clarify in the judgment that they are entitled to equal shares of the amount owed by defendant. The judgment instead states the outstanding amounts are payable to plaintiffs jointly. Defendant has no reason to complain about a theoretical dispute between plaintiffs as to the proper division of the judgment proceeds.

DISPOSITION

The judgment is affirmed. Plaintiffs shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.