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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of ERIC WINTEMUTE and  
VENUS SOLTAN.

ERIC WINTEMUTE,

Respondent,

v.

VENUS SOLTAN,

Appellant.

G050607

(Super. Ct. No. 10D004337)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Claudia Silbar, Judge. Affirmed.

Jarvis, Krieger & Sullivan, Kevin Harrison and Richard P. Sullivan; John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes, for Appellant.

Minyard | Morris and Lonnie K. Seide; Snell & Wilmer, Richard A. Derevan and Todd E. Lundell, for Respondent.

## **INTRODUCTION**

After spending nearly a month in trial about dividing assets in a marriage dissolution proceeding, appellant Venus Soltan<sup>1</sup> and respondent Eric Wintemute finally reached a stipulated global settlement, just moments before a ruling by the trial judge that apparently would have been unfavorable to Soltan. Part of the settlement disposed of over a million shares of stock. Owing to a questionably motivated objection by Soltan, the original handwritten stipulation was recopied by hand; as is often the case with handwritten copies of manuscripts, the copy differed from the original.

Soltan then insisted that the copy was the correct stipulation, the one the trial court had to enter as the formal judgment. The trial court disagreed. Recalling the events at the end of the month-long slog through trial and the cheery or relieved faces greeting her return to the bench when the settlement was finally achieved, the judge entered a formal judgment that reflected the original stipulation, not the truncated copy. Soltan appeals from that judgment.

We affirm. The trial court resolved the parties' disagreement over the judgment's wording by implicitly holding, first, that the settlement resolved all the issues still in dispute at the time of trial, and, second, that Wintemute was entitled to all the shares of stock not specifically awarded to Soltan. We assume the correctness of a judgment, and we are bound by the trial court's resolutions of factual disputes and findings of credibility. Both support the judgment entered here.

## **FACTS**

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<sup>1</sup> We distinguish here between the parties' status on appeal and their status in the trial court. Soltan was the respondent in the dissolution proceedings.

Soltan and Wintemute were married in September 1980. Wintemute filed for divorce in May 2010.<sup>2</sup> The date of separation was June 26, 2010. The court granted a status only judgment in November 2012.

The focus of this appeal is the allocation of over a million shares of American Vanguard (AVD) stock. Wintemute became AVD's CEO in 1994. He characterized three transfers of AVD stock of 10,000 shares each as gifts to him from his father, and therefore his separate property, and also traceable. Soltan claimed the shares were given to both of them and had been commingled with community property.

After about a month of trial testimony and unsuccessful attempts to settle, the court was on the verge of ruling that the disputed stock transfers were traceable gifts. Soltan and her lawyer had an unreported heart-to-heart talk with the judge in chambers – with Wintemute's blessing – and the parties were able to settle at last, on December 12, 2013. Wintemute's counsel wrote out a stipulated settlement by hand (the first stipulation). With respect to the stock, the first stipulation read, “[Soltan] is awarded a total of 390,000 shares of AVD stock, not including the sum of approximately 27,000 shares already awarded to [Soltan] in retirement accounts (“C[ommunity] B[alance] S[heet]” items 34a and 35a), and including the sum of 253,434 already awarded to [Soltan] (“CBS” items 31g. + 31h.). As a result, [Soltan] shall receive 136,566 shares, in addition to 253,434, for a total of 390,000 shares; [¶] [Wintemute] shall receive the remaining stock, including options +/- grants, totaling approximately 884,000 shares, in addition to the sum of approx 27,000 shares already awarded to [Wintemute] in retirement accounts . . . .” The first stipulation incorporated six pages of the Community Balance Sheet (CBS) by reference.

Soltan refused to sign the first stipulation, apparently because Wintemute's counsel had written it out. She said she was unable to read it. Accordingly, her counsel

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<sup>2</sup> Soltan's appellant's appendix lacks chronological and alphabetical indexes, making it difficult to find documents. (See Cal. Rules of Court, rules 8.124(d)(1), 8.144(b)(1).)

wrote out another stipulation, which the parties, the lawyers, and the court all signed (the second stipulation).<sup>3</sup> With respect to the stock, the second stipulation read, “[Soltan] is awarded the following property as her sole and separate property. [¶] . . . [¶] 2.) 136,566 shares of AVD stock. Both parties shall cooperate to transfer the shares in 30 days for a total of 390,000 – not including retirement acct[.]” “[Wintemute] shall receive as his s[eparate] p[roperty] 553,013 AVD shares . . . . [¶] 30,000 stock options strike price [\$]7.50 awarded 12-10-15 vesting Dec. of 2013.” The second stipulation incorporated the same six pages of the CBS.

The second stipulation provided, “Final judgment will contain standard judgment provisions.”<sup>4</sup> Wintemute’s counsel prepared a proposed final judgment that included “standard” provisions, to which Soltan objected as not agreed to. The court ruled on April 1, 2014, that the final typewritten judgment should be an “exact duplicate” of the second stipulation, that is, one without detailed standard provisions.

Wintemute then objected to the entry of the “exact duplicate” proposed judgment prepared by Soltan because it did not explicitly distribute all the AVD stock. Unlike the first stipulation, the second stipulation did not direct that the balance of the AVD stock – the stock other than the 390,000 shares awarded to Soltan – go to Wintemute as his separate property. Wintemute foresaw litigation over these shares – more than 300,000 of them – if the final judgment did not clarify this point.

The court held a hearing on the wording of the final judgment on June 12, 2014. It directed Wintemute to file a proposed judgment by June 16 and Soltan to file her objections by June 19. The court stated, “I believe [Wintemute’s counsel] is correct from my recollection and from the exhibits and from the prior [i.e., the first] stipulation. And I should just put on the record so that [Soltan] is aware, when [Wintemute’s counsel]

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<sup>3</sup> Neither lawyer would contend for a penmanship award, but Soltan’s counsel’s handwriting is much harder to decipher than that of Wintemute’s counsel.

<sup>4</sup> The first stipulation stated, “The formal judgment, which shall be prepared by counsel for [Wintemute], shall contain the ‘standard’ judgment provisions.”

prepared the handwritten agreement, there was an objection to it based on an inability to read it, not on the content of it. So the court then allowed and/or directed [Soltan's counsel] to re-write it. And when it was re-written, some of the specifics were left out. [¶] . . . [¶] . . . [A]nd my recollection is pretty strong because we spent a month on this trial, the 390,000 shares stands strongly in the court's mind. That's my recollection and that's my understanding. And it's also my recollection that there were no unresolved issues when we walked away that day, and now to indicate that there are, I just don't think is accurate."

The court took Wintemute's second proposed judgment and Soltan's subsequent objections under submission. It adopted the proposed judgment and signed it on June 24, 2014. With respect to the AVD stock, the judgment provided: "[Soltan] is awarded the following property as her sole and separate property: [¶] . . . [¶] 2. A total of 390,000 shares of AVD stock, not including the sum of approximately 27,000 shares already awarded to [Soltan] in retirement accounts ("CBS" items 34a and 35a) and including the sum of 253,434 already awarded to [Soltan] ("CBS" items 31g and 31h). As a result, [Soltan] shall receive 136,566 shares, in addition to 253,434, for a total of 390,000 shares." "[Wintemute] shall receive as his separate property: [¶] 1. All remaining AVD stock (in excess of the 390,000 shares awarded to [Soltan]) including options and/or grants, totaling approximately 884,434 shares (in addition to the sum of approximately 27,000 shares already awarded to [Wintemute] in retirement accounts)." Soltan has appealed from this judgment.

## **DISCUSSION**

Soltan offers two arguments for reversing the judgment. First, she asserts that the way it was handled deprived her of due process and was prejudicial. She maintains on appeal that the trial court had to proceed by a motion under Code of Civil

Procedure section 664.6;<sup>5</sup> failure to do so deprived her of due process. Second, she asserts the judgment as entered did not reflect the agreed-upon stipulation – the second stipulation – which awarded Wintemute only 583,013 shares, not all the shares remaining after deducting the 390,000 shares awarded to her. In effect, the trial court rewrote the parties’ agreement. She has asked us to reverse the judgment and return it to the trial court to divide 49,987 shares of AVD stock in accordance with Family Law Code section 2556.

## **I. Procedure**

Procedural due process, of which Soltan complains she was deprived, consists of notice and an opportunity to be heard. (See *In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 236; *In re Marriage of Liss* (1992) 10 Cal.App.4th 1426, 1429 [due process satisfied by party’s presence and opportunity to object]; *Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1329 [due process requires timely and adequate notice and effective opportunity to be heard].)

Soltan received due process. She was served with Wintemute’s first proposed judgment and objected to it. The court held a hearing on her objections and agreed with her, ordering the judgment to be an “exact duplicate” of the second stipulation. Wintemute then pointed out an ambiguity in the second stipulation – one that did not exist in the first stipulation, which Soltan had refused to sign. The court held another hearing. After this one, the court ordered Wintemute to file another proposed judgment and gave Soltan an opportunity to object to it. She did so at length, over 100 pages. The court took both the second proposed judgment and Soltan’s objections under submission before ruling. After two hearings and two sets of objections, Soltan can hardly claim she did not have adequate notice and an effective opportunity to be heard.

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

Soltan asserts that the parties and the court had to follow section 664.6, which provides a procedure for entering a stipulated settlement as a judgment, “upon motion.” Because there was no “motion,” Soltan asserts, “the court’s chosen procedure was unauthorized by statute [*sic*].” It therefore had no jurisdiction to enter the judgment. In addition, proceeding without a motion under section 664.6 deprived Soltan of due process of law and was prejudicial. Had a motion been made under section 664.6, the trial court would have had no option but to enter a judgment that was the exact duplicate of the second stipulation.

On this last point, Soltan is in error. A motion under section 664.6 does not transform the trial court into a rubber stamp. It is the trier of fact. “It must determine whether the parties entered into a valid and binding settlement. To do so it may receive oral testimony in addition to declarations. If the same judge presides over both the settlement and the section 664.6 hearing, he may avail himself of the benefit of his own recollection. [Citation]. The appellate court then determines whether the trial court’s ruling was supported by substantial evidence. [Citation.]” (*Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1534.)

Soltan overlooks the fact that the parties stipulated to the process the court employed to finalize the judgment. The first stipulation provided that Wintemute’s counsel would prepare a formal judgment; nothing was said about anyone moving to enforce the settlement agreement. Moreover, Soltan does not explain why *she* did not make a motion under section 664.6 if she felt one was necessary or appropriate. Either party to a settlement agreement can make such a motion. Instead, she participated in the entire judgment-entering process – over several months – without a murmur. In fact, she argued to the trial court that section 664.6 did not apply, because neither she nor Wintemute had made a motion.<sup>6</sup> She cannot now claim as error a procedure used by the

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<sup>6</sup> Soltan now says she objected to the trial court’s failure to proceed under section 664.6 as part of her objections to the second proposed judgment.

trial court to which she first stipulated then acquiesced and to which she failed to object. (See *Ellerbroek v. Saddleback Valley Unified School Dist.* (1981) 125 Cal.App.3d 348, 363; *Jackson v. Barnett* (1958) 160 Cal.App.2d 167, 172.)

## **II. Terms of Judgment**

“A stipulated judgment is a contract and must be construed under the rules applicable to any other contract.” (*Jamieson v. City Council of the City of Carpenteria* (2012) 204 Cal.App.4th 755, 761.) We interpret a stipulation, as we would any contract, to determine the parties’ objective intent when they entered into it. We look first to the contract language itself. If the language is ambiguous, we resolve the ambiguity “by taking into account all the facts, circumstances and conditions” leading to the stipulation. (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1252.) We are bound by the trial court’s interpretation if it turned on the credibility of conflicting extrinsic evidence. (*Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 372.) In this case, it did. (See *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866, fn. 2 [“when conflicting inferences arise from conflicting evidence . . . the trial court’s resolution is binding.”] .)

Extrinsic evidence may also be consulted to interpret an agreement when its meaning is ambiguous or uncertain. (*Yarus v. Yarus* (1960) 178 Cal.App.2d 190, 201; *Lipton v. Johansen* (1951) 105 Cal.App.2d 363, 367.) The second stipulation created an uncertainty that parol evidence could resolve: the agreement was supposed to finally settle all outstanding issues, yet it left out the disposition of over 300,000 shares of AVD stock. The trial court used the first stipulation and the parties’ statements when they professed their agreement to the stipulation on the record as this extrinsic evidence. (See § 1856, subd. (d).)

According to the CBS, there were 1,328,630 AVD shares to distribute. Of that amount, 54,196 shares were held in retirement accounts; these were split evenly: 27,098 apiece. That left 1,274,434 shares. Soltan does not dispute that the settlement

agreement awarded her a total of 390,000 shares, in addition to her retirement account shares, leaving 884,434 shares.<sup>7</sup>

The first stipulation provided that all the remaining shares – 884,434 of them – went to Wintemute as his separate property. The second stipulation, however, specifically designated only 583,013 shares as going to Wintemute, leaving 301,421 shares unaccounted for.<sup>8</sup>

So what happened to the 301,421 shares? According to Soltan, 47,987 shares were “not agreed to.”<sup>9</sup> She therefore seeks a reversal of the judgment and a return to the trial court for a ruling on their disposition.

To reverse the judgment, we would have to assume that between the time Wintemute’s counsel wrote out the first stipulation and the time Soltan’s counsel rewrote it as the second stipulation, Wintemute waived his right to the balance of the AVD stock – *and* to a final settlement of all issues – and put the disposition of some of this stock back on the table for further litigation. Nothing in the record supports this idea.

One point *is* clear from this record. The settlement was a global one; there were no remaining issues.<sup>10</sup> The only issues that could have been raised after the settlement were those relating to concealed or omitted assets or fraud. Nothing in the record indicates that any portion of the stock was a concealed or omitted asset; on the contrary, witnesses – both percipient and expert – testified about it over the course of many days. Soltan’s insistence that we send the matter back for further litigation

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<sup>7</sup> The parties stipulated pretrial to a distribution of 253,434 shares each. This amount added to the 136,566 shares specifically mentioned in the first and second stipulations gave Soltan a total of 390,000 shares.

<sup>8</sup> This number represents the total of 553,013 shares and 30,000 stock options. The source of the number 553,013 is unexplained.

<sup>9</sup> Soltan arrived at this figure by starting with the 1,328,630 number from the CBS and subtracting the 54,196 retirement account shares, the 390,000 shares awarded to her in settlement, the 583,013 shares identified in the second stipulation as Wintemute’s, and the 253,434 shares Wintemute got pursuant to the pretrial distribution agreement. The second stipulation did not mention this last component.

<sup>10</sup> This does not mean there was nothing for the parties to do in the future. For example, Wintemute got a community golf club membership on condition that he purchase a separate membership for Soltan. The parties agreed to split a wine collection and a collection of CDs and DVDs. Soltan agreed to dismiss a separate civil action she had filed against Wintemute and AVD.

regarding the disposition of this stock flies in the face of all the evidence regarding the finality of the settlement reached by the parties in December 2013.

The trial court resolved the issues of credibility and interpretation in favor of Wintemute's second proposed judgment. We are bound by the court's credibility findings and by its resolution of conflicting inferences (*Zinn v. Ex-Cell-O Corp.* (1957) 148 Cal.App.2d 56, 74), and we presume that a judgment is correct until the appellant shows us otherwise. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) On this record, the trial court got it right.

### **DISPOSITION**

The judgment is affirmed. Wintemute is to recover his costs on appeal.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.