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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SHIRLEY WINDSOR, Plaintiff and Appellant, v. FRANK PRIOR, Defendant and Respondent.	B232681 (Los Angeles County Super. Ct. No. NC035087)

APPEAL from an order of the Superior Court of Los Angeles County, Ross M. Klein, Judge. Affirmed.

Shirley A. Windsor, in pro. per., for Plaintiff and Appellant.

Law Offices of Joel F. Tamraz and Joel F. Tamraz for Defendant and Respondent.

INTRODUCTION

Plaintiff Shirley Windsor appeals from an order granting the motion of defendant Frank Prior to set aside and vacate a writ of execution and notice of levy.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action on December 9, 2003.[2] On April 4, 2006, the parties entered into a stipulation for judgment. This provided: "Defendant Frank Prior, shall pay to Shirley Windsor aka Shirley Winsor the sum of $20,000 (twenty thousand dollars) within 15 days, or on or before April 20, 2006, in exchange for a dismissal with prejudice as well as a release of all claims with a C[ivil] C[ode] section] 1542 waiver as to all unknown claims as to all defendants as well as defendants['] agents, witnesses, and attorneys. [¶] This agreement is a confidential agreement and the parties agree to an order, enforceable by contempt, shall be issued to enforce said confidential agreement."

Pursuant to the stipulation, the case was dismissed. The court retained jurisdiction over the settlement of the case.

Defendant's attorney, Joel F. Tamraz (Tamraz), prepared a release of all claims and obtained a cashier's check in the amount of $20,000, payable to plaintiff, both dated

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[1] Plaintiff's notice of appeal indicates that she is appealing from the subsequent notice of ruling. We treat the appeal as having been taken from the order itself. (Code Civ. Proc., § 904.1, subd. (a)(2); Cal. Rules of Court, rule 8.100(a)(2); see *Roston v. Edwards* (1982) 127 Cal.App.3d 842, 846.)

[2] The complaint is one of many documents filed in this case which was not included in the clerk's transcript on appeal. "It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) To the extent the record is inadequate to support plaintiff's claims on appeal, those claims will be resolved against her. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.)

April 20, 2006. He left messages for plaintiff letting her know he had the check and release, and he wrote to her the following day, letting her know he had the two items. He wrote to her again on May 1, confirming that he had the check and release and asking her to contact his office, "in that Frank Prior remains ready, willing, and able to comply with each and every term of the settlement which he is required to perform."

On July 28, 2006, plaintiff filed a motion to set aside the dismissal and settlement agreement (i.e., stipulation for judgment) and to reinstate the action. Although a copy of that motion is not included in the clerk's transcript, it appears from defendant's opposition that the motion was made under Code of Civil Procedure section 473 on the grounds of surprise and inadvertence, and plaintiff was claiming that Tamraz made oral promises to her in order to induce her to enter into the stipulation for judgment. According to Tamraz, plaintiff had contacted him in the middle of May and attempted to renegotiate the settlement. She told Tamraz that if defendant did not pay a higher amount, she would move to set aside the settlement. Tamraz refused to renegotiate and informed her that she had no grounds for setting aside the settlement.

Plaintiff's motion apparently was denied on September 15, 2006, and she filed a second motion to set aside the dismissal and settlement agreement on November 28. Tamraz and defendant filed declarations in opposition to the motion. Tamraz reiterated that he made no representations to plaintiff outside the stipulation for judgment, and plaintiff continued to refuse to accept the settlement amount or to execute the release of claims. Defendant stated that he had given Tamraz the $20,000 for settlement of the litigation and he had incurred over $350,000 in attorney's fees in connection with the litigation. He noted that plaintiff had filed suit against four other parties regarding the same matter. He concluded that unless the court awarded sanctions against plaintiff or forced her to bear the cost of this litigation, she would continue to use the judicial system to harass him.

While the record does not reveal a ruling on plaintiff's second motion, it shows that she filed a notice of appeal on January 17, 2007. That appeal was dismissed under

rule 8.100 of the California Rules of Court on April 9, but plaintiff filed a second notice of appeal on May 24. That appeal was dismissed and the remittitur filed on June 22.

Plaintiff filed an ex parte application to enforce the settlement agreement on May 5, 2008. In it, she claimed that "[b]y the terms of the [April 4, 2006] written agreement, plaintiff released defendant and his agents from all claims and dismissed the case against defendant with prejudice. Defendant Prior agreed to tender a settlement payment (that amount being confidential) to plaintiff. Defendant Prior has never tendered the settlement payment. Defendant first demanded that plaintiff sign a new agreement and now claims that a Notice of Lien prevents defendant Prior from tendering said payment to plaintiff."

In opposition, Tamraz noted that plaintiff was still refusing to sign the release of claims. He also noted that defendant had a 2004 judgment against plaintiff which had been assigned to Tyler Barnes (Barnes) on October 16, 2006. Barnes had filed a notice of lien in the instant action, so satisfaction of that judgment was required before the instant action could be settled. In response, plaintiff challenged the documents Tamraz had filed and requested "that the court grant plaintiff's motion and order defendant to immediately deliver the settlement payment" to her.

According to Tamraz, at a May 23, 2008 hearing on plaintiff's motion, defendant came to court with the cashier's check for plaintiff. Plaintiff refused to sign the release of claims and dismissal with prejudice. The court prepared a release, but plaintiff refused to sign that one as well. The matter was then placed off calendar.

Plaintiff filed a second ex parte application to enforce the settlement agreement on June 9, 2008. On June 19, defendant filed a motion to have plaintiff declared a vexatious litigant. On July 7, plaintiff filed opposition to that motion and a third motion to enforce the settlement agreement. There was a trial court ruling in August 2008, presumably a denial of plaintiff's application(s) to enforce the settlement.

On September 27, 2010, plaintiff filed a request for an order entering judgment, and on November 12, 2010, she filed a motion to enforce the settlement and enter judgment.

In opposition, Tamraz filed a declaration stating that this was plaintiff's fifth such motion, a fact which she did not mention in the motion, and that all previous motions had been denied. He noted that plaintiff still refused to sign the release of claims. Tamraz filed documents with the court showing that at some point during the proceedings, plaintiff filed a separate action against defendant, Tamraz and Barnes for breach of the settlement agreement. (*Windsor v. Prior* (Super. Ct. L.A. County, No. 07C04871).)

In her reply, plaintiff challenged the accuracy of Tamraz's declaration. Additionally, she claimed she was not required to sign the release of claims prepared by Tamraz, and she had "***never*** refused to sign a general release of claims if it *does not* modify the terms of the stipulated judgment." She had "no objection to signing a form dismissal with prejudice, ***but not until the proceeds are tendered,*** after plaintiff no longer needs the court's jurisdiction pursuant to [Code of Civil Procedure section] 664.6."

On October 28, 2010, the trial court ruled as follows: "Plaintiff and Defendant entered into a settlement agreement. Defendant was to tender payment to Plaintiff in exchange for a dismissal with prejudice as well as a release of all claims with a C[ivil] C[ode section] 1542 waiver as to all unknown claims as to all defendants as well as defendant's agents, witnesses and attorneys[.]

"Although the cas[e] was dismissed, Plaintiff refused to execute the required release (and apparently continues to do so). As such, Judge Grant denied requests to enforce the settlement agreement three times in 2008. Instead of filing a motion to enforce the settlement, as she did previously, Plaintiff has now submitted a request for entry of judgment. However, Plaintiff has still not executed the required releases. [¶] Plaintiff's request is denied by the Court."

On December 14, 2010, the trial court ruled on plaintiff's motion to enforce the settlement. Plaintiff signed a release of claims, including a Civil Code section 1542 waiver. The court granted plaintiff's motion and ordered the case dismissed with prejudice pursuant to Code of Civil Procedure section 664.6.

Plaintiff submitted a proposed order on judgment which included numerous provisions, including an award of prejudgment interest at 10 percent from April 21, 2006.

The trial court rejected her proposed order, and it ordered her to submit a new proposed order including only the provisions stating that she had signed a general release, the court ordered the case dismissed with prejudice retaining jurisdiction under Code of Civil Procedure section 664.6, and defendant shall immediately tender the $20,000 settlement proceeds to plaintiff. Plaintiff complied, and the court signed the order on judgment on January 18, 2011.

On January 27, 2011, plaintiff filed a writ of execution as judgment creditor on the April 4, 2006 judgment, seeking the $20,000 judgment plus $9,545.36 in postjudgment interest. In her supporting affidavit, she stated: "On April 4, 2006 the stipulated judgment . . . was filed and entered. [¶] Defendant Frank Prior's obligation was due on April 20, 2006. [¶] On December 14, 2010 the court ordered Frank Prior to tender the proceeds to Windsor. Calculating the interest rate at 10%, the interest due on the stipulated judgment, up to and including the date of January 27, 2011 is $9,545.36. The daily interest is $5.48."

A notice of levy was mailed to Wells Fargo Bank on January 11, 2012. The amount sought was $29,622.84 plus $5.48 interest per day from January 29.

Defendant filed an ex parte application to set aside the writ of execution and notice of levy on February 7, 2011. In the supporting declaration, Tamraz reminded the trial court that plaintiff had been ordered to remove the provision for postjudgment interest from the proposed order which the court had rejected, and the signed order only stated that defendant was to pay plaintiff $20,000. Additionally, in a separate case, *Prior v. Windsor* (Super. Ct. L.A. County, 2004, No. 03U02263), defendant had been awarded $11,298.30, which, with interest, now totaled $18,479.26. Therefore, the net balance defendant owed to plaintiff was only $1,520.74.

Plaintiff filed her opposition, claiming that the ex parte application did not satisfy the requirement of showing irreparable harm. As part of her opposition, she asserted that the stipulated judgment was entered on April 4, 2006, plaintiff's performance of the settlement agreement—dismissal of the action with prejudice—was prevented by defendant's demand that plaintiff sign a general release he approved of and his refusal to

tender the settlement amount. Plaintiff was entitled to postjudgment interest as a matter of law, and "contrary to what defendant, through his attorney's declaration under penalty of perjury, represents, the Court did *not* inform plaintiff that interest would not be allowed." Plaintiff also challenged defendant's right to an offset based on the judgment in the other case.

On February 15, 2011, the trial court ruled as follows: "The Court GRANTS the Motion of Defendant Frank Prior to set aside and vacate the writ of execution issued on January 27, 2011 and notice of levy served upon Wells Fargo Bank. [¶] Plaintiff is not entitled to interest from the date of the agreement as Plaintiff failed to fully perform the terms of the agreement by executing the required release until December 14, 2010. Plaintiff is entitled to post-judgment interest from the date of the order (January 18, 2011)." Plaintiff appealed from the order granting defendant's motion.

A judgment debtor examination was subsequently held, and defendant applied to offset the amount plaintiff owed him against the amount he owed plaintiff. On July 6, 2011 it was ordered that the judgment in defendant's favor in case No. 03U02263 be offset against the amount he owed plaintiff in the instant case. "With that offset, the total judgment due to Shirley Windsor for both judgments is $2,718.75." Upon defendant's payment of the amount, the cases would be dismissed and the judgments satisfied.

DISCUSSION

On appeal, plaintiff makes the same claims rejected by the trial court below, that she obtained a stipulated judgment on April 4, 2006, that the stipulated judgment did not require that she sign an additional release, and that she fully performed under the settlement agreement by dismissing the case with prejudice. We agree with the trial court.

A settlement agreement is interpreted according to the same principles as any other written agreement. (*Gouvis Engineering v. Superior Court* (1995) 37 Cal.App.4th 642, 649.) It must be interpreted to give effect to the mutual intent of the parties as it

existed at the time, insofar as that intent can be ascertained and is lawful. (Civ. Code, § 1636; *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.) If the language of the agreement is clear and explicit and does not involve an absurdity, determination of the mutual intent of the parties and interpretation of the contract is to be based on the language of the agreement alone. (Civ. Code, §§ 1638, 1639; *Sass v. Hank* (1951) 108 Cal.App.2d 207, 211.)

The settlement agreement provided that "Defendant Frank Prior, shall pay to Shirley Windsor aka Shirley Winsor the sum of $20,000 (twenty thousand dollars) within 15 days, or on or before April 20, 2006, in exchange for a dismissal with prejudice as well as a release of all claims with a C[ivil] C[ode section] 1542 waiver as to all unknown claims as to all defendants as well as defendants['] agents, witnesses, and attorneys." By its terms, the settlement agreement provided that defendant would pay plaintiff $20,000, in exchange for which plaintiff would provide him with a dismissal with prejudice "as well as" a release with a Civil Code section 1542 waiver.

"As well as" means "and." (See, e.g., *People v. Streeter* (2012) 54 Cal.4th 205, 248; *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 463, fn. 25 [interpretation from plain meaning of language and purpose of provision].) Therefore, plaintiff was required to provide defendant with both a dismissal with prejudice and a release. The stipulation which plaintiff signed was not the release; it was an agreement to provide defendant with a release.

This was what the trial court found on October 28, 2010, when it ruled on plaintiff's request for entry of judgment. It further found that "[a]lthough the cas[e] was dismissed, Plaintiff refused to execute the required release (and apparently continues to do so). . . . Instead of filing a motion to enforce the settlement, as she did previously, Plaintiff has now submitted a request for entry of judgment. However, Plaintiff has still not executed the required releases."

Plaintiff now argues that the ex parte hearing on defendant's application to set aside the writ of execution and notice of levy denied her due process, in that, "[h]ad Plaintiff had the opportunity to properly respond the evidence would have been

researched and presented to prove that Plaintiff never refused to sign a release but only objected to certain language in Defendant's release." Plaintiff had numerous opportunities to present such evidence to the court, as well as to sign a release acceptable to her. She failed to do so.

Plaintiff's argument that she is entitled to postjudgment interest on the April 4, 2006 "judgment" is similarly without merit. What was entered on April 4, 2006 was a dismissal of the case, not a judgment awarding plaintiff $20,000. Thus, there was no judgment on which she was entitled to postjudgment interest.

On plaintiff's final motion to enforce the settlement agreement, the trial court rejected plaintiff's proposed order which included an award of prejudgment interest at 10 percent from April 21, 2006, and on January 18, 2011 it signed an order dismissing the case and ordering defendant to tender the $20,000 settlement proceeds to plaintiff.

Plaintiff had absolutely no basis on which to claim postjudgment interest from April 4, 2006. The trial court therefore did not abuse its discretion in setting aside the writ of execution and notice of levy which sought interest to which plaintiff was not entitled. (*Evans v. Superior Court* (1942) 20 Cal.2d 186, 188; see *Wyshak v. Wyshak* (1977) 70 Cal.App.3d 384, 393-394; *Vest v. Superior Court* (1956) 140 Cal.App.2d 91, 93.)

DISPOSITION

The order is affirmed. Defendant shall recover costs on appeal.

JACKSON, J.

We concur:

WOODS, Acting P.J. ZELON, J.