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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LAKSHMAN R. KOKA, Plaintiff and Appellant, v. VENKATESH KOKA, Defendant and Respondent.	B277116 (Los Angeles County Super. Ct. No. VC047710)

APPEAL from an order of the Superior Court of Los Angeles County, Lori Ann Fournier, Judge. Affirmed.

Reid & Hellyer and Michael G. Kerbs, for Plaintiff and Appellant.

Curd, Galindo & Smith and Joseph D. Curd, for Defendant and Respondent.

Appellant Lakshman R. Koka appeals from an order enforcing a settlement agreement pursuant to Code of Civil Procedure section 664.6.[1] The court determined appellant's cross-complaint was barred by his release of all claims against respondent in a settlement agreement in an earlier action. (*Koka v. Koka* (Super. Ct. L.A. County, No. 047710); (*Koka v. Shastri* (Super. Ct. L.A. County, No. 037226).) Appellant argues the court lacked authority to grant the motion for enforcement of settlement and that it misinterpreted the settlement agreement to bar his cross-complaint. He further argues the court lacked the power to strike the cross-complaint. We disagree with these contentions and affirm.

FACTUAL AND PROCEDURAL SUMMARY

In 1997, appellant; his mother, Rukmani Koka; his brother-in-law, Ramachandra Pulumati; and Sunil Shastri formed a partnership to purchase and operate a property, located at 18612 and 18612½ Pioneer Boulevard in Artesia, California (the property). In 2002, appellant, his mother, and his brother-in-law filed suit against their partner, Shastri, alleging Shastri had misappropriated rents generated by the property. (*Koka v. Shastri* (Super. Ct. L.A. County, No. 037226).) The parties reached a settlement agreement in that action (the original Shastri action) in 2004 (the 2004 agreement). Under the 2004 agreement, appellant and his co-plaintiffs were entitled to payments from Shastri and an accounting to determine the amount of further sums payable by Shastri.

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[1] Subsequent undesignated statutory references are to the Code of Civil Procedure.

In 2006, appellant commenced an action (the family action) against his mother, brother-in-law, and brother, respondent Venkatesh Koka to determine his interest in the property, and other properties owned by the family (the family properties). (*Koka v. Koka* (Super. Ct. L.A. County, No. 047710).) Appellant claimed he possessed an ownership interest in the family properties. The defendants disputed this, claiming appellant was not a true owner, but had consented to have his name nominally placed on the title to the properties "to hold legal title, obtain financing, assist in establishing credit and citizenship, and facilitate management of the properties by their absentee owners." In 2009, the parties to the family action reached a settlement agreement (the 2009 agreement), which provided that appellant would receive $2,000,000 in exchange for releasing all claims of interest in the family properties.

In 2012, appellant's mother moved to enforce the 2004 agreement from the original Shastri action and requested an accounting. In 2013, appellant's mother and brother-in-law transferred their interest in the property by quitclaim deed to Realty Specialties, Inc., a company wholly owned by respondent. Respondent continued the action in his mother's name, as permitted by section 368.5. The motion for an accounting was approved and the court found that Shastri owed respondent and his company $780,089.90. This order was affirmed on appeal in an unpublished case. (*Koka v. Shastri* (Aug. 31, 2015, B253523) [nonpub.opn.].)

In 2013, respondent filed suit (the second Shastri action), alleging that Shastri had made a fraudulent conveyance of the property to his wholly-owned company, Ajah, LLC. (*Koka v. Shastri* (Super. Ct. L.A. County, No. 063624).) Shastri and Ajah,

LLC filed a cross-complaint against respondent, respondent's company, appellant, appellant's mother, and appellant's brother-in-law. Appellant then filed a cross-complaint against respondent, Shastri, and their respective companies, claiming he was owed payments pursuant to the 2004 agreement in the original Shastri action.

Respondent demurred to appellant's cross-complaint in the second Shastri action and filed a motion for enforcement of the 2009 settlement agreement in the family action (case No. VC047710). In that motion, he argued the release provisions of the 2009 agreement barred appellant from bringing the cross-complaint against him in the second Shastri action.

The 2009 agreement states that its purpose is to "avoid the expense, inconvenience and uncertainty of litigation." It further states that it "is intended as a full and complete compromise of all claims or potential claims between the parties and should be liberally construed to accomplish that purpose."

The 2009 agreement includes a release of "any and all claims . . . of whatever kind and nature . . . which Lakshman now has or ever will have" against respondent, "including without limitation any and all such matters arising out of or in any way related to the facts, circumstances, transactions and/or claims set forth in [the family action]." It includes a promise that Lakshman and his wife will execute quitclaim deeds to the family properties, including the property. The purpose of the quitclaim provision is that appellant and his wife "shall forever and unconditionally waive and relinquish any and all interest or claim they may have or purport to have in or to any and all of [the family properties]." Appellant and his wife executed a

quitclaim deed on the property in July 2010, which was recorded in January 2013.

The 2009 agreement states that "Lakshman shall cause [the family action] to be dismissed with prejudice" but that "[t]he dismissal . . . shall be subject to the court's retention of jurisdiction to enforce the terms of this Agreement pursuant to Code of Civil Procedure section 664.6." It provides that "any disagreement or dispute over the meaning or effect of any term or provision of this Agreement . . . shall be submitted to the Hon. William Sheffield." The 2009 agreement also contains a severability clause.

Appellant opposed respondent's motion for enforcement of settlement, arguing that the 2009 agreement did not bar his cross-complaint in the second Shastri action. He also argued the trial court lacked authority to interpret the release provisions because the 2009 agreement requires mediation of disputes before retired Judge Sheffield. Respondent replied with a declaration alleging that Judge Sheffield was no longer offering mediation services.

The trial court heard respondent's demurrer to the cross-complaint in the second Shastri action and motion for enforcement of settlement at the same time. The court granted the motion, finding that appellant's cross-complaint against respondent was barred by the terms of the 2009 agreement. The court based its authority to grant the motion on the 2009 agreement, which provides for court enforcement pursuant to section 664.6. The court struck appellant's cross-complaint in the second Shastri action and deemed the demurrer moot in light of its ruling on the motion.

Appellant appealed from the order granting the motion for enforcement of settlement and striking his cross-complaint. The court dismissed the cross-complaint with prejudice in November 2016.[2]

DISCUSSION

I

Appellant argues the trial court lacked authority to grant the motion for enforcement of settlement because the 2009 agreement required that all disputes be submitted to mediation before retired judge William Sheffield. We disagree.

We review orders enforcing settlement agreements under section 664.6 de novo. (*Weinstein v. Rocha* (2012) 208 Cal.App.4th 92, 96.) Further, "the interpretation and construction of a written instrument" such as the 2009 agreement in this case, "may be conducted de novo where ' . . . the trial court's contractual interpretation is based solely upon the terms of the written instrument without the aid of extrinsic evidence.'" (*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1180, quoting *Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 913.) We imply all findings which are both supported by substantial evidence and necessary to support the court's order. (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 739.)

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[2] We take judicial notice on our own motion of the case summary in *Koka v. Shastri*, Superior Court, Los Angeles County, No. 063624. (Evid. Code, § 452, subd. (d).) Because notices of appeal must be construed broadly, we construe the notice of appeal to include the dismissal of the cross-complaint, which is an appealable final order. (*Kantor v. Housing Authority* (1992) 8 Cal.App.4th 424, 429.)

The mediation provision in the 2009 agreement did provide that all disagreements or disputes be submitted to Judge Sheffield for mediation. But there was substantial evidence indicating that Judge Sheffield was unavailable for mediation. Respondent's attorney submitted a declaration in which he averred that Judge Sheffield was no longer listed on the website of mediation provider Judicate West and that the provider stated Judge Sheffield had "retired." Appellant argues this means only that Judge Sheffield was retired from the bench, but the context unmistakably indicates that he was no longer providing mediation services.

"Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary." (Rest.2d Contracts, § 261; see also *In re Marriage of Benjamins* (1994) 26 Cal.App.4th 423, 432, fn. 3.) Here, the parties bargained for mediation, naming a specific mediator, but did not indicate how an alternate mediator would be selected in the event of Judge Sheffield's unavailability. When Judge Sheffield retired, it became impracticable for respondent to mediate disputes under the 2009 agreement. It is not reasonable to require respondent to retain the mediation services of a person who was no longer providing that service. (See Rest.2d Contracts, § 261, com. d ["[p]erformance may be impracticable because [of] extreme and unreasonable difficulty"]; see also *Oosten v. Hay Haulers Dairy Employees & Helpers Union* (1955) 45 Cal.2d 784, 788, quoting Rest. Contracts, § 454

[impracticability can be caused by "extreme and unreasonable difficulty"].)

Therefore, the mediation provision fails due to impracticability. Because the 2009 agreement contains a severability provision, the rest of the agreement is unaffected by the failure of the mediation provision. This leaves only the language allowing court enforcement under section 664.6. This language, vesting the trial court with authority to enforce the 2009 agreement, necessarily encompasses the authority to resolve conflicts regarding contractual interpretation. (See *City of Fresno v. Maroot* (1987) 189 Cal.App.3d 755, 760, fn. 3.)

II

Appellant next argues that the release provisions in the 2009 agreement do not bar him from bringing a cross-complaint against respondent in the second Shastri action. We disagree.

The release provisions of the 2009 agreement employ broad language, encompassing "any and all claims" against respondent "including without limitation any and all such matters arising out of or in any way related to the facts, circumstances, transactions and/or claims set forth in [the family action]." General releases using such language "must be given a comprehensive scope." (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 306 [release of "all claims" must be construed broadly to achieve purpose of avoiding litigation].) The 2009 agreement explicitly states that its language "should be liberally construed" to avoid litigation.

Appellant's cross-complaint in the second Shastri action was clearly "related to" his claim in the family action. In both cases, appellant was attempting to determine his interest in the property. In the 2009 agreement, appellant promised to deed his

interest in the property for the purpose of relinquishing any claim of ownership or interest. Appellant and his wife executed a quitclaim deed on the property, which was recorded in January 2013. Yet, in his cross-complaint, appellant claimed to be owed money based on the settlement in the original Shastri action. The only basis upon which appellant could be owed such money is that he has some interest in the property, which was the subject of that litigation.

Determining the extent of appellant's interest in the family properties was the subject of the family action, which was settled when the parties signed the 2009 agreement. The clear purpose of the 2009 agreement was to avoid determining appellant's interest in the family properties, including the property. By filing a cross-complaint against respondent which would require determination of his interest in the property, he violated the purpose of the 2009 agreement. The court did not err in granting the motion for enforcement of judgment on that basis.

III

Appellant also argues that the court lacked the authority to strike and dismiss his cross-complaint in the second Shastri action based on its ruling in the family action because the cases were unrelated. We disagree.

We take judicial notice on our own motion of the fact that the same judge had both the family action (case No. VC047710) and the second Shastri action (case No. VC063624) pending before her at the time of the order. The court heard the demurrer in the second Shastri action and the motion for enforcement of settlement in the family action on June 2, 2016, took both matters under submission on June 21, 2016, and issued orders on both matters on June 24, 2016.

The court was authorized to strike the cross-complaint pursuant to section 436, which provides that "[t]he court may . . . at any time in its discretion . . . [¶] . . . strike out any . . . improper matter inserted in any pleading." The court's finding in the family action that appellant had released all claims against respondent rendered appellant's cross-complaint in the second Shastri action improper. It was within the court's discretion to strike the improper pleading. Therefore, the court did not err in dismissing appellant's cross-complaint with prejudice.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.