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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

WILLIAM LITTLE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; DAVID PULLMAN et al., Real Parties in Interest.	B260866 (Los Angeles County Super. Ct. No. BC395717)

ORIGINAL PROCEEDING in mandate. Mark V. Mooney, Judge. Petition granted.

William Little, in pro. per., for Petitioner.

No appearance for Respondent.

Armen Manasserian for Real Parties in Interest David Pullman and Structured Asset Sales, LLC.

In this longstanding contract dispute, the superior court granted a motion for summary adjudication and to compel arbitration, finding that a previous settlement agreement had been unilaterally rescinded. The nonmoving party petitioned for a writ of mandate directing the superior court to vacate its order on the ground that the court's decision did not comply with the directions in our previous opinion in this matter. We grant the petition and remand for further proceedings as contemplated by our prior opinion.

BACKGROUND

This litigation, making a third appearance in this court, concerns a dispute over residual income rights once owned by the bankruptcy estate of television and film actor Sherman A. Hemsley.

Upon Hemsley's bankruptcy, in 2005 the bankruptcy trustee made available for sale certain rights to collect Hemsley's theatrical residuals from the Screen Actors Guild, which administers residual collection and distributes the income to the rights-holder. (*Little v. Pullman* (2013) 219 Cal.App.4th 558, 561 (*Little II*).) Respondent David Pullman approached petitioner William Little, suggesting that they purchase certain of the residuals for $85,000 and split the cost and resulting income flow. Pullman offered to buy and paid for the residuals, and Little paid Pullman $42,500. They entered into an agreement to share the residuals (the Original Agreement), which included an agreement to arbitrate "any controversy or claim arising out of or relating to . . . any of the transactions or services contemplated" in the Original Agreement. (*Id.* at p. 561.) A dispute arose, and Little filed suit against Pullman and Pullman's company Structured Asset Sales, LLC (SAS), alleging that the Original Agreement was illegal. Little sought rescission of the Original Agreement. (*Little v. Pullman* (Super. Ct. L.A. County, 2007, No. BC337234).)

In 2007, Pullman, SAS and Little entered into a settlement agreement, settling the pending claims (the Settlement Agreement). Unlike the Original Agreement, the Settlement Agreement did not contain an agreement to arbitrate disputes. The Settlement Agreement did, however, include a provision stating that the agreement expressed "the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all

prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof." (*Little II*, *supra*, 219 Cal.App.4th at p. 562.)

Pursuant to the Settlement Agreement, Little paid Pullman $42,500 in exchange for Pullman's release of all right, title and interest in the Hemsley residuals. (*Little II*, *supra*, 219 Cal.App.4th at p. 562.) Soon after entering into the Settlement Agreement, however, Pullman informed the Screen Actors Guild that there remained an active dispute regarding the status of the residuals and claimed rights to certain residuals for which Pullman was holding uncashed checks. Pullman attempted to rescind the Settlement Agreement and reinstate the Original Agreement, which he argued triggered the requirement to arbitrate. (*Id.* at pp. 563-564.)

In the first of the two prior visits to this Court, the trial court had denied Pullman's motion to compel arbitration based on the Original Agreement and this Court affirmed the denial, holding that the Settlement Agreement superseded the Original Agreement. (*Little v. Pullman* (May 19, 2011, B221565) [nonpub. opn.] (*Little I*).) Shortly thereafter, Pullman attempted to rescind the Settlement Agreement unilaterally and argued that, as a result of that unilateral rescission, the Original Agreement was reinstated. The trial court again denied Pullman's motion to compel arbitration and we affirmed. We disagreed with Pullman, and concluded that Pullman's rescission was not completed and, more importantly, that such a unilateral rescission of the Settlement Agreement would not necessarily reinstate the Original Agreement. (*Little II*, *supra*, 219 Cal.App.4th at p. 568.) In *Little II*, we assumed that Pullman would quickly attempt to rescind the Settlement Agreement, and stated that even if he did so, "unilateral rescission will not by itself entitle him to arbitration under the Original Agreement." (*Ibid*.)

Our opinion in *Little II* concluded by stating that "[i]n sum, it is true that the Settlement Agreement will become void when Pullman rescinds it. But unilateral rescission will establish only that Pullman wants to arbitrate the Hemsley dispute, not that Little does. To compel Little to arbitrate, Pullman must first prove that he, Pullman, is entitled to some relief upon rescission—at a minimum that he effected rescission of the Settlement

Agreement and was justified in doing so. This will require more than a bare fraud allegation. He must then prove as a separate matter that the Original Agreement contains an enforceable arbitration provision, an issue that has never been determined by any court." (*Little II*, *supra*, 219 Cal.App.4th at pp. 569-570.) That determination was not made by the trial court in granting Pullman's motion for summary adjudication and to compel arbitration.

In *Little II* we made clear that even if the rescission had been effected, "Pullman would be entitled to no relief until the court deemed the rescission justified. Should rescission ultimately be effected and the matter be revisited—either by adjudication of Pullman's cross-complaint or by a rehearing of the petition to compel arbitration—the court would be within its discretion to hold a full evidentiary hearing, perhaps involving oral testimony as well as documentary evidence, to reach a final determination regarding the merits of Pullman's fraud allegations. [¶] If at some point the trial court determines that Pullman completed the rescission and was justified in doing so and is entitled to some relief, it may then determine the merits of other issues raised by the parties but not yet addressed in substance, including whether the Original Agreement includes a valid agreement to arbitrate and whether Pullman has waived the right to seek arbitration." (*Little II*, *supra*, 219 Cal.App.4th at p. 571.)

As we anticipated in *Little II*, after our decision Pullman attempted to rescind unilaterally the Settlement Agreement by tendering $42,500 in verified funds to Little's then-counsel Mitchell Ezer.[1] Pullman then moved for summary adjudication of the issue of whether the Settlement Agreement had been rescinded, and moved to compel arbitration. Little opposed the motion and filed numerous written objections to Pullman's statement of undisputed facts.[2]

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[1] Little asserts that the tender was not completed and was insufficient, and that Ezer was substituted out as Little's counsel prior to the date on which Pullman tendered the funds to Ezer.

[2] Among the facts cited by Pullman as "undisputed" include that "Little improperly filed suit against Pullman and SAS"; "Little has been fraudulently using SAS's tax

On November 5, 2014, respondent court entered an order granting Pullman's motion for summary adjudication, concluding that the Settlement Agreement was rescinded based on the tender by Pullman of $42,500. Respondent court then deemed the summary adjudication motion to be a motion to compel arbitration and granted the motion without additional discussion. The court did not rule on Little's objections to the allegedly undisputed facts. No analysis was provided or finding made that the rescission was justified, there was no finding that the arbitration provision in the Original Agreement was valid, and even assuming the arbitration provision was determined to be valid, the trial court provided no analysis as to whether Pullman waived the right to seek arbitration pursuant to the Original Agreement.

Little filed a petition for writ of mandate, seeking to vacate the trial court's order granting Pullman's motion for summary adjudication and ordering arbitration. Little also filed a request for reconsideration with the trial court, which was denied. We issued a temporary stay on January 28, 2015 and requested opposition.

DISCUSSION

"A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) An order granting

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identification to collect and attempt to collect monies owed to SAS, monies Little falsely claims belong to him"; "Little never had any intention of abiding by the terms of the Settlement Agreement, and Little fraudulently induced Pullman and SAS to enter into the Settlement Agreement."

summary adjudication is not an appealable order, but is reviewable by writ. (Code Civ. Proc., § 437c, subd. (m)(1) [a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ].) Similarly, an order compelling arbitration is an interlocutory order and not appealable. Writ review of such an order "is proper in at least two circumstances: (1) if the matters ordered arbitrated fall clearly outside the scope of the arbitration agreement or (2) if the arbitration would appear to be unduly time consuming or expensive." (*Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 160.) In this case, which has been pending for nearly a decade, we conclude that writ review is proper in order to avoid an arbitration based on erroneous rulings of law, with the parties incurring additional delay and expense.

The trial court based its decision that Pullman had effected a rescission of the Settlement Agreement "based on the $42,500 payment tendered." We concluded in *Little II*, however, that tender of the contract amount by Pullman would not be sufficient to establish that he had effected a rescission of the Settlement Agreement and that such a rescission was justified. We further held that even if the rescission was found to have been completed and justified, that alone would not resurrect the arbitration provision of the Original Agreement. The effect of the trial court's order was to allow further trial court and arbitration proceedings that would be contrary to our opinion in *Little II*.

"When there has been a decision upon appeal, the trial court is reinvested with jurisdiction of the cause, but only such jurisdiction as is defined by the terms of the remittitur. The trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void." (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655.) Because the trial court's order granting Pullman's motion for summary adjudication and compelling arbitration did not conform to the directions of our prior opinion in *Little II*, we vacate the order and remand for further proceedings.

We deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Brown, Winfield & Canzoneri, Inc. v.*

Superior Court (2010) 47 Cal.4th 1233, 1237–1238; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240–1241.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

DISPOSITION

The petition is granted. Let a peremptory writ of mandate issue ordering the trial court to vacate its November 5, 2014 order, granting Pullman's motion for summary adjudication and compelling arbitration. Little is awarded his costs related to this petition. The temporary stay issued on January 28, 2015 is vacated, and the case remanded for further proceedings consistent with this opinion and our opinion in *Little II*, *supra*, 219 Cal.4th 558.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.