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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of ROBERT and  
MELISSA DEMARCO.

2d Civil No. B271078  
(Super. Ct. No. D334063)  
(Ventura County)

ROBERT DEMARCO,

Respondent,

v.

MELISSA DEMARCO,

Appellant.

Melissa DeMarco (Wife) appeals postjudgment orders denying her requests that Robert DeMarco (Husband) pay her share of a settlement Husband reached with his former business partner without deducting attorney fees. We affirm.

**BACKGROUND**

Husband and Wife divorced and entered into a stipulated judgment in 2013. Husband is a music composer and

receives royalties from his compositions. The judgment provides for the equal division of certain royalties he receives after paying other composers and expenses. Husband has paid Wife over \$1.5 million in royalties pursuant to the judgment.

The judgment includes a provision regarding a dispute with Husband's former business partner, Robert Egizi. It states that Husband "is to further investigate potential claims" against Egizi with an attorney of Husband's choosing. If counsel recommends pursuing the claim, Husband will follow counsel's written recommendations. Husband and Wife "shall split 50/50 any recovery obtained net of expenses. Said expenses shall include payment of reasonable attorneys fees."

Egizi filed a complaint against Husband. Husband hired an attorney and filed a cross-complaint. Over a year later, Egizi and Husband agreed to settle the lawsuit. The settlement allowed Husband to keep \$500,000 in royalty payments he withheld from Egizi, among other terms.

Although Wife was not a party to the Egizi suit and the settlement did not require her approval, Husband sought her approval. Wife refused to sign the original settlement agreement. She asked for an order directing Husband to pay her share of royalties withheld from Egizi. She also sought an order restraining Husband from executing certain terms of the settlement.

Husband offered to pay Wife for "her share of that \$500,000, or \$250,000 plus interest as soon as she provides her approval and consent to the Egizi settlement." He reiterated that "once [Wife] consents and approves the Egizi [s]ettlement [a]greement and the terms of the [j]udgment thereon, I will forthwith pay her half of the funds I am holding, specifically

\$250,000.” Before the hearing on Wife’s request for orders, Husband paid Wife \$35,000, to be applied against her share.

The trial court denied Wife’s requests for a restraining order and for immediate payment of the balance of her share. The trial court also denied Husband’s request for an order directing Wife to approve the Egizi settlement.

The Egizi settlement was modified, and Wife entered a settlement approval agreement with Husband and Egizi to “not challenge the terms of the Modified Agreement.” The approval agreement specified: “Disputes and differences exist between [Husband and Wife] and this Agreement is not intended to have any impact or effect on those disputes and differences (the ‘DeMarco Disputes’).” It also stated: “Nothing contained herein shall waive, release, or compromise any claims, rights, defenses or remedies of [Husband and Wife] in connection with any of the DeMarco Disputes.”

After Wife signed the settlement approval agreement, Husband paid his attorney in the Egizi dispute. Based on the stipulated judgment, he deducted half of the attorney fees and the \$35,000 he had already paid from her share of the settlement proceeds. That left a balance of \$85,000 (\$250,000 less \$35,000 already paid, less \$130,000 in attorney fees).

Wife asked for an order directing Husband to pay her \$215,000 (\$250,000 less \$35,000). The trial court denied Wife’s request. Wife requested a hearing for a “clarification” of the court’s order and a decision on whether Husband may deduct attorney fees. The court ruled that Wife was entitled to half of the settlement proceeds, “subject to deductions for reasonable attorneys’ fees pursuant to the terms of the [j]udgment.”

## DISCUSSION

### *Wife's Obligation to Pay Attorney Fees*

Wife contends that the trial court erred in denying her requests for orders that Husband pay \$215,000 without deducting attorney fees. We disagree.

We presume a trial court's order is correct and that factual findings are supported by substantial evidence. We construe the evidence in favor of the prevailing party and resolve all conflicts in favor of the trial court's ruling. (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 898; *In re Marriage of Zaentz* (1990) 218 Cal.App.3d 154, 162-163.)

Wife claims Husband did not comply with the stipulated judgment when he settled the Egizi suit. She claims that under the stipulated judgment, she would only be responsible for attorney fees if Husband's attorney recommended or filed a lawsuit against Egizi, if there was a side agreement, or if net proceeds were collected from the settlement. The record does not support her claim.

When interpreting a written instrument, we are bound to give effect to the plain and ordinary meaning of the language used by the parties. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264-1265.) When the language is clear and explicit and does not lead to absurd results, we ascertain the parties' intent from its written terms and go no further. (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 53.)

The stipulated judgment states that Husband is to "further investigate potential claims" against Egizi with an attorney of Husband's choosing. The parties will "split 50/50 any recovery obtained net of expenses" and after "payment of reasonable attorneys fees." Nothing in the stipulated judgment

states that Wife would not be obligated to pay attorney fees if Husband asserted a claim by cross-complaint and settled the lawsuit.

Wife also asserts various contract and quasi-contract theories.<sup>1</sup> Underlying all these theories is the claim that she and Husband entered into a new or modified agreement that relieved her of the obligation to pay attorney fees. None of these claims are supported by the record. In Husband's declaration filed in the trial court, he offered to pay her share (\$250,000) once she approved the Egizi settlement, but there is no evidence that he excused her from paying attorney fees. In any event, Wife did not accept this offer. Wife never approved the original settlement agreement. Only after the trial court denied her request for orders did she agree to the settlement under modified terms.<sup>2</sup>

The settlement approval agreement does not show that Wife's approval was conditioned on Husband paying all the Egizi fees. Such a condition is not contained in the approval agreement or in any other agreement in the record between Husband and Wife. Rather, the approval agreement states that it is "not intended to have any impact or effect" in Husband and Wife's divorce and that nothing in it "shall waive, release or compromise any claims" in the divorce. The stipulated judgment

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<sup>1</sup> Wife asserts there was a unilateral contract accepted through performance, an accord and satisfaction, a novation, a compromise, a release, promissory estoppel, equitable estoppel, and unjust enrichment.

<sup>2</sup> The record is unclear on how the settlement terms were modified.

states that Husband and Wife are jointly responsible for attorney fees in the Egizi dispute.

The court's finding that Wife's share was subject to attorney fees deductions is supported by substantial evidence.

*Bankruptcy Court Approval*

Around the same time Husband and Wife entered the stipulated judgment, Wife filed for Chapter 11 bankruptcy. Wife contends that deducting attorney fees from her share of the settlement proceeds violates statutes that require bankruptcy court approval of postpetition attorney fees. (11 U.S.C. §§ 327, 330.) We disagree.

The bankruptcy court confirmed Wife's plan of reorganization and revested all property of the estate to Wife as the reorganized debtor before Husband and Egizi entered their settlement agreement. Husband requested an order from the bankruptcy court approving the Egizi settlement. The court denied the request in part because the settlement did not require its approval. The court explained that the property at issue in the Egizi matter was no longer a part of the bankruptcy estate, since all property had already revested to Wife as the reorganized debtor. The bankruptcy court stated that if Wife wished to litigate her rights in the Egizi matter, she could do so in an "appropriate court of general jurisdiction" such as a state court.

In light of the bankruptcy court's ruling and its lack of jurisdiction over the settlement proceeds, bankruptcy court approval was not required here. (11 U.S.C. §§ 327, 330) To the extent that Wife challenges the bankruptcy court's finding and order, this court does not have jurisdiction to review that determination.

The trial court orders were within its jurisdiction,  
and Wife has not demonstrated any error.

DISPOSITION

The orders are affirmed. Husband shall recover his  
costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

John R. Smiley, Judge

Superior Court County of Ventura

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Law Offices of Richard A. Marcus and Richard A.  
Marcus, for Appellant.

Law Offices of Ian C. Malatesta and Ian C.  
Malatesta, for Respondent.