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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JENNIFER GETZ,

Plaintiff and Appellant,

v.

SYDNEY EDWARDS et al.,

Defendants and Respondents;

UB VALLEY VILLAGE, LLC,

Respondent.

B280708

(Los Angeles County
Super. Ct. No. EC064049)

APPEAL from the judgment of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Corin L. Kahn; Horvitz & Levy, Barry R. Levy, Mitchell C. Tilner; Kulik Gottesman Siegel & Ware and Donald S. Gottesman for Plaintiff and Appellant.

Walker & Kirkpatrick, John J. Walker, Jason A. Kirkpatrick and Carla J. Sanchez for Defendants and Respondents Sydney Edwards, Eric Edwards and Marta Lathrop.

King Parret & Droste, McQueen Droste and Alan J. Droste for Respondent UB Valley Village, LLC.

* * * * *

This case involves several lawsuits concerning the sale and development of the property at 5303 Hermitage Avenue in Valley Village. However, the issues on appeal are few. Plaintiff Jennifer Getz, a former tenant of an apartment on the property, sued the owner defendants, Sydney Edwards, Eric Edwards, and Marta Lathrop, after they contracted to sell the property to Urban Blox, LLC (who assigned its right to purchase the property to UB Valley Village, LLC). UB Valley Village intended to develop the property, and while in escrow, filed plans for approval of its project with the City of Los Angeles (City).

Plaintiff alleged she had a right of first refusal to purchase the property, and that she was owed compensation for her work as manager of the property. Plaintiff and the owner defendants ultimately settled plaintiff's claims by confidential settlement agreement which was signed by the trial court, and over which the court retained jurisdiction to enforce.

After settlement of the case, plaintiff filed a petition for writ of mandate against the City, naming the owner defendants and UB Valley Village as real parties in interest, challenging the City's approval of the development project. Ms. Lathrop sought enforcement of the settlement agreement, arguing that plaintiff's act of naming her as a party in the writ proceeding violated the terms of the agreement. The trial court agreed. Plaintiff challenges this finding on appeal (and makes additional undeveloped claims of error). Finding no error, we affirm.

BACKGROUND

1. The Getz Lawsuit Between Plaintiff and the Owner Defendants

In February 2015, the owner defendants and Urban Blox contracted for the sale of 5303 Hermitage Avenue to Urban Blox or its assignee. UB Valley Village later assumed all rights under the purchase agreement. Plaintiff filed this action on May 7,

2015, seeking to block the sale, enforce her right to purchase the property, and damages related to her claim that she was owed compensation for her work as a property manager. During the pendency of plaintiff's lawsuit, the owner defendants terminated her tenancy. Plaintiff refused to vacate the premises, and the owner defendants instituted unlawful detainer proceedings against her.

Plaintiff and the owner defendants negotiated a settlement. Under the agreement, plaintiff agreed to dismiss her claims against the owner defendants and vacate the property within 90 days in exchange for a sum of money to be paid upon close of escrow. Plaintiff was entitled to payment from the proceeds of sale, regardless of who purchased the property. The owner defendants agreed to stay their unlawful detainer proceeding. Plaintiff agreed to forfeit her leasehold rights to the property, to withdraw the lis pendens she had filed, and to dismiss the case after the 90-day residency period expired. She agreed that she would not file "any claims, lawsuits or causes of action against Defendants arising from her occupation of the Property . . . and any claims related to her tenancy. . . ." Plaintiff also agreed to release the owner defendants, "the Property" and their "successors" and "assigns" "from any and all claims, demands, liabilities, obligations . . . whatsoever, whether based in tort, contract, equity, law, statutes or codes . . . or any other theory of recovery, known or unknown . . . from the beginning of time to the date this Agreement is signed by all parties." Plaintiff expressly waived the protections of Civil Code section 1542.

The parties agreed that the case would not be dismissed until after plaintiff's tenancy expired. Under the agreement, the court would retain jurisdiction to enforce the agreement "until performance in full of the terms of [the] Agreement." Plaintiff filed a notice of settlement of the entire case on September 12,

2016. Plaintiff and Ms. Lathrop executed the agreement on September 15, 2016, and the Edwards defendants signed it on November 7, 2016. On November 18, 2016, the court signed the agreement, and entered an order providing that it would retain jurisdiction to enforce the agreement pursuant to Code of Civil Procedure section 664.6. The court's order also required plaintiff to vacate the property by February 5, 2017.¹

2. The UB Valley Village Lawsuit

On September 7, 2016, while settlement negotiations between plaintiff and the owner defendants were underway, UB Valley Village filed a lawsuit against the owner defendants and plaintiff, seeking specific performance of the purchase agreement, and a declaration that plaintiff had no interest in the property. Plaintiff failed to answer the complaint, and her default was entered. The owner defendants were dismissed from the action, after it was clear they intended to proceed with the sale. Plaintiff later moved to set aside her default. It does not appear that the court ever ruled on her motion. The UB Valley Village action and plaintiff's lawsuit were later deemed related, and the UB Valley Village case was ordered transferred to Judge Donna Fields Goldstein.

3. Plaintiff Files the CEQA Action

UB Valley Village intended to develop the property, and two adjacent parcels, into a "small-lot" subdivision consisting of 26 single family homes. While the property was in escrow, UB Valley Village applied to the City for approval of its development plans, and for environmental review under the California

¹ The Edwards defendants did not immediately execute the agreement, and in October 2016, plaintiff moved to enforce the settlement agreement, urging that it was valid and enforceable. Her motion was taken off calendar as moot after all parties, and the court, signed the agreement.

Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.). Between February 2016 and March 2016, during the course of the environmental review process, plaintiff attended public hearings, and submitted comment letters to the City, voicing her opposition to the project. The City ultimately approved the plans, and certified that the plans complied with CEQA.

Despite the enforceable settlement agreement between plaintiff and the owner defendants, on December 7, 2016, plaintiff filed a petition for writ of mandate under CEQA against the City, naming the owner defendants and UB Valley Village as real parties in interest, challenging the City's approval of the project, and alleging violations of CEQA and other statutes and ordinances.

On January 4, 2017, Ms. Lathrop moved to enforce the parties' settlement agreement, arguing that plaintiff violated the release in the settlement agreement by naming her as a defendant in the CEQA action.²

In opposition to Ms. Lathrop's motion, plaintiff argued that the settlement agreement did not release her right to pursue the CEQA action, and that it was limited in scope to only release her claims related to her employment, tenancy, and right to purchase the property.

The trial court granted the motion to enforce the settlement agreement, and found that "the defendants are not the necessary

² Almost contemporaneously with the filing of this motion, plaintiff sought to set aside the settlement agreement, arguing that it was executed under duress. The motion was denied by the trial court as an untimely motion for reconsideration, and as barred by judicial estoppel, finding that an enforceable agreement existed. Plaintiff abandoned her claim on appeal that the settlement agreement was not enforceable.

parties regarding the CEQA case and the CEQA case, as plead, violates the settlement agreement in this case.” The court also awarded Ms. Lathrop her attorney fees pursuant to the fee provision in the settlement agreement.

The court also consolidated the Getz lawsuit and the UB Valley Village lawsuit, but declined the parties’ request to relate the CEQA action, since that case was pending in the central district courthouse, and the local rules required that motions to transfer between districts must be made in Department 1.³

On March 28, 2017, the consolidated action was dismissed. Plaintiff filed a timely notice of appeal.

ANALYSIS

Plaintiff makes only three claims of error on appeal. She contends: (1) the trial court erred in finding that she violated the settlement agreement by naming the owner defendants as parties in the CEQA proceeding; (2) she is entitled to attorney fees and to discovery regarding whether Ms. Lathrop actually incurred any of the fees awarded to her; and (3) she is entitled to relief from her default in the case filed by UB Valley Village.⁴

³ UB Valley Village requests that this court take judicial notice of various filings in the CEQA action. It appears the CEQA action was stayed pending resolution of this appeal, based on plaintiff’s representation that this appeal would contest the enforceability of the settlement agreement (an issue which, as we stated previously, plaintiff later abandoned). We have no occasion to pass on the question of what, if any, impact this appeal may have on the CEQA action. We grant the unopposed motion for judicial notice.

⁴ During the pendency of this appeal, plaintiff retained new appellate counsel, which sought leave to provide supplemental briefing on an issue which was raised, in passing, in plaintiff’s reply brief. (*REO Broadcasting Consultants v. Martin* (1999) 69

1. The Settlement Agreement

Plaintiff argues the parties did not intend for the settlement agreement to preclude the CEQA action. She also contends UB Valley Village is not an intended third party beneficiary of the settlement agreement, and that the trial court exceeded its jurisdiction in finding that the CEQA action violated the settlement agreement because Judge Goldstein is not a designated CEQA judge. However, she “agrees that Lathrop and Edwards are not ‘necessary parties’ under [CEQA].”

Code of Civil Procedure section 664.6 empowers a court, if the parties so agree, to “retain jurisdiction over the parties to enforce [a written] settlement until performance in full of the terms of the settlement.” (*Ibid.*) A court enforcing a settlement may not “‘create [new] material terms of [the] settlement,’” but may “‘decid[e] what terms the parties themselves have previously agreed upon.’ [Citation.]” (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 983-984.)

We review orders enforcing settlement agreements under section 664.6 de novo. (*Weinstein v. Rocha* (2012) 208 Cal.App.4th 92, 96.) “[T]he interpretation and construction of a written instrument” such as the settlement 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.’”

Cal.App.4th 489, 500 [the court will not consider points raised for the first time in a reply brief].) The application also sought to make this court aware of a case decided after the appeal was fully briefed, *Howeth v. Coffelt* (Nov. 30, 2017, D072136). The owner defendants and UB Valley Village opposed the application, and we denied the request, construing the application as a letter under California Rules of Court, rule 8.254, to the extent it referred us to new authority.

(*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1180.) 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.)

The arguments made in plaintiff's opening brief seem to be untethered to the trial court's straightforward findings, conclusions and orders. We find no error in the finding the trial court actually made: that the settlement agreement barred plaintiff from suing the owner defendants in the CEQA action. Under the unambiguous terms of the agreement, plaintiff gave a broad release of all claims that she might ever have had against the owner defendants or related to the property. She released them "from any and all claims, demands, liabilities, obligations . . . whatsoever, whether based in tort, contract, equity, law, statutes or codes . . . or any other theory of recovery, known or unknown . . . from the beginning of time to the date this Agreement is signed by all parties." Such general releases are routinely enforced despite protestations by one of the parties that she did not intend to release certain types of claims. (See *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1172-1173.)

When she filed the notice of settlement in September 2016, plaintiff was plainly aware of the claims she asserted only three months later in the CEQA action; she had vocally opposed the development project since February 2016. As an apparent concession that the settlement agreement barred her claims, plaintiff also sought to set aside the settlement agreement -- the very agreement she had previously sought to enforce.

We need not decide whether UB Valley Village is a third party beneficiary of the agreement, because the trial court made no such finding. We reject the claim that Judge Goldstein exceeded her jurisdiction when she entered the order, as the

order did not purport to make any rulings regarding the CEQA action; it only determined that naming the owner defendants in the action contravened the settlement agreement that the court had jurisdiction to enforce.

2. Attorney Fees and Default

As to plaintiff's claims concerning attorney fees and setting aside her default in the UB Valley Village lawsuit, plaintiff has failed to articulate any grounds entitling her to relief. We therefore treat these issues as waived. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) In any event, the claims plainly lack merit. It appears plaintiff is seeking to relitigate the trial court's award of attorney fees to Ms. Lathrop in connection with her enforcement of the settlement agreement, and to conduct discovery anew, without identifying any error by the trial court. Moreover, plaintiff's motion to set aside her default was rendered moot by dismissal of the UB Valley Village lawsuit, and we can discern no possible prejudice to plaintiff as a consequence of her default in an action that has been dismissed.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

HALL, J.*

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