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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PREMIUM OF AMERICA, LLC,

Plaintiff and Respondent,

v.

DONNA WESTFALL,

Defendant and Appellant.

B235159

(Los Angeles County
Super. Ct. No. BC356676)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Emilie Harris Elias, Judge. Affirmed.

Donna Westfall, in pro. per., for Defendant and Appellant.

Parker, Milliken, Clark, O'Hara & Samuelian and Thomas E. Shuck for Plaintiff
and Respondent.

Donna Westfall appeals from the judgment entered in this action filed against her by Premium of America, LLC (Premium). Westfall and Premium entered into a settlement of Premium's claims, stating and agreeing to the terms of the settlement orally on the record in open court pursuant to Code of Civil Procedure section 664.6.¹ The court retained jurisdiction "to enforce the terms of the settlement."

Premium later filed a motion to enforce the settlement, contending that Westfall had failed to comply with it. Westfall opposed the motion. The record before us contains neither the motion nor Westfall's opposition. The trial court granted the motion and entered judgment.

Westfall then filed a motion to vacate the judgment pursuant to section 663.² The trial court denied the motion. Westfall appealed from the judgment but not from the order denying her motion to vacate, which is separately appealable. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 663; *Howard v. Lufkin* (1988) 206 Cal.App.3d 297, 300-303.)

On appeal, Westfall argues that under the terms of the settlement, if the parties did not sign a written settlement agreement by March 27, 2011, "then the settlement is off and we will go forward to a trial." Westfall further contends that the parties did not sign a written settlement agreement before that deadline (or ever), so the matter should go to trial. The argument lacks merit, because the reporter's transcript reflects that the parties expressly agreed to dispense with the requirement of a signed written settlement agreement and to proceed instead by agreeing to the settlement's terms orally on the record in open court.

For similar reasons, we also reject Westfall's arguments that she did not waive her right to trial and that the trial court did not make it sufficiently clear that she was waiving

¹ All subsequent statutory references are to the Code of Civil Procedure.

² One paragraph of Westfall's memorandum of points and authorities in support of the motion also refers to section 473. On appeal, however, Westfall raises no arguments concerning section 473, so we deem any contentions under that statute to have been abandoned. (See, e.g., *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538.)

her right to trial. For example, the court expressly informed Westfall that “if we do it this way, then there will be no future trial date. This will just be enforced through a motion in front of me.” After a brief colloquy, Westfall said, “All right. I got it. So it takes the trial completely off the table.” The court responded, “The trial is gone.” Westfall said “Okay.” The court then repeated, “The trial is gone.”

Finally, Westfall argues that the court should have granted her motion to vacate under section 663 because, she claims, one of the properties affected by the judgment is the sole and separate property of her husband. Westfall did not, however, appeal from the order denying her section 663 motion, and she does not contend that she raised this issue in her opposition to Premium’s motion to enforce the settlement. (As already noted, the record on appeal contains neither Premium’s motion nor Westfall’s opposition.) In any event, section 663 applies only to a judgment entered *after a trial*. (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 13-14.) There was no trial in this case, so Westfall’s section 663 motion was properly denied.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs of appeal.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.