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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

Estate of GEORGE R. HEARST, JR., Deceased.	2d Civil No. B251912 (Super. Ct. No. PR120177) (San Luis Obispo County)
SUSAN R. HEARST, Petitioner and Appellant, v. GEORGE R. HEARST III, as Co-Executor, etc., et al., Objectors and Respondents.	
SUSAN R. HEARST, Plaintiff and Appellant, v. GEORGE R. HEARST III, as Co-Trustee, etc., et al., Defendants and Respondents.	2d Civil No. B251964 (Super. Ct. No. PR120326)

George R. Hearst, Jr., was a scion of the wealthy Hearst family. He married appellant, Susan R. Hearst, in 1998. They remained married until his death in 2012. In 2002, George and Susan entered into a marital property agreement (MPA) in which Susan agreed to waive her community property interests in George's assets in exchange for $10 million in cash and a life estate in certain real property.[1] Following his death, Susan filed claims against his estate and trust seeking her share of the community property. Those claims were resolved by a written settlement agreement following mediation.

When Susan attempted to rescind the settlement agreement, respondents Stephen T. Hearst and George R. Hearst III, the co-executors/trustees of George's estate and trust, moved to enforce the settlement under Code of Civil Procedure section 664.6.[2] The trial court granted the motion, finding the parties had entered into a valid and binding settlement agreement. We affirm.

FACTS AND PROCEDURAL BACKGROUND

George's grandfather was renowned publisher William Randolph Hearst. For many years, George served as a director of the Hearst Corporation, a privately held company with interests in newspapers, magazines, television stations, cable television networks, internet businesses, real estate and other enterprises. He later became chairman of the board.

Susan and George did not have a prenuptial agreement. On December 17, 2002, while Susan was battling cancer, she and George executed the MPA. Susan, who was represented by independent counsel, agreed to accept $10 million in cash in exchange for a waiver of her community property rights. The MPA also provided that if George predeceased Susan, she would receive a life estate in the residence located at

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[1] To avoid confusion, we refer to Susan and George by their first names. No disrespect is intended.

[2] All statutory references are to the Code of Civil Procedure unless otherwise stated.

5165 Estrella Road in Paso Robles (Estrella Property). Susan accepted the $10 million payment and made no attempt to rescind or otherwise invalidate the MPA.

After executing the MPA, George created the George R. Hearst, Jr. 2003 Trust, which references Susan's life estate in the Estrella Property. It makes no mention of any community property rights. Respondents, who are George's sons from a prior marriage, were named as successor co-trustees.

Following George's death, Susan filed a petition seeking half of the community property in the estate and a separate petition seeking half of the community property in the trust. Neither petition mentions the MPA, although she now claims she was coerced into signing it and was inadequately represented by counsel during the negotiation process. In opposing the petitions, respondents asserted "the gravamen of [each] petition is really an untimely attack on the [MPA]."

The attorneys who represented Susan in the two probate actions expressly declined to represent her regarding any issues relating to the MPA. Her engagement letter with Ervin Cohen & Jessup LLP (EC&J) stated: "We will not be advising you with regard to marital property matters or in disputing the [MPA] executed by you and your late husband, and our understanding is that you will be engaging separate counsel to advise us and Bingham McCutchen LLP with regard to such matters." Susan did not retain separate counsel to advise her or her probate attorneys on those matters.

Susan propounded written discovery requests seeking, inter alia, information about George's finances and the MPA. Respondents objected, asserting that "such information would only be made relevant if your client had claimed that the [MPA] should be rescinded. However, no such claim has been made nor has any offer been made to restore the consideration received by Susan under the [MPA]."

On July 2, 2013, the parties attended a day-long mediation before Judge Melinda Johnson (Ret.). Susan personally participated in the mediation and was represented by two attorneys from EC&J and one attorney from Bingham McCutchen LLP. The mediation resulted in a written settlement agreement signed by all of the parties and their counsel. Respondents agreed to pay Susan a total sum of $550,000, with

$140,000 allocated to her life estate in the Estrella Property and $410,000 allocated to her community property claims. They also agreed to clear her title to a horse trailer. In exchange, Susan agreed to vacate the Estrella Property and to dismiss her petitions with prejudice. The settlement agreement included a waiver of Civil Code section 1542. The $10 million Susan received in 2002 is not mentioned.

The settlement agreement stated it was binding and could be enforced by motion under section 664.6. It also provided that the agreement itself is admissible and subject to disclosure for purposes of enforcing the settlement. In addition, paragraph 5 stated: "Counsel for each of the parties to this agreement represents that he/she has fully explained to his/her client(s) the legal effect of this agreement and of the Release and Dismissal with Prejudice provided for herein and that the settlement and compromise stated herein is final and conclusive forthwith, and each attorney represents that his/her client(s) has freely consented to and authorized this agreement." Susan and her attorneys signed the signature block at the end of the agreement, and she initialed the attachment page outlining the settlement terms.

A week after Susan signed the settlement agreement, her attorney advised that Susan "believes she has grounds to rescind the Stipulation for Settlement . . . and has instructed us to give you notice of her desire to rescind." Thereafter, the attorneys who represented her in the probate actions withdrew as counsel, citing a "breakdown of communications with Mrs. Hearst and irreconcilable differences as to the continued handling of the case." Susan has not accepted respondents' tendered performance of the settlement.

Respondents moved for entry of judgment under section 664.6 in both probate actions, submitting the settlement agreement that Susan had signed and initialed. Susan opposed the motion, arguing (1) the settlement agreement is inadmissible, (2) she did not fully execute or have an opportunity to read the agreement, (3) the agreement is silent about the MPA and (4) the settlement terms are unconscionable and unjust. The trial court rejected each of these arguments.

Emphasizing that the mediation was conducted by a mediator and that Susan was represented by counsel, the court found Susan had signaled her intent to be bound by the settlement agreement by signing the signature block and initialing the page containing its specific terms. The court noted the settlement terms are clear and expressly resolve Susan's community property and life estate claims. It found she had not demonstrated fraud, overreaching or excusable neglect, or that enforcement of the settlement agreement would be unjust. The court acknowledged the agreement's inclusion of a Civil Code section 1542 waiver precludes Susan from asserting any claims related to the MPA, but determined its failure to specifically mention the MPA did not render it invalid since "the issue of Susan's community property interests was made a part of the settlement agreement by virtue of the allocation of settlement proceeds."

Based on these findings, the trial court granted the section 664.6 motion and entered judgment on the settlement agreement in both probate actions. Susan filed a separate appeal from each judgment. At her request, we consolidated the appeals.

DISCUSSION

Standard of Review

"Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flic*k (1998) 60 Cal.App.4th 793, 809 (*Weddington*).) It provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." (§ 664.6.)

"It is for the trial court to determine in the first instance whether the parties have entered into an enforceable settlement. [Citation.] In making that determination, 'the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] . . .'" (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360 (*Osumi*); *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905 (*Assemi*) [trial court must "resolve [the] disputed issues and ultimately determine whether the parties reached

a binding mutual accord as to the material terms"].) "The trial court's factual findings on a motion to enforce a settlement pursuant to section 664.6 'are subject to limited appellate review and will not be disturbed if supported by substantial evidence.' [Citation.]" (*Osumi*, at p. 1360.) We review any legal determinations under the de novo standard. (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 35; *Weddington, supra*, 60 Cal.App.4th at p. 815.)

Admissibility of Settlement Agreement

The mediation confidentiality provisions of the Evidence Code encourage mediation by permitting the parties to frankly exchange views without the risk that their statements will be used against them in later proceedings. (*Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 194; *Rojas v. Superior Court* (2004) 33 Cal.4th 407, 415-416.) "Toward that end, 'the statutory scheme . . . unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception.' [Citations.]" (*Fair*, at p. 194; see Evid. Code, § 1119, subds. (a), (b).) One such exception is for written settlement agreements. (Evid. Code § 1123; *Fair*, at p. 194.) Evidence Code section 1123 provides: "A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied: [¶] (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect. [¶] (b) The agreement provides that it is enforceable or binding or words to that effect. [¶] (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure. [¶] (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute."

Susan contends the settlement agreement does not satisfy the conditions of Evidence Code section 1123 because it does not include language signifying the parties' intent to be bound. The statute provides, however, that the settlement agreement is admissible where *any* of the conditions set out in subdivisions (a)-(d) exist. (See *In re Estate of Thottam* (2008) 165 Cal.App.4th 1331, 1338-1341 [confidentiality waived under subd. (c)].) There is no question the agreement falls squarely within subdivisions

(a) and (c). It is signed by all settling parties and states, directly above the parties' signatures: "This Stipulation is *admissible and subject to disclosure* for purposes of enforcing this settlement agreement pursuant to [section] 664.6, or any other procedure permitted by law, and the provisions of the confidentiality agreement signed by the parties relative to this mediation are waived with respect to this Stipulation." (Italics added.)

The settlement agreement also falls within subdivision (b), as it expressly provides that it is enforceable or binding. (Evid. Code, § 1123, subd. (b); see *Cassel v. Superior Court* (2011) 51 Cal.4th 113, 126 [discussing application of § 1123, subd. (b)].) Paragraph 9 of the agreement states: "Any provisions of Evidence Code §§ 1115 - 1128 notwithstanding, this Stipulation is *binding* and may be *enforced* by a motion under [section] 664.6 . . . ." (Italics added.) The parties having expressly waived the agreement's confidentiality, it is admissible. (§ 1123, subds. (a)-(c).)

Enforceability of Settlement Agreement

Susan concedes she signed the settlement agreement, but argues it is unenforceable because it does not evidence mutual consent or definite terms. She claims that because the parties never agreed to settle the MPA claims, the agreement is ambiguous on its face. Respondents maintain the agreement unambiguously demonstrates the parties' mutual intent to settle Susan's community property and life estate claims for $550,000, and to waive all known and unknown claims, including those relating to the MPA. We agree with respondents.

"'The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.' [Citation.]" (*Weddington, supra,* 60 Cal.App.4th at p. 811.) "Moreover, to be binding, the agreement must be *sufficiently definite* to enable courts to give it an exact meaning." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2013) ¶ 12:955.5, p. 12(ll)–122.) In other words, "a contract is enforceable if it is sufficiently definite that a court can ascertain the parties' obligations thereunder and determine whether those obligations have been

performed or breached." (*Elite Show Services, Inc. v. Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 268; *Blackburn v. Charnley* (2004) 117 Cal.App.4th 758, 766 ["'. . . The defense of uncertainty has validity only when the uncertainty or incompleteness of the contract prevents the court from knowing what to enforce"'].)

Ordinarily, a party "who signs an instrument which on its face is a contract is deemed to assent to all its terms." (*Marin Storage & Trucking, Inc. v. Benco Contracting & Engineering, Inc.* (2001) 89 Cal.App.4th 1042, 1049.) By signing the settlement agreement, Susan objectively manifested her assent to its terms. (*Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1587; *Money Store Investment Corp. v. Southern Cal. Bank* (2002) 98 Cal.App.4th 722, 728 [bank objectively manifested consent when its employee signed acknowledgment and accepted escrow conditions].) She claims her signature does not manifest her assent because she did not see the whole agreement before she signed it. Even if her attorneys did fail to show her all of the pages, as she suggests, it would not render the agreement unenforceable. "'It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that [s]he failed to read the instrument before signing it.' [Citations.]" (*Stewart*, at pp. 1588-1589, fn. omitted; see *C9 Ventures v. SVC-West, L.P.* (2012) 202 Cal.App.4th 1483, 1501 ["'A party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing. [Citations.]"'].)

The trial court found there was no evidence that Susan's signature was obtained through fraud, overreaching or excusable neglect. The record supports this finding. The mediation was conducted by an experienced mediator. Susan was represented by three attorneys from two different law firms. Her signature/initials appear on two of the agreement's four substantive pages, including the page with the handwritten settlement terms.[3] There is no suggestion respondents withheld the other pages or otherwise attempted to mislead her. Although Stephen Hearst initialed two handwritten

[3] Although the agreement has five total pages, the fourth page contains only blank lines and the word processing file path footer.

interlineations that were not initialed by Susan, nothing in these interlineations creates any confusion regarding the settlement terms or Susan's objective manifestation of assent.

Susan contends that regardless of her assent, the settlement agreement is unenforceable because it does not specifically mention the MPA. We disagree. The MPA afforded Susan $10 million in cash and a life estate in exchange for a complete waiver of her community property rights. Despite this, she claimed a community property interest in George's estate and trust. Although Susan asserts, inter alia, she was coerced into executing the MPA, she did not challenge it. Her probate counsel not only declined to represent her on issues related to the MPA, but also understood she would be hiring counsel to advise her on those issues. Instead of hiring such counsel, Susan participated in a voluntary mediation, represented solely by her probate counsel, and agreed to a $550,000 settlement allocated specifically to her community property and life estate claims – the very claims addressed in the MPA.

As respondents point out, Susan's decision to forego legal advice on her MPA claims does not render the settlement unenforceable. Section 664.6 does not require representation by counsel. It requires only a written settlement agreement signed by the parties. (See *Levy v. Superior Court* (1995) 10 Cal.4th 578, 585-586 [it is the litigants' -- not their attorneys' -- signatures that are necessary to make a settlement agreement enforceable].)

The settlement agreement reflects Susan's intent to release "all claims and causes of action [against respondents], whether *now known or now unknown*." (Italics added.) Unquestionably, Susan was aware of the MPA claims when she signed the agreement. Moreover, by expressly waiving Civil Code section 1542, the parties confirmed their intent to settle all claims between them, known and unknown.[4] The agreement states that "[c]ounsel for each of the parties to this agreement represents that he/she has fully explained to his/her client(s) the legal effect of this agreement and of the

[4] Civil Code section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Release and Dismissal with Prejudice provided for herein . . . ." Declaring the agreement unenforceable because it does not expressly mention the MPA would impermissibly vitiate the purpose of the broad release language. (See *Crosby v. HLC Properties, Ltd.* (2014) 223 Cal.App.4th 597, 604; *Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1507 ["when interpreting a contract, we strive to interpret the parties' agreement to give effect to all of a contract's terms, and to avoid interpretations that render any portion superfluous, void or inexplicable"].)

Finally, Susan contends the settlement agreement is unenforceable because it is unconscionable and unjust. (See *Lanigan v. City of Los Angeles* (2011) 199 Cal.App.4th 1020, 1035.) She asserts she was married to one of the world's wealthiest men and is entitled to more than the $10,550,000 accorded to her community property and life estate interests. The record, however, contains no competent evidence regarding either George's personal wealth – as opposed to his family wealth – or his community property earnings during their marriage. Susan offered no evidence other than a newspaper obituary notice which, even assuming it is admissible, simply discusses George's family and accomplishments. It makes no reference to his personal income and assets.

Susan argues respondents thwarted her attempts during discovery to obtain information regarding the value of her community property interests in George's estate and trust. Respondents claimed she was not entitled to the information because she waived those interests in the MPA, which she was not contesting. But, as they point out, Susan could have moved to compel discovery responses or amended the probate petitions to challenge the MPA. She opted instead for mediation and settlement.

The only evidence before the trial court was that Susan received $10,550,000 in exchange for a waiver of community property and life estate rights. This, in and of itself, does not establish the settlement was unconscionable or unjust. As the trial court aptly summarized, "[t]he mediation was conducted by a mediator [and Susan] was represented by counsel in that process. The settlement references her community property interests and resolves her claims with respect to those interests. There is

insufficient evidence to cause the Court to refuse to enforce the agreement because of a claim that it would be unjust." [5]

In sum, substantial evidence supports the trial court's determination that the parties entered into a valid and binding settlement. (See *Osumi, supra,* 151 Cal.App.4th at p. 1360; *Assemi, supra,* 7 Cal.4th at p. 911.) We conclude the court properly entered judgment on the settlement under section 664.6.

DISPOSITION

The judgments are affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

[5] Susan moves to augment the record with documents filed in the trial court in connection with her application for a stay of judgment pending appeal. She asserts these post-judgment documents establish the value of her life estate in the Estrella Property and support her claim the settlement is unjust. Respondents oppose the motion and move to strike the portions of the reply brief discussing these documents. "Augmentation does not function to supplement the record with materials not before the trial court. . . . '[W]hen reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' [Citation.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) Accordingly, we deny Susan's motion to augment the record and grant respondents' motion to strike the portions of her reply brief, at pages 2-7, discussing the documents.

Martin J. Tangeman, Judge

Superior Court County of San Luis Obispo

Dempsey & Johnson, Stephen C. Johnson, Arlene M. Turnichak, Rebecca A. Asuan-O'Brien for Appellant.

McDermott Will & Emery, Terese A. Mosher Beluris, Jessica A. Mariani; Paul E. Clark; Greines, Martin, Stein & Richland, Cynthia E. Tobisman for Respondents.