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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PETERBERG CONSTRUCTION, INC., Plaintiff, Cross-defendant, and Respondent, v. MICHAEL KESLER et al., Defendants, Cross-complainants, and Appellants.	B296577 (Los Angeles County Super. Ct. No. BC668491)

APPEAL from a judgment of the Superior Court of Los Angeles, David Sotelo, Judge. Affirmed.

Law Offices of Michael P. Ribons and Michael P. Ribons for Defendants, Cross-complainants, and Appellants.

Turner Friedman Morris & Cohan, Steven Morris and Jonathan Deer for Plaintiff, Cross-defendant, and Respondent.

The issue before us is whether the trial court erred in finding that e-mail correspondence between appellants' real property owners and respondent contractor created a binding "walk away" settlement of the operative complaint and cross-complaint herein, and in enforcing that agreement. We conclude the trial court did not err and affirm.

Appellant property owners argue (1) the e-mail correspondence reflects mere negotiations; (2) respondent contractor's proposed formal settlement agreement included new terms demonstrating that the e-mail correspondence did not constitute an agreement; and (3) because respondent was unlicensed for want of workers' compensation insurance, under Business and Professions Code section 7031 (section 7031), any settlement of the contractor's claim for compensation would be invalid and lack consideration.

As detailed below, the e-mail correspondence shows that respondent accepted appellants' walk away offer by the deadline appellants set forth in their offer. The trial court enforced that settlement, and not the purported additional terms in respondent's proposed formal settlement agreement. Appellants' offer and respondent's acceptance, moreover, did not condition settlement on the execution of a formal settlement agreement. As also set forth below, there is no authority supporting appellants' argument that a settlement for no compensation of an alleged uninsured contractor's claim is invalid.

FACTUAL AND PROCEDURAL BACKGROUND

A. Parties

Appellants Michael Kesler, Kimberly Kesler, and Jackie Chatman own real property in Hollywood, California.

Emancee Unlimited, LLC, another appellant, is an operating entity for appellants and their property. In February 2017, Michael Kesler hired respondent Peterberg Construction Inc. (Peterberg) to perform construction work at the property. According to appellants, Emancee paid Peterberg over $200,000. Peterberg alleged appellants still owed it approximately $31,000.

B. Complaint and Answer

On July 14, 2017, Peterberg sued the Keslers and Chatman, alleging causes of action for foreclosure of mechanic's lien, breach of contract, and quantum meruit. In its complaint, Peterberg alleged that it was "duly licensed by the State of California." Peterberg alleged that appellants owed it money for work performed on appellants' property.

In their answer, Kimberly Kesler and Jackie Chatman alleged Peterberg was not "duly licensed" and thus could not recover anything on its complaint. Kimberly Kesler and Jackie Chatman claimed Peterberg "failed to possess or maintain workers' compensation insurance for all employees performing work at the Project and is deemed unlicensed by operation of law."

In his answer, Michael Kesler alleged Peterberg was not a licensed contractor. Michael Kesler also alleged that "each and every purported Cause of Action in the Complaint are barred as a result of a failure of consideration." Michael Kesler averred Peterberg failed to maintain workers' compensation insurance for all employees and therefore was deemed unlicensed by operation of law.

C. Cross-Complaint and Answer

Appellants cross-complained against Peterberg and American Contractors Indemnity Company (American) alleging causes of action for breach of contract, disgorgement, slander of title, cancellation of cloud on title, and contractor's license bond. Appellants alleged Peterberg was not licensed because it failed to maintain workers' compensation insurance.

Peterberg and American answered the cross-complaint, but the answer is not included in the appellate record. With the trial court's permission, Peterberg and American filed an amended answer. The amended answer included an affirmative defense alleging that the parties had entered a binding settlement agreement.

D. The Parties' Settlement Correspondence

On appeal, the parties dispute whether they entered a binding settlement agreement. The following facts are undisputed.

On January 29, 2018, appellants' counsel e-mailed Peterberg's counsel a five-page-single-spaced letter proposing a settlement offer. The letter summarized appellants' view of California law governing unlicensed contractors. In that e-mail, appellants stated in headings: "PETERBERG WAS REQUIRED TO OBTAIN AND MAINTAIN WORKERS COMPENSATION INSURANCE AT ALL TIMES DURING THE PROJECT." (2) "CAL. BUS. AND PROF. CODE SECTION 7031 BARS ANY RECOVERY BY AN UNLICENSED CONTRACTOR AND PROVIDES FOR DISGORGEMENT OF SUMS RECEIVED BY AN UNLICENSED CONTRACTOR." (3) "EQUITY DOES NOT SAVE PETERBERG." (Boldface omitted.)

Appellants' counsel closed her letter with the following: "In an effort to resolve this dispute and move on, and avoid incurring attorney's fees and costs, Michael Kesler, Kimberly Kesler, Jackie Chatman, and Emancee Unlimited, LLC have authorized us to settle this matter with Peterberg for a mutual walk away, such that each party will dismiss its respective pleading and bear its own attorney's fees and costs."

"**This offer will remain open until close of business on February 1, 2018 and thereafter [will be] revoked.** Please let me know if Peterberg will agree to the proposed settlement."

On February 1, 2018, Peterberg's counsel responded via e-mail: "Our clients have decided that the costs of pursuing this matter is not worth the time and aggravation, therefore, they accept your mutual walk away proposal. I will prepare a Settlement Agreement which will include mutual general releases."

On the same day, appellants' counsel e-mailed the following: "Thank you, I will wait for the proposed agreement. In the meantime, I assume we have an open extension on the discovery." On February 6, 2018, Peterberg's counsel e-mailed appellants' counsel with the message that his clients were still reviewing the proposed settlement agreement. Appellants' counsel replied that day, "Thanks for the update, obviously, we would like to wrap this up quickly. Thanks."

As explained more fully below, ultimately the parties never signed a written settlement agreement. In an e-mail exchange dated March 28, 2018, appellants' new counsel disputed that the parties had a binding settlement agreement because Peterberg's proposed written settlement agreement included terms not

discussed in the above-described e-mail correspondence, most notably a release of unknown claims described in Civil Code section 1542.

E. Court Trial

The trial court bifurcated the trial with the court first deciding whether the parties had reached a binding and enforceable settlement agreement. The parties agreed on a joint exhibit list, which included the above described correspondence regarding the settlement. There was no live testimony. As appellants represent: "In this case the Parties stipulated to all of the evidence to be considered." There was no evidence on whether Peterberg was a licensed contractor or had workers' compensation insurance.

F. Trial Court's Findings

The trial court found that the e-mail correspondence described above constituted a binding and enforceable settlement agreement. The court explained that Peterberg's counsel had accepted appellants' offer of settlement prior to the deadline in appellants' offer. "After consideration of the evidence and argument, this Court finds that as of February 1, 2018, the day plaintiff accepted the offer, there was a Settlement Agreement: Plaintiff accepted Defendant's [*sic*] offer to a 'mutual walk away, such that each party will dismiss its respective pleading and bear its own attorney's fees and costs.' "

The trial court further explained: "The unambiguous terms of settlement, the material points, were simple: 'You go your way and we'll go our way.' " "It is of no importance that there is no written settlement agreement, because the terms are clear, and nothing in defendants' offer required the mutual release to be

rendered into a formal document. Plaintiff's counsel volunteered to write one, but [t]here is no legal affirmative requirement that all settlements be reduced to a formal writing." The trial court concluded that the settlement agreement was "legally enforceable."[1]

The trial court expunged Peterberg's mechanic's lien,[2] ordered that proof of removal of the lien be filed within 10 days, dismissed the complaint and cross-complaint, and entered judgment in favor of Peterberg based on the settlement agreement. This timely appeal followed.

DISCUSSION

I. Appellants Demonstrate No Error in the Trial Court's Conclusion that the Parties had a Binding Settlement Agreement

"A settlement is an agreement to terminate or forestall all or part of a lawsuit. [Citation.] It need not be in writing. [Citations.] Compromise settlements are governed by the legal principles applicable to contracts generally." (*Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988.) "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy."

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[1] In making this finding, the trial court did not address specifically appellants' argument that the alleged failure to obtain worker's compensation insurance rendered the settlement agreement unenforceable. As we explain *post*, no evidence before the trial court supported that argument.

[2] The trial court noted Peterberg had "orally agreed to withdraw the Mechanic's lien . . . forthwith."

(*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 777.)

" 'An essential element of any contract is the consent of the parties, or mutual assent.' [Citation.] Further, the consent of the parties to a contract must be communicated by each party to the other. [Citation.] 'Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings.' [Citation.] Because there are no facts in dispute, the existence of a contract is a question we decide de novo." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 173.)

In their January 29, 2018 letter, appellants made an offer to Peterberg "for a mutual walk away, such that each party will dismiss its respective pleading and bear its own attorney's fees and costs." The trial court concluded Peterberg had accepted the terms of that offer and enforced it. On appeal, appellants argue the parties' e-mail correspondence constituted mere negotiating and not a binding agreement. Appellants argue that the proposed written settlement agreement included what they contend were material terms not discussed in the e-mail correspondence, and therefore, there was no meeting of the minds. Appellants' arguments are unpersuasive.

A. The parties entered an agreement; they did not simply negotiate

Appellants' contention that the parties' e-mail exchange constituted only negotiations cannot be reconciled with appellants' own settlement proposal. To recap, appellants' counsel represented appellants "have authorized us to settle this

matter with Peterberg for a mutual walk away, such that each party will dismiss its respective pleading and bear its own attorney's fees and costs." In their five-page e-mail correspondence, appellants' described the foregoing proposal as their "offer," and as a "proposed settlement." Nothing in appellants' proposal stated or supports an inference that appellants did not intend to be bound absent execution of a formal settlement agreement.

Nor does the law require a formal settlement agreement. As we have explained: "The test is—did the minds of the parties meet; that a proposal for a contract was made by one party and accepted by another; that the parties definitely understood and agreed upon the terms of the contract." (*Kreling v. Walsh* (1947) 77 Cal.App.2d 821, 834; see also *Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 48 ["When parties intend that an agreement be binding, the fact that a more formal agreement must be prepared and executed does not alter the validity of the agreement"].)

Here, as the trial court found, the parties agreed to walk away from the lawsuit and end the litigation. The fact that Peterson's counsel drafted a formal written agreement does not eviscerate the parties' intent to be bound by their correspondence agreeing to a mutual walk away settlement. (*J.B.B. Investment Partners Ltd. v. Fair* (2019) 37 Cal.App.5th 1, 12; *Kreling v. Walsh*, *supra*, 77 Cal.App.2d at p. 835; see also *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 295 [even if evidence showed parties contemplated a written agreement, the oral agreement was not unenforceable as a matter of law because it was not reduced to a signed writing].)

B. The parties agreed to the material terms enforced by the trial court

"Mutual intent is determinative of contract formation because there is no contract unless the parties thereto assent, and they must assent to the same thing, in the same sense." (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 358–359.) Appellants argue that the parties failed to reach a meeting of the minds on all material points.

Appellants identify no failure to reach a meeting of the minds on any material point in the agreement described in appellants' e-mailed offer and Peterberg's acceptance of that offer on February 1, 2018. This was the only agreement the trial court enforced. Simply put, appellants offered, and Peterberg accepted a mutual walk away. The terms were " 'reasonably certain' " such that they provided a basis to assess the parties' obligations. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811 (*Weddington*).)

Appellants argue that the unexecuted written contract contains material terms that were not included in the February 1, 2018 agreement and to which the parties had not agreed. For example, they argue Peterberg's counsel inserted a Civil Code section 1542 waiver into the formal written agreement and a provision prohibiting appellants from disparaging Peterson's reputation, and failed to provide for release of Peterberg's mechanic's lien. According to appellants, they did not expressly or impliedly include these provisions in their settlement offer.

Appellants, however, fail to demonstrate the relevance of provisions in a proposed settlement agreement not enforced by the trial court. Specifically, the parties' settlement agreement provided for general releases, which the trial court enforced when

it dismissed both complaints. The settlement agreement enforced by the court did not contain any nondisparagement provision. Peterberg had orally withdrawn the mechanic's lien and the trial court ordered it expunged.

Appellants rely on *Weddington*, *supra*, 60 Cal.App.4th 793 to support their claim that the parties did not agree to material terms. In *Weddington*, the appellate court refused to enforce a deal point memorandum signed by only one party during the first session of a mediation in which the parties agreed to " 'formalize' " additional material terms later. (*Id*. at p. 796.) The mediation continued for several sessions in an effort to draft an agreement. These sessions—some of which were attended by only one party—resulted in the private judge issuing an order styled as an order to enforce settlement pursuant to Code of Civil Procedure section 664.6. Concluding that the alternative dispute procedures were "seriously awry," the appellate court held the parties had not agreed to material terms. (*Weddington*, at pp. 796, 811–815.) We fail to discern how *Weddington* is instructive here where the trial court effectuated the very settlement offer championed by appellants and accepted by Peterberg.

II. Business and Professions Code Section 7031 Does Not Prevent Enforcement of the Parties' Settlement Agreement

"To protect the public, the Contractors' State License Law [CSLL] . . . imposes strict and harsh penalties for a contractor's failure to maintain proper licensure. Among other things, the CSLL states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for 'the performance of any

act or contract' unless he or she was duly licensed 'at all times during the performance of that act or contract.' " (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 418 (*MW Erectors*), italics omitted.)

A contractor must allege that he or she was duly licensed. If the opposing party contests that allegation, the contractor must produce a verified certificate. (*MW Erectors*, *supra*, 36 Cal.4th at p. 424, fn. 5.) Section 7031 prohibits "judicial aid" to an unlicensed contractor seeking compensation. (*MW Erectors*, at p. 430, fn. 10, italics omitted.) "[N]othing [however] in the statute precludes the satisfied beneficiary of such work from paying for it voluntarily." (*Ibid*.) Section 7031, moreover, does not void all contracts with unlicensed contractors; it precludes suits by unlicensed contractors to collect compensation for unlicensed work. (*Templo Calvario Spanish Assembly of God v. Gardner Construction Corp.* (2011) 198 Cal.App.4th 509, 518, 519.)

Appellants argue that the settlement agreement "is not enforceable because the underlying complaint is based upon an illegal contract, and the Court cannot enforce an obligation originating from an illegal transaction." Appellants contend such a contract lacks consideration. We disagree.

A. Peterberg's claim was not wholly invalid and thus, compromising it constituted sufficient consideration for the settlement agreement

The premise of appellants' argument is that section 7031 precluded Peterberg's claim. From this assumption, appellants reason there was no consideration for the settlement agreement. Although the compromise of a wholly invalid claim generally would not constitute consideration (*Property California SCJLW*

One Corp. v. Leamy (2018) 25 Cal.App.5th 1155, 1168), appellants cite no support for their assertion that Peterberg's claim was wholly invalid.[3]

First, there was no evidence Peterberg was an unlicensed contractor. On appeal, both sides include evidence regarding Peterberg's licensure in their appendices. That evidence, however, was not before the trial court, and no party has demonstrated that it is properly before this court. (See Cal. Rules of Court, rule 8.124(g) ["Filing an appendix constitutes a representation that the appendix consists of accurate copies of documents in the superior court file"].)[4] The stipulated universe of evidence before the trial court is devoid of any information about Peterberg's licensure status. Appellants have thus failed to demonstrate there was no consideration for Peterberg's acceptance of appellants' offer to settle the parties' respective claims.

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[3] The trial court's bifurcation order indicated that the first phase of trial "will focus solely on the issue of settlement." As appellants correctly argue, in a suit to recover compensation, Peterberg would bear the burden to show it was licensed. (§ 7031, subd. (d).) Appellants cite no authority for the proposition Peterberg bore that burden in a trial to enforce a *no* compensation agreement.

[4] We choose not to impose the sanctions for these violations of California Rules of Court, rule 8.124(g).

B. Enforcement of the walk away settlement agreement does not violate section 7031 because Peterberg received no compensation

Assuming arguendo Peterberg was unlicensed when it performed work on appellants' property, the trial court's enforcement of the settlement agreement did not award Peterberg any compensation. Appellants' characterization of the settlement as lending judicial aid to an unlicensed contractor ignores this dispositive point. The settlement as enforced by the trial court gave Peterberg *no* compensation. As such, its enforcement did not violate section 7031.

Appellants argue "[w]here an illegality is shown to exist, the courts will leave the parties where they were at the outset." Appellants' argument is consistent with the principle that a court cannot lend judicial aid to the recovery of compensation by an unlicensed contractor. Appellants fail to show any such error here. The parties' mutual walk away agreement left the parties where they were at the outset of the litigation, and the trial court did not assist Peterberg in obtaining compensation.

Finally, appellants rely on *Loving & Evans v. Blick* (1949) 33 Cal.2d 603 (*Loving*) and *Precision Fabricators, Inc. v. Levant* (1960) 182 Cal.App.2d 637, 639 (*Precision*). Neither case is apposite.

In *Loving*, the appellate court reversed the confirmation of an arbitration award compensating a joint venture that did not have a contractor's license. (*Loving*, *supra*, 33 Cal.2d at pp. 607–608).[5] In *Precision*, the appellate court held it was

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[5] An amendment to section 7031 after *Loving* and *Precision* were decided affected the application of section 7031 to a joint venture. (See *McBarron v. Kimball* (1962) 210 Cal.App.2d

prejudicial error to exclude evidence that the contractor was a joint venture. If the contractor were a joint venture and thus required under then existing law to have a contractor's license, it would violate section 7031 to enforce a settlement for such an unlicensed contractor's claim for compensation. (*Precision*, *supra*, 182 Cal.App.2d at pp. 643–644.) In contrast to *Loving* and *Precision*, here enforcing the parties' walk away settlement resulted in no compensation to Peterberg even were we to assume Peterberg was unlicensed.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

218, 219–220.) Because this case does not involve a joint venture, we need not further discuss the amendment.