

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DAVID SOLOMON,

Cross-complainant and
Respondent,

v.

OCEAN TOWERS HOUSING
CORPORATION,

Cross-defendant and
Appellant.

B270276

(Los Angeles County
Super. Ct. No. BC511043)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Mark Mooney, Judge. Affirmed.

Imber Law Group and Daniel S. Imber for Cross-defendant and
Appellant.

Smith Correll and Michelle J. Correll for Cross-complainant and
Respondent.

David Solomon successfully petitioned the trial court pursuant to Code of Civil Procedure¹ section 664.6 to enforce a written settlement agreement between himself and Ocean Towers Housing Corporation. Ocean Towers appeals, arguing that there was no meeting of the minds at the execution of the settlement agreement and that material terms were missing from the settlement agreement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying litigation between Solomon and Ocean Towers involved allegations that Ocean Towers had harmed Solomon, a real estate agent, by excluding him from the Ocean Towers housing complex, where Solomon had active listings and had done extensive business in the past. (*Pickford Realty v. Ocean Towers Housing Corporation* (Feb. 10, 2015, B254420) [nonpub. opn.].)

In August 2015 Solomon and Ocean Towers entered into a written settlement agreement. The five-page agreement constituted a compromise of disputed claims and included provisions for the dismissal of the cross-complaint, future access to Ocean Towers by Solomon and his employees, notice to Ocean Towers shareholders of the resolution of the dispute, and authorization for Solomon to enter and to conduct business within Ocean Towers. The agreement also included a mutual general release; a release of unknown claims; severability provisions; an integration clause; provisions for attorney fees and costs in the underlying dispute and any further litigation; procedures for amendment of the agreement; a non-disparagement clause; and a provision that the trial court would retain jurisdiction to enforce the terms of the agreement pursuant to section 664.6. The agreement was signed by Solomon and by the president and chief executive officer of Ocean Towers.

Discord resumed between the parties within days of the agreement's execution. Ocean Towers claimed that Solomon refused to comply with its rule that all guests check in and sign in at the front desk. Ocean Towers also contended that Solomon failed to comply with his obligation under the agreement to file a request for dismissal of his cross-complaint.

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

Solomon denied knowing about any sign-in requirement for visitors, and declared that upon learning of the requirement he ensured that he signed in for future visits. Solomon also disputed Ocean Towers's assertions concerning the request for dismissal, stating that he had already sent a signed request for dismissal to Ocean Towers's attorney for filing, as he was required to do, when Ocean Towers suddenly repudiated the settlement agreement and then denied him access to the complex and the ability to participate in real estate transactions involving Ocean Towers units. Moreover, Solomon complained that Ocean Towers had failed to send the notice required by the settlement agreement to its shareholders notifying them that Solomon was authorized to enter Ocean Towers and to conduct business listing, selling, and leasing units there.

Solomon filed a motion to enforce the settlement agreement under section 664.6. The court granted the motion and entered judgment pursuant to the terms of the agreement. Ocean Towers appeals.

DISCUSSION

Section 664.6 creates “a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met.” (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585.) In such instances, “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.] Trial judges may consider oral testimony or may determine the motion upon declarations alone. [Citation.] When the same judge hears the settlement and the motion to enter judgment on the settlement, he or she may consult his [or her] memory. [Citation.]’ [Citation.] 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 v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.)

We review the court's legal conclusions de novo. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 815.)

I. Meeting of the Minds

The settlement agreement provides, "The Parties agree that David Solomon, Anna Solomon, and any employee of David or Anna Solomon, may enter onto the premises of Ocean Towers for any legitimate business or social purpose, notwithstanding any previous decision by Ocean Towers Housing Corporation." Ocean Towers claims that the settlement agreement is unenforceable because the parties failed to reach a meeting of the minds "as to what the settlement agreement was intended to embody."

According to Ocean Towers, it intended by the settlement agreement to "address Solomon's privileges of being able to represent clients in [Ocean Towers], without granting Solomon any privileges above and beyond any other real estate agent with which [Ocean Towers] is doing business." Ocean Towers contends that Solomon "seems to think that the settlement agreement was intended to give him 'VIP' access to [Ocean Towers]" and that he has "no respect for the rules" applicable to everyone. As evidence of Solomon's purported understanding of the agreement, Ocean Towers relies upon the declaration of John Spahi, a member of the Ocean Towers board of directors, who stated that Solomon violated Ocean Towers rules and regulations by "regularly blow[ing] past the front desk without signing in or acknowledging the requests of security."

Ocean Towers's argument appears to be that there is no enforceable settlement agreement because Solomon understands the provision granting him access to Ocean Towers as meaning that he does not have to sign in when he enters Ocean Towers, while Ocean Towers understands the settlement agreement to provide Solomon access to the complex subject to its other rules and regulations, including the requirement that he sign in. This argument is at its core a claim that unless Ocean Towers and Solomon ascribed the same meaning to the provision concerning access to the complex, no contractual obligation arose. Contract formation does not require a subjective "meeting of the minds." (See *Blumenfeld v. R. H. Macy & Co.* (1979) 92 Cal.App.3d 38, 46 ["Under the objective test of contract formation, a

‘meeting of the minds’ is unnecessary. A party is bound, even if he misunderstood the terms of a contract and actually had a different, undisclosed intention”]; *Atlas Assurance Co. v. McCombs Corp.* (1983) 146 Cal.App.3d 135, 144 [same]; *Beard v. Goodrich* (2003) 110 Cal.App.4th 1031, 1039-1040 [rejecting plaintiff’s “no meeting of the minds” argument because it was based on plaintiff’s “subjective intent”].) Having agreed to the provision granting Solomon access to Ocean Towers, Ocean Towers may not now claim that it had an unexpressed understanding of the provision. “When a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents and estopped from saying that its provisions are contrary to his intentions or understanding.” (*Tarpy v. County of San Diego* (2003) 110 Cal.App.4th 267, 276.)

Contracts require mutual assent (Civ. Code, §§ 1550, 1565), but absent fraud or mistake, “the outward manifestation or expression of consent is controlling.” (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 116, italics omitted; see *Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1027 [citing text].) “[I]n determining whether there has been a mutual consent to contract the courts are not interested in the subjective intent of the parties, but only in their objective intent—that is[,] what would a reasonable man believe from the outward manifestations of consent.’ [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.] Furthermore, ‘[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. . . . (Civ. Code, § 1639.) Thus, in a case like this involving a written contract, whether there was mutual consent—i.e., a meeting of the minds—must be determined from the written contract itself, and if a reasonable and lawful construction can be given to the contract, then that is where we must conclude the minds of the parties met.” (*In re Quantification Agreement Settlement Cases* (2011) 201 Cal.App.4th 758, 816-817 (*Quantification*).)

Here, we have a formal written contract, signed by Solomon and by the president and chief executive officer of Ocean Towers, that twice expressly sets forth the parties' intention to settle their dispute. The parties declared that they, "in order to finally resolve the differences between them . . . desire to settle all of the controversies between them and any and all other outstanding disputes existing between them." They also stated that they each "intend[] to resolve each and all of the claims and disputes between them." Among its many provisions, the settlement agreement provides that Solomon is to have access to Ocean Towers for legitimate business and social purposes. The agreement itself evidences the parties' mutual consent, and Ocean Towers has neither argued nor established that the contract cannot be given a reasonable and lawful construction. (See *Quantification*, *supra*, 201 Cal.App.4th at pp. 816-817 [whether there was "mutual consent—i.e., a meeting of the minds—must be determined from the written contract itself, and if a reasonable and lawful construction can be given to the contract, then that is where we must conclude the minds of the parties met"].) The trial court did not err in concluding that the parties mutually assented to the agreement.

Even if we were to accept Ocean Towers's premise that differing understandings by the parties of what they meant when they agreed that Solomon "may enter onto the premises of Ocean Towers for any legitimate business or social purpose" could signal an absence of a meeting of the minds, Solomon presented evidence that the parties did not in fact have different understandings of the meaning of the contract. Both Solomon and Ocean Towers submitted evidence concerning the sign-in conflict on August 25, 2015. Spahi asserted that Solomon passed the front desk without signing in, refused to sign in, and yelled at and threatened Spahi and the board of directors; and Spahi also asserted without any detail that Solomon regularly failed to sign in as requested. Based on this testimony Ocean Towers claims that Solomon expected special treatment or access to the complex. Solomon, however, declared that on the date of the sign-in incident, his assistant had obtained the key for the relevant unit from the front desk, and that he did not sign in because he had never done so before and was unaware of any sign-in requirement. Solomon declared that it was Spahi and his son who raised

their voices: “Spahi and his son, Omar Spahi, began screaming and chasing me, repeatedly yelling ‘call the police’ and yelling that they were going to throw me out because I had not signed in.” Solomon declared that the Spahis would not let him proceed with the showing he was there to conduct. Solomon also declared that since that date he had always made it a point to sign in, to the point of asking the doormen to let him sign in, and that Spahi’s assertion that he regularly failed to sign in and to acknowledge the requests of security was false. Solomon’s assistant also testified to the confrontation, and she declared that she had never been asked to sign in at Ocean Towers or been told of any requirement for realtors to sign in at the front desk. Solomon, therefore, presented evidence that he did not view himself as exempt from general regulations regarding access to Ocean Towers and that he was willing, once he learned of the sign-in requirement, to sign in upon arrival. To any extent that the parties’ subjective intentions about access to the property are relevant to the validity of the settlement agreement, substantial evidence supports the conclusion that the parties had a meeting of the minds as to the contract terms.

Alternatively, Ocean Towers contends that there was no meeting of the minds in the formation of the settlement agreement because “Solomon has not followed through with other requirements under the Settlement Agreement such as file [*sic*] the timely dismissal.” The trial court made no determination of whether the settlement agreement had been breached, but even if Ocean Towers had established that Solomon did not comply with his obligations under the agreement, a breach of the agreement would not tend to demonstrate that the parties failed to agree on the material terms of the contract at the time they entered into it. Ocean Towers has not established any error.

II. Absence of Material Terms

Ocean Towers’s material terms argument also rests on the dispute over Solomon signing in at the complex. Here, Ocean Towers argues that the settlement agreement fails to resolve the question of whether it gives Solomon “VIP” treatment” and does not provide “explained ways to handle the current situation the parties face, namely what to do when Solomon fails

to properly conduct himself in accordance with [Ocean Towers] by-laws and regulations.” This, Ocean Towers contends, means that the agreement lacks material terms that govern the future actions of the parties and therefore cannot be enforced.

The parties agreed to the material term that Solomon would have access to the complex for social and professional purposes; operational details about how access would be provided to Solomon pursuant “are not material contract terms but details adjunct to the substance of the agreement.” (*Provost v. Regents of University of Cal.* (2011) 201 Cal.App.4th 1289, 1302 [where stipulated settlement required human resources to respond to prospective employers’ requests with an agreed-upon neutral response, absence of provisions in the contract specifying who in human resources would handle inquiries or how all references would be handle were not material terms].)

Moreover, no settlement agreement can be expected to anticipate and resolve all potential future conflicts between the settling parties. As the California Supreme Court has remarked, “[F]ew contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached.” (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 352.) The record before us shows no more than a post-settlement dispute about what the parties agreed to, not a failure to reach an enforceable agreement in the first instance. The trial court did not err in granting the motion to enforce the settlement agreement.

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.