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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of MICHAEL
WOLFE and AIMEE LIBEU.

2d Civil No. B283994
(Super. Ct. No. 1468299)
(Santa Barbara County)

MICHAEL JOHN WOLFE,

Respondent,

v.

AIMEE MEREDITH LIBEU,

Appellant.

Amy Libeu appeals from an order awarding Michael Wolfe interest, attorney fees, and costs incurred to enforce judgment on a marital settlement agreement (MSA). Libeu contends (1) Wolfe is estopped from collecting interest on the judgment (or there is an accord and satisfaction) because his attorney demanded that Libeu pay overdue principal within 30 days and she did; and (2) Wolfe may not recover contractual fees

and costs under the MSA because she took “the action specified” in his demand letter “within the time specified,” as provided in the MSA’s meet and confer notice provision. We affirm.

PROCEDURAL AND FACTUAL HISTORY

Wolfe and Libeu divorced after 21 years of marriage. The court entered judgment on their MSA in September 2013. They negotiated the agreement without legal representation. Libeu is an attorney; Wolfe is a marine engineer.

The MSA awards two pieces of real property to Libeu. It requires Libeu to make an equalizing payment to Wolfe in the amount of \$681,194 by June 1, 2015.

The MSA contains a fee provision with a meet and confer notice requirement. The prevailing party “in an action or proceeding to enforce any provision of [the MSA]” may recover fees and costs, but only if “he or she first gives the other party at least thirty (30) days written notice before filing the action or proceeding.”¹ The MSA requires that any modifications be made by “a writing signed by [Wolfe] and [Libeu] that expressly refers to this Agreement.”

¹ The MSA provides: “The written notice shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement, (2) the reasons why the moving party believes the subsequent action or proceeding is necessary, (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding, and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action. The first party shall not be entitled to attorney fees and costs if the other party takes the specified action within the time specified in the notice.”

Libeu did not pay Wolfe anything by the June 1, 2015 deadline. On October 23, 2015, she paid him \$500,000. When informal collection efforts failed, Wolfe hired an attorney to help him collect the outstanding balance of \$172,672.²

On July 11, 2016, Wolfe's attorney gave Libeu written notice that he would file an enforcement proceeding for her "failure to pay \$172,672," unless she paid within 30 days. He wrote, "Failure to do so will result in [Wolfe] immediately pursuing all available remedies at law and equity," including "attorney fees and costs if payment in full is not made within 30 days of the date of this letter." On July 15, he sent another letter to Libeu, confirming a conversation between them in which she acknowledged the amount due but said she would not pay it until another matter was resolved. Wolfe's attorney wrote that there was no contingency to Libeu's obligation to make the equalizing payment, and she should pay \$172,672 "immediately." He wrote that, "If you pay [Wolfe] said amount, you will not be liable for his attorney fees. If you fail to do so, [Wolfe] will pursue all available remedies at law and equity including reimbursement for his attorney fees pursuant to the terms of judgment."

On July 19 or 20, 2016, Libeu paid Wolfe \$170,000, leaving \$2,672 unpaid. On July 21, 2016, Wolfe's attorney gave Libeu 30 days written notice that he would file an enforcement proceeding unless she paid the \$2,672 balance and \$19,154.62 in accrued interest (\$21,826.62 total) within 30 days. He wrote, "In order to avoid enforcement proceedings being filed you must pay [Wolfe] \$21,826.62 within 30 days of the date of this letter." Wolfe testified he did not know until July 21 that he was entitled

² This amount reflects a credit Wolfe gave Libeu for costs incurred to ship or store his belongings.

to interest on the unpaid judgment. Wolfe and Libeu testified they never discussed interest.

On August 1, within 30 days of the July 11 demand, Libeu paid the remaining \$2,672 in principal. But she did not pay any interest.

Wolfe filed a request for an order seeking \$5,000 in attorney fees and \$19,154.62 in interest for the periods of time in which principal was unpaid. (Code Civ. Proc., § 685.020.)

The parties submitted briefs and declarations, and the court issued a tentative decision in Wolfe's favor. Libeu requested an evidentiary hearing. Wolfe traveled to California from his home in Virginia to attend the evidentiary hearing, incurring \$900 in costs. He testified he also incurred another \$5,800 in attorney fees.

Libeu argued that Wolfe's claim was barred because there was an accord and satisfaction when she paid the principal within 30 days of the July 11, 2016 demand letter. She asserted that the June 1, 2015 deadline was unrealistic, in hindsight, and reflected the parties' expectation that refinancing would be completed by then. She paid late because she had difficulty refinancing the properties to fund the equalizing payment. She testified that she withheld the final \$2,672 in principal in July because she was going to incur costs to ship Wolfe's personal belongings to him and they verbally, or in text messages, agreed to wait to see how much that would cost.

In a 20-page decision, the trial court awarded Wolfe \$19,154 in interest, \$10,000 in fees, and \$900 in travel costs. It found that neither the refinance timing nor the shipping and storage of Wolfe's personal property were relevant to Libeu's obligation to pay the judgment. The court noted that, Libeu's

“bank statements appear to show she had the ability to pay, but simply did not.”

The court found Wolfe’s claim was not barred by the doctrines of estoppel or accord and satisfaction: “Neither doctrine helps [Libeu]. She has established none of the critical elements. The simple fact is that [Libeu] had negotiated the sum demanded in the MSA; it was incorporated in the Judgment; she agreed to the date it was to be paid; she didn’t pay it when due; [Wolfe] demanded the very sum due; she eventually paid it; but paid it late. [Wolfe’s attorney’s] letters of mid-July 2016 do not alter the underlying facts. The [c]ourt sees no support for the application of the doctrines of equitable estoppel or accord and satisfaction on these facts.”

DISCUSSION

Wolfe is not barred from recovering interest, costs, and fees by his attorney’s demand letters that were written to comply with the notice provisions of the MSA.

Interest accrues on an unpaid judgment at 10 percent per annum. (Code Civ. Proc., § 685.010, subd. (b); *In re Marriage of Pollard* (1988) 204 Cal.App.3d 1380, 1382 [an equalizing payment is a money judgment on which interest accrues].) Libeu does not question Wolfe’s interest calculation, adopted by the court. But she contends her August 1 principal payment satisfied the July 11 demand letter and therefore operated as an accord and satisfaction or estops Wolfe from collecting interest. She points out that Wolfe’s attorney, as his agent, wrote on July 11, “In order to avoid further action, remit payment in the amount of \$172,672 within 30 days,” and she did.

Accord and Satisfaction

The record supports the trial court's conclusion that the parties did not reach an accord and satisfaction. "A money judgment may be satisfied by . . . acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment." (Code Civ. Proc., § 724.010 [accord and satisfaction].) Whether a transaction constitutes an accord and satisfaction is a question of fact that "depends on the intention of the parties as determined from the surrounding circumstances, including the conduct and statements of the parties, and notations on the instrument itself." (*In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1058-1059 (*Marriage of Thompson*).) The elements of an accord and satisfaction are: (1) a bona fide dispute between the parties, (2) the debtor sends a certain sum "on the express condition that acceptance of it will constitute full payment," and (3) the creditor "so understands the transaction and accepts the sum." (*Id.* at p. 1058.)

Whether the parties intended an accord and satisfaction is a question of fact. (*Marriage of Thompson, supra*, 41 Cal.App.4th at p. 1059.) We review for substantial evidence the trial court's determination they did not. (*Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 148.)

Libeu did not make her August 1 payment on the express condition that acceptance would constitute full payment of the interest that had accrued. Libeu's August 1 payment did not refer to interest. Libeu testified that she and Wolfe never discussed interest. When Libeu paid only principal on August 1, neither party could understand the transaction to constitute full payment because Wolfe's lawyer had demanded interest on

July 21. The July 11 and 15 demands did not offer to compromise Wolfe's right to interest or even mention it. Nothing in the circumstances surrounding the July 11 letter show it was intended to waive Wolfe's right to interest. There is no evidence that Wolfe understood Libeu's payment to constitute full payment of interest when he accepted it.

Estoppel

Libeu contends Wolfe is estopped from collecting attorney fees and costs because she paid the principal he demanded after his attorney wrote on July 15, "If you pay [Wolfe] said amount, you will not be liable for his attorney fees."

Wolfe is not estopped from collecting interest because Libeu did not detrimentally rely on his attorney's letters when she paid the overdue principal she undisputedly owed. Equitable estoppel is generally a question of fact; it is a question of law if the facts are undisputed and only one reasonable conclusion can be drawn from them. (*Molecular Analytical Systems v. CIPHERGEN Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 708.) "Estoppel requires: (1) the party to be estopped knew the facts; (2) the other party was ignorant of the true facts; (3) the party intended his conduct would be acted upon, or acted in a manner that the party asserting the estoppel had a right to believe it so intended; and (4) the other party relied upon the conduct to his injury." (*Marriage of Thompson, supra*, 41 Cal.App.4th at p. 1061.)

There was no detrimental reliance here. "Where one of the elements is missing, there can be no estoppel." (*Marriage of Thompson, supra*, 41 Cal.App.4th at p. 1061 [in which a county was not estopped from collecting interest on overdue child support when the father paid the full balance that the county's

ledger showed was due and the ledger balance erroneously omitted interest].)

Moreover, the doctrine of estoppel “operates to prevent one from taking unfair advantage of another but not to give an unfair advantage to one seeking to invoke the doctrine.” (*Marriage of Thompson, supra*, 41 Cal.App.4th at p. 1061.) Libeu invokes the doctrine to take advantage of Wolfe, who did not have use of the principal to which he was entitled for 14 months while she delayed payment. She is like the father in *Marriage of Thompson* who tried to avoid paying interest on overdue child support on the ground he paid the principal upon demand: “[N]o evidence show[ed] that he suffered any injury, harm, or detriment by simply paying an amount which was undisputably owing,” and his “delayed payments likely caused hardship or inconvenience to the mother.” (*Id.* at pp. 1061-1062.)

Fees and Costs Under the MSA

Libeu contends Wolfe is barred from collecting fees or costs by the MSA’s meet and confer requirement, which states that a party “shall not be entitled to attorney fees and costs if the other party takes the specified action [in the demand letter] within the time specified in the notice.” But Wolfe’s July 21 letter complied fully with the notice requirement and Libeu did not pay the interest it demanded.

Whether a contractual attorney fee clause provides for a fee award in a particular case is a question of contract interpretation. We interpret a contract de novo if the interpretation does not turn on the credibility of extrinsic evidence. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.)

The July 21 letter was sent before Libeu paid the overdue principal and its demand for interest met the MSA's requirements to: "specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement, (2) the reasons why the moving party believes the subsequent action or proceeding is necessary, (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding, and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action."

The July 21 letter fulfills each of the enumerated requirements. It states, "(1) We intend to file enforcement proceed[ing]s against you to enforce the original terms of the MSA for your failure to pay \$21,826.62 [balance plus interest] to [Wolfe]. [¶] (2) The enforcement proceedings are necessary for [Wolfe] to receive the \$21,826.62 he is due under the terms of the judgment. [¶] (3) In order to avoid enforcement proceedings being filed you must pay [Wolfe] \$21,826.62 within 30 days of the date of this letter. [¶] (4) In order to avoid enforcement proceedings being filed you must pay [Wolfe] \$21,826.62 within 30 days of the date of this letter." Libeu did not pay \$21,826.62 within 30 days, and still has not. Nothing further was required.

DISPOSITION

The order is affirmed. Wolfe shall recover his costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

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