

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

ARKIUS, INC.,

Plaintiff and Appellant,

v.

CHARLES YEH et al.,

Defendants and
Respondents,

LAW OFFICES OF MARK
WAECKER, APC,

Lienholder and Judgment
Creditor.

B271221

(Los Angeles County
Super. Ct. No. BC415114)

APPEAL from an order of the Superior Court of Los Angeles County, Barbara Ann Meiers, Judge. Affirmed.

Moon & Dorsett, Dana M. Dorsett, and Jeremy Cook for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Mark Waecker for Lienholder and Judgment Creditor.

Plaintiff Arkius, Inc.'s former counsel and judgment creditor, Law Offices of Mark Waecker, APC (Waecker), filed a motion seeking satisfaction of a lien from the judgment proceeds in this action. Arkius opposed payment to Waecker, arguing its current counsel, Dana M. Dorsett, held a competing and senior contractual lien that had not yet been adjudicated. The trial court granted Waecker's motion and Arkius appeals. We affirm.

BACKGROUND

Waecker's Legal Representation and Lien

On October 17, 2008, May 7, 2009, and September 21, 2009, Pius Kim (Arkius's principal), on behalf of himself and various companies, including Arkius, retained Waecker to perform legal services in different matters. None of the three retainer agreements included an express or implied lien provision.

Kim did not pay all amounts due under the retainer agreements. On March 14, 2012, Waecker entered into a "Release and Settlement Agreement" (the settlement agreement) with Kim, attempting to resolve their attorney fees dispute. As set forth in the settlement agreement, Kim owed \$19,046.23 under the October 17, 2008 retainer agreement, \$67,422.35 under the May 7, 2009 retainer agreement, and \$14,708.30 under the September 21, 2009 retainer agreement, for a total of \$101,176.88. Under the settlement agreement, Kim agreed to pay Waecker \$86,468.58 pursuant to an enumerated payment schedule.

The settlement agreement, which incorporated the three retainer agreements by reference, included a lien provision, stating: "KIM [on behalf of himself and the various companies,

including Arkius] grants to WAECKER a lien for the attorney fees and costs set forth [above] and all other outstanding bills for fees and costs and authorizes him to deduct from any and all amounts collected the sum of \$86,468.58, plus all fees and costs in any outstanding other invoices.” Kim represented in the settlement agreement that he had received independent legal advice before voluntarily entering into the settlement agreement.

Also on March 14, 2012, the same day Waecker and Kim entered into the settlement agreement, Kim and Arkius retained Waecker to represent Arkius in the present action.¹ In late 2012, Waecker represented Arkius at a four-day court trial in this action for recovery under construction contracts against Charles and Christine Yeh. On February 15, 2013, the trial court entered judgment in favor of Arkius and against the Yehs in the amount of \$7,329.50, plus attorney fees and costs subject to proof. (*Arkius, Inc. v. Yeh* (May 14, 2015, B248115) [nonpub. opn.], pp. 6-7.)

Dorsett’s Legal Representation and Alleged Lien

Arkius and attorney Dana Dorsett entered into a retainer agreement on September 25, 2013, according to Dorsett’s declaration in support of Arkius’s opposition to Waecker’s motion for satisfaction of his lien. The retainer agreement is not part of the record on appeal. Dorsett represented in her declaration that the retainer agreement included a lien provision, stating: “Client [Arkius] hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney’s representation under this Contract. Attorney’s lien will be for any sums due and

¹ The record before us does not include a retainer agreement for Waecker’s representation of Arkius in the present action.

owing to Attorney at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. . . . Client is hereby advised that he/she may seek the advice of an independent lawyer of the Client's choice to review this lien provision. Client may withhold signing of this lien until he/she has had a reasonable opportunity to seek the advice of an independent counsel."

Dorsett represented Arkius in the cross-appeals from the \$7,329.50 judgment in favor of Arkius, referenced above, and continues to represent Arkius to this day. In the appeals, Arkius contended the trial court erred in declining to award it additional money under the construction contracts, and the Yehs contended the trial court erred in awarding Arkius any money at all. We affirmed the portion of the judgment awarding Arkius \$7,329.50, reversed the portion denying Arkius recovery on two of the contracts, and remanded the matter for further proceedings. (*Arkius, Inc. v. Yeh, supra*, B248115, pp. 2, 12.)

Judgment in Favor of Waecker After Arbitration of Attorney Fee Dispute

On July 14, 2014, Waecker filed an arbitration claim against Kim before the American Arbitration Association, alleging failure to pay attorney fees due under the retainer agreements. Arkius and other of Kim's companies were later added as respondents. According to the August 14, 2015 final arbitration award, Kim did not pay Waecker any portion of the \$86,468.58 due under the settlement agreement. Nor did Kim or Arkius pay \$125,817.50 in attorney fees due for Waecker's representation of Arkius in this action.

During the arbitration, Kim disputed the validity of the settlement agreement containing the lien provision. The arbitrator found the settlement “agreement was negotiated at arm’s length over a period of six months,” and Kim’s testimony “that he did not fully understand the [settlement agreement] nor did he seek separate legal advice concerning the [settlement agreement]” was “self-serving and lacked credibility.”

The arbitrator awarded Waecker a total of \$323,320.58 for money owed under the retainer agreements, plus interest, fees, and costs. On October 22, 2015, the superior court entered a judgment confirming the arbitration award and stating the amount Kim and Arkius jointly and severally owed to Waecker in breach of contract damages, interest, attorney fees, arbitration fees, and costs was \$299,694.77.²

Notices of Lien

On September 15, 2015, after the arbitrator issued the final award in favor of Waecker and before the superior court confirmed it, Dorsett filed in the present action a “Notice of Attorney’s Lien,” stating she had a contractual lien on Arkius’s recovery in this action (presumably arising from her alleged September 25, 2013 retainer agreement with Arkius).³

On October 13, 2015, Waecker filed a notice, stating he had a contractual lien on Arkius’s recovery in this action, arising from the March 14, 2012 settlement agreement.

² Kim and another of his companies jointly and severally owed to Waecker the remaining \$23,625.81 of the arbitration award.

³ As stated above, Dorsett referenced the retainer agreement and lien provision in her declaration, but the agreement itself is not included in the record on appeal.

On or about November 2, 2015, after the superior court confirmed the arbitration award and entered judgment, Waecker filed a notice of its judgment lien.

Judgment in Favor of Arkius in This Action

On December 3, 2015, the trial court in the present action entered judgment in favor of Arkius on the causes of action related to the portion of the judgment affirmed on appeal, and severed the remaining causes of action. As set forth in the judgment, Arkius's recovery included "\$7329.50 principal plus post-judgment interest thereon to the present of \$2016 plus attorney fees of \$65,336.83 and costs of \$19,568.36 plus post-judgment interest thereon to date in the sums of \$12,086 and \$3579, respectively," for a total recovery of \$109,915.69. Apparently, Arkius and the Yehs settled the remaining causes of action under terms not disclosed in the record before us.

Waecker's Motion for Satisfaction of its Lien from the Proceeds of Arkius's Judgment

On December 22, 2015, pursuant to Code of Civil Procedure section 708.470,⁴ Waecker filed a motion for partial satisfaction of his lien from the proceeds of Arkius's judgment, styled as a

⁴ Subdivision (a) of this section states, in pertinent part: "If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court." (Code Civ. Proc., § 708.470, subd. (a).)

motion “for an order directing payment by defendants.”⁵ Specifically, Waecker sought payment of \$96,579.01 in funds the Yehs and their company had tendered in partial satisfaction of Arkius’s judgment.⁶

Arkius opposed Waecker’s motion, arguing Dorsett’s attorney contractual lien, as set forth in the September 25, 2013 retainer agreement (not submitted with the opposition or included in the record on appeal), is senior to Waecker’s lien based on the October 22, 2015 judgment confirming the arbitration award in the attorney fees dispute. Arkius acknowledged Waecker’s attorney contractual lien, as set forth in the March 14, 2012 settlement agreement between Kim and Waecker, but disputed the validity of this lien based on the assertion Waecker “obtained the lien by threatening in writing to sue [Arkius] (while representing [Arkius]) if the contract (a settlement agreement concerning attorney fees due) were not signed.” Arkius further asserted the final arbitration award did not address the validity of Waecker’s March 14, 2012 attorney contractual lien, and therefore Waecker was required to file an independent action to determine the validity and amount of his lien. Arkius conceded in papers filed below, however, that the “threatening” writings that form the basis of its dispute of the validity of the settlement agreement containing the lien provision

⁵ The trial court denied without prejudice an earlier version of Waecker’s motion, for reasons not germane to the issues on appeal.

⁶ The checks were made payable to both Waecker and Dorsett’s law office, jointly, and forwarded to Dorsett. Waecker asked the Yehs’ counsel to reissue the checks in his name only in partial satisfaction of his lien. This dispute ensued.

were admitted into evidence at the arbitration. As discussed above, the arbitrator rejected Kim/Arkus's challenge to the settlement agreement, finding it "was negotiated at arm's length over a period of six months."

After hearing oral argument on January 22, 2016, the trial court granted Waecker's motion and issued a written order setting forth the reasons for its decision. The court denied Arkus's written request for a statement of decision. As stated in the order, the "court direct[ed] the holder(s) of the Arkus judgment proceedings which are now being held as well as those which may be realized in the future in this case to be turned over to the judgment creditor [Waecker]"⁷

DISCUSSION

Arkus contends the trial court erred in granting Waecker's motion for partial satisfaction of his lien from the proceeds of Arkus's judgment and denying Arkus's request for a statement of decision.

In *Brown v. Superior Court* (2004) 116 Cal.App.4th 320, 335 (*Brown*), a case relied upon by Arkus and cited by the trial court in its written order, the Court of Appeal concluded, "when a trial court presented with an application under [Code of Civil Procedure] section 708.470 has notice of an attorney's claim of a contractual lien against the proceeds of the judgment that, if valid, would have priority over the judgment lien that is the subject of the application, the trial court must take all relevant circumstances—including the potential existence of a senior

⁷ We disagree with Waecker's assertion the appellate record is inadequate because it does not include a reporter's transcript of the hearing. The trial court's written order is sufficient for meaningful appellate review of the decision.

lien—into account in exercising its discretion whether to grant or deny the application.” The Court of Appeal further explained that, where an attorney contractual lien has priority over a judgment lien, “it might well constitute a denial of substantial justice and therefore an abuse of discretion for the trial court to direct payment of the judgment proceeds to [the judgment lienholder] without giving [the attorney contractual lienholder] a fair opportunity to first litigate the validity of his lien claim in a separate action.” (*Ibid.*)

Relying on *Brown*, Arkius argues Dorsett’s attorney contractual lien is senior to Waecker’s judgment lien, and the trial court erred in failing to consider Dorsett’s lien in exercising its discretion to grant Waecker’s motion.

As set forth in Civil Code section 2897, “Other things being equal, different liens upon the same property have priority according to the time of their creation” “Thus, an attorney contractual lien arising out of a contract entered into before the filing of a notice of lien under the judgment lien statutes has priority over the judgment lien created by that filing.” (*Brown, supra*, 116 Cal.App.4th at p. 328.) An attorney lien is created by contract and does not require the filing of a notice of lien. A judgment lien, on the other hand, “is created when the notice of lien is filed.” (*Carrol v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1172.) Accordingly, assuming Dorsett had an attorney contractual lien arising out of her alleged September 25, 2013 retainer agreement with Arkius, her lien would be senior to Waecker’s judgment lien created on or about November 2, 2015, after the superior court entered judgment confirming the arbitration award in favor of Waecker.

However, Waecker also had an attorney contractual lien, arising out of the March 14, 2012 settlement agreement, predating Dorsett's attorney contractual lien. Arkius's challenge to the validity of the settlement agreement containing the lien was rejected by the arbitrator during the attorney fees arbitration.

Arkius argues the trial court exceeded its jurisdiction "by adjudicating" Waecker's attorney contractual lien. Arkius cites case law explaining: " 'Appellate courts have consistently held that the trial court in the underlying action has no jurisdiction to determine the existence or validity of an attorney lien on the judgment. [Citations.] The trial court does have fundamental jurisdiction over the subject matter and over the parties. Nevertheless, because the attorney is not a party to the underlying action and has no right to intervene, the trial court acts in excess of its jurisdiction when it purports to determine whether the attorney is entitled to foreclose a lien on the judgment. [Citations.] Nor can the court entertain a motion to terminate the lien. [Citation.] After the client obtains a judgment, the attorney must bring a separate, independent action against the client to establish the existence of the lien, to determine the amount of the lien, and to enforce it. [Citations.] An order within the underlying action purporting to affect an attorney's lien is void.' " (*Brown, supra*, 116 Cal.App.4th at p. 328.)

These principals apply to *Dorsett's* attorney contractual lien, not Waecker's attorney contractual lien. Waecker already brought a separate, independent action against Arkius—the arbitration claim. The sum Waecker was entitled to recover from Arkius already had been established in the arbitration. The trial

court did not act in excess of its jurisdiction in ordering payment of the proceeds of the Arkius judgment to Waecker in partial satisfaction of its judgment lien, where Waecker had an attorney contractual lien that was senior to Dorsett's alleged attorney contractual lien. The court would have acted in excess of its jurisdiction if it adjudicated Dorsett's alleged attorney contractual lien before Dorsett brought a separate, independent action establishing her right to payment.

As the trial court's written order establishes, the court reviewed the principals set forth in *Brown, supra*, 116 Cal.App.4th 320, considered Dorsett's claim of a senior attorney contractual lien, and exercised its discretion in favor of granting Waecker's motion. The court did not abuse its discretion.

Nor did the court err in denying Arkius's request for a statement of decision. Under Code of Civil Procedure section 1291, "A statement of decision shall be made by the court, if requested pursuant to Section 632, whenever an order or judgment, except a special order after final judgment, is made that is appealable under this title." Code of Civil Procedure section 632 provides, in pertinent part: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial."

"The requirement of a written statement of decision generally does not apply to an order on a motion, even if the motion involves an evidentiary hearing and even if the order is appealable." (*Lien v. Lucky United Properties Inv., Inc.* (2008)

163 Cal.App.4th 620, 623-624.) We will not depart from that general rule here, given the trial court did not try a question of fact, but rather made a discretionary decision after considering relevant factors. In any event, we find the court’s written order satisfied the requirements of a statement of decision because it “fairly disclose[ed] its determinations as to the ultimate facts and material issues in the case.” (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 689.)⁸ There is no error.⁹

DISPOSITION

The order is affirmed. Waecker is entitled to recover costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

⁸ Because “we review a trial court’s ruling, not its reasoning,” we have not summarized the reasons the court set forth for its decision in its two-page order. (*Brown, supra*, 116 Cal.App.4th at p. 337.)

⁹ Although we reject Arkius’s contentions on appeal, we disagree with Waecker’s claim in the respondent’s brief that the appeal is frivolous and monetary sanctions should be imposed against Arkius.