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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JING JING DAN,

Plaintiff and Respondent,

v.

RAMBLA VISTA ENTERPRISES, LLC,
et al.,

Defendants and Appellants.

B252050

(Los Angeles County
Super. Ct. No. BC458739)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Johnson, Judge. Affirmed.

Levinson Arshonsky & Kurtz and Jason Jarvis for Defendants and Appellants.

Weidmann & Farrar and Mark Weidmann for Plaintiff and Respondent.

Plaintiff Jing Jing Dan and defendants entered into a settlement of Dan's employment discrimination lawsuit. When defendants failed to perform their obligations under the settlement, Dan moved to enforce it, and defendants moved to set it aside. The trial court denied defendants' motion, granted Dan's, and entered judgment. Defendants timely appealed, and we affirm.

BACKGROUND

Dan sued Rambla Vista Enterprises, LLC, (Rambla Vista) and Joichi Gushiken (collectively defendants) for sexual harassment and related claims.¹ She alleged that while employed by Rambla Vista she was subjected to fondling and various other unwelcome sexual advances by Gushiken, and that when she resisted those advances and objected to her treatment she was fired.

The parties participated in a mediation on June 27, 2013. The case did not settle on that day, but the mediator continued to communicate with the parties for the next several days in an attempt to resolve the dispute.

On July 1, 2013, Gushiken's counsel, Paul Ness, discussed the terms of a possible settlement with the mediator. Ness then spoke to Gushiken by phone concerning those discussions. Gushiken wanted to settle and said so to Ness.

Later on July 1, the mediator emailed to Ness a "Stipulation for Settlement." That same evening, Ness emailed the document to Gushiken, but Gushiken could not open it. Ness then sent the document to Gushiken in a different format, and Gushiken was able to open it. His reply email to Ness reads, "It worked this time! I am[]reading it, and after I finish I[']ll scan and send it over to you, in about an hour[.]" Gushiken signed it and returned it to Ness at approximately 10:58 p.m.

The mediator also sent the stipulation for settlement to Dan's counsel. Both Dan and Dan's counsel reviewed it, signed it, and returned it to the mediator.

¹ The complaint also names Gushiken Enterprises, L.P. as a defendant, but that entity is not a party to the settlement, is not named in the judgment, and is not a party to this appeal.

The stipulation for settlement is a three-page document (most of the third page consists of signature lines). In summary, it states that Rambla Vista and Gushiken agree to pay Dan \$420,000 in consideration for a general release of all claims and dismissal with prejudice. It begins as follows: “After extensive mediation efforts, a settlement has been reached in this matter. This document sets forth the essential points of the settlement terms and serves as a memorandum of understanding which, when signed by the necessary parties, is binding on the parties and is admissible pursuant to California Evidence Code § 1123 and enforceable by motion of any party pursuant to CCP § 664.6.” It further states, under the boldface heading “**No Other Material Terms**,” that “[w]hile there may be additional, minor, usual and customary settlement provisions, there are no other material terms (deal breakers) beyond those which are described in this memorandum and the lack of any specificity in that regard will not prevent the parties from being bound by the terms of this agreement.” The stipulation for settlement also calls for the creation of various additional documents: “Settlement/release agreement(s) shall be prepared by counsel for the defendant and circulated to all other parties for comment within seven (7) days,” and “Request for Dismissal shall be prepared by counsel for the plaintiff and filed and served on all parties within 5 calendar days of receipt of the settlement funds,” which were to be paid within 15 calendar days. The stipulation for settlement further provides that “[t]he court shall retain jurisdiction to enforce the terms and conditions of this settlement,” and “in the event of an alleged breach, . . . the court may impose penalties, sanctions, costs and attorneys’ fees to the prevailing party.”

In the ensuing days, Dan’s counsel and Ness conferred about notifying the court of the settlement and preparing the other contemplated documents. Eventually, however, defendants “refuse[d] to pay or even recognize the [stipulation for settlement].”

On July 31, 2013, defendants filed a motion for an order “setting aside and vacating the void Stipulation for Settlement.” On August 30, 2013, Dan filed a motion to enforce the settlement and for an award of attorney fees and costs in the amount of \$6,060.00.

In support of the motion to vacate, defendants argued that the stipulation for settlement was unenforceable because (1) it was not signed by defendants' counsel, (2) it called for the creation of further documents and did not express "a meeting of the minds on all terms between Plaintiff and Defendant[s]," and (3) "it was only entered by mistake, inadvertence, surprise, or excusable neglect," because Gushiken was not aware of its terms and was pressured into signing it late at night. Dan sought an award of \$5,500 for attorney fees incurred in opposing defendants' motion.

The court denied defendants' motion and granted Dan's motion. The court rejected defendants' argument concerning the absence of a signature from defendants' counsel, stating that the argument "relies on cases where an attorney of record was bypassed in the settlement process," which did not happen here. The court rejected the argument concerning missing terms and the creation of additional documents, reasoning that the stipulation for settlement "is thorough and comprehensive" and the documents to be created (i.e., a release and a dismissal) "merely carry out the comprehensive terms of the agreement." And the court rejected the argument based on mistake and excusable neglect because it was based on a declaration by Gushiken that was "not credible or persuasive, and it does not establish grounds for disregarding the settlement." The court awarded Dan \$8,060 in attorney fees and costs.

The court entered judgment on September 30, 2013. Defendants timely appealed.

DISCUSSION

On appeal, defendants repeat the arguments they advanced in the trial court in support of their motion to vacate. We agree with the trial court that the arguments lack merit.

First, defendants argue that the stipulation for settlement is not enforceable because its terms “were not definite and certain.” In support of that argument, defendants point out that the stipulation for settlement called for the preparation of additional documents (namely, the release and the dismissal), and defendants contend that “such unexecuted, undrafted, and unsettled documents as a matter of law were insufficiently certain and definite” for the stipulation for settlement to be enforceable. We disagree. The stipulation for settlement calls for a \$420,000 payment in exchange for “a full and complete General Release of all claims, a Dismissal with Prejudice and any other terms described in this stipulation for settlement.” Those terms are sufficiently definite to be enforceable. The stipulation for settlement further provides that it is an enforceable settlement and contains all material terms. On the face of the stipulation for settlement, that appears to be correct—the agreement is to provide a \$420,000 payment in exchange for a full and complete release and a dismissal with prejudice. Apart from the bare fact that additional documents were to be prepared, defendants fail to explain how the stipulation for settlement is insufficiently definite or, contrary to its express provisions, omits any material terms.

Second, defendants argue that the stipulation for settlement is unenforceable because defendants’ counsel did not sign it. Defendants do not respond to the trial court’s correct observation that the cases on which defendants rely involved attorneys of record who were bypassed in the settlement process. Here, Ness was intimately involved in the settlement process—he conferred with the mediator about settlement, relayed the contents of his discussions to Gushiken, and transmitted the mediator’s settlement proposal (the stipulation for settlement) to Gushiken twice. Defendants cite no authority for the proposition that, given Ness’s thoroughgoing involvement, the absence of Ness’s mere signature is of any consequence. We are aware of none. Code of Civil Procedure

section 664.6 requires the signatures of the parties but does not require the signatures of counsel.

Third, defendants argue that the trial court should have exercised its discretion to set aside and vacate the settlement because of “the circumstances surrounding its execution by Gushiken.” In support of this argument, defendants contend that Gushiken is elderly, suffers from hearing loss and impaired vision, was “exhausted by the stress of the mediation negotiations and the upcoming trial,” and felt pressured to sign the stipulation for settlement quickly when he received it late at night. We perceive no abuse of discretion in the trial court’s rejection of this argument, based in part on the court’s rejection of Gushiken’s declaration as not credible. Defendants do not explain how Gushiken’s alleged hearing loss impaired his ability to understand a written agreement. His email correspondence with Ness—which is attached as an exhibit to Gushiken’s declaration—indicates that he had no trouble reading the stipulation for settlement once he succeeded in opening the file (“It worked this time! I am[] reading it, and after I finish I[’]ll scan and send it over to you, in about an hour.”) Gushiken signed the stipulation for settlement four days after the mediation, so it was reasonable for the trial court to infer that Gushiken’s capacity for rational assent to the settlement was not impaired by his exhaustion from the mediation. In general, defendants have not shown that the trial court exceeded the bounds of reason, committed an error of law, or based its decision on factual findings that were not supported by substantial evidence. We accordingly conclude that the trial court did not abuse its discretion by denying defendants’ motion to set aside and vacate the settlement. (See *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.)

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

MILLER, J.