Filed 9/28/16 Baldwin v. Funk Shui, LLC CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHRISTOPHER BALDWIN, Plaintiff and Appellant, v. FUNK SHUI, LLC, et al., Defendants and Respondents.	B268844 (Los Angeles County Super. Ct. No. BC415095)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eli Weinbach, Judge. Affirmed.

_____

Franceschi Law Corporation and Ernest J. Franceschi, Jr., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Jason R. Chermela, and John J. Weber for Defendants and Respondents.

_____

Plaintiff Christopher Baldwin appeals from the judgment of dismissal entered after defendants Funk Shui, LLC and Jason Alkhaldi successfully moved for summary judgment to enforce a personal injury settlement agreement. Baldwin argues that defendants' motion should have been denied because: (1) The settlement agreement was not signed by Funk Shui or Alkhaldi, and therefore, it was not enforceable; (2) Baldwin rescinded the agreement; and (3) Funk Shui and Alkhaldi were collaterally estopped from relitigating the enforceability of the agreement based on our ruling in the prior appeal. We disagree and affirm.

BACKGROUND

Baldwin filed suit against defendants for assault and battery. After discovery on April 2, 2012, the parties entered private mediation, but they did not agree to a settlement. The parties continued to negotiate, and on April 11, 2012, the parties reached a settlement agreement; without admitting liability, defendants would pay Baldwin $250,000 in exchange for a dismissal of the action with prejudice. On April 12, 2012, Baldwin's counsel, Raymond McElfish, filed an unconditional "notice of settlement of entire case" promising to dismiss the case within 45 days of the settlement. Following the settlement, defendants' counsel prepared a written agreement and release. On April 12, defense counsel sent it to Baldwin's counsel. On April 17, 2012, Baldwin requested changes to the agreement via email, and defense counsel agreed to accept those changes. Baldwin and McElfish each signed the agreement, modified pursuant to Baldwin's changes, and returned it to defendants' counsel. On June 6, 2012, Axis Surplus Insurance Company sent a check for $250,000 to Baldwin and McElfish with a letter stating that it served "as [a] full and final settlement on behalf of [defendants]." Plaintiff received the check but did not deposit it.[1]

At a July 13, 2012 hearing to show cause, more than one month after Baldwin received the settlement funds, his attorney stated to the court that it was Baldwin's position that there was no settlement agreement, and he, therefore, refused to dismiss the

[1] The court subsequently ordered Baldwin's counsel to deposit the check into a blocked account, and counsel complied.

case. Subsequently, defendants moved to enforce the agreement under Code of Civil Procedure section 664.6,[2] requesting that the court dismiss the action with prejudice and award reasonable attorney fees pursuant to the settlement's terms. The trial court entered judgment in favor of defendants, and Baldwin appealed on the ground that the settlement was not enforceable under section 664.6.

On that prior appeal, we reversed and remanded the case, holding that section 664.6 requires strict compliance. Because defendants failed to sign the settlement agreement or orally stipulate to it in court, the settlement agreement was not enforceable pursuant to section 664.6. We noted, however, that "[i]f the streamlined method for enforcing settlements under section 664.6 is not available because of procedural defects, an agreement might still be enforceable by summary judgment, a suit for breach of contract, or a suit in equity." (*Baldwin v. Funk Shui, LLC, et al*. (Aug. 29, 2013, B244491) [nonpub. opn.] at p. 3.)

On remand, defendants moved for leave to file an amended answer to assert the settlement agreement as an affirmative defense and a cross-complaint to enforce the settlement agreement. On March 12, 2014, the trial court granted defendants leave to amend. Defendants then moved for summary judgment on the ground that under the settlement agreement they were entitled to summary judgment as a matter of law on both Baldwin's complaint and their cross-complaint. Baldwin argued in opposition that the settlement agreement failed because it was not executed by Funk Shui and Alkhaldi or, in the alternative, because it had been rescinded by Baldwin. On August 3, 2015, the trial court granted defendants' motion for summary judgment. Baldwin timely appealed.

[2] Unless otherwise noted, all statutory references are to the Code of Civil Procedure.

DISCUSSION

A. *The Settlement Agreement Was An Enforceable Contract*

Baldwin argues the settlement agreement was not an enforceable contract because Funk Shui and Alkhaldi did not sign it. We disagree.

Settlement agreements are governed by the legal principles applicable to contracts generally. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.) A settlement agreement also has the attributes of a judgment in that it is decisive of the rights of the parties and serves to bar reopening of the issues settled. Absent a fundamental defect in the agreement itself the terms are binding on the parties. (*A. J. Industries, Inc. v. Ver Halen* (1977) 75 Cal.App.3d 751, 759.) Importantly, there is no requirement that a settlement agreement be in writing (*Nolte v. Southern Cal. Home Bldg. Co*. (1938) 28 Cal.App.2d 532, 535), or that it be signed by both parties. (*Angell v. Rowlands* (1978) 85 Cal.App.3d 536, 541.) California courts have held that a signatory to a settlement agreement resisting enforcement of the agreement, as Baldwin is here, cannot evade the terms of the agreement "unless he affirmatively establishes that the signatures of all parties were contemplated as being a condition precedent to the validity of the contract." (*Ibid*.)

Here, there was no such condition in the written agreement and Baldwin does not allege, and there is no evidence in the record, that all of the parties were required to sign the settlement. Instead, Baldwin argues the general principle that a settlement agreement signed by only one party is unenforceable. But this is not the law, and each of the cases relied upon by Baldwin involve agreements where the parties were required by statute or contract, to fully execute the contract in order for it to be binding. (See, e.g., *In re Quartz Crystal Products Co*. (S.D.Cal. 1947) 71 F.Supp. 949 [statutory requirement]; *Barber v. Burrows* (1876) 51 Cal. 404 [addendum to modify contract must be signed by all signatories to the contract per original contract]; *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1299 [enforcement of settlement pursuant to a section 664.6 motion].)

Although signature by all parties to the contract is not required, mutual consent is required to form a binding agreement. (*Weddington Productions, Inc. v. Flick*, *supra*, 60 Cal.App.4th at p. 811 [contracts must be enforced according to the mutual intention of the parties as it existed at the time of contracting].) To form a valid contract, mutual promises must be exchanged with each other by each of the two contracting parties. (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc*. (2002) 103 Cal.App.4th 30, 36, citing 1 Corbin, Contracts (rev. ed. 1993) § 1.23, p. 87.) A contractual promise is defined as " 'an expression of commitment to act in a specified way, or to bring about a specified result in the future, or to take responsibility that the result has occurred or will occur, communicated in such a way that the addressee of the expression may justly expect performance and may reasonably rely thereon.' " (*Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.*, *supra*, 103 Cal.App.4th at p. 36, quoting 1 Corbin, Contracts, *supra*, § 1:13, p. 35.)

Here, the record demonstrates that Baldwin, Funk Shui and Alkhaldi mutually consented to obligate themselves in a specified way in an oral settlement agreement in April 2012: Funk Shui and Alkhaldi agreed to pay Baldwin $250,000 in exchange for Baldwin agreeing to dismiss the action with prejudice. This constituted a valid settlement agreement even if it was not reduced to writing and even if it was not signed by all the parties. Indeed, on April 12, 2012, Baldwin's counsel advised the trial court that the parties reached an unconditional settlement. Although a written draft of the settlement, memorializing the oral agreement, was transmitted by counsel for Funk Shui and Alkhaldi to Baldwin's counsel on April 12, 2012, nothing in that agreement required all the parties to sign it as a condition precedent. Indeed, there was not even a signature line for defendants in the document. On April 17, 2012, Baldwin, through his counsel, requested minor changes to the draft, but did not request any provision requiring the signatures of all the parties. Funk Shui and Alkhaldi agreed to the changes. On May 4, 2012, the settlement agreement, revised by Baldwin's attorney to incorporate Baldwin's changes, was signed by Baldwin. On May 7, 2012, it was signed by Baldwin's counsel. On May 10, 2012, the signed agreement was transmitted to counsel

for Funk Shui and Alkhaldi. On June 6, 2012, Funk Shui and Alkhaldi's insurer send Baldwin a check for $250,000 pursuant to the agreement.

Nothing in the oral agreement, the written agreement or the parties' course of conduct indicates that Baldwin's contractual obligation to dismiss the suit was conditioned on defendants signing the agreement, and defendants did not mutually agree to do so. Baldwin's contractual obligation to dismiss the suit was conditioned on defendants paying Baldwin $250,000, which they did. The requirement that defendants also sign the agreement cannot be imputed into the agreement after-the-fact in order for Baldwin to avoid performing his obligation under the contract.[3]

B. *Baldwin Did Not Effectively Rescind The Settlement Agreement*

Baldwin argues that he rescinded the agreement based on the conduct of his counsel, who allegedly forced him to enter it and threatened him with "sanctions" if he did not sign it. We disagree.

Civil Code section 1689, subdivision (b)(1), allows for a party to rescind a contract if "the consent of the party rescinding . . . was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds." Pursuant to the statute, if a party seeks to rescind a contract, the mistake, duress or undue influence must be caused by the party seeking to enforce it. Here, Baldwin alleges that his own lawyer induced him to enter the settlement agreement. He does not allege, and there is no evidence in the record, that defendants or agents for defendants attempted to obtain his agreement through duress, fraud, mistake or undue influence.

---

3 Baldwin argues for the first time in his reply brief that the settlement agreement was inadmissible and unenforceable because it was made in the course of mediation, and, therefore, is privileged. We decline to consider an argument first made in a reply brief. (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.)

C. *Collateral Estoppel Does Not Apply*

Baldwin claims that by seeking to enforce the settlement agreement by way of a section 664.6 procedure, defendants elected their remedy and are barred from litigating the issue by bringing a breach of contract claim against Baldwin. We disagree.

Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) The requirements for invoking collateral estoppel are the following: (1) the issue necessarily decided in the previous proceeding is identical to the one that is sought to be relitigated; (2) the issue must have been actually litigated in the prior proceeding; (3) it must have been necessarily decided in the prior proceeding; (4) the previous proceeding terminated with a final judgment on the merits; and (5) the party against whom collateral estoppel is asserted was a party to or in privity with a party in the previous proceeding. (*Ibid*.)

In Baldwin's first appeal, the issue before us was whether the agreement was enforceable under the streamlined procedure of section 664.6. We stated that the issue of whether the agreement was enforceable as a contract matter was an open question and noted that the agreement might "still be enforceable by summary judgment, a suit for breach of contract, or a suit in equity." (*Baldwin v. Funk Shui, LLC, et al., supra*, B244491, at p. 3.) It is this latter issue, of the settlement's enforceability under contract law, which is before us now. This issue was neither litigated nor resolved in the prior suit, and collateral estoppel is, therefore inapplicable.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.