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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRISTINA CHAVEZ et al.,

Plaintiffs and Appellants,

v.

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Defendant and Respondent.

B289876

(Los Angeles County
Super. Ct. No. BC435321)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maren Nelson, Judge. Vacated and remanded.

Gianelli & Morris, Timothy J. Morris and Mary T. Rahmes, for Plaintiffs and Appellants.

Sidley Austin, Sean A. Commons, Melissa O. Evidente, and Alexandria V. Ruiz, for Defendant and Respondent.

Plaintiff and appellant Christina Chavez (Chavez), individually and on behalf of others similarly situated, sued defendant and respondent Massachusetts Mutual Life Insurance Company (MassMutual) on causes of action of breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and unfair competition. The trial court certified a subclass of less than 300 people in California who purchased or were beneficiaries under one group of insurance policies, commonly known as T20G policies, sold or serviced through a general agency of MassMutual. The court dismissed the remainder of the asserted subclasses at issue without prejudice to plaintiffs seeking certification of those subclasses after the T20G claims were tried.

The subclass claims proceeded to jury trial (which the parties refer to as a “bellwether trial”), and by special verdict the jury found MassMutual had an obligation to perform an annual determination as to whether the policies contributed to divisible surplus and had not done so—but the T20G policyholders had suffered no damages as a result. Following the trial court’s dismissal of plaintiffs’ Unfair Competition Law claim, the court entered judgment in favor of MassMutual and against the California T20G subclass plaintiffs. Plaintiffs noticed an appeal to this court.

After plaintiffs filed their appeal, counsel for plaintiffs filed an amended complaint alleging a nationwide class of approximately 740,000 purchasers or beneficiaries of all participating term insurance policies sold by MassMutual and in force since 1996, including all T20G policies sold nationwide. The proposed nationwide class therefore included the California T20G subclass plaintiffs whose claims had been tried. Settlement

negotiations between the parties ensued, and the parties arrived at an agreed-upon nationwide settlement of the claims of the nationwide class, including all T20G policies nationwide. The trial court thereafter found the terms of the nationwide settlement fair, adequate, and reasonable for all members of the settlement class.

Because the nationwide settlement would cover the California T20G subclass plaintiffs, who have had judgment entered against them, the parties now stipulate and request that this court vacate that judgment to permit the trial court to enter a new judgment reflecting the terms of the nationwide settlement, which would cover the less than 300 California T20G subclass plaintiffs who have appealed the judgment entered against them. Specifically, the parties agree the California T20G subclass judgment should be vacated in favor of a new judgment based on the nationwide settlement “because (1) of the substantial benefits afforded under the settlement, (2) not a single plaintiff covered by [the appeal in this case] objected to the settlement (only two persons out of the settlement class of more than 740,000 submitted an objection, and the Superior Court overruled those objections as unsupported and meritless), and (3) not a single settlement class member intervened, which is necessary to appeal final approval of a class settlement”

Our ability to accept a stipulation to vacate a duly entered judgment is governed by Code of Civil Procedure section 128. That statute provides “[a]n appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B)

The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.” (Code Civ. Proc., § 128, subd. (a)(8).)

The parties stipulate the terms of Code of Civil Procedure section 128 are satisfied here. Specifically, they agree there is no reasonable possibility the interests of nonparties or the public will be adversely affected because the nationwide settlement provides substantial relief—an agreement by MassMutual to undertake certain actuarial analyses and calculations for at least ten years (but no damages or attorney fees)—whereas the existing judgment provides none. The parties further agree vacating the California T20G subclass judgment will neither erode public trust nor reduce the incentive for pretrial settlement because the nationwide settlement provides for relief and because “the parties engaged in extensive pre-trial settlement negotiations[] and the [trial court] weighed the nature and extent of those pre-trial negotiations before approving the nationwide settlement.”

We agree the parties’ stipulation to vacate the California T20G subclass judgment satisfies the requirements of Code of Civil Procedure section 128 for the reasons set forth by the parties in their stipulation and based on the information in the exhibits attached thereto. To the parties’ reasons we would add these observations: (1) there is little if any danger the disposition of this appeal would reduce the incentive for pretrial settlement when it appears the “bellwether trial” was at least in part undertaken with some notion that it may well inform a larger global settlement, and (2) given the class-wide nature of the relief

contemplated by the nationwide settlement and the trial court's finding that notice of the settlement was properly given, there is a markedly reduced risk of an effect on nonparties. We shall therefore accept the parties' stipulation.¹

DISPOSITION

The judgment is vacated, and the matter is remanded to the trial court for further proceedings not inconsistent with this opinion.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.

¹ We accept the stipulation to vacate the judgment below. We do not dismiss the appeal, as the parties appear to suggest we should at one or more places in the stipulation, because dismissal of the appeal would prevent vacating the judgment below.