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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SHIRLEY A. WINDSOR, Plaintiff and Appellant, v. JOEL F. TAMRAZ et al., Defendants and Respondents.	B229484 (Los Angeles County Super. Ct. No. NC054493)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph E. DiLoreto, Judge. Affirmed

Shirley A. Windsor, in pro. per., for Plaintiff and Appellant.

Law Offices of Joel F. Tamraz and Joel F. Tamraz for Defendants and Respondents.

This is another chapter in prolonged litigation between Shirley A. Windsor, Frank Prior, and Prior's attorney, Joel Tamraz (we refer to Prior and Tamraz collectively as "respondents"). In this action, Windsor alleges contract and tort causes of action arising from a settlement in an underlying action which was not finalized at the time this action was filed. The trial court sustained a demurrer by respondents on statute of limitations grounds and dismissed this action. During the pendency of this appeal, the underlying judgment was finalized and satisfied as part of a global settlement.

Windsor argues the trial court erred in sustaining the demurrer without leave to amend. Respondents contend that this appeal is moot and that no issues remain to be decided in light of the resolution of the underlying case. We affirm dismissal of the contract and covenant of good faith causes of action on the grounds that they are barred by the resolution of the underlying action and are moot because there is no effective relief which may be provided through this appeal. We also conclude that the trial court did not err in sustaining the demurrer to the first amended complaint as to the remaining causes of action. We deny respondents' request for sanctions on appeal.

FACTUAL AND PROCEDURAL SUMMARY

An understanding of the history of litigation between Windsor and Prior is necessary to provide a context for the present appeal.

A. Underlying Actions[1]

1. Los Angeles Superior Court Case No. 03U02263–Prior v. Windsor

This unlawful detainer action was filed by Prior against Windsor on July 8, 2003 (the unlawful detainer action). Default judgment in favor of Prior was entered in July 2003 and a writ of possession issued. Windsor's efforts to stay execution of the writ were unsuccessful, and the levying officer was ordered to proceed with the lockout. On October 5, 2004, the court entered judgment for Prior against Windsor in the principal

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[1] We take much of our procedural history from respondents' motion to augment the clerk's transcript, which we granted.

amount of $11,000.00, costs of $298.30, and no fees or interest, for a total award of $11,298.30 (unlawful detainer judgment).

2. Los Angeles Superior Court Case No. NC035087–Windsor v. Prior

The parties tell us little about the gravamen of this action, although as we explain, it is the catalyst for the present appeal. Without citation to the record, Windsor informs us that this action was filed by her in December 2003 for breach of contract and fiduciary duty. In a declaration filed in that case, Tamraz stated that the lawsuit "involved an action by Windsor to attempt to set aside a foreclosure sale of a residence that was previously owned by her, which commenced on December 9, 2003." He explained that he was associated as counsel for Frank Prior in 2005. No copy of the complaint in this action is included in the record on appeal.

On April 4, 2006, the parties entered into a stipulated settlement before the court. They signed a hand-written settlement agreement on a court form. It provided that Prior would pay Windsor $20,000 "within 15 days, or on or before April 20, 2006 in exchange for a dismissal with prejudice, as well as a release of all claims with a CC [Civil Code] 1542 waiver as to all unknown claims as to all defendants, as well as defendants' agents, witnesses, and attorneys." The parties agree that the agreement was confidential.

In opposition to a demurrer filed in the present action, Windsor discussed the settlement of case No. NC035087 and said: "The court confirmed that it was the intent of the parties that the stipulation between them was to be the final settlement that would end the situation between them for all purposes." The reporter's transcript of April 4, 2006 reflects that the court asked Windsor whether she understood that once the court accepted the settlement, "it is a full and complete settlement as of today's date and you could not come back later and request any more monies arising from this incident?" Windsor replied, "Yes." The court entered judgment in conformity with the stipulation of the parties and case No. NC035087 was dismissed. But the court retained jurisdiction for purposes of enforcement.

On April 21, 2006, Tamraz wrote to Windsor, saying that he had left several messages for her confirming that he had in his possession a cashier's check for $20,000,

"as well as another confidential document for you to execute," to implement the settlement. He asked Windsor to call to make arrangements to pick up the check and execute "the documents involved." This correspondence was followed by similar correspondence in May 2006. Two obstacles to final resolution of case No. NC035087 then occurred. Windsor took the position that she did not use elevators and could not come to Tamraz's high-rise office for that reason. She also objected to the language of the proposed release of claims on the ground that several additional terms were added beyond the scope of the stipulation reached on April 4, 2006.

We discuss the ensuing developments in case No. NC035087 which occurred simultaneously with the litigation of the present case below.

3. *Los Angeles Superior Court Case No. 07C04871–Windsor v. Prior, Tamraz, and Tyler Barnes* (Limited Jurisdiction)

Windsor filed this action on December 13, 2007 (the limited jurisdiction action). The operative pleading was the fourth amended complaint, which alleged causes of action for breach of contract, intentional interference with economic advantage; aiding and abetting the intentional breach of a duty owed to another, interference with economic advantage, defamation, and damages under Code of Civil Procedure section 1992. Apart from the defamation allegations, the failure to complete the settlement in case No. NC035087 was the basis for most of the complaint. Windsor alleged that the defendants engaged in a scheme to thwart her receipt of the $20,000 settlement in case No. NC035087 by entering into a sham assignment of the unlawful detainer judgment (case No. 03U02263) and claiming that Barnes had a judgment lien in the NC035087 action. After the court sustained demurrers brought by Tamraz and Tyler Barnes, judgment of dismissal was entered as to them.

Apparently the matter went to trial as to defendant Prior, although the breach of contract claim was dismissed on the eve of trial. The court granted judgment for Windsor

in the slander cause of action and fixed damages "at the nominal sum of two hundred fifty dollars."[2] Judgment was entered on February 8, 2010.

B. The Present Action (Los Angeles Superior Court Case No. NC054493)

Windsor filed the complaint against respondents on May 4, 2010. She alleged causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud by deceit, intentional or negligent infliction of emotional distress, and damages under Code of Civil Procedure section 1992 (failure to appear for deposition under subpoena). The charging pleading is the first amended complaint filed in August 2010. The gravamen of the action was respondents' failure to perform their obligations, including payment of $20,000, under the settlement agreement in case No. NC035087. Windsor alleged that Tamraz refused to send her a cashier's check for $20,000 by mail, insisting instead that she appear at his office and sign a release which contained terms not included in the original April 4, 2006 in-court settlement. She also alleged that respondents had asserted that a judgment lien held by Tyler Barnes in case No. NC035087 prevented tender of the $20,000 due to her.

The breach of contract and breach of the covenant of good faith and fair dealing causes of action were based on the alleged failure of Prior to tender $20,000 to Windsor and insistence that Windsor owed Prior $11,298.30 on the unlawful detainer judgment (case No. 03U002263). The third cause of action for fraud by deceit alleged that respondents falsely represented that the settlement in case No. NC035087 resolved all claims between these parties in order to induce Windsor's agreement, but later claimed that the unlawful detainer judgment in favor of Prior was not included. It also was based on the allegation that respondents claimed they could not tender performance of that settlement because of a non-existent lien held by Tyler Barnes. The fourth cause of action for intentional infliction of emotional distress was based on respondents' conduct in deceiving Windsor about the case No. NC035087 settlement and in preventing her

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[2] The ruling in case No. 07C04871 does not indicate the disposition of the other causes of action, except judgment for defendant Prior was granted on a cause of action for failure to appear for deposition.

from receiving the settlement proceeds. The fifth cause of action (against Tamraz only) was for statutory damages of $500, under Code of Civil Procedure section 1992, for failure to appear at a deposition pursuant to subpoena.

On September 30, 2010, the trial court sustained respondents' demurrer to the first amended complaint on statute of limitations grounds as to the first four causes of action. Because damages on the fifth cause of action are limited to $500, the trial court reclassified the action as a limited jurisdiction case, assigned a new case number, and transferred it to a limited jurisdiction department. The appeal in this action was filed December 6, 2010. No judgment of dismissal was entered according to the docket in the case.[3] We granted respondents' motion to augment the record on appeal.[4]

C. Subsequent Developments in Case No. NC035087

On October 28, 2010, the trial court denied Windsor's request for entry of judgment pursuant to stipulation in case No. NC035087. The court noted that the judge who oversaw the stipulated settlement had denied three similar requests in 2008. In the October 2010 order, the trial court noted that Windsor had still not executed the required releases and denied her motion. In November 2010, Windsor filed a new motion to enforce the settlement agreement, set for hearing on December 14, 2010.

On December 14, 2010, Windsor finally executed a "General Release of Existing Claims" which contained a waiver of unknown claims pursuant to Civil Code section

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[3] An order sustaining a demurrer is interlocutory and not appealable. The proper vehicle for appeal is a judgment of dismissal resulting from that order. In the interests of justice and to avoid prolonging this conflict between the parties, we deem the order on the demurrer as incorporating a judgment of dismissal and treat the notice of appeal as taken from that judgment. (*Conley v. Roman Catholic Archbishop* (2000) 85 Cal.App.4th 1126, 1130.)

[4] We grant Windsor's motion to file a late reply brief and have considered its contents in the preparation of this opinion. Windsor need not submit further briefing on respondents' sanctions request in light of our decision that sanctions are not warranted, as explained below.

1542.[5] This was not the release originally proposed by Tamraz in 2006. Windsor released all claims she might have had against Prior "arising out of the subject matter of this action for injuries, damages, or losses . . . ." The same day, Windsor's motion was taken under submission. The trial court ruled: "The motion is granted pursuant to 664.6, Code of Civil Procedure. [¶] The case is ordered dismissed with prejudice pursuant to 664.6, Code of Civil Procedure."

A dispute then arose over the wording of the judgment memorializing the December 14, 2010 order. The trial court rejected Windsor's proposed judgment. On January 18, 2011, the trial court signed an order dismissing case No. NC035087 with prejudice, noting that Windsor had delivered to Prior a signed general release approved by the court. Prior was ordered to immediately tender settlement proceeds of $20,000 to Windsor.

In February 2011, Prior obtained a writ of execution against Windsor in the unlawful detainer action for a total of $18,479.26, which included interest on the original judgment. Windsor obtained a writ of execution on Prior's bank accounts, which was vacated by the trial court. It held that Windsor "is not entitled to interest from the date of the agreement as [she] failed to fully perform the terms of the agreement by executing the required release until December 14, 2010. [Windsor] is entitled to post-judgment interest from the date of the order (January 18, 2011)."

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[5] That clause of the release said that Windsor had read Civil Code section 1542, which is quoted, and waived its application. It continued: "Release or [releasor] understands and acknowledges that the significance and consequences of waiving section 1542 of the Civil Code is that even if Releasor should eventually suffer additional damages arising from the subject of the Release, she will not be permitted to make any claim for those damages. Furthermore, Realeasor [*sic*] acknowledges that she intends these consequences even as to claims for injury and/or damages that may exist as of April 4, 2006 but which Releasor did not know existed, and which, if known, would have materially affected Releasor's decision to execute the Stipulated Judgment or the release, regardless of whether Releasor's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause."

In June 2011, the trial court appointed Judge Patrick Madden evidentiary referee of a judgment debtor examination of Prior in case No. NC035087. Windsor claimed a right to a judgment against Prior in her limited jurisdiction case (case No. 07C4871) of $250 plus sanctions of $250. Prior claimed a right to setoff of the judgment against Windsor in the unlawful detainer case (case No. 03U02263) for $11,298.30 plus interest of $7,155.06. Judge Madden calculated that Prior owed Windsor $21,608.56 ($20,000 judgment in case No. NC035087 plus interest of $1,073.97 and on the limited jurisdiction case, case No. 07C04871, a total of $534.59 from a $250 judgment, $250 sanctions, and $34.59 interest); and that Windsor owed Prior $18,915.71 on the unlawful detainer judgment in case No. 03U02263 (judgment of $11,298.30, plus interest of $7,592.41 plus $25 for a filing fee). Judge Madden calculated the difference between what Prior owed Windsor, and what Windsor owed him, as $2,692.85. He also found that Prior was prepared to pay $2,718.75 to Windsor forthwith, if there was a full satisfaction of judgment (and sanction order) in case No. NC035087. But Windsor challenged Prior's right to any offset from the unlawful detainer judgment. In light of the dispute, Judge Madden ordered the parties to appear before the trial court (Judge Klein) to determine whether Prior was entitled to the offset. The judgment debtor examination was stayed until that determination was made.

On July 1, 2011, Prior submitted an ex parte application to offset the judgment he obtained in the unlawful detainer case ($18,915.71) from the $20,000 judgment in case No. NC035087. Prior represented that he was prepared to pay Windsor either cash or cashier's check ($2,718.75), to bring an end to eight years of litigation. On July 6, 2011, Judge Judith A. Vander Lans signed an order granting Prior's ex parte application to offset the judgment in case No. NC035087 (in favor of Windsor against Price for $21,608.56) by the judgment in case No. 03U02263 ($18,915.71 in favor of Prior against Windsor). This left a total due to Windsor from Prior of $2,718.75. "IT IS FURTHER ORDERED that upon payment by Frank Prior (to be on this date $2,718.75), Case Numbers NC035087 and 07C04871 and 03U02263 are dismissed and judgments in each case satisfied."

The reporter's transcript reflects that Tamraz said: "I'd like the record to reflect that I'm handing Ms. Windsor a cashier's check in the sum of $2,750, slightly more than what the judgment would be, and it's dated 6-30-11. It's [a] cashier's check number 311912915 drawn on Citibank. And it's made payable to Shirley Windsor. And it's from Frank Prior. [¶] And now she has that check. So this case is totally settled and resolved as of this moment, and there is no further outstanding judgment as far as Mr. Prior is concerned."

Windsor's response was to request a statement of decision, but she did not dispute that the judgments had been satisfied. The court denied that request. As of July 6, 2011, all underlying actions between Prior and Windsor had been satisfied and were dismissed with prejudice. Windsor did not attempt to appeal from that action.

DISCUSSION

I

We begin with respondents' argument in their brief on appeal that the subsequent July 2011 global settlement and satisfaction of judgment in case No. NC035087 and the other cases render the issues on this appeal moot and leave no issues unresolved. Windsor responds that the July 2011 order did not consider or make findings on the causes of action raised in her first amended complaint in this action.

She also raises arguments regarding Prior's right to an offset. We decline to consider any argument as to the merits of the July 2011 order allocating the rights of the parties (including Prior's right to offset) because the order resulted in a satisfaction of judgment and dismissal with prejudice of the three underlying actions specified. Since no appeal was taken (nor could it have been) from that order, the terms of the order are final and not subject to attack on appeal. (*Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1237 [final judgment terminates the litigation between the parties and leaves nothing in the nature of judicial action to be done other than questions of enforcement or compliance].)

"'A question becomes moot when, pending an appeal from a judgment of a trial court, events transpire that prevent the appellate court from granting any effectual relief.'" (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 824, quoting *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 419.) In *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, the court examined cases in which subsequent events had rendered a controversy moot. (*Id*. at p. 1033.) These included cases in which "the parties settled the disputes arising out of an underlying contract while the appeal was pending (*Cappellino v. Moore* (1929) 207 Cal. 35, 38)." (*Ibid.*) "When the parties to a case have settled their underlying dispute, dismissal of the appeal as moot is appropriate because the settlement moots the issues on appeal. [Citation.]" (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th 1576, 1588; see also *Larner v. Los Angeles Doctors Hosp. Associates, LLP* (2008) 168 Cal.App.4th 1291, 1299-1300.)

Windsor does not invoke any recognized exception to the mootness doctrine, such as the exception for a case that presents an issue of broad public interest likely to recur, or where there is a distinct possibility that the controversy between the parties may recur. (See *Bullis Charter School v. Los Altos School Dist., supra*, 200 Cal.App.4th at pp. 1033-1034.) Even if she had, this case does not involve any issue of broad public interest. Nor is there a likelihood the controversy between the parties may recur under the broad terms of the release and order dismissing case No. NC035087 after the judgment was satisfied.

On her cause of action for breach of contract (against Prior only) in this action, Windsor seeks damages of $20,000 plus interest from April 20, 2006 (the case No. NC035087 settlement amount); an order of satisfaction in the unlawful detainer case, or damages of $11,298.30 plus interest (the amount of the unlawful detainer judgment obtained by Prior); and prejudgment interest. All of these items were included and finally resolved in the July 6, 2011 order in case No. NC035087 as we have explained. There remains no effectual relief we may grant on this cause of action and we conclude that it is moot. (*Quantification Settlement Agreement Cases, supra*, 201 Cal.App.4th at p. 824.)

The same reasoning applies to Windsor's second cause of action for breach of the covenant of good faith and fair dealing, also only against Prior. It alleges that Prior failed to act in good faith by "refusing to tender the proceeds from the settlement agreement, demanding an additional agreement to be signed, stating that plaintiff must perform acts that have previously been performed, falsely representing that a lien has been filed against the proceeds which prevents defendant from performing his obligation to plaintiff and using meritless roadblocks suggested by attorney Tamraz." As discussed, all of these issues were finally resolved and disposed of in case No. NC035087, leaving no issues for resolution by this court.

Alternatively, Windsor's execution of the release in case No. NC035087, after this action was filed, precludes relief on these causes of action. When a party releases all existing causes of action he or she has promised not to sue again for past harms. (*Mundy v. Lenc* (2012) 203 Cal.App.4th 1401, 1411.) In *Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, the court considered the impact of a release which included an express waiver of the protection of Civil Code section 1542 similar to the language included in the release executed here by Windsor in December 2010. The court held that the terms of the release applied to unknown claims against the Association that arose prior to the release. (*Id*. at p. 1161.) "A compromise settlement is '"decisive of the rights of the parties thereto and operates as a bar to the reopening of the original controversy."' (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 677.) Thus, compromise settlements 'ordinarily conclude all matters put in issue by the pleadings—that is, questions that otherwise would have been resolved at trial.' (*Ibid.*)" (*Doran v. North State Grocery, Inc.* (2006) 137 Cal.App.4th 484, 492.)

We conclude that the third cause of action for fraud by deceit and the fourth cause of action for emotional distress are not moot, but that the trial court properly sustained the demurrer to these causes of action, as we next discuss.

II

"'On review of an order sustaining a demurrer without leave to amend, our standard of review is de novo, "i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law." [Citation.]' [Citation.] '"'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.]"' [Citation.] 'We affirm if any ground offered in support of the demurrer was well taken but find error if the plaintiff has stated a cause of action under any possible legal theory. [Citations.] We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale. [Citation.]' [Citation.]" (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 433.)

Windsor's third cause of action for fraud by deceit is brought against both Prior and Tamraz. She alleges that respondents misled her into believing that the original settlement of case No. NC035087 encompassed all disputes between them, including her obligation to pay the unlawful detainer judgment. Later, as we have seen, Prior obtained a setoff of the amount of the unlawful detainer judgment from the $20,000 he owed Windsor on the NC035087 settlement. Windsor also alleges the insistence of respondents that she sign a release with additional terms not included in the April 4, 2006 settlement of case No. NC035087 as a ground for her fraud claim. Finally, Windsor's fraud claim is based on respondents' alleged representation that tender of the $20,000 settlement amount was barred by a lien held by Tyler Barnes.

Respondents demurred to this cause of action on the ground that it is barred by the litigation privilege codified in Civil Code section 47, subdivision (b). We find merit in the argument. The litigation privilege immunizes defendants from virtually any tort liability, including claims for fraud, except a cause of action for malicious prosecution. (*Olsen v. Harbison* (2010) 191 Cal.App.4th 325, 333; *Silberg v. Anderson* (1990) 50 Cal.3d 205, 215-216.) "The litigation privilege applies to statements made 'by litigants or other participants authorized by law' (*Action Apartment Assn., Inc. v. City of*

Santa Monica [(2007)] 41 Cal.4th [1232,] 1241), and it attaches to communications 'made in, or in anticipation of, litigation.' [Citation.]" (*Olsen v. Harbison*, *supra*, 191 Cal.App.4th 325, 334.)

In *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953 (*Seltzer*), in the context of a special motion to strike under Code of Civil Procedure section 425.16, the court applied the litigation privilege under Civil Code section 47, subdivision (b) to statements made in the negotiation of a partial settlement agreement. (*Seltzer v. Barnes*, *supra*, 182 Cal.App.4th 953, 970-972.) "'[T]he litigation "privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. [Citations.]" [Citation.]' (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1058.)" (*Id*. at p. 970.) The court in *Seltzer* relied upon *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17 (*Home Insurance*), which held that the litigation privilege extended to an allegedly fraudulent statement concerning insurance policy statements made during the litigation which impacted a subsequent settlement. (*Seltzer*, *supra*, 182 Cal.App.4th at pp. 971-972, citing *Home Insurance*, *supra*, 96 Cal.App.4th at p. 28.) The *Home Insurance* court held that the privilege applied even though the statement was made outside a courtroom, and applied to statements made by counsel during settlement negotiations. (96 Cal.App.4th at p. 24.)

Here, the fraud cause of action alleges that Prior and Tamraz led Windsor to believe that the settlement of case No. NC035087 settled all claims between Prior and Windsor, including Prior's claims against Windsor, but then changed their position and obtained a setoff of the judgment Prior had obtained in the unlawful detainer case (case No. 03U02263) against Windsor. Statements by Prior and Tamraz to this effect were made in the course of negotiating the enforcement of the settlement and obtaining a release from Windsor and were privileged under Civil Code section 47, subdivision (b). Similarly, respondents' alleged insistence that Windsor sign the proposed release occurred as part of the settlement and enforcement negotiations. The same rationale

applies to Windsor's allegation that Prior and Tamraz committed fraud by continuing to represent that a lien held by Tyler Barnes exists against settlement proceeds which prohibited them from tendering the proceeds to Windsor. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 830-831 [litigation privilege bars claims based on filing of statutory liens to achieve object of litigation].)

We conclude that the third cause of action for fraud and deceit was barred by the litigation privilege under Civil Code section 47, subdivision (b).

III

Windsor's fourth cause of action, against both respondents, is for intentional or negligent infliction of emotional distress. She alleges that defendants "intentionally acted to deceive plaintiff and prevent, delay or diminish plaintiff's benefit of the settlement proceeds from NC035087." She also alleges that defendants intended to cause her financial and emotional harm. The cause of action incorporates the previous allegations.

Although vaguely pleaded, it is apparent that this cause of action is based on the same conduct alleged in the fraud and other causes of action, all related to the negotiations leading to the satisfaction of the settlement in case No. NC034087. The litigation privilege under Civil Code section 47, subdivision (b) also applies to causes of action for emotional distress. (*Kemps v. Beshwate* (2009) 180 Cal.App.4th 1012, 1018-1019 [causes of action for abuse of process and intentional or negligent infliction of emotional distress barred by litigation privilege].) Windsor's emotional distress claim is barred and the order sustaining the demurrer was not in error.

We conclude that the breach of contract and breach of covenant of good faith and fair dealing causes of action are moot and barred by the global settlement reached in July 2011 between Prior and Windsor. Although we rely on the litigation privilege under Civil Code section 47 rather than the statute of limitations ground cited by the trial court,

we conclude the demurrer was properly sustained without leave to amend as to the third and fourth causes of action because the complaint was not amenable to amendment.[6]

IV

With respect to the cause of action for breach of contract, Windsor also claims the trial court erred in stating: "You refused to complete the necessary settlement process which is the signing of the releases. That's tantamount to a settlement. That's how you do it. They don't just send you the money and say, good, take another shot at me. All right." Windsor claims this was an improper evidentiary finding related to the tender of the $20,000 and that it is unsupported.

Windsor fails to cite any authority to support this claim of error. However, the contention relates to the duties of the parties in the settlement of case No. NC035087. As we have concluded, that matter was resolved through a global settlement and any such issue is not the proper subject for further appellate review.

V

Respondents seek sanctions on appeal on the ground that Windsor's appeal is frivolous. "[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650; see also *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 516.) "The first standard is tested subjectively. The focus is on the good faith of appellant . . . . The second is tested objectively." (*In re Marriage of Gong & Kwong*, *supra*, at p. 516.)

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[6] Windsor makes no argument on appeal regarding her fifth cause of action for statutory damages based on Tamraz's failure to appear for deposition pursuant to subpoena. (Code Civ. Proc., § 1992.) Since damages were limited to $500 on that remaining cause of action, the trial court transferred the cause of action and assigned it a limited jurisdiction number. We need not discuss this cause of action since the court's ruling on it is not the basis for appeal.

Given the complexity of the issues presented, and the tortured procedural history, we conclude that sanctions are not warranted.

DISPOSITION

The order sustaining respondents' demurrer to the first amended complaint is affirmed. Respondents' motion for sanctions on appeal is denied. Respondents are to have their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.