Filed 5/30/18 Jeffery Catanzarite Family Limited Partnership v. Lane CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JEFFERY CATANZARITE FAMILY LIMITED PARTNERSHIP et al., Plaintiffs and Respondents, v. FRANK LANE, Defendant and Appellant.	B276983 (Los Angeles County Super. Ct. No. BC432694)

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

Michael L. Sloan for Defendant and Appellant.

Finch Law and Brent M. Finch for Plaintiffs and Respondents.

Five weeks into a bench trial accusing him of fraud, defendant and appellant Frank Lane[1] entered into a settlement agreement with plaintiffs and respondents Jeffrey Catanzarite Family Limited Partnership and others (collectively, Respondents)[2] for a stipulated judgment in Respondents' favor in the amount of $1.5 million. Approximately six months later, Lane filed a motion to vacate the settlement agreement contending he lacked the mental capacity to enter into it. The trial court denied the motion, and Lane now contends the trial court abused its discretion in excluding his medical expert's declaration and denying his motion to vacate. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 2, 2010, Respondents filed an amended complaint against Lane and others alleging they were fraudulently induced into investing approximately $2.4 million in ArmorLite Roofing Company, LLC (ArmorLite) based on false

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[1] Appellant claims his last name is "Italiane" so that documents included in the record on appeal refer to him as "Frank Lane Italiane or Mr. Italiane." For convenience, we will refer to appellant as "Lane."

[2] "Respondents" refers to Jeffrey Catanzarite Family Limited Partnership; Eron Martin; Wolfgang Greinke, as Trustee of the Greinke Family Trust; Wesley Larsen; Brian Hicks, as Trustee of the Hicks Family Trust UDT 10/01/2001; Steven Nazaroof, individually and as Trustee of the Steven Nazaroof Retirement Trust; The Nazaroff Family Partnership; Tricia Prentice; Robert Strohbach, as Trustee of the Strohbach Living Trust; Cathy Galie-Lewis; Leason V. "Chet" Leeds, as Trustee of the Leason V. Leeds Trust; Lynae Arnold; and Liz Malone, as Trustee of the Malone Family Trust."

representations that the company had developed and was ready to market a "patented, high-technology roofing system." Lane was the founder, President, and Chief Executive Officer of ArmorLite.

A bench trial commenced on September 21, 2015.[3] Thereafter, the parties entered into a "short form" settlement agreement. On October 16, 2015, the terms of the settlement were placed on the record. At the hearing, the trial court observed Lane and questioned his understanding of the settlement terms. The following colloquy ensued:

"[Court]: So you have had a chance to speak with your client?

[Plaintiff's attorney]: I have had a chance to speak with my client. He has indicated to me that he will agree with the terms of the stipulated judgment.

[Court]: He will?

[Plaintiff's attorney]: He will. And he's not going to add any--try and add any terms.

[Court]: Okay. So going back to my last question, Mr. Lane, you're entering into this agreement of your own free will, is that correct?

[Lane]: Yes, your honor.

[Court]: And it's not as a result of any duress[4] by anyone, is that correct?

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[3] Lane did not include any transcripts of proceedings related to the underlying trial as part of the record on appeal.

[4] At the request of Lane's counsel, the trial court explained to Lane the meaning of the term "duress" as follows: "No one is pointing a gun at him. You know, he may choose to enter into the agreement because he's tired of it. He doesn't want to go through

[Lane]: That's correct, your honor.

[Court]: Now, you understand that you raised an issue right before I broke regarding fire testing the panels. You understand that that's not part of this agreement?

[Lane]: I understand that now.

[Court]: Okay. And you still wish to go forward with it; is that correct?

[Lane]: Yes, I do, your honor.

[Court]: Okay. In that case, I'm going to have you read the terms of the agreement into the record.

[Defense attorney]: [Respondents] and Frank Lane, Tallian, Jr., agree as follows: [¶] Mr. Lane agrees to a stipulated judgment in favor of the [Respondents] for fraudulent concealment in the amount of $1,500,000 to be allocated to each [respondent] in the amount of their respective investments."

Satisfied all parties understood and accepted the terms of the settlement agreement, the trial court ordered Respondents' counsel to dismiss the case with prejudice.

Thereafter, Lane represented himself and filed a motion to vacate the settlement agreement and dismissal under Code of Civil Procedure section 473, subdivision (b). He argued the settlement agreement was invalid because he lacked the mental capacity to enter into it. In support of his motion, Lane filed the Declaration of Cynthia Cotter, a clinical psychologist specializing in geriatric psychology, who concluded Lane "likely did not have the capacity to sign [the] stipulated agreement." Lane also

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with it. He may choose to enter into it because he needs to be somewhere else. He has a sick parent at home. I mean, he could have a good number of reasons. I don't care what they are, but as long as that he's not doing it out of his own free will, basically."

attached several unauthenticated documents which he claimed corroborated his contention that he suffered from "cognitive deficits" at the time he signed the settlement agreement.[5]

Respondents opposed the motion, arguing Lane failed to provide any admissible evidence establishing he lacked the mental capacity to understand the terms of the settlement agreement. Respondents also filed objections to Dr. Cotter's declaration, and the April 9, 2012 letter from Dr. Buckhorn, Lane's attending physician.

The trial court denied the motion to vacate, ruling Lane failed to submit any admissible evidence suggesting he lacked the mental capacity to enter into the settlement agreement. It also sustained all of Respondents' evidentiary objections, and noted the medical records attached to the motion were not properly authenticated. In addition, the court indicated that even had it considered the excluded evidence, it would still have denied the motion because it had observed Lane during trial and at the October 16, 2015 hearing, and it appeared Lane understood the nature and content of the proceedings.

Lane filed a timely notice of appeal.

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[5] The following exhibits were attached to Lane's motion to vacate: (A) October 9, 2015 email addressed to Lane from his attorney, Donna Boris; (B) October 27, 2015 letter from Anthony DiMartino, Lane's caregiver; (C) April 8, 2016 letter from Susan Leonard, Lane's sister; (D) November 24, 2015 email addressed to Lane from his trial expert, Vishu H. Shah; (E) a document entitled "Settlement Agreement to Put on Record"; (F) Lane's medical records from Dr. Jackson (2009-2012); (G) Lane's 2015 student academic transcript; and (H) April 9, 2012 letter from Dr. Buckhorn, Lane's attending physician.

DISCUSSION

Lane contends the trial court abused its discretion in sustaining Respondents' objections to Dr. Cotter's declaration and denying his motion to vacate the settlement agreement. We disagree.

A. Applicable Legal Principles

Code of Civil Procedure section 473 provides, in pertinent part, that: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b).) Thus, "[a]n order or decree incorporating a settlement agreement may be set aside under [Code of Civil Procedure] section 473." (*In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 465.) " 'Excusable neglect,' whether or not it is the result of 'mistake,' may . . . support setting aside an order under section 473, and the 'excusable neglect' may be the result of disability." (*Ibid.*) "The existence of some degree of mental confusion or illness of the party moving to set aside an order supports granting the motion, and the court may infer the existence of such problems from the whole record before it." (*Id.* at p. 466.)

The Due Process in Competence Determinations Act (the Act) (§§ 810 et seq.) sets forth the mental capacity standard required to perform certain acts, such as executing a contract. (§ 810, subd. (b).) The Act establishes a rebuttable presumption that all persons have the capacity to make decisions and to be responsible for their acts or decisions. (§ 810, subd. (a).) It also makes clear that a person with a mental or physical disorder may still be capable of contracting. (§ 810, subd. (b).) Further, it

states "[a] judicial determination that a person is totally without understanding . . . should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder." (§ 810, subd. (c).)

"The Act [also] offers a wide range of potential mental deficits that may support a 'determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act[.]' (Prob. Code, § 811, subd. (a) [lists 18 mental functions].) The categories of mental functions generally relate to one's ability to understand and recall one's surroundings, and include (but are not limited to) alertness and attention, orientation to time, ability to concentrate, short-and long-term memory, ability to communicate, recognition of familiar objects and persons, ability to plan and reason logically, delusions, ability to modulate mood, and affect. (*Ibid.*) The Legislature noted a deficit in one of the mental functions listed 'may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions *with regard to the type of act or decision in question.*' (Prob. Code, § 811, subd. (b), italics added.) In other words, under this statutory scheme, incompetency due to an 'unsound mind' cannot be based on the diagnosis of a medical or physical disorder, and it is not enough to identify a few mental deficits. There must be a causal link between the impaired mental function and the issue or action in question. Moreover, in considering the causal link, courts should also consider 'the frequency, severity, and duration of periods of impairment.'

(Prob. Code, § 811, subd. (c).)" (*In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 640.)

B. Standard of Review

We review an order granting or denying a motion to vacate a settlement agreement under Code of Civil Procedure section 473 for abuse of discretion. (*Etchepare v. Ehmke* (1955) 137 Cal.App.2d 508, 511.) Under that standard, we reverse only where the trial court's order exceeded the bounds of reason. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118.) "The burden is on the complaining party to establish abuse of discretion, and the showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion." (*Ibid.*)

As to findings of fact, "we will not disturb the trial court's factual findings where . . . they are based on substantial evidence. It is the province of the trial court to determine the credibility of the declarants and to weigh the evidence." (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 828.)

C. The Trial Court Properly Denied Lane's Motion to Vacate the Settlement Agreement

We need not decide whether Dr. Cotter's declaration was improperly excluded because the trial court indicated that its decision to deny the motion to vacate would remain the same even had it considered Lane's evidence. Specifically, it stated, "Even if I did not sustain those objections, there's a difference between having memory issues and not having the capacity – mental capacity to understand and comprehend a settlement in which he entered. I've listened to him testify. I've watched him. I had lots of interaction with him throughout the course of the trial, and I have no doubt that he has probably forgotten certain

things, but you know what, he is not a man who did not have a capacity to enter into a settlement agreement."

Further, though Lane now contends the transcript demonstrates he "struggled" to understand the terms of the agreement, there is no evidence to support his assertion. Rather, the record shows Lane, represented by counsel, expressly stated he understood and agreed to the settlement terms. He asked questions during the hearing in order to clarify the terms of the agreement; the court took a break and allowed Lane to further discuss any issues with his counsel; and, when the proceedings resumed, Lane made no objection to the settlement terms recited on the record. We have no reason to doubt the trial court's own observations of Lane's demeanor and mental acuteness during the trial and the October hearing in determining Lane had the mental capacity required to make a reasoned decision. (*Ayala v. Southwest Leasing & Rental, Inc.* (1992) 7 Cal.App.4th 40, 44 ["On matters of credibility, we defer to the trial court."].)

Likewise, we agree with the trial court's finding that the documented correspondence between Lane and Respondents' counsel during the months following the October hearing reveal Lane was of sound mind when he settled because he still possessed the "[a]bility to reason" and "[a]bility to plan, organize, and carry out actions in [his] own rational self-interest."[6] (§ 811, subd. (a)(2)(E)–(G) [examples of mental functioning related to

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[6] For example, in his correspondence to Respondents' counsel following the settlement, Lane wrote: "Please let me know before 6-26-16 when my support team and I will be filing an investigation with all concerned parties on your claim of fraudulent concealment that would cause harm or death to public safety, or if you will be withdrawing the stipulated judgment and all related matters."

information processing].) In the correspondence, Lane attempted to vacate the settlement for a mish mash of reasons other than his alleged mental incapacity. The document were written by Lane and included a level of detail which are demonstrative of his ability to understand the proceedings and make reasoned judgments.

We conclude there was no abuse of discretion.

DISPOSITION

The trial court's order denying Lane's motion to vacate the settlement agreement and dismissal is affirmed. Respondents are awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.