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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WILLIAM REILLY, Plaintiff and Respondent, v. FRANK CHINDAMO, Defendant and Appellant	B233076 (Los Angeles County Super. Ct. No. EC050966)

APPEAL from a judgment of the Superior Court of Los Angeles County, William D. Steward, Judge. Affirmed.

Law Offices of Jon H. Freis and Jon H. Freis for Defendant and Appellant.

Law Office of James B. McAllister and James B. McAllister and Mickey Jew for Plaintiff and Respondent.

Frank Chindamo appeals from a judgment entered after the trial court granted William Reilly's motion to enforce a settlement agreement under section 664.6 of the Code of Civil Procedure.[1] Chindamo claims the court erred in entering judgment against him in his individual capacity because he was not required to pay Reilly any money under the terms of the agreement. We find no error and affirm.

FACTUAL AND PROCEDURAL HISTORY

In September 2009, Reilly filed a lawsuit for breach of contract, fraud, conversion, and related causes of action against FLM Productions, Inc. (FLM), ROK Entertainment Group, Inc. (ROK) and Chindamo. Reilly alleged liability for all causes of action against all defendants based on alter ego, agency and respondeat superior theories of liability. The defendants filed a cross-complaint.

On June 30, 2010, before a mediator, the parties executed a written settlement agreement drafted by the defendants' attorney and expressly enforceable under section 664.6. The agreement provides in relevant part: "Defendant FLM shall pay the total sum of $45,000.00 to Plaintiff, payable as follows: [¶] 1) An initial payment of $10,000 on or before August 30, 2010[;] [¶] 2) $5,000 payable on or before November 30, 2010[;] [¶] 3) 12 quarterly payments of $2,500 commencing on February 28, 2010, and continuing every three (3) months thereafter on the last calendar day of each month that ends the respective quarter. [¶] . . . [¶] Upon receipt of the $10,000 . . . , Plaintiff shall immediately cause a Request for Dismissal, with prejudice, of the Complaint to be filed as to CHINDAMO and ROK. A Request for Dismissal, with prejudice, will be filed as to the Cross-complaint. The parties will file a stipulation with the Court, that the Court may dismiss the Complaint, with prejudice, as to FLM subject to the Court's retention of jurisdiction to enforce the terms of this Agreement."

The agreement provides that if FLM did not pay the initial $10,000, "then this Agreement, at the sole election of Plaintiff, may be deemed null, void, and of no further

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[1] All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

force or effect as to him. . . . [T]he Plaintiff and the Defendants shall be returned to the *status quo* prior to execution of this Agreement, and Defendants agree to cooperate in seeking to reschedule a trial date at the earliest date convenient to the Court." In the event appellant did not void the agreement, he could enforce it: "The failure to make a timely payment under this Agreement shall constitute an Event of Default hereunder. Upon an Event of Default, and prior to taking any action to enforce the Agreement, Plaintiff shall provide written notice [to defendants' attorney] . . . and if the Default has not been cured, then Plaintiff may . . . [file a motion] for entry of judgment in the amount of $60,000, less any payments made hereunder, plus reasonable attorney's fee and costs in enforcement of this Agreement."

FLM did not make any payments required under the agreement.

On November 10, 2010, Reilly filed a motion to enforce the settlement agreement under section 664.6 against all defendants, including Chindamo.

Chindamo and ROK filed an opposition to the motion. They conceded that FLM had not made the initial payment. They argued, however, that since FLM was the only party required to pay plaintiff under the agreement, default could be entered against FLM only and not against Chindamo or ROK.

The trial court granted Reilly's motion, but it did not issue written findings. Chindamo filed this timely appeal but did not produce the reporter's transcript.

DISCUSSION

The sole issue raised on appeal is whether the settlement agreement is unambiguous in limiting liability to FLM only. Because this question involves the application of contract law, we exercise de novo review. (See *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1533.)

It is undisputed that the settlement agreement is enforceable under section 664.6. It is also undisputed that Chindamo signed the agreement both as president and CEO of FLM and in his individual capacity as a named defendant.

Chindamo did not order preparation of a reporter's transcript of the proceedings. An appeal on "a record consisting of judgment roll and exhibits or other papers from the clerk's file without a reporter's transcript . . . 'must be treated as a judgment roll appeal, and only those facts appearing in the findings should or will be considered.'" (*Williams v. Inglewood Board of Realtors, Inc.* (1963) 219 Cal.App.2d 479, 481.) Defendants "'cannot broaden the scope of this court's inquiry by incorporating in the clerk's transcript the documentary evidence received in the court below.'" (*Id*. at p. 482.) We can consider only those matters appearing on the face of the judgment roll. (*Id*. at p. 483.) The sufficiency of the evidence to support the findings is not open to question. (*Id*. at p. 482; accord, *Ducray v. Ducray* (1967) 257 Cal.App.2d 480, 483.)

Because this is a judgment roll appeal, Chindamo must show error from the face of the judgment roll. He attempts to do so by arguing that the language of the settlement agreement is unambiguous in limiting liability to FLM alone. He does not argue that the settlement agreement is ambiguous, presumably because resolution of that issue would require us to analyze the trial court's findings with regard to the conflicting extrinsic evidence presented by the parties. (See *Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350-1351 [parol evidence admissible to interpret an ambiguous contract; when evidence conflicts, trial court's resolution is a question of fact upheld if supported by substantial evidence].) Since the court did not issue written findings, they do not appear on the judgment roll.

In interpreting a contract, we give meaning to the parties' expression. "A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) Where the language of a contract is clear and not absurd, it will be followed. (*Id.* at § 1638.) "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible . . . ." (*Id.* at § 1639.)

Chindamo contends the trial court's error is apparent from the language of the settlement agreement, which appears in the clerk's transcript. He argues that since the agreement obligated only FLM to pay Reilly, Chindamo has no legal obligations and

cannot be held liable for breach of the agreement. He claims that Reilly had two options when FLM failed to tender the first payment. Reilly could void the entire agreement and proceed to trial against all the defendants, or obtain entry of judgment against FLM only based on its failure to pay. Chindamo asserts this interpretation is proper because the ability to obtain a default judgment in general is founded upon a default in the obligation to pay.

The default clause itself does not distinguish between any of the defendants for the purposes of seeking a judgment for a breach of the agreement. It provides that in the event there is no timely payment, a judgment may be entered for $60,000, less any payments that were made under the agreement. The absence of any distinction among the defendants and parties to the settlement agreement as to who is liable for a failure to pay renders all of the defendants liable.

Further, even if Chindamo's interpretation of the agreement was reasonable, other portions of the agreement would allow us to reach a contrary, but equally plausible interpretation. Another clause provides: "If the initial payment of $10,000 i[s] not timely made, then this Agreement, at the sole election of Plaintiff, may be deemed null, void, and of no further force or effect as to him. In the event that Plaintiff so elects, the Plaintiff and the Defendants shall be returned to the *status quo* prior to execution of this Agreement . . . ." In other words, Reilly could proceed with the lawsuit against all defendants, including Chindamo. We infer from this that the parties intended Chindamo to be jointly and severally liable for a breach at least until the $10,000 initial payment was tendered.

For these reasons, Chindamo cannot show the agreement is unambiguous in extinguishing his liability.

Chindamo contends that because he had no obligations under the agreement, he obtained a release of all claims against him, which bars an entry of judgment. The parties agreed to release all claims against each other "[e]xcept for any obligations contained in or created by this Agreement." As we have discussed, we do not agree that Chindamo had no obligations under the agreement. Thus, he did not obtain a release.

Chindamo's last argument is that all prior agreements that gave rise to Reilly's underlying breach of contract claim were between Reilly and FLM only. Chindamo claims this shows that the parties did not intend for him to pay anything under the settlement agreement. The parties' prior contracts are extrinsic evidence, which we presume the court weighed in making its determination. But we do not have the trial court's findings with respect to this evidence since Chindamo did not produce the reporter's transcript. Chindamo's claim effectively goes to the sufficiency of the evidence to support the trial court's findings on the parties' intent and is improper on a judgment roll appeal. Further, we note that Chindamo signed the settlement agreement in his individual capacity as an individually named defendant, even if he did not sign prior contracts with Reilly.

DISPOSITION

The judgment is affirmed. Respondent to have his costs on appeal.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.