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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.	B272450 (Los Angeles County Super. Ct. No. BC415095)

APPEAL from an order of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

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

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

Plaintiff Christopher Baldwin appeals from an order granting a motion by defendants Funk Shui, LLC, and Jason Alkhaldi to recover the attorney fees they incurred to enforce a settlement agreement. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Plaintiff sued defendants to recover damages for personal injuries arising from an alleged assault.

On April 2, 2012, the parties participated in a mediation, which concluded without a settlement.

On April 11, 2012, the parties reached a settlement whereby defendants agreed to pay $250,000 to plaintiff, and plaintiff agreed to dismiss his lawsuit and release his claims against defendants. The agreement provided for the recovery of attorney fees by the party prevailing in any action or proceeding to enforce the settlement agreement.[1] The terms of the agreement are set forth in a document that plaintiff, but not defendants, signed.

Defendants thereafter tendered the settlement payment to plaintiff's lawyer. Plaintiff, however, did not dismiss the lawsuit and asserted that the parties had not reached a settlement.

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[1] The attorney fees provision states: "Should any party to this [r]elease reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision hereof including, but not limited to, instituting any action or proceeding (1) to enforce any provision hereof, (2) for damages by reason of any alleged breach of any provision hereof, (3) for a declaration of such party's rights or obligations hereunder, or (4) for any other judicial remedy, then, if such matter is resolved by judicial determination, . . . the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby including, but not limited to, reasonable attorneys' and accountant's fees."

Defendants then filed a motion to enforce the settlement under Code of Civil Procedure section 664.6, which the trial court granted.

We reversed in an unpublished decision on the ground that the proffered writing had not been signed by defendants, which Code of Civil Procedure section 664.6 requires. (*Baldwin v. Funk Shui, LLC* (Aug. 29, 2013, B244491) [nonpub. opn.] (*Baldwin I*).) We noted, however, that if enforcement of the settlement "under [Code of Civil Procedure] section 664.6 is not available because of procedural defects, [the] agreement might still be enforceable by summary judgment, a suit for breach of contract, or a suit in equity." (*Id.* at p. 3.)

After remand, defendants amended their answer to assert the settlement agreement as an affirmative defense and filed a cross-complaint to enforce the settlement agreement. Defendants then moved for summary judgment based upon the settlement agreement. The court granted the motion and entered judgment for defendants.

We affirmed the judgment in an unpublished opinion. (*Baldwin v. Funk Shui, LLC* (Sept. 28, 2016, B268844) [nonpub. opn.] (*Baldwin II*).) We explained that the settlement agreement was "valid . . . even if it was not signed by all the parties." (*Id.* at p. 5.)

In February 2016, defendants filed a motion in the trial court to recover their attorney fees pursuant to the settlement agreement in the amount of $48,072. The defendants limited the amount they sought to fees incurred after the issuance of the remittitur in *Baldwin I*. Defendants supported the motion with evidence of the settlement agreement, their attorneys' declarations, and their partially-redacted billings for the post-*Baldwin I* time frame. According to the attorneys' declarations, in this matter their firm billed its partners' time at $175 per hour and the associates' time at $170 per hour.

Plaintiff opposed the motion on the grounds that the amount of fees defendants requested was excessive, but did not deny that defendants were entitled to some amount of fees under the settlement agreement. Plaintiff did not submit any evidence to support his opposition and did not object to the evidence of the settlement agreement.

The trial court granted defendants' motion and, after disallowing $467.50 for time spent on work other than enforcing the settlement, awarded defendants the amount of $47,604.50.

Plaintiff timely appealed.

DISCUSSION

I. Admissibility of the Settlement Agreement

Evidence Code section 1119 generally makes inadmissible statements made and writings prepared "for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation." (Evid. Code, § 1119, subds. (a) & (b).) Plaintiff argues that this statute applies to the evidence of the settlement agreement in this case and, therefore, the court could not consider it or the attorney fees provision contained therein.

As plaintiff acknowledges, he did not object to the evidence of the settlement agreement in the proceedings below or otherwise raise the point he is asserting on appeal. He has thus forfeited the argument. (See *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.)

Even if plaintiff had preserved the argument for appeal, we would reject it. Evidence Code section 1119 applies to statements and writings that are made "for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation." (Evid. Code, § 1119, subds. (a) & (b).) The settlement agreement, reached nine days after the conclusion of the mediation, could not have been made for the purpose of mediation or in the course of mediation.

Plaintiff contends that the settlement agreement should be "deemed to be a product of the mediation." The argument implies that an agreement that is a *product* of mediation is an agreement made *pursuant to* mediation. For this point, he cites to *Simmons v. Ghaderi* (2008) 44 Cal.4th 570 (*Simmons*). *Simmons*, however, involved the admissibility of statements that were made *during* mediation, and it does not support plaintiff's argument. (*Id.* at pp. 575, 581.)

Even if an agreement that is a product of mediation is an agreement made pursuant to mediation for purposes of Evidence Code section 1119, plaintiff does not refer to anything in the record to establish that the settlement agreement was such a product. The only evidence on this issue are statements by defendants' counsel that the mediation was held on April 2, 2012, that "the parties were unable to reach a settlement," and "[s]ubsequently, on or about April 11, 2012, the parties were able to reach a settlement."[2] Without more, this is insufficient to establish that the agreement reached on April 11, 2012, was either a product of—or made pursuant to—the mediation for purposes of Evidence Code section 1119. We therefore reject plaintiff's contention that the settlement agreement was inadmissible.

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[2] The evidence is consistent with our statement in *Baldwin II* that "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." (*Baldwin v. Funk Shui, LLC*, *supra*, B268844, at p. 2.)

II. The Determination of the Amount of Attorney Fees

Plaintiff contends that the amount of fees the court awarded is excessive. Trial courts have "broad authority to determine the amount of a reasonable fee" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095), and we review the court's decision for an abuse of discretion. (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751.)

Plaintiff asserts that the defendants' motion and the supporting declarations failed to discuss the factors identified in rule 4-200 of the State Bar Rules of Professional Conduct.[3] This rule provides that a "member [of the California State Bar] shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee," and sets forth 11 "factors to be considered" in determining whether a fee is unconscionable. (Rules Prof. Conduct, rule 4-200(B).)

Plaintiff's reliance on this rule is misplaced because the State Bar Rules of Professional Conduct "regulate professional conduct of members of the State Bar." (Rules Prof. Conduct, rule 1-100(A).) The only parties to the settlement agreement are plaintiff and defendants, and there is nothing in the record to indicate that they are members of the California State Bar. Rule 4-200, therefore, has no application to the settlement agreement in this case, and defendants had no obligation to discuss the factors described in that rule.

Plaintiff further argues that the fee request is "unconscionable" because portions of the billings offered to support the motion are redacted. The trial court considered

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[3] References to a rule are to the Rules of Professional Conduct of the State Bar of California

and rejected this argument because it determined that the redactions did not prevent it from evaluating the merits of the motion in light of the unredacted entries and the attorneys' declarations concerning their work. Indeed, as the court observed, evidence of attorney billings are not necessary when other evidence, such as attorney declarations, are sufficient to evaluate the motion. (See *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375 ["an award of attorney fees may be based on counsel's declarations, without production of detailed time records"].) Moreover, plaintiff has not challenged any particular entry, and he asserts only generally that the "use of redactions obscures the nature of the work claimed and allows for inflated time entries combinable with non-compensable hours." This statement is insufficient to fulfill his burden of establishing error on appeal.

Plaintiff further asserts that "there is no question that a significant amount of the time expended [was] for activities not in furtherance of the enforcement of the settlement agreement," such as for travel for depositions of plaintiff's parents and review of depositions in plaintiff's malpractice case against his former counsel. He does not, however, provide any citation to the record on this point, and has therefore waived the issue. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287.)

For the foregoing reasons, plaintiff has failed to establish that the court abused its discretion in determining the reasonableness and amount of recoverable attorney fees.

DISPOSITION

The order granting defendants' motion for attorney fees is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.