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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NATALIE RIVERA,

Plaintiff and Respondent,

v.

4 STREETS CO-OP OF RTE. 2, INC.,

Defendant and Appellant.

B281866

(Los Angeles County
Super. Ct. No. BC467958)

APPEAL from an order of the Superior Court of Los Angeles County. Ernest M. Hiroshige, Judge. Petition for writ of mandate denied.

SwedelsonGottlieb, David C. Swedelson and Joan E. Lewis-Heard for Defendant and Appellant.

BASTA, Inc., Daniel J. Bramzon and Ross T. Kutash for Plaintiff and Respondent.

* * * * *

After a jury awarded the plaintiff \$1,002 in damages in a dispute over a residential co-op board's election, a court awarded the plaintiff's attorneys more than 130 times that amount in attorney's fees. After the co-op paid \$124,701.22 and later sent a check for an additional \$45,291.23, plaintiff's attorneys rejected the check because it was \$887.10 short in postjudgment interest and because they wanted to apply for another \$4,480 in attorney's fees. The attorneys then sought discovery and, when it went unanswered, moved to compel a response. The co-op responded that the motion to compel was moot because the plaintiff's daughter (who was substituted in for the plaintiff after he died) had accepted the \$45,291.23 check and signed an acknowledgment of the satisfaction of the judgment. The trial court ruled that the satisfaction of judgment was invalid, and granted the motion to compel. The co-op appeals. We have jurisdiction to reach the merits by treating this appeal as a writ—and conclude that there was no error.

FACTS AND PROCEDURAL BACKGROUND

I. Underlying Lawsuit

A. *Complaint and Verdict*

Defendant 4 Streets Co-Op of Rte. 2, Inc. (the Co-Op) offers housing to its member-tenants, who are persons of lower income. In 2010, Hector Rivera (Hector)¹ was a member and tenant of the Co-Op. Hector sought to run for a position on the Co-Op's Board of Directors (Board), but was prevented from doing so by the Co-Op's current Board.

¹ Because another family member is involved in this litigation, we use first names for clarity's sake. We mean no disrespect.

In 2011, Hector sued the Board and its nine directors for (1) violating the Davis-Stirling Common Interest Development Act (Davis-Stirling Act) (Civ. Code, § 4000 et seq.), which regulates elections held by common interest developments like the Co-Op, (2) violating the Co-Op's own bylaws, and (3) breach of fiduciary duty. He sought actual damages, punitive damages, and attorney's fees pursuant to the Davis-Stirling Act. At the time, Hector retained BASTA, Inc. (BASTA) to represent him; in his retainer agreement, Hector agreed to "assign" to BASTA "the right to collect the attorneys' fees incurred from the opposing side in the litigation."

Hector's latter two claims proceeded to a jury trial. In a special verdict, the jury found that the Co-Op had not allowed Hector to be nominated for election to the Board, had not specified the qualifications for candidates or procedures for nomination to the Board, and had not served the Co-Op's member-tenants with the list of candidates for the Board and their statements. For the violation of the Co-Op's bylaws, the jury awarded \$2; for breach of fiduciary duty, it awarded \$1,000.

Deferring to the jury's findings, the trial court ruled that the Co-Op had also violated the Davis-Stirling Act.

B. *Judgment and Attorney's Fees Award*

On July 2, 2013, the trial court entered judgment on all three claims awarding compensatory damages of \$1,000 and awarding attorney's fees and costs in an amount to be determined later.²

On November 5, 2013, the trial court awarded attorney's fees of \$121,125 and costs of \$7,842.26.

² The court did not explain the \$2 discrepancy.

II. Postjudgment Litigation

A. *Partial Payment of Outstanding Judgment*

On January 20, 2014, Hector died.

Almost two years later, on November 17, 2015, the Co-Op deposited a cashier's check for \$124,701.22 with the trial court. This amount reflected the outstanding judgment, plus interest through the date of Hector's death.

In March 2016, the court granted the request of Hector's adult daughter, Natalie Rivera (Natalie), to serve as Hector's successor in interest.

In late May 2016, BASTA (1) accepted the deposited funds previously deposited with the court and (2) filed a memorandum of costs seeking (a) an additional \$11,150 in postjudgment costs (including \$10,855 in postjudgment attorney's fees) and (b) an additional \$32,839.83 in unpaid interest (because the accrual of interest did not stop on the date of Hector's death).

The trial court subsequently denied the Co-Op's motion to tax these additional costs.

B. *Refusal to Accept Further Payment*

In mid-September 2016, the Co-Op mailed BASTA a check made payable to Natalie in the amount of \$45,291.23, reflecting the amount still outstanding on the judgment plus interest of \$1,301.37.

The same day, BASTA rejected the proffered check because (1) it had a shortfall of \$887.10 in interest, (2) it was a check, which BASTA was free to reject so that it could seek an additional \$4,480 in postjudgment attorney's fees. BASTA counteroffered that it would accept a check for \$50,658.33, reflecting the amount owed plus the additional postjudgment attorney's fees it wanted; it renewed that offer again in October

2016.

The Co-Op never accepted or rejected BASTA's counteroffer.

C. *BASTA's Request for Further Discovery*

In October 2016, BASTA served the Co-Op with 28 requests for documents and 16 special interrogatories.

When the Co-Op did not respond to those discovery requests, BASTA in December 2016, filed two motions to compel.

In response, the Co-Op asserted that BASTA's motions were moot because Natalie had (1) accepted the \$45,291.23 check from the Co-Op's managing agent, and (2) executed an Acknowledgement of Satisfaction of Judgment (the Acknowledgement) on November 3, 2016.

The trial court ordered further briefing on the significance of the Acknowledgement.

In its additional briefing, the Co-Op explained that its managing agent had, on her own and without prompting from the Co-Op's attorneys, approached Natalie, offered Natalie the check BASTA refused, and sent her the Acknowledgment to execute. Once Natalie signed it, the managing agent asked the Co-Op's attorneys to record the Acknowledgment at the Los Angeles County's Recorder's Office.

In its additional briefing, BASTA submitted a declaration from Natalie. Natalie stated that the managing agent had contacted her, saying that she "had a check in [Natalie's] name that was money belonging to [her] dad and that [her] lawyers did not accept it." Natalie accepted the check, signed and notarized a form, and sent it back to the managing agent. Natalie explained that "nobody explained to [her] that the form [she] signed and notarized would cancel any debt that the Co-Op owed to [her]"

attorneys at BASTA,” and said that she did not authorize anyone to *record* the form she executed. Natalie felt that “[t]he situation was a little confusing” and that, “[w]ith 20/20 hindsight, [she] fe[lt] tricked.”

The trial court issued a tentative ruling in advance of a February 28, 2017 hearing. The court was inclined to reject the Co-Op’s mootness argument based upon the Acknowledgment due to (1) “insufficient proof that the judgment was satisfied” because there was “no evidence” that Rivera “was indeed paid” and (2) “improper” execution of the Acknowledgment because it was not “prepared with the participation of all parties *and* their counsels of record.”

The court took the matter under submission, and the parties filed further briefing.

In late March 2017, the court issued a written ruling that adopted its tentative ruling. The court’s ruling went on to distinguish *In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, a case in which a court upheld a settlement agreement entered into by two parties without the assistance of their attorneys. The court explained that the agreement in *Hasso* “manifest[ed] an unmistakable intention by the parties to settle their differences”; here, by contrast, “[n]o such evidence of the parties’ intent exists.” Because the motions to compel were not mooted, the court granted the motions and gave the Co-Op 10 days to produce responsive documents.

The Co-Op filed a timely notice of appeal.

DISCUSSION

The Co-Op argues that the trial court erred in granting BASTA’s motions to compel further postjudgment discovery because the judgment is already satisfied. Natalie responds that

(1) the order granting the motions to compel is not an appealable order, and (2) even if it is, (a) the satisfaction of judgment is not valid because Natalie did not intend to accept a lesser amount, because BASTA was not involved and because the Co-Op violated ethical rules in communicating with Natalie directly, and (b) there is an insufficient record on appeal.

I. Appealability

A judgment creditor has a statutory right to conduct discovery from a judgment debtor, including (1) debtor examinations (Code Civ. Proc., § 708.110);³ (2) interrogatories (§ 708.020, subd. (a)); and (3) document productions (§ 708.030, subd. (a)). If the judgment debtor does not respond, the judgment creditor may file a motion to compel. (§§ 708.020, subd. (c), 708.030, subd. (c), 2031.300, subd. (c).)

Is a court order granting a judgment creditor's motion to compel appealable?

The answer to this question is complicated. On the one hand, courts have consistently held that orders regarding postjudgment discovery are not appealable, at least when they involve the parties to the underlying lawsuit (rather than third parties). (*Yolanda's, Inc. v. Kahl & Goveia Commercial Real Estate* (2017) 11 Cal.App.5th 509, 512-513 (*Yolanda's*) [so holding]; *Fox Johns Lazar Pekin & Wexler, APC v. Superior Court* (2013) 219 Cal.App.4th 1210, 1214-1218 [same]; *Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 213-220 [same]; cf. *Macaluso v. Superior Court* (2013) 219 Cal.App.4th 1042, 1048-1049 [order compelling postjudgment discovery involving third party is appealable].) On the other hand, the

³ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

discovery order in this case encompasses a definitive ruling on the validity of the satisfaction of judgment which, if valid, would moot out all further discovery.

We need not resolve the issue because we may construe the Co-Op's appeal as a petition for a writ of mandate. (*Olson v. Cory* (1983) 35 Cal.3d 390, 400; accord, *Yolanda's, supra*, 11 Cal.App.5th at pp. 512-513; *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 750.)

II. The Merits

We review a trial court's ruling granting a motion to compel discovery responses for an abuse of discretion. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.)

As far as the law of discovery goes, the trial court did not abuse its discretion in granting the motions to compel. It is undisputed that BASTA served statutorily authorized discovery requests upon the Co-Op and that the Co-Op did not respond. On these facts, an order compelling responses is appropriate.

But did the trial court abuse its discretion in concluding that the satisfaction of judgment was invalid (and thus did not render moot the otherwise valid request for a motion to compel discovery)? We conclude that the trial court did not abuse its discretion, and do so for two reasons.

First, substantial evidence supports the trial court's finding that Natalie never cashed the \$45,291.23 check she was given by the Co-Op. Although a judgment debtor's tender of a check "fully satisfie[s]" a judgment and is enough to cut off the judgment creditor's right to seek additional attorney's fees (*Gray1 CPB, LLC v. SCC Acquisitions, Inc.* (2015) 233 Cal.App.4th 882, 893-894), that judgment creditor is not required to "give or file an acknowledgment of satisfaction of judgment" until "the check . . .

has actually been honored upon presentation for payment.” (§ 724.010, subd. (c).) The Co-Op’s ability to rely upon the Acknowledgment accordingly relies upon whether Natalie cashed the check. This is a factual question, and hence one we review for substantial evidence. (*City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1053 (*San Marcos*).) Although Natalie indicates that she *received* the \$45,291.23 check, she never says that she *cash*ed it, and the Co-Op offers no further proof that she did. On these facts, substantial evidence supports the trial court’s conclusion that the check was never cashed and that Natalie was accordingly never obligated to give the Acknowledgment.

Second, and alternatively, substantial evidence supports the trial court’s finding that Natalie lacked the intent to enter into a binding settlement of the judgment debt for less than its full value. “A money judgment may be satisfied” by the “judgment creditor[’s]” “acceptance . . . of a lesser sum in full satisfaction of the judgment” (§ 724.010, subd. (a); *Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 139 (*Lucky*)), but acceptance does so only if the creditor *intends* for its acceptance to have that effect (*Lucky*, at p. 148 [requiring proof of accord and satisfaction]; *In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1058-1059 “[w]hether a transaction constitutes an accord and satisfaction depends on the intention of the parties”]; see also *McCall v. Four Star Music Co.* (1996) 51 Cal.App.4th 1394, 1400 “[t]he intent of the parties as expressed in the release is controlling” as to whether acceptance of a lesser amount satisfies a judgment].) A judgment creditor’s intent is a question of fact, and thus one we review for substantial evidence. (See *San Marcos, supra*, 234 Cal.App.4th

at p. 1053; *BII Finance Co. v. U-States Forwarding Services Corp.* (2002) 95 Cal.App.4th 111, 118 [reviewing accord and satisfaction finding for substantial evidence].) Here, substantial evidence supports the trial court's finding that Natalie did not intend to have her acceptance of the \$45,291.23 check function as a satisfaction of judgment. Although she executed the Acknowledgement of Satisfaction of Judgment form, she later explained that she did not understand that the form would cut off BASTA's right to attorney's fees and that she was "a little confus[ed]" by the paperwork and its significance. Natalie's later explanation supports the trial court's finding that there was insufficient evidence of her intent to satisfy the judgment debt by accepting less than its full amount.

The Co-Op asserts that the trial court should never have ruled on the validity of the Acknowledgment because (1) the issue of validity should have been handled in a procedurally separate motion rather than as part of the motion to compel, and (2) the Co-Op was not given the opportunity to rebut Natalie's testimony that she never cashed the \$45,291.23 check. We reject both assertions. It was the *Co-Op* that raised the Acknowledgement as a defense to the motion to compel; the Co-Op can hardly be heard to complain that the court went ahead and decided the very defense it raised. Further, the Co-Op does not explain how it was prejudiced from the trial court's resolution of the issue as part of the motion to compel. And although Natalie did not appear in person to be cross-examined (and was accordingly not available to be questioned about whether she cashed the check), the Co-Op's bank records would have shed equally probing light on the same subject yet the Co-Op chose not to introduce that evidence despite having the opportunity and incentive to do so

(because the trial court asked the parties for further briefing after indicating its concerns about whether the check was cashed).

Because we uphold the trial court's finding that the satisfaction of judgment was invalid, we have no occasion to reach the further arguments presented by the parties in this case.

DISPOSITION

The petition for a writ of mandate is denied. Natalie is entitled to her costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ