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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

TYISHA HAMPTON-MITCHELL, Plaintiff and Appellant, v. KEL MITCHELL et al., Defendants and Respondents.	B228988 (Los Angeles County Super. Ct. Nos. BC349521 and BC431414)

APPEAL from a judgment of the Superior Court of Los Angeles County. Amy Pellman, Judge. Affirmed in part and reversed in part.

Law Offices of Gregory R. Ellis and Gregory R. Ellis for Plaintiff and Appellant.

Levinson Arshonsky & Kurtz, Richard I. Arshonsky, Helen Kim Colindres, and Anne C. Manalili for Defendants and Respondents Steven E. Kenilvort and Nick Vanos, Inc.

Gemmill, Baldridge & Yguico, and Carlos V. Yguico; Robert J. Shulkin for Defendants and Respondents Coldwell Banker Residential Brokerage Company and Consuelo Olmos.

Appellant Tyisha Hampton-Mitchell appeals from the trial court's order granting the motion filed by respondents Steven Kenilvort, Nick Vanos, Inc., Coldwell Banker Residential Brokerage Company, and Consuelo Olmos (collectively, Respondents) to enforce a written settlement agreement pursuant to Code of Civil Procedure section 664.6.[1] On appeal, Hampton-Mitchell asserts that the settlement agreement entered into by the parties at a private mediation is unenforceable under section 664.6 because Coldwell and Olmos did not sign the agreement until a week after the mediation, and Kenilvort and Vanos did not sign the agreement at all. She also argues that the settlement agreement is unenforceable under general contract principles because it is fatally uncertain in its material terms. For the reasons set forth below, we affirm the trial court's order granting the motion to enforce the settlement agreement as to Coldwell Banker and Olmos, but reverse the order granting the motion as to Kenilvort and Vanos.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Wrongful Transfer Action

This action arises out of the sale of real property by Hampton-Mitchell's former husband, Kel Mitchell. Hampton-Mitchell and Mitchell were married in April 1999, and purchased a residential property in May 1999. In connection with that purchase, Hampton-Mitchell signed a quitclaim deed transferring her interest in the property to Mitchell. In August 2005, Mitchell filed a petition for dissolution of the marriage. In March 2006, during the pendency of the marital dissolution proceedings, Mitchell sold the property to Kenilvort. Vanos provided Kenilvort with a loan to purchase the property, which was secured by a deed of trust. Olmos, a real estate agent for Coldwell Banker, acted as Mitchell's agent in his purchase of the property in 1999, and in his sale of the property to Kenilvort in 2006.

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[1] All further statutory references are to the Code of Civil Procedure.

On March 23, 2006, following the sale of the property to Kenilvort, Hampton-Mitchell filed a civil action against Mitchell, Kenilvort, Vanos, Olmos, and Coldwell Banker. In a fifth amended complaint, Hampton-Mitchell alleged that the property was a community asset which could not be sold by Mitchell without her consent. Hampton-Mitchell specifically alleged that, at the time she signed the quitclaim deed, she was in the hospital due to pregnancy complications, was told by Mitchell that she was signing paperwork to facilitate financing for the purchase of the property, and never intended to transfer her interest in the property to Mitchell. She further alleged that Kenilvort and Olmos knew the property was the subject of a pending marital dissolution proceeding, and knew the sale of the property to Kenilvort violated Mitchell's fiduciary duty to her. The complaint asserted causes of action for quiet title, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraud, negligent misrepresentation, negligence, cancellation of instrument, and reformation of instrument.[2]

On October 20, 2006, the trial court related the civil action to the pending family law action. The parties thereafter litigated both cases for several years. On November 20, 2009, the family law court issued a statement of decision finding the property sold to Kenilvort was the community property of Hampton-Mitchell and Mitchell.

II. Mediation and Stipulation for Settlement

Following the family law court's ruling, Hampton-Mitchell and Respondents agreed to participate in a private mediation before a professional mediator.[3] The mediation took place over a four-day period between November 2009 and January 2010. The fourth and final session, held on January 15, 2010, was attended by Hampton-

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[2] On November 17, 2009, Vanos filed a cross-complaint against Hampton-Mitchell and Mitchell for imposition of an equitable lien. On January 21, 2010, a default was entered on the cross-complaint against Mitchell only.

[3] Mitchell did not participate in the mediation and was not a party to the settlement agreement at issue.

Mitchell and her counsel, counsel for Kenilvort and Vanos, and counsel for Coldwell Banker and Olmos. No parties other than Hampton-Mitchell were present at the mediation.

At the January 15, 2010 mediation session, a two-page document entitled "Stipulation for Settlement" was signed by Hampton-Mitchell and her counsel and by counsel for each of Respondents. It was not signed by any of Respondents on that date. As set forth in the agreement, Respondents agreed to pay Hampton-Mitchell the sum of $275,000 as payment for the claims alleged in the complaints. Of that sum, Coldwell Banker and Olmos were responsible for the payment of $25,000, and Kenilvort and Vanos were responsible for the payment of $250,000. Hampton-Mitchell agreed to sign a dismissal with prejudice, and to accept the terms of the stipulation with the knowledge that she would be "barred from proceedings against all defendant(s) in the future concerning this matter." Each of the settling parties also agreed to sign full and complete mutual releases without any admission of liability.

As further provided in the Stipulation for Settlement, Kenilvort agreed to sign a deed to the property to Hampton-Mitchell and Hampton-Mitchell agreed to sign a deed to the property to Kenilvort. The deed transferring the property from Hampton-Mitchell to Kenilvort, along with a stipulated judgment for possession, would be held by Kenilvort's counsel but not filed unless Hampton-Mitchell failed to complete a sale or refinancing of the property in nine months. In addition to a refundable security deposit of $9,000, Hampton-Mitchell agreed to deposit nine months of payments into an escrow account to be disbursed on a monthly basis during the time she sought to sell or refinance the property. She also represented that the property was in average condition and that the only current lien on the property was held by Vanos.

The Stipulation for Settlement stated that it was intended to be binding, enforceable, and effective as of January 15, 2010, and that it reflected the final agreement between the parties to the dispute. It also included a provision granting the court "jurisdiction to enforce the terms and conditions of the settlement pursuant to Code of Civil Procedure 664.6 upon noticed motion of any party."

Within a week after the January 15, 2010 mediation session, both Olmos and an authorized officer of Coldwell Banker signed the Stipulation for Settlement. On or about January 22, 2010, counsel for Coldwell Banker and Olmos circulated a copy of the agreement signed by his clients to counsel for the other parties. Neither Kenilvort nor Vanos ever signed the Stipulation for Settlement.

On February 4, 2010, the family law court issued a further judgment in the marital dissolution proceeding. The court found that Mitchell had sold the family residence without Hampton-Mitchell's consent while she and the couple's minor children were still residing there. The court further found that Mitchell had sold the residence at $425,000 below fair market value without ever marketing the property through proper real estate sales channels. Based on its finding that Mitchell fraudulently and maliciously breached his fiduciary duty to the community in selling the residence, the family law court awarded 100 percent of the property to Hampton-Mitchell.

III. Motion to Enforce the Stipulation for Settlement

On August 11, 2010, eight months after the mediation, Kenilvort and Vanos filed a motion to enforce the Stipulation for Settlement pursuant to section 664.6. The motion was supported by declarations from Kenilvort, Vanos, and their counsel, Richard Arshonsky. According to Arshonksy's declaration, at the time the parties entered into the Stipulation for Settlement at the mediation, they also agreed to sign a subsequent settlement agreement that would describe the terms of the stipulation in greater detail. After the mediation, Arshonsky prepared and circulated several drafts of a detailed settlement agreement to counsel for the other parties. Eventually, he was advised by Hampton-Mitchell's counsel that Hampton-Mitchell would not sign any subsequent agreement, and would not agree to refrain from encumbering the property during the nine-month period that she would hold title to the property while seeking to sell or refinance it.

In their supporting declarations, Kenilvort and Vanos stated that they participated in each of the mediation sessions by communicating with their counsel via telephone about any pertinent events. Kenilvort and Vanos also stated that, at the final session on

January 15, 2010, they authorized Arshonsky as their attorney to sign the Stipulation for Settlement on their behalf. According to Kenilvort and Vanos, it was their understanding at the time of the mediation that all of the parties would sign a subsequent agreement detailing the terms of the Stipulation for Settlement, but after some time, they were advised that Hampton-Mitchell would not sign such agreement. As further set forth in their declarations, Kenilvort and Vanos remained willing to perform their obligations under the Stipulation for Settlement, provided that Hampton-Mitchell complied with her obligations, including refraining from encumbering the property except as necessary to purchase the property back from Kenilvort and to pay off the loan provided by Vanos.

Coldwell Banker and Olmos joined in the motion to enforce the Stipulation for Settlement. In a supporting declaration, Jay Statman, counsel for Coldwell Banker and Olmos, stated that he obtained the signatures of his clients on the Stipulation for Settlement by January 22, 2010, and he thereafter circulated the signed copy of the agreement to counsel for the other parties. Statman also stated that, at all relevant times, no party to the Stipulation for Settlement had communicated a repudiation of the terms of the agreement.

Hampton-Mitchell opposed the motion to enforce the Stipulation for Settlement on several grounds, including that the agreement was not signed by each settling party, and that the terms of the agreement were fatally uncertain.[4] One of the specific terms that she argued was legally unenforceable was the provision requiring her to deed the property back to Kenilvort while simultaneously attempting to refinance the property or sell it to someone else. In a supporting declaration, Hampton-Mitchell further stated that it was her understanding that the Stipulation for Settlement was not a final agreement and that the settlement would not be binding unless all parties signed a subsequent agreement.

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[4] Hampton-Mitchell also opposed the motion on the grounds that she was coerced into signing the agreement by her civil attorney, and that the agreement was inadmissible for purposes of enforcement because it was a confidential settlement. Hampton-Mitchell does not assert either of these arguments on appeal.

On September 20, 2010, the trial court heard the motion. Counsel for Respondents asserted that the statutory requirements of section 664.6 were satisfied because Coldwell Banker and Olmos signed the Stipulation for Settlement within one week following the mediation, and because Kenilvort and Vanos signed sworn declarations stating that they had expressly authorized their attorney to enter into the Stipulation for Settlement on their behalf. In response, Hampton-Mitchell's counsel argued that section 664.6 required that each settling party sign the settlement agreement before judgment could be entered pursuant to the statute and that a signed declaration authorizing an attorney to sign on a client's behalf was not sufficient. He further contended that Kenilvort and Vanos could no longer sign the Stipulation for Settlement because the offer had been withdrawn by his client. On the other hand, Hampton-Mitchell's counsel conceded at the hearing that the Stipulation for Settlement could be separately enforced by Coldwell Banker and Olmos because they both signed the agreement before the offer had been withdrawn. Hampton-Mitchell's counsel stipulated to the entry of judgment in favor of Coldwell Banker and Olmos, but continued to contest the enforceability of the Stipulation for Settlement as to Kenilvort and Vanos.

In written orders issued on October 26, 2010, the trial court granted the motion to enforce the Stipulation for Settlement as to all Respondents. The court specifically ordered Coldwell Banker and Olmos to pay Hampton-Mitchell the sum of $25,000, and Kenilvort and Vanos to pay Hampton-Mitchell the sum of $250,000, in exchange for a mutual release of claims by each settling party. The court also ordered Hampton-Mitchell to deposit into an escrow account the sum of $12,653.75, of which $3,653.75 represented the monthly payments owed on the property under the Stipulation for Settlement. Additionally, the court ordered Kenilvort to deed the property to Hampton-Mitchell "for the sole purpose of [Hampton-Mitchell] obtaining financing to repurchase the Property from Kenilvort and to pay off Vanos upon notice of financing, during which period [Hampton-Mitchell] may not transfer or cause any other liens to be placed on the Property." The court further ordered Hampton-Mitchell to provide Kenilvort's counsel with an executed grant deed transferring the property back to Kenilvort, along with an

executed stipulation for judgment for possession in favor of Kenilvort. The stipulation for judgment would be held by Kenilvort's counsel but not filed unless Hampton-Mitchell failed to sell or refinance the property within a nine-month period commencing on January 15, 2010. Following the trial court's orders, Hampton-Mitchell filed a timely appeal.

DISCUSSION

On appeal, Hampton-Mitchell challenges the trial court's orders. Because it is undisputed that neither Kenilvort nor Vanos ever signed the agreement as expressly required by section 664.6, we reverse the order as to them. However, because Hampton-Mitchell's counsel stipulated before the trial court that the agreement was separately enforceable by Coldwell Banker and Olmos, we affirm the order as to Coldwell Banker and Olmos.

I. Standard of Review

In a statutory settlement proceeding under section 664.6, "[i]t is for the trial court to determine in the first instance whether the parties have entered into an enforceable settlement." (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.) "The trial court's factual findings on a motion to enforce a settlement pursuant to section 664.6 'are subject to limited appellate review and will not be disturbed if supported by substantial evidence.' [Citation.]" (*Ibid*.) "We make such a determination, however, only after deciding whether the parties meet the statutory conditions of section 664.6. Construction and application of a statute involve questions of law, which require independent review. [Citation.]" (*Murphy v. Padilla* (1996) 42 Cal.App.4th 707, 711; see also *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1253 [where "claim of error 'raises a question of law concerning the construction and application of section 664.6[, . . .] it requires independent review'"].)

II. Statutory Requirements of Section 664.6

Section 664.6 provides, in relevant part: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the

court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." "'Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit.' [Citation.] The statute recognizes that a settlement may be summarily enforced in either of two situations: where the settlement was made orally before the trial court or where it was made in writing outside the presence of the court." (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1428 (*Elyaoudayan*).)

In *Levy v. Superior Court* (1995) 10 Cal.4th 578 (*Levy*), the California Supreme Court considered whether a trial court may enter judgment on a settlement pursuant to section 664.6 when the written stipulation to settle is signed by a litigant's attorney, but not by the litigant personally. The Court concluded that "the term 'parties' as used in section 664.6 . . . means the litigants themselves, and does not include their attorneys of record." (*Id*. at p. 586, fn. omitted.). The Court reasoned that, unlike other steps that an attorney takes in managing a lawsuit on behalf of a client, settlement ends the lawsuit and "obviously implicates a substantial right of the litigants themselves." (*Id*. at p. 584.) "Accordingly, settlement is such a serious step that it requires the client's knowledge and express consent. [Citation.]" (*Id*. at p. 583.)

As the Supreme Court in *Levy* further observed, in enacting section 664.6, the Legislature "created a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met. . . . The litigants' direct participation tends to ensure that the settlement is the result of their mature reflection and deliberate assent. This protects the parties against hasty and improvident settlement agreements by impressing upon them the seriousness and finality of the decision to settle, and minimizes the possibility of conflicting interpretations of the settlement. [Citations.] It also protects parties from impairment of their substantial rights without their knowledge and consent." (*Levy*, *supra*, 10 Cal.4th at p. 585, fn. omitted.) Because the settlement agreement in *Levy* was signed by the litigants' attorneys but not by one of the litigants personally, the Court held that it could not be enforced under the summary procedure of section 664.6. (*Id*. at p. 586.)

In *Johnson v. Department of Corrections* (1995) 38 Cal.App.4th 1700 (*Johnson*), the Court of Appeal applied the holding in *Levy* to a motion to enforce an oral settlement agreement under section 664.6. The attorneys for the parties had orally stipulated to a settlement before the trial court, but the plaintiff never personally acknowledged to the court his acceptance of the terms of the agreement. The *Johnson* court held that "[a]bsent this personal involvement, the agreement is not enforceable under section 664.6." (*Id*. at p. 1708.) In so holding, the court rejected the argument that the plaintiff's involvement in the settlement negotiations was sufficient to permit enforcement under the statute based on his attorney's oral acceptance of the agreement. (*Id*. at p. 1709.) Instead, the court concluded that "[c]onsultation between plaintiff and his attorney during the course of negotiations does not constitute the type of direct participation contemplated by *Levy*. As *Levy* makes clear, the litigant must personally acknowledge the settlement to the court" to satisfy the strict requirements of section 664.6. (*Ibid*.)

III. Enforceability of Stipulation for Settlement as to Kenilvort and Vanos

Based on *Levy*, we conclude that the trial court erred in granting the motion to enforce the Stipulation for Settlement as to Kenilvort and Vanos. *Levy* clearly establishes that a party seeking to enforce a settlement under section 664.6 must strictly comply with the requirements of the statute. One of section 664.6's requirements is that the parties to a settlement must either personally sign the writing constituting the settlement agreement or orally assent to the terms of the settlement agreement before the court. Here, it is undisputed that neither Kenilvort nor Vanos ever signed the Stipulation for Settlement, or orally agreed to the terms of the Stipulation for Settlement in a proceeding before the trial court. Under these circumstances, Kenilvort and Vanos cannot enforce the Stipulation for Settlement utilizing the summary enforcement procedures of section 664.6.

Kenilvort and Vanos contend that *Levy* is not controlling because the settlement agreement in this case was not only signed by counsel for each of the settling parties, but also was signed by Hampton-Mitchell, the party against whom enforcement was sought. This claim, however, is contrary to settled law. Since *Levy*, several cases have addressed whether the statutory requirements of section 664.6 are met so long as the party against

whom the settlement is being enforced personally assented to its terms. Indeed, in *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299 (*Harris*), this Court specifically held that, based on the plain language of the statute, section 664.6's "requirement of a 'writing signed by the parties' must be read to apply to all parties bringing the section 664.6 motion and against whom the motion is directed." (*Id*. at p. 306.) We observed that such interpretation was also consistent with the purpose of the statute since "'[a] procedure in which a settlement is evidenced by one writing *signed by both sides* minimizes the possibility of . . . dispute[s] and legitimizes the summary nature of the section 664.6 procedure.'" (*Id*. at p. 305.) Because the party seeking to enforce a written settlement agreement in *Harris* never signed it, we concluded that the statutory prerequisites of section 664.6 were not satisfied. (*Id*. at p. 306.)

Our colleagues in Division Six reached a similar conclusion in *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30 (*Sully-Miller*). Citing our decision in *Harris*, the Court of Appeal in *Sully-Miller* held that "[a] written settlement agreement is not enforceable under section 664.6 unless it is signed by all of the parties to the agreement, not merely the parties against whom the agreement is sought to be enforced." (*Id*. at p. 37.) While acknowledging the strong public policy in favor of settlement, the Court nevertheless affirmed that "a party who wishes to invoke the summary procedure of section 664.6 to enforce a written settlement must strictly comply with the signature requirement of that section." (*Id*. at p. 38; see also *Critzer v. Enos*, *supra*, 187 Cal.App.4th at pp. 1257-1258 ["the fact that [plaintiffs] gave their personal consent to the terms of the oral Settlement – as the parties against whom the Settlement is being enforced – does not obviate the necessity of the personal consent of the remaining parties" for compliance with section 664.6].)

Kenilvort and Vanos also argue that they satisfied the statutory requirements of section 664.6 because they expressly authorized their attorney to enter into the settlement on their behalf. In support, they point to the uncontroverted evidence that, while not physically present at the mediation, they regularly communicated with their attorney during the course of the mediation and then granted him the express authority to sign the

resulting Stipulation for Settlement and to bind them to it. This argument is unavailing. As explained in *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110 (*Gauss*), "[t]he cases following *Levy* have recognized no exceptions to the rule that litigants themselves must sign a settlement for it to be enforceable *under section 664.6*." (*Id*. at p. 1119.) In *Gauss*, for instance, the defendant expressly authorized a third party entity to act as its exclusive agent in the defense and settlement of asbestos-related claims alleged against it. The Court of Appeal held that a settlement agreement signed by the designated agent on the defendant's behalf could not be enforced under section 664.6 because it had not been signed by the defendant personally. (*Id*. at p. 1113.) The Court concluded that "[s]ection 664.6, as construed by the Supreme Court in *Levy*, simply does not permit the use of its summary, expedited procedures to enforce a settlement agreement signed only by a party's agent." (*Id*. at p. 1121.) "Indeed, *Levy* itself holds that the signature of a *duly authorized* attorney, who acts as an agent of the client [citation] does not suffice to permit enforcement of a settlement under section 664.6." (*Id*. at p. 1119; see also *Murphy v. Padilla*, *supra*, 42 Cal.App.4th at p. 716 [settlement agreement ratified by a party's attorney was not enforceable under section 664.6 because *Levy* precludes reliance on agency principles to satisfy the requirements of the statute].)[5]

Contrary to Respondents' contention, the sworn declarations signed by Kenilvort and Vanos purporting to consent to the terms of the Stipulation for Settlement are likewise insufficient to satisfy the requirements of section 664.6. The declarations were signed almost eight months after a settlement was reached at the January 15, 2010 mediation and were submitted as part of a section 664.6 motion brought by Respondents to enforce the Stipulation for Settlement. The declarations further reflect that, at the time

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[5] Kenilvort and Vanos cite to the unpublished federal decision in *Ellerd v. County of Los Angeles* (9th Cir. 2008) 273 Fed. Appx. 669 (*Ellerd*) to support their argument that a non-signatory party to a settlement agreement may be bound by its terms if the agreement was ratified by the party's attorney. However, *Ellerd* contains no discussion of section 664.6 and there is no indication that the settlement agreement in that case was being enforced pursuant to section 664.6's summary procedure.

of signing, Kenilvort and Vanos were aware that Hampton-Mitchell was disputing the terms of the Stipulation for Settlement by refusing to sign a detailed settlement agreement in accordance with the stipulation. Additionally, although both Kenilvort and Vanos stated in their declarations that they were willing and ready to abide by the Stipulation for Settlement, they made their assent to the agreement expressly contingent upon Hampton-Mitchell's concession to a term that was then in dispute, namely whether the property could be encumbered by other liens while title was in Hampton-Mitchell's name. Under these circumstances, the after-the-fact declarations submitted by Kenilvort and Vanos in support of their section 664.6 motion are simply not equivalent to the timely signing of a written settlement agreement or oral consent to a settlement agreement in open court.

For these reasons, Kenilvort's and Vanos's reliance on *Elyaoudayan, supra,* 104 Cal.App.4th 1421, to show compliance with section 664.6 is misplaced. In *Elyaoudayan*, an oral settlement agreement was recited on the record and was personally consented to by some, but not all, of the parties. The parties who were not present to consent later signed a stipulation attaching a transcript of the court proceeding at which the settlement was recited. (*Id*. at pp. 1425-1426.) The Court of Appeal held that, because "[a]ll parties agreed to the settlement in one form or the other or both," it was enforceable under section 664.6 notwithstanding the "'mix and match' approach to the *manner* of agreement." (*Id*. at p. 1432.) As the Court observed, "[n]othing in the statutory language suggests that, in a multiparty action, *all* parties must agree to the settlement *in the same manner*. And as long as the parties agree to the *same material terms*, be it orally or in writing, the purpose of section 664.6 is satisfied." (*Id*. at p. 1428.)

In this case, however, it is undisputed that Kenilvort and Vanos never signed the Stipulation for Settlement or orally agreed to be bound by the Stipulation for Settlement before the trial court. Instead, they authorized their attorney to sign the settlement agreement for them and then waited some eight months to acknowledge their personal assent to the agreement, the terms of which were then in dispute. As discussed, neither the attorney's authorized signature on the Stipulation for Settlement nor the declarations that Kenilvort and Vanos submitted in support of their motion to enforce the settlement

are sufficient to establish an enforceable agreement under section 664.6. (See, e.g., *Sully-Miller*, *supra*, 103 Cal.App.4th at p. 37 [party's belated signing of settlement agreement to comply with section 664.6 did not render it enforceable under the statute because "[a] party's signature fails to convey . . . knowledge and consent unless it is contained in a document that was clearly intended by that party to be a binding settlement agreement"]; *Critzer v. Enos*, *supra*, 187 Cal.App.4th at pp. 1258-1259 [party's signing of settlement agreement three and one-half months after other parties orally consented to settlement in open court did not permit enforcement of agreement under section 664.6].)

Respondents suggest that it would undermine the strong public policy encouraging settlement to preclude Kenilvort and Vanos from enforcing the Stipulation for Settlement through section 664.6. In support of this claim, they note that the settlement was reached after nearly four years of litigation and over the course of multiple intensive mediation sessions. Respondents also assert that Hampton-Mitchell should be equitably estopped from repudiating the Stipulation for Settlement because she benefited from the settlement by continuing to reside in the property for eight months after signing the agreement. However, the law is clear that "[b]ecause of its summary nature, strict compliance with the requirements of section 664.6 is prerequisite to invoking the power of the court to impose a settlement agreement." (*Sully-Miller*, *supra*, 103 Cal.App.4th at p. 37.) Moreover, "'[t]he statutory procedure for enforcing settlement agreements under section 664.6 is not exclusive. It is merely an expeditious, valid alternative statutorily created. [Citation.] Settlement agreements may also be enforced by motion for summary judgment, by a separate suit in equity or by amendment of the pleadings to raise the settlement as an affirmative defense.' [Citations.]" (*Gauss*, *supra*, 103 Cal.App.4th at p. 1122.) We express no opinion as to the merits of these alternative enforcement mechanisms in this case. Rather, we hold that the failure of Kenilvort and Vanos to sign the Stipulation for Settlement, or to orally agree to the terms of the Stipulation for Settlement before the trial court, precludes them from utilizing the expedited summary procedure of section 664.6. The trial court's order granting the motion to enforce the Stipulation for Settlement as to Kenilvort and Vanos must therefore be reversed.

IV. Enforceability of Stipulation for Settlement as to Coldwell Banker and Olmos

We reach a different conclusion with respect to Coldwell Banker and Olmos. It is undisputed that both Olmos and an authorized officer of Coldwell Banker signed the Stipulation for Settlement within one week following the January 15, 2010 mediation. It is also undisputed that counsel for Coldwell Banker and Olmos circulated a copy of the Stipulation for Settlement signed by his clients to counsel for the other settling parties, including Hampton-Mitchell, on or about January 22, 2010. At the time Coldwell Banker and Olmos signed the Stipulation for Settlement, Hampton-Mitchell had not revoked her offer to settle or otherwise repudiated the terms of the agreement. Thus, unlike Kenilvort and Vanos, Coldwell Banker and Olmos complied with the statutory requirements of section 664.6 by personally signing the written settlement agreement.

Hampton-Mitchell argues that the Stipulation for Settlement cannot be enforced by Coldwell Banker or Olmos pursuant to section 664.6 because the agreement was not signed by all of the settling parties at the same time. She also asserts that there is no evidence to support an inference that the parties intended the Stipulation for Settlement to be severable if any portion of the agreement was held to be unenforceable. We need not address the merits of these arguments, however, because Hampton-Mitchell's counsel expressly conceded before the trial court that the Stipulation for Settlement was separately enforceable by Coldwell Banker and Olmos based on their timely signatures.

Specifically, at the hearing on Respondents' section 664.6 motion, Hampton-Mitchell's counsel stated on the record as follows: "Ms. [Hampton-]Mitchell made an offer to Mr. Kenilvort. Mr. Kenilvort didn't sign it. She's withdrawing the offer. If Mr. Kenilvort had signed that document at any time prior to my client saying she repudiates the agreement, I would have a problem. And that's why I'm willing to concede to Coldwell Banker, because they did that. They did exactly that. Even though they didn't sign it on the date, they signed it before my client filed a declaration withdrawing this offer. Mr. Kenilvort has never signed that document and can't sign it now that she's withdrawn the offer. [¶] So I'd stipulate that [as to] Coldwell Banker and Connie Olmos, the court should enter the judgment in favor of them, but [as to]

Mr. Kenilvort should not." Given the express stipulation of her counsel, Hampton-Mitchell has abandoned any claim on appeal that the trial court erred in granting the motion to enforce the Stipulation for Settlement as to Coldwell Banker and Olmos. (See *Robinson v. Hewlett-Packard Corp*. (1986) 183 Cal.App.3d 1108, 1127 ["'issues raised and then abandoned in the trial court . . . cannot be considered on appeal'"]; *Carmichael v. Reitz* (1971) 17 Cal.App.3d 958, 969 ["one cannot raise on appeal material issues which he abandons at the trial level as a matter of strategy and purely for his own advantage"].)

Hampton-Mitchell contends that, under section 664.6, her counsel was precluded from stipulating to the enforceability of the settlement as to Coldwell Banker and Olmos because Hampton-Mitchell did not personally stipulate that the agreement with them was enforceable. She reasons that if an attorney cannot agree to a settlement on behalf of a client for purposes of section 664.6, then the attorney likewise cannot agree on the client's behalf to the enforceability of a settlement agreement not signed by all of the settling parties. This argument does not withstand scrutiny. In stipulating that judgment should be entered in favor of Coldwell Banker and Olmos on the section 664.6 motion, Hampton-Mitchell's counsel was not purporting to enter into a binding settlement agreement on his client's behalf. Hampton-Mitchell already had entered into the settlement agreement on her own behalf by signing the Stipulation for Settlement at the mediation. Instead, Hampton-Mitchell's counsel was conceding the legal merits of the motion to enforce the Stipulation for Settlement as to Coldwell Banker and Olmos on the ground that they both signed the agreement before it was repudiated by his client. Nothing in the language of section 664.6 precludes a party's counsel from stipulating to the enforceability of a settlement personally agreed to by his or her client in response to a statutory motion to enforce that settlement agreement.

Because her counsel expressly stipulated to the entry of judgment in favor of Coldwell Banker and Olmos, Hampton-Mitchell cannot challenge the order enforcing Stipulation for Settlement as to those two parties on appeal. We accordingly affirm the

trial court's order granting the motion to enforce the Stipulation for Settlement as to Coldwell Banker and Olmos.[6]

DISPOSITION

The order granting the motion to enforce the Stipulation for Settlement as to Coldwell Banker and Olmos is affirmed. The order granting the motion to enforce the Stipulation for Settlement as to Kenilvort and Vanos is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. Coldwell Banker and Olmos shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

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[6] In light of our conclusions, we need not address the parties' remaining arguments regarding whether the material terms of the Stipulation for Settlement were sufficiently certain to constitute a meeting of the minds.