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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

ANDREA MURRAY, Plaintiff, Cross-defendant and Respondent, v. PATRICK FLANNERY, Defendant, Cross-complainant and Appellant.	B276287 (Los Angeles County Super. Ct. No. BC438538)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard E. Rico, Judge. Affirmed.

Law Offices of Philip Kaufler and Philip Kaufler for Plaintiff, Cross-defendant and Respondent.

Bahar Law Office and Sarvenaz Bahar; Daneshrad Law Firm and Joseph Daneshrad for Defendant, Cross-complainant and Appellant.

In this procedurally tangled case, defendant, cross-complainant and appellant Patrick Flannery (Flannery) contends the trial court erred in entering an amended judgment awarding his former nonmarital partner, Andrea Murray (Murray), $1,225,000 of the settlement proceeds from a lawsuit arising out of the destruction by fire of a ranch jointly owned by Flannery and Murray. We conclude that Murray's entitlement to the settlement funds has already been adjudicated in a separate action, in which a final judgment has been entered and affirmed by the Court of Appeal, and thus Flannery's claim is barred by res judicata. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The parties acquire a ranch property together.*

Flannery and Murray had a nonmarital relationship over a period of 20 years and have three children together. In 1999, they decided that she would sell her home in Garden Grove, he would sell his home in Northridge, and they would buy an agricultural property together. In January 2003, they closed escrow on a 13-acre horse boarding ranch (the Ranch) in Chatsworth that had a small dilapidated house on it. Murray contributed $123,000 from the sale of her family home toward the down payment and improvements. Flannery contributed $100,000, which he obtained by refinancing his Northridge home instead of selling it. Although Murray contributed the majority of the funds, they agreed that they would be 50/50 owners. Due to Murray's low credit score, she was not on the loan and was not on title. Flannery reassured her, however, that "we're building all this for the family anyway. . . . [Y]ou know, we're partners . . . ." After acquiring the Ranch, they ran a horse boarding business on the premises.

2. *The Ranch is damaged in a fire, leading to a lawsuit by Flannery and Murray against the Southern California Gas Company (SCGC).*

In October 2008, the Ranch was severely damaged by a fire. The landscape and trees were devastated, and two barns, which could accommodate 40 horses, were destroyed. In October 2009, Flannery and Murray filed a lawsuit against the SCGC (the SCGC lawsuit) for allegedly failing to maintain the power lines that had sparked the fire. They anticipated recovering about $3 million in damages.

Flannery and Murray's relationship ended in February 2010, when Murray obtained a restraining order against Flannery.

3. *Murray brings a* Marvin[1] *action against Flannery to determine her half-ownership in the Ranch and her right to share in the anticipated settlement proceeds.*

In May 2010, three months after the relationship ended, Murray filed this lawsuit against Flannery. The operative complaint included causes of action for breach of a *Marvin* agreement, fraud, and declaratory relief.

The gravamen of Murray's complaint was that the parties agreed that they "were in fact equal partners together in their mutual endeavors," and that "all property acquired belonged to her equally, even if it was titled in [Flannery's] name only." Further, Flannery's alleged promise that her name "would be added to the title of the Chatsworth Ranch at some point after escrow closed" was made "with the intent to defraud and induce [Murray] to rely upon [it] so that she sold her home in Garden

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1 *Marvin v. Marvin* (1976) 18 Cal.3d 660.

Grove and contributed the proceeds of the sale of her home towards the down payment for the purchase price of the Chatsworth Ranch and paid for the mortgage payments for the Chatsworth Ranch[. Further,] from in or about August, 2002 to June, 2009, at the request of [Flannery], [she] paid for the mortgage payment for [his] Northridge home out of her earnings from her horse boarding business and her other job."

Murray's complaint sought compensatory and punitive damages. She also sought a judicial determination that she is the half owner of the Ranch, as well as declaratory relief with respect to the ownership of the horse boarding business and her share of any proceeds that might be obtained in the SCGC lawsuit.

Flannery filed a cross-complaint, alleging, inter alia, causes of action for conversion.

4. *During the pendency of the* Marvin *action, the SCGC lawsuit settles and SCGC files an interpleader action.*

In negotiating a settlement of the SCGC lawsuit, Flannery and Murray were unable to agree how the settlement proceeds should be divided between them. The trial court (Judge Wiley) ruled that the "respective ownership interest of [the parties] in the subject property is not directly relevant to their claims of negligence against [SCGC]. Litigating the issue of ownership interests of the [parties] in this case is unnecessary, as BC438538 [the *Marvin* action] will resolve that dispute."

On February 26, 2013, Flannery, Murray and SCGC settled the SCGC lawsuit, and on March 25, 2013, SCGC deposited the

settlement funds with the court and filed a complaint in interpleader.[2]

5. *In the* Marvin *action, the jury determined that Murray is a half-owner of the Ranch and the trial court on declaratory relief determined that Murray was entitled to one-half of the fire settlement proceeds*.

Some of the parties' *Marvin* claims were tried to a jury, and in November 2013, the jury returned a special verdict and found, inter alia, that Murray and Flannery had orally agreed to purchase the Ranch jointly, and that each was a 50 percent owner of the Ranch. On the fraud claim, the jury awarded Murray $150,000 in noneconomic damages and $68,000 in punitive damages.

Thereafter, in ruling on Murray's request for declaratory relief with respect to her share of the SCGC settlement proceeds, the trial court (Judge Rico) found Murray was entitled to 50

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[2] " 'Interpleader is an equitable proceeding by which an obligor who is a mere stakeholder may compel conflicting claimants to money or property to interplead and litigate the claims among themselves instead of separately against the obligor. . . . After admitting liability and depositing the money or property with the court, the obligor is discharged from liability and freed from the necessity of participating in the litigation between the claimants.' [Citations.] . . . 'The true test of suitability for interpleader is the stakeholder's disavowal of interest in the property sought to be interpleaded, *coupled with the perceived ability of the court to resolve the entire controversy* as to entitlement to that property without need for the stakeholder to be a party to the suit.' " (*Southern California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 486–487, italics added.)

percent of the SCGC settlement proceeds of $2,450,000. The trial court indicated it "considered the evidence heard during the course of the trial and adopts the findings of the jury."

Flannery appealed the judgment.

6. *During the pendency of Flannery's appeal in the* Marvin *action, Murray successfully moved in the interpleader action for disbursement of $1,225,000 from the SCGC settlement proceeds.*

On August 6, 2015, while Flannery's appeal in the *Marvin* action was pending, Murray filed a motion in the interpleader action for disbursement of $1,225,000, or 50 percent of the SCGC settlement proceeds. On September 11, 2015, the trial court (Judge Wiley) granted Murray's motion and awarded her $1,225,000 of the SCGC settlement proceeds. The September 11, 2015 order required Murray to resolve any fee obligations to her attorneys out of the award amount.

Flannery appealed the judgment in the interpleader action.

7. *This court partially reversed the* Marvin *judgment and remanded for a statement of decision on the declaratory relief claim; proceedings on remand.*

Four months after the interpleader court awarded Murray one-half of the settlement proceeds, this court issued an opinion partially affirming the *Marvin* judgment. (*Murray v. Flannery* (Jan. 27, 2016, B255917) [nonpub. opn.].) We affirmed the *Marvin* judgment insofar as it declared Murray a 50 percent owner of the Ranch, but reversed the $218,000 in tort damages awarded to Murray as an improper double recovery. On the declaratory relief issues, we concluded Judge Rico had jurisdiction to declare the rights of the parties in the proceeds of the SCGC settlement, but that he erred in denying Flannery's request for a statement of decision with respect to the SCGC

settlement proceeds. We therefore reversed the *Marvin* judgment "insofar as it awards Murray 50 percent of the $2,450,000 [SCGC] settlement proceeds; the matter is remanded for preparation of a statement of decision in that regard, based on the existing evidence." In all other respects, we affirmed the judgment.

On remand, Judge Rico adopted a proposed statement of decision prepared by Murray's counsel, after rejecting Flannery's various objections thereto. The statement of decision provided in relevant part that "[a]s a 50% owner of the Ranch, Murray is entitled to $1,225,000, which represents one-half of the $2,450,000 settlement which has been deposited in the Interpleader Action, less her share, if any, for attorney's fees and costs. These findings are consistent with the jury verdict which the court adopts."

On June 7, 2016, the trial court entered an amended judgment in conformity with the statement of decision. On July 18, 2016, Flannery filed a timely notice of appeal from the judgment, resulting in the present appeal.

8. *Affirmance of the judgment in the interpleader action.*

Subsequent to Judge Rico's issuance of a statement of decision and an amended judgment in the *Marvin* action, Division Five of this court, in a published decision, affirmed the judgment in the interpleader action. (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476 (*SCGC v. Flannery*).)[3]

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[3] Following notice to the parties, on the court's own motion, we take judicial notice of the appellate record in the Division Five appeal, No. B268298. (Evid. Code, § 452, subd. (d), § 459.)

DISCUSSION

Flannery attacks the amended judgment on a number of grounds, including that the trial court's statement of decision is inadequate, and the declaratory relief judgment is contrary to law. Murray disputes each of Flannery's substantive contentions; she also urges that Division Five's decision affirming the interpleader judgment has res judicata effect and thus bars Flannery's claim to the disputed funds.

As we now discuss, Murray's entitlement to the disputed settlement funds was fully litigated in the interpleader action, and thus Flannery's claim is barred by res judicata.[4] We therefore affirm the amended judgment.

1. Additional facts relevant to Murray's preclusion claim.

a. The interpleader action.

In the action before Judge Wiley, Flannery asserted a claim to the entirety of the interpled funds. He thereafter opposed Murray's motion for distribution of $1,225,000 of those funds to her. (*SGGC v. Flannery*, *supra*, 5 Cal.App.5th at p. 482.) In that opposition, however, Flannery did not urge (as he does in this appeal) that the jury's finding that Murray was a half-owner of the Ranch did not completely dispose of the issue of the proper distribution of the settlement proceeds; instead, he contended

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[4] Because we conclude that Flannery's claim to the disputed settlement funds is barred by res judicata, we do not reach his other substantive contentions. Our review is confined to the trial court's determination on remand that Murray is entitled to one-half of the $2,450,000 settlement proceeds; the trial court's jurisdiction on remand was limited to that narrow issue. (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655.)

that Judge Rico "had no jurisdiction" over the settlement proceeds, and thus that Judge Wiley should disregard the findings in the *Marvin* case.

Flannery made a number of arguments on appeal from the interpleader judgment before Division Five. First, he contended that the interpleader judgment was entered "without conducting a trial[,] depriving [Flannery] of [his] due process rights to be afforded an opportunity to cross-examine witnesses and present [his] case." As a result, he urged, he was deprived of his "proper share[] of the interpleaded funds without due process, because the disbursements were ordered on the motion[] of [Murray] without compliance with the procedural or substantive due process of law and without even considering the interests and claims of [Flannery] against the interpleaded funds." Second, he argued that Judge Wiley, as the judge in both the interpleader action and the SCGC litigation, had exclusive jurisdiction over the settlement proceeds, and thus Judge Rico lacked subject matter jurisdiction over the interpled funds. Third, Flannery contended that the "terms of the Settlement Agreement [were] clear" that Flannery and his attorney "were unconditionally entitled to the sum of $2,450,000," and "[t]he fact that the parties did not release each other from their rights in other lawsuits has no bearing on the settlement of $2,450,000 in the Settlement Agreement." Flannery therefore asked Division Five to "reverse the trial court's Judgment, including the portion requiring the Court Clerk to disburse the interpleaded funds to [Murray, her attorney, and SCGC]."

Division Five rejected Flannery's contentions and affirmed the interpleader judgment in full. With regard to due process, the court held that Flannery had not demonstrated that Judge

Wiley erred by granting Murray's motion without a trial or summary judgment motion; it found that Flannery had not provided a sufficient appellate record to permit the court to determine whether Flannery was entitled to have his claims decided by trial or summary judgment motion. Thus, the court concluded: "With no reporter's transcript in the record, we presume that Flannery had the opportunity to present evidence at the hearing on September 10, 2015, and waived any objections to the court proceeding on the parties' declarations and exhibits alone." (*SCGC v. Flannery*, *supra*, 5 Cal.App.5th at p. 485, italics added.)

Division Five also rejected Flannery's claims regarding the distribution of the interpled funds to Murray, including his contention that Judge Rico lacked jurisdiction to determine the rights to the settlement funds. It explained: "[Flannery's] argument rests on the fact that [Judge Wiley] dismissed the [SCGC lawsuit] . . . , retaining jurisdiction only to enforce the terms of the settlement. However, the settlement and dismissal of the [SCGC lawsuit] did not resolve the ongoing dispute between Murray and Flannery regarding their respective ownership interests in the fire-damaged property, and therefore their respective claims to the Settlement Funds. The parties to the [SCGC lawsuit] were well aware that there was ongoing litigation between Murray and Flannery and that Judge Wiley had deferred those questions to Judge Rico when he ruled on Murray and Flannery's motions in limine on January 23, 2013. The Settlement Agreement expressly reserved those claims by stating, 'As between Ms. Murray and Mr. Flannery, the parties are not releasing each other of and from any and all claims that may exist between them, whether or not included in the pending

lawsuits. And this settlement is without prejudice to either of their rights in those other lawsuits.' [¶] Having entered into a settlement agreement that expressly reserved Murray's claims against him, Flannery cannot now claim that the court tasked with resolving those claims somehow lacked jurisdiction to do so." (*SCGC v. Flannery*, *supra*, 5 Cal.App.5th at pp. 491–492.)

b. The present appeal.

As he did in the interpleader appeal, Flannery contends in this appeal that Murray was not entitled to any portion of the $2,450,000 settlement. Some of his arguments are identical to those he made in the interpleader appeal: As in that appeal, Flannery argues here that Judge Rico lacked jurisdiction "to reallocate Flannery's settlement proceeds." In this regard, he urges: "[T]he trial court in the [SCGC litigation] reserved *exclusive* jurisdiction over any modification to the [settlement agreement]. If Murray had an issue with whether the express terms of the agreement accurately reflected the parties' understanding, she should have gone to that court, not the trial court in this case. The trial court in this action had no authority to modify the final and binding settlement agreement." He further argues here, as he did in the interpleader appeal, that Judge Rico's interpretation of the settlement agreement was contrary to and could not be reconciled with the *express* terms of the settlement agreement. Murray also makes some new arguments that he did not make in the prior proceeding—namely, that the distribution to Murray was speculative, was contrary to the "undisputed record that established that most of Flannery's settlement proceeds were meant to compensate him for his attorney fees," had not been litigated, and failed to grant Flannery an offset for money Murray had already received.

2. Flannery's present claims are precluded by res judicata because he had the opportunity to raise them in the interpleader action.

a. Legal principles.

The doctrine of res judicata precludes parties from relitigating a cause of action finally resolved in a prior proceeding. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.) " 'The doctrine of res judicata, whether applied as a total bar to further litigation or as collateral estoppel, "rests upon the sound policy of limiting litigation by preventing a party who has had one fair adversary hearing on an issue from again drawing it into controversy and subjecting the other party to further expense in its reexamination." ' [Citation.]" (*Needelman v. DeWolf Realty Co., Inc*. (2015) 239 Cal.App.4th 750, 760, italics omitted.)

As " 'generally understood, "[t]he doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy." [Citation.] The doctrine "has a double aspect." [Citation.] "In its primary aspect," commonly known as claim preclusion, it "operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]" [Citation.] "In its secondary aspect," commonly known as collateral estoppel, "[t]he prior judgment . . . 'operates' " in "a second suit . . . based on a different cause of action . . . 'as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' [Citation.]" [Citation.]' " (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 797, italics omitted (*Boeken*).)

" ' "The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]" ' [Citation.]" (*Boeken*, *supra*, 48 Cal.4th at p. 797.)[5]

b. The "identical issue" requirement.

It is undisputed that the second and third elements of res judicata have been met in this case: The interpleader action resulted in a final judgment on the merits, which was affirmed on appeal; and Flannery, the party against whom res judicata is being asserted, was a party to the interpleader action. We therefore consider the first element—whether the issue raised in this case is identical to an issue litigated in the interpleader action.

" 'The "identical issue" requirement addresses whether "identical factual allegations" are at stake in the two proceedings. . . .' (*Lucido* [*v. Superior Court* (1990)] 51 Cal.3d [335], 342.)" (*In re M.A.* (2018) 20 Cal.App.5th 899, 909–910.) " ' " 'Res judicata precludes . . . relitigation of the same cause of action on a different legal theory. . . .' " ' [Citation.] Therefore, ' " 'a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different legal ground for relief.' " ' (*Boeken*

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[5] Because the same three elements govern claim preclusion and issue preclusion, the distinction between the doctrines is not material to our analysis.

v. Philip Morris USA, Inc. (2010) 48 Cal.4th 788, 798.)" (*In re M.A.*, *supra*, 20 Cal.App.5th at p. 911.)

Flannery contends that "Judge Wiley in the Interpleader Case did not make any determination regarding Murray's entitlement to 50% of Flannery's settlement proceeds, [and thus] the Court of Appeal presiding over the appeal from the Interpleader Case did not reach that issue either." It is clear, however, that both the interpleader action and the present action concern the allocation of the settlement funds, and Division Five has already affirmed a judgment awarding $1,225,000 of those funds to Murray. Indeed, Judge Wiley's September 11, 2015 order specifically awarded Murray $1,225,000 from the interpled funds, and the Court of Appeal affirmed the award, rejecting Flannery's "multiple contentions of error against the order awarding $1,225,000 of the interpleader funds to Murray." (*SCGC v. Flannery*, *supra*, 5 Cal.App.5th at p. 489.) On their face, therefore, the two judgments appear to concern the " 'identical issue with the same part[ies]' " (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 864), such that the first judgment is a bar to the second.

Nor are we persuaded that the interpleader judgment should not have res judicata effect here because Flannery did not have a "full and fair opportunity to present his defense in a trial." While it may be the case that Flannery did not present to Judge Wiley all of the legal and factual arguments he claims were necessary to a decision on the merits, the focus of our inquiry is whether the party against whom preclusion is being sought had " '*an adequate opportunity* to litigate' the factual finding or issue" in the prior proceeding, *not* whether he actually did so. (*Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at p. 869, italics added.)

Flannery makes no persuasive showing that he was denied such opportunity; indeed, the Court of Appeal in the interpleader action specifically found to the contrary, concluding that because Flannery failed to provide it with an adequate record on appeal, it "presume[d] that Flannery *had the opportunity* to present evidence [before Judge Wiley] and waived any objection to the court proceeding on the parties' declarations and exhibits alone." (*SCGC v. Flannery*, *supra*, 5 Cal.App.5th at p. 485, italics added.)

Nor do we conclude that the prior judgment lacks preclusive effect because Flannery raises in this proceeding many new arguments that he did not make in the interpleader action. In *Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at page 869, our Supreme Court considered the effect of prior findings made in a proceeding in which a party could have, but did not, fully litigate its claim. There, the plaintiff filed a complaint with the United States Secretary of Labor alleging that after his position was outsourced, he was not rehired in retaliation for his whistleblowing. (*Id.* at p. 865.) Following an investigation, the Secretary concluded there was no credible connection between the employer's failure to rehire plaintiff and his involvement in protected activity; she therefore notified the plaintiff that his complaint would be dismissed, but that he had 30 days to request a hearing before an Administrative Law Judge (ALJ). (*Id.* at pp. 865–866.)

The plaintiff did not file objections, did not request a hearing, and did not withdraw his administrative complaint. Instead, he filed a new complaint against the employer in state court, claiming wrongful termination and retaliation. (*Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at p. 866.) The airline removed the case to federal court, which relied on the Secretary's

findings to grant summary judgment to the employer based on collateral estoppel. (*Ibid.*) The plaintiff appealed to the Ninth Circuit, which certified to the California Supreme Court the question of the preclusive effect of the Secretary's findings under California law. (*Ibid.*)

The Supreme Court explained that in considering the preclusive effect of the Secretary's findings, "the focus of our inquiry should be on whether the party against whom issue preclusion is being sought had 'an adequate opportunity to litigate' the factual finding or issue in the prior administrative proceeding. . . . '[I]t is the *opportunity to litigate* that is important in these cases—not whether the litigant availed himself or herself of the opportunity. [Citation.]' [Citations.]" (*Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at p. 869.) In the case before it, the plaintiff had the requisite opportunity to litigate: "Here, Murray, who has been represented by counsel at every stage of the prior administrative and present court proceedings, voluntarily instituted an action against his former employer. . . . At the conclusion of the Secretary's preliminary investigation, . . . Murray effectively abandoned his administrative action and brought suit against [his employer] in state court, raising claims that would ultimately turn on the same key factual matter of causation resolved against him in the earlier proceedings. He failed to take the steps required to lawfully withdraw his administrative complaint, failed to exercise his absolute statutory right to a formal de novo hearing of record before an administrative law judge (ALJ), and, consequently, failed to exercise his statutory right to appeal any adverse findings and decision of the ALJ." (*Id.* at p. 868.) Accordingly, the Secretary's findings "should, under California law, be

afforded preclusive effect in this subsequent court action between the same parties." (*Id*. at p. 879.)

The result was unchanged, the court said, by the fact that the plaintiff's claims would have been more fully litigated had the plaintiff invoked his right to a formal hearing before an ALJ. The court explained: "Although, without doubt, Murray's claims would have been more fully litigated in the prior . . . proceeding had he invoked his right to a formal hearing before an ALJ, he never did so. Under California law, however, the dispositive issue of causation was nonetheless 'actually litigated' [citation] in the [federal] administrative proceeding once the matter was ' "properly raised" ' by Murray's [administrative] complaint, along with his written statements and other supporting documentation, and then ' "determined" ' by the Secretary in her written findings and order." (*Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at p. 877.) The result also was unchanged by the fact that initiating the federal proceeding was not a prerequisite to filing the state court action: "[O]nce Murray failed to exercise his rights to a formal hearing and judicial review, the Secretary's investigative findings became 'a final order,' " and thus Murray's failure to appeal the Secretary's order "must be given preclusive effect." (*Id*. at p. 878.)

Murray v. Alaska Airlines, Inc. is dispositive of Flannery's claims here. As in that case, Flannery had the *opportunity* to litigate his claims regarding the distribution of the settlement proceeds in the prior interpleader action, and he did so. That he did not raise all of the substantive arguments in that proceeding that he asserts here is of no moment because " '[t]he failure of a litigant to introduce relevant evidence on an issue does not necessarily defeat a plea of collateral estoppel. [Citation.]' "

(*Murray v. Alaska Airlines, Inc.*, *supra*, 50 Cal.4th at p. 871; accord, *Dailey v. City of San Diego* (2013) 223 Cal.App.4th 237, 257–258.)

For all of these reasons, we find Flannery's claim to the disputed settlement proceeds is barred by res judicata.

DISPOSITION

The amended judgment is affirmed. Murray shall recover her costs on appeal. Murray's request for sanctions on appeal is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

KALRA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.