

Hines v Lukes

10/27/08

Enforcement of Settlement Agreement; CCP 664.6; Motion for Entry of Judgment

Plaintiff Noel Hines and Defendant Pat Lukes are neighbors, residing on contiguous lots. Lukes owns an [easement](#) over a portion of Hine's property. There is a dispute over the scope of the easement. In December 2003, Hines sued Lukes, alleging she exceeded the scope of the easement recorded May 14, 1979, by parking vehicles and leaving trash bins and a dumpster in the easement area.

Lukes filed a cross-complaint in July 2004, referring to a February 7, 1980 recorded easement agreement. She alleged the easement was for "general driveway purposes." The parties went to [Mandatory Settlement Conference](#) on October 13, 2004. There, they agreed to settlement terms in which Lukes would resurface a portion of the driveway, and Hines would resurface a separate portion. Their insurance carriers would pay much of the costs. The work was to be completed within one year. Lukes agreed to keep her garbage cans on her own property and not on the easement. Lukes also promised not to park more than two vehicles in front of her garage, and would not park at all on Hine's easement. Finally, the parties were to attend mediation if they could not meet the terms of the settlement.

The **settlement was recited orally in court**. Mutual dismissals and a mutual release were included in the deal. The court retained jurisdiction to enforce the terms of the settlement. The Court stated on the record, "I understand that these terms will be put into writing. However, **the settlement is enforceable** as of now." The case was dismissed in February 2005.

In May 2005, Lukes sought and was granted a restraining order against Hines, prohibiting him from parking within a certain distance of her house. In October 2006, Hines filed a [motion for entry of judgment pursuant to the settlement](#). He argued Lukes had failed to comply with the terms of the deal. Lukes argued in opposition that Hines had not complied with the terms, and that his non-performance [excused](#) her performance and did not constitute a breach of the agreement. In December 2006, the court ordered the litigants to mediation.

The [motion](#) to enforce the settlement agreement was finally heard in April 2007. Both sides argued the other was not complying with the settlement terms. The court reviewed the transcript of the earlier settlement, indicating that it controlled. On May 1, 2007, the [motion to enforce the settlement agreement](#) was granted. The ruling quoted some, but not all of the terms of the oral settlement. Because Lukes had failed to comply with the terms, [the court entered judgment pursuant to CCP 664.6](#) and the authority of Skulnick v Roberts Express, Inc. (1992) 2 Cal.App.4th 884. Lukes was ordered to comply by June 15, 2007. Lukes then filed a notice of appeal.

[The court retains jurisdiction to enforce a settlement under the statute even after a](#)

dismissal, but only if the parties requested such a retention of jurisdiction before the dismissal. Such a request must be made either in writing or orally before the court. (*Wackeen v Malis* (2002) 97 Cal.App.4th 429)

The Second DCA considered the following rules:

(1) A court ruling on a motion under CCP 664.6 must **determine whether the parties entered into a valid and binding settlement.** (*Osumi v Sutton* (2007) 151 Cal.App.4th 1355)

(2) A settlement is **enforceable under section 664.6 only if the parties agreed to all material settlement terms.** (*Elyaoudayan v Hoffman* (2003) 104 Cal.App.4th 1421)

(3) The court ruling on the motion **may consider the parties' declarations and other evidence** in deciding what terms the parties agreed to, and the court's factual findings in this regard are reviewed under the substantial evidence standard. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896)

(4) If the court determines the parties entered into an enforceable settlement, it should grant the motion and enter a formal judgment **pursuant to the recited terms.** (*Corkland v Boscoe* (1984) 156 Cal.App.3d 989)

(5) The statute expressly provides for the court to enter judgment pursuant to the terms of the settlement. (CCP section 664.6)

Lukes argued that Hines **waived the right to enforce the settlement** by failing to perform his settlement obligations. Hines failed to resurface his portion of the easement and failed to allow her to park on the easement. The Justices noted that Lukes failed to explain why any of those obligations was a **condition precedent** to the performance of her own settlement obligations. (Civil Code section 1436)

Lukes also argued that when she moved for the injunction pursuant to the civil harassment proceeding, Hines failed to move to enforce the settlement, and thereby **waived the right to have it enforced.** The Appellate Court did not believe the failure by Hines to bring up the settlement acted as a waiver. Lukes also contended Hines refused to provide written consent for her to resurface the driveway, claiming his conduct prevented her performance, thus **excusing** Lukes from performing. (Civil Code section 1511(1)) **The Court stated judgment could be entered regardless of whether Hines conduct excused Lukes from performing her obligations. The moving party need not establish a breach of contract to support relief under the CCP 664.6.**

Ultimately, the only shortcoming in the trial court ruling to enforce the settlement as a judgment was its failure to include all the terms of the original oral agreement in the judgment. The judgment was reversed, solely to allow the trial court to enter a judgment setting forth all the material terms of the settlement agreement that have yet to be fully performed. Lukes is entitled to her costs on appeal.