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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WAJIA GHAFOORI et al., Plaintiffs, Cross-defendants, and Appellants, v. ROSS REZAEI et al., Defendants, Cross-complainants, and Respondents.	G058984 (Super. Ct. No. 30-2018-01014163) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed. Motion to Dismiss. Granted.

Law Offices of Mark B. Plummer and Mark B. Plummer for Plaintiffs, Cross-defendants, and Appellants.

Anderson, McPharlin & Conners and Elmira R. Howard for Defendants, Cross-complainants and Respondents.

* * *

INTRODUCTION

The Law Offices of Mark B. Plummer and Mark B. Plummer (Plummer Law and Attorney Plummer, respectively) represented Wajia Ghafoori in connection with an automobile accident resulting in injuries to Ghafoori. Ghafoori signed a medical lien in favor of Advance Occupational and Hand Therapy Center, doing business as Sevento7 Physical & Hand Therapy (Advance), which provided physical therapy and occupational therapy to her after the accident.

After Ghafoori settled her personal injury case against the other driver in the automobile accident, Ghafoori and Plummer Law sued Advance and one of its employees, Ross Rezaei, to rescind the medical lien. Advance cross-complained against Ghafoori, Plummer Law, and Attorney Plummer for breach of contract. The trial court granted summary judgment on the complaint to both Advance and Rezaei, and judgment was entered in favor of Rezaei. Advance's cross-complaint was set for trial. Before trial, however, the parties reached a settlement and stipulated to entry of judgment in favor of Advance. Ghafoori and Plummer Law filed a notice of appeal from an amended judgment in favor of Advance; a separate notice of appeal from the judgment in favor of Rezaei was never filed.

We dismiss the appeal as to Rezaei because no appeal was ever taken from the judgment in his favor. As to the appeal from the judgment in favor of Advance, we conclude the trial court properly granted summary adjudication of all claims asserted by Ghafoori and Plummer Law, and we therefore affirm. For the reasons we explain *post*, the appeal from the amended judgment in favor of Advance is close to frivolous.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Advance is a physical therapy and occupational therapy clinic. Rezaei is a physical therapist employed by Advance. Ghafoori received physical therapy treatments at Advance from May through June and September through November 2014. This case

does not involve any allegations of negligent treatment by Advance or any of its employees.

On September 25, 2014, Ghafoori was involved in an automobile accident. Attorney Plummer and Plummer Law represented Ghafoori in a lawsuit arising out of that accident.

The medical lien, which was signed by Ghafoori on November 19, 2014, reads in relevant part as follows: "I hereby authorize and direct you, my attorney, to pay directly to [Advance] such sums as may be due and owing him for medical services rendered me by reason of this accident and by reason of any other bills that are due his office and withhold such sums from any settlement, judgment or verdict as may be necessary to adequately protect [Advance]. And I hereby further give a lien on my case to [Advance] against any and all proceeds of any settlement, judgment [or] verdict which may be paid to you, my attorney, or myself as the result of the injuries for which I have been treated or injuries in connection therewith. [¶] I fully understand that I am directly and fully responsible to [Advance] for all medical bills submitted by him for service rendered me and that this agreement is made solely for [Advance]'s additional protection and in consideration of his awaiting payment. And I further understand that such payment is not contingent on any settlement, judgment or verdict by which I may eventually recover said fee." Plummer Law, by signing the lien on November 20, 2014, agreed to observe all of its terms and to withhold from any settlement or judgment the money necessary to reimburse Advance.

Between December 2014 and March 2015, Advance provided Ghafoori with 24 physical therapy sessions with a reasonable value of $5,300, and 20 occupational therapy sessions with a reasonable value of $5,900. Advance provided copies of its bills and Ghafoori's medical records to Plummer Law.

Plummer Law, on behalf of Ghafoori, made a $52,362.80 settlement demand on State Farm Mutual Auto Insurance Company (State Farm), the insurance

carrier for the other driver involved in the accident, to settle Ghafoori's personal injury claims. The demand letter represented to State Farm that Ghafoori had incurred $11,200 in medical expenses owed to Advance for physical therapy and occupational therapy. State Farm and Ghafoori settled the claim for $27,100. None of the settlement proceeds was paid to Advance.

After Rezaei, on behalf of Advance, asked Attorney Plummer whether Ghafoori's case had been settled, "Plummer became agitated and started yelling at me telling me that I did not have a medical lien and that he and his client had no obligation to pay Advance for the treatments." (Some capitalization omitted.) Advance responded by filing a complaint against Attorney Plummer and Plummer Law with the California State Bar.

Ghafoori and Plummer Law filed a complaint against Rezaei and Advance; Ghafoori and Plummer Law asserted a claim for rescission of the medical lien, and Ghafoori asserted claims for fraud and unfair business practices. Advance filed a cross-complaint against Ghafoori, Attorney Plummer, and Plummer Law for breach of the medical lien, fraud, unfair business practices, breach of an implied contract, quantum meruit, and money had and received.

Rezaei filed a motion for summary judgment and/or summary adjudication of the complaint, and Advance filed a similar motion for summary judgment and/or summary adjudication of the complaint and the cross-complaint. The trial court (1) granted Rezaei's motion for summary judgment, (2) granted Advance's motion for summary adjudication of all issues on the complaint, and (3) denied Advance's motion for summary adjudication on the cross-complaint.

On February 3, 2020, a judgment was entered in favor of Rezaei and against Ghafoori and Plummer Law (the February 3 judgment). No appeal has ever been taken from the February 3 judgment.

Advance, Ghafoori, Plummer Law, and Attorney Plummer stipulated in writing for entry of judgment in favor of Advance on Advance's cross-complaint. The trial court approved the stipulation, and judgment based on it was entered. On March 3, 2020, an amended judgment was entered against Ghafoori and Plummer Law and in favor of Advance on the complaint, and in favor of Advance and against Ghafoori, Plummer Law, and Attorney Plummer on the cross-complaint (the March 3 judgment).

On March 12, 2020, Ghafoori and Plummer Law filed a notice of appeal from the March 3 judgment. Attorney Plummer did not file a notice of appeal.

DISCUSSION

I.

FEBRUARY 3 JUDGMENT IN FAVOR OF REZAEI – MOTION TO DISMISS

Rezaei and Advance filed a motion to dismiss the appeal as to Rezaei because no appeal had been taken from the February 3 judgment.[1]

Ghafoori and Plummer Law oppose the motion to dismiss on the ground that the February 3 judgment was an improper "partial judgment" entered in violation of the one final judgment rule. This argument is not well taken. In the case on which Ghafoori and Plummer Law rely, *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, the Supreme Court stated: "'A judgment is final "when it *terminates the litigation between the parties* on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined."'" (*Id.* at p. 304, italics added.)

The February 3 judgment terminated the litigation between Ghafoori and Plummer Law on the one hand, and Rezaei on the other. This was a final judgment as to Rezaei and was appealable. (*Justus v. Atchison* (1977) 19 Cal.3d 564, 567-568 [husband

[1] The motion asked this court to strike the portions of the opening brief relating to claims against Rezaei. This court issued an order stating that the motion would be treated as a motion to dismiss the appeal as to Rezaei and would be decided in conjunction with the appeal.

and wife both sought relief on same cause of action; judgment against husband definitively adjudicated the action against him and was appealable although wife's case on the same cause of action was pending]; *Millsap v. Federal Express Corp*. (1991) 227 Cal.App.3d 425, 429-430 [two defendants filed separate motions for summary judgment; judgment entered in favor of one defendant was immediately appealable]; *Johnson v. Threats* (1983) 140 Cal.App.3d 287, 288-289 [judgment resolving all claims against multiple defendants was immediately appealable although claims remained against another defendant].)

"'"[W]here several judgments and/or orders occurring close in time are separately appealable . . . , each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal."' [Citations.] The policy of liberally construing a notice of appeal in favor of its sufficiency (Cal. Rules of Court, rule 8.100(a)(2)) does not apply if the notice is so specific it cannot be read as reaching a judgment or order not mentioned at all." (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 173.) The notice of appeal filed on March 12 specified it was taken from the March 3 judgment, and the notice designating the record on appeal does not list the February 3 judgment as a document to be included in the clerk's transcript.

Ghafoori and Plummer Law also argue that there was a single ruling, covering both Rezaei and Advance, on the motions for summary judgment/adjudication. This argument, too, lacks merit because a ruling on a motion for summary judgment or summary adjudication, as opposed to the entry of judgment following such a ruling, is not appealable. (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1189.)

The February 3 judgment was appealable. Ghafoori and Plummer Law never filed a notice of appeal from that judgment, and this court therefore has no jurisdiction to consider that judgment in connection with the appeal from the March 3

judgment in favor of Advance. The motion to dismiss the appeal as to Rezaei is therefore granted.

II.

THE TRIAL COURT PROPERLY GRANTED SUMMARY ADJUDICATION IN FAVOR OF ADVANCE ON THE COMPLAINT.

A.

DO GHAFOORI AND PLUMMER LAW HAVE STANDING TO APPEAL?

As an initial matter, Advance argues that Ghafoori and Plummer Law may not pursue their appeal from the March 3 judgment because that was a stipulated judgment to which Ghafoori and Plummer Law consented. While it is clear that Ghafoori and Plummer law consented to entry of judgment as to the cross-complaint, a reasonable argument can be made that they did not consent to the entry of judgment on the complaint. We shall therefore reach the merits of the appeal which challenges entry of judgment on the complaint only.

B.

STANDARD OF REVIEW

"'We review orders granting summary judgment or summary adjudication de novo. [Citations.] A motion for summary judgment or summary adjudication is properly granted if the moving papers establish there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law.'" (*Taswell v. Regents of University of California* (2018) 23 Cal.App.5th 343, 350.)

The interpretation of a written contract where extrinsic evidence is unnecessary is also a question of law subject to de novo review. (*Mitri v. Arnel Management Co.* (2007) 157 Cal.App.4th 1164, 1169-1170.) "The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. [Citations.] When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible." (*Founding Members of the Newport Beach Country*

Club v. Newport Beach Country Club, Inc. (2003) 109 Cal.App.4th 944, 955.) "The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed." (Civ. Code, § 1644.)

C.

FIRST CAUSE OF ACTION, FOR RESCISSION

The first cause of action in the complaint sought to rescind the medical lien. If consent to a contract was given by mistake or obtained by fraud, the contract may be rescinded. (Civ. Code, § 1689, subd. (b)(1).)

The medical lien clearly and unambiguously states that Ghafoori would be personally liable for her treatments and that those treatments would be paid out of the settlement with State Farm. Further, the settlement demand by Plummer Law to State Farm represented that Ghafoori owed $11,200 to Advance, and enclosed copies of Advance's bills showing that CalOptima—Ghafoori's health insurance provider—had not been billed.

Ghafoori and Plummer Law argue on appeal, as they did in the trial court, that the medical lien was contingent, meaning that Advance would bill Ghafoori's health insurance and the medical lien would be "additional protection" for Advance only if that insurance were terminated or Advance stopped accepting that insurance.

The clear and explicit language of the medical lien contradicts this argument. It expressly provides that Ghafoori will be "directly and fully responsible" for "all medical bills submitted." While Ghafoori and Plummer Law correctly note that Ghafoori did not have the ability to modify the terms of the ancillary services agreement between Advance and CalOptima, that does not preclude Ghafoori from entering a separate agreement with Advance to not bill her insurance company.

Indeed, the ancillary services agreement specifically provides that, "[n]otwithstanding the foregoing, [Advance] may also collect other amounts (e.g., . . . third party liability payments) where expressly authorized to do so under the CalOptima Program(s) and applicable law." Addendum 1 to the ancillary services agreement, providing additional terms relating to the Medi-Cal/CalOptima program, provides in part: "[Advance] shall make no claim for the recovery of the value of Covered Services rendered to a Member when such recovery would result from an action involving tort liability of a third party." Addendum 2, providing additional terms and conditions relating to the Healthy Families Program, provides: "If a Healthy Families Member is injured through the wrongful act or omission of another person, and Covered Services are provided by [Advance], then [Advance] may be reimbursed to the extent of reasonable value of services immediately upon collection of damages by the Member provided he or she is made whole before reimbursement to [Advance]. [Advance] *may assert a lien for recovery of monies in such amount for Covered Services to the Member*." (Italics added.) Rather than prohibit the medical lien between Ghafoori and Advance, the ancillary services agreement specifically authorizes it.

Ghafoori and Plummer Law emphasize that the medical lien provides it was given "solely for said doctor's additional protection," and argue that the medical lien was intended to be contingent on Ghafoori's insurer's failure to pay. On this point, the medical lien reads, in full, that it was given "solely for said doctor's additional protection and in consideration of his awaiting payment." This full phrase makes it clear the additional protection relates to the time lag between performance of the services and the settlement or other resolution of the case.

Ghafoori and Plummer Law also argue that the purpose of the medical lien was to cover three contingent situations: (1) if Ghafoori lost her coverage through CalOptima, (2) if Advance terminated its ancillary services agreement with CalOptima, or (3) if Advance provided services to Ghafoori that were not covered services under the

terms of the CalOptima ancillary services agreement. First, there is nothing in the medical lien that supports this interpretation, and Ghafoori and Plummer have not offered any extrinsic evidence that could reasonably support this interpretation. Second, these are contingencies that could arise at any time, not simply when a patient is being treated following an accident for which a third party may be liable. Therefore, if Advance wanted to protect itself from these contingencies, it would need to have a medical lien for each and every patient. Third, as noted *ante*, a lien on recovery of third party liability proceeds was specifically authorized by the ancillary services agreement between CalOptima and Advance.

Rezaei, in his declaration filed in support of the motions for summary judgment/adjudication, testified: "It was my understanding, based on the custom and practice in the medical industry, that when a patient elects to be treated on a medical lien for injuries sustained relating to a car accident which is the subject of a personal injury action, that patient chooses to be treated as if they are uninsured. Accordingly, when a patient, such as Ghafoori, signs a medical lien, their insurance is not billed for the treatments rendered in conjunction with the personal injury action. If Ghafoori's insurance was to be billed, there would be no point of the Medical Lien because by law, Advance is not allowed to collect from Ghafoori's insurance and also collect from Ghafoori. That is considered balance billing which is unlawful. For this reason, Ghafoori's insurance could not be billed if Advance elected to be paid under the Medical Lien." (Some capitalization omitted.)[2]

[2] Ghafoori and Plummer Law did not file objections to any of the evidence submitted by Advance and Rezaei in support of the motions for summary judgment/adjudication.

It is undisputed that the medical lien was presented to and signed by both Ghafoori and Plummer Law without discussion with either Advance or Rezaei.[3] The parties then behaved in a manner consistent with the agreed-upon medical lien. Advance treated the medical lien as its source of payment and did not bill CalOptima for the treatments at issue. Plummer Law's demand on State Farm claimed $11,200 for services provided to Ghafoori by Advance and attached a billing summary showing such charges had been incurred without any applicable insurance coverage.

Ghafoori and Plummer Law rely primarily on *Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595 for the proposition that Advance cannot collect on the medical lien because it has been fully reimbursed by CalOptima. "For the medical services provided to Parnell, the Community Hospital received payment from Parnell and the Health Plan in the amount specified in the hospital's provider agreement. Under the CCN [Community Care Network] and provider agreements, the Community Hospital agreed to accept this amount as 'payment in full.' As conceded by the Community Hospital, Parnell's entire debt to the hospital has therefore been extinguished. Indeed, the bill sent by the Community Hospital to Parnell noted the hospital's usual and customary charges and stated that the difference between these charges and the amount owed under the insurance contract 'is the CCN discount received for using a CCN facility' and will be 'written off' by the hospital. Because Parnell no longer owes a debt to the hospital for its services, we conclude that the hospital may not assert a lien under the [Hospital Lien Act] against Parnell's recovery from the third party tortfeasor." (*Id.* at p. 609.)

The rule of *Parnell*, while undoubtedly correct, does not apply in this case because Advance has not received "payment in full" under the terms of its agreement

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[3] Ghafoori and Plummer Law contended in their response to the separate statement that the lack of any representations by Advance and Rezaei was irrelevant because of the terms of Advance's ancillary services agreement with CalOptima. But we have concluded that Ghafoori and Plummer Law's interpretation of that agreement is incorrect.

with CalOptima. Rather, under the terms of that agreement, Advance and Ghafoori and Plummer Law entered into the medical lien and Advance sought payment through that lien. Indeed, in the stipulation for entry of judgment the parties agreed that "Ghafoori did not have to pay Medi-Cal at the time of settlement because *Advance did not bill and collect from Medi-Cal for the services which are the subject of the First Amended Cross-Complaint* as a result of the executed Medical Lien which is the subject of the First Amended Cross-Complaint." (Italics added, some capitalization omitted.)

Ghafoori and Plummer Law also argue that the medical lien and the ancillary services agreement between Advance and CalOptima, under which Advance agreed to accept the amounts paid by CalOptima as payment in full for its services, are agreements between the same parties regarding the same matter. Because the ancillary services agreement has not been terminated, Ghafoori and Plummer Law argue that the two agreements must be construed together, or Advance must prove a completed novation of the ancillary services agreement by the medical lien. Setting aside the obvious—that the agreements are not between the same parties—the terms of the two agreements can be construed together as permitting a service provider like Advance to provide services to a CalOptima member, like Ghafoori, under a medical lien, and then to seek payment under that lien when a third party is liable for the damages.

Ghafoori and Plummer Law have also failed to show a triable issue of material fact justifying rescission of the medical lien based on a unilateral mistake. "[A] unilateral mistake may not invalidate a contract without a showing that the other party to the contract was aware of the mistaken belief and unfairly utilized that mistaken belief in a manner enabling him to take advantage of the other party." (*Meyer v. Benko* (1976) 55 Cal.App.3d 937, 944.) Advance and Rezaei offered admissible evidence that the parties had no conversations regarding the medical lien before it was signed by Ghafoori and Plummer Law, and Ghafoori and Plummer Law offered no admissible evidence establishing a triable issue of material fact on that issue in opposition to the

motion for summary judgment/adjudication. There would therefore be no way for Advance to know of Ghafoori and Plummer Law's allegedly mistaken belief that the medical lien would only come into play if, for example, Ghafoori lost her insurance coverage. "Failure to make reasonable inquiry to ascertain or effort to understand the meaning and content of the contract upon which one relies constitutes neglect of a legal duty such as will preclude recovery for unilateral mistake of fact." (*Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 615.)

D.

SECOND CAUSE OF ACTION, FOR FRAUD

Ghafoori based her cause of action for fraud on alleged misrepresentations she claims were made to induce her to sign the medical lien. However, Advance and Rezaei offered evidence that they had not made any misrepresentations to Ghafoori or Plummer Law to induce Ghafoori to sign the medical lien. This evidence was undisputed by Ghafoori. Ghafoori argued in opposition to the motions for summary judgment/adjudication that the medical lien itself contained misrepresentations. These alleged misrepresentations are directly contradicted by the actual language of the medical lien.

Advance and Rezaei also demonstrated that Ghafoori suffered no fraud damages by offering evidence that she never paid Advance for the occupational therapy and physical therapy she had received for her injuries sustained in the automobile accident. While Ghafoori contends this fact was disputed and irrelevant, she did not offer any admissible evidence of damages she claimed to have suffered.

E.

THIRD CAUSE OF ACTION, FOR UNFAIR BUSINESS PRACTICES

The third cause of action for unfair business practices was based entirely on Advance and Rezaei's alleged conduct underlying the recission and fraud causes of action. Therefore, the lack of a triable issue of material fact as to the other two causes of

action establishes that summary judgment was properly granted as to this cause of action as well.

In the appellants' opening brief, Ghafoori claims that Advance and Rezaei illegally used balance billing by taking money from both Ghafoori's insurance provider and from Ghafoori herself, and therefore engaged in unfair business practices requiring disgorgement. The undisputed material facts and the language of the stipulation for entry of judgment established that Advance and Rezaei did not receive any money from either Ghafoori's insurance provider or from Ghafoori; the balance billing issue is a red herring.

DISPOSITION

The appeal is dismissed as to Respondent Rezaei. The amended judgment entered March 3, 2020 is affirmed. Respondents to recover costs on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

GOETHALS, J.