Hutters v. Keesee

2003 | Cited 0 times | California Court of Appeal | April 17, 2003

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

Gene Hutters (Gene) sued respondent Regina Keesee (Keesee), alleging that she defaulted on a loan. During the pendency of the action, Gene died and appellant Kathleen Hutters (Kathleen), [1] Gene's widow, substituted in as the plaintiff. Kathleen challenges the summary judgment entered in favor of Keesee, contending that there is a triable issue as to whether Gene's 1999 release of claims against Keesee (the 1999 release) was forged or otherwise invalid. Upon review of the underlying motion, we conclude that there are no triable issues.

Kathleen's evidence regarding the authenticity of Gene's signature is speculative and there is no evidence that Gene was "entirely without understanding" of the 1999 release such that he lacked the capacity to contract. Moreover, Keesee's attorney's communication with Gene is not grounds for invalidating the 1999 release, and because the release was plain, explicit, and in writing, it did not require consideration.

We affirm.

PROCEDURAL HISTORY

1. The operative pleading.

The first amended complaint (the complaint) alleges the following: Keesee and Gene entered into a written loan agreement and various oral loan agreements, all of which Keesee breached. Moreover, Keesee never intended to fulfill her promises, which subjects her to liability for fraud damages and punitive damages. The amounts Keesee borrowed are recoverable on the additional theories of money had and received and constructive trust.

2. The motion.

Keesee moved for summary judgment, contending that Gene's action is barred by two documents, an agreement dated October 19, 1998 (the October 1998 agreement) in which Gene promised to dismiss

a prior, similar action and limit his remedy to seeking $31,000 through Action Dispute Resolution Services, and the 1999 release (entered in February 1999) pertaining to the complaint. In support of her motion, Keesee attached her declaration, Gene's pleading from his dismissed prior action, the October 1998 agreement, and the 1999 release.

Pursuant to the terms of the 1999 release, which was prepared by Walter Krause (Krause), Keesee's attorney, only Gene's current claims against Keesee were released. However, there is a handwritten portion that reads: "And all subsequent claims." The initials "RK" and what appears to be "GH" are next to the interlineated language. In her declaration, Keesee stated that Gene signed the 1999 release in her presence. She went on to state: "In February 1999 [Gene] wanted to release me from all past and future claims. After [Gene] read the [the 1999 release] . . . which I presented to him, he told me that it didn't cover subsequent claims[,] which was his intention. I told him that I wanted to verify what he told me with Mr. Krause and I thereupon telephoned Mr. Krause in [Gene's] presence. [Gene] got on the phone, verified with Mr. Krause that the [1999 release] as drafted did not cover subsequent claims and, following the telephone call, [Gene] dictated the additional language on page 1 `and all subsequent claims' which I inserted and we both initialed."

In opposition, Kathleen argued: (1) Keesee failed to identify the elements of any cause of action which lack merit; (2) Gene never signed the 1999 release; (3) even if Gene signed the 1999 release, he lacked the requisite mental capacity to form a contract; (4) there was no consideration for the 1999 release; (5) because Gene was represented by counsel, Krause violated the Rules of Professional Conduct by preparing the 1999 release and speaking to Gene directly, as a result of Krause's unethical conduct, the 1999 release is not enforceable; and (6) Keesee waived her right to arbitrate by refusing to cooperate with Gene's attempt to initiate arbitration.

Kathleen attached various declarations and exhibits to her opposition, including her own declaration. She declared that in June 1998, Gene suffered a massive coronary and thereafter was in poor health until his death, which often times left him restricted to a wheel chair. He took approximately eight pills a day for his heart and received oxygen 24 hours a day. Gene was an alcoholic. After his heart attack, he often became disoriented and confused, especially when he drank. In November 1998, his kidneys, lungs, and heart were failing. He admitted that Keesee had been providing him with champagne and wine, and that they drank together. Because Gene was giving Keesee money, Gene and Kathleen could not make their mortgage payments and their house went into foreclosure. Once all his money was gone, Keesee refused to have any more contact with Gene.

Additionally, Kathleen declared that the signature on the 1999 release "does not look like my husband's signature to me" and that the handwritten interlineation is "not my husband's writing." She also stated: "My husband had told me many times that he intended to collect the money he loaned to [Keesee]. He was quite determined to recover that money he loaned to [Keesee.]"

Christine Lyden (Lyden), who represented Gene from July 1998 to his death, declared that she

prepared the October 19, 1998 agreement. According to Lyden, Gene and Keesee stated that they were in love and did not want to be involved in a lawsuit against each other. In February 1999, Lyden wrote to Krause and advised him not to contact Gene. Thereafter, Gene instructed Lyden to refile the action with Action Dispute Resolution Services, as provided by the October 19, 1998 agreement. However, Keesee and Krause refused to participate in the arbitration process, leaving Lyden no choice but to file the present action. Krause did not tell Lyden about the 1999 release until March 25, 1999. In fact, Lyden did not see the 1999 release until it was attached to a motion in June 1999.

Larry Winter (Winter), the supervisor at Gene's bank, declared that he frequently observed Gene in the bank with Keesee. On most of those occasions Gene withdrew money to give to Keesee. Winter became concerned. After Gene suffered a heart attack, he became increasingly disoriented and forgetful. The day Gene was released from the hospital he withdrew $10,000 and gave it to Keesee. Winter had no legal basis to prevent this transaction. A few days later Gene withdrew even more money and gave it to Keesee. Shortly thereafter, Gene called and demanded to know how $13,000 had been withdrawn from his account. Winter explained what happened, and Gene said he had no memory of giving money to Keesee. Then Gene and Keesee came into the bank and asked Winter to witness Gene sign a will leaving all of his property to Keesee. Later, when Winter mentioned the will, Gene had no memory of the will and was quite upset about it. Subsequently, Gene wrote out a new will and asked Winter to place that will in Gene's safety deposit box. In closing, Winter declared: "It always appeared to me that [Keesee] was manipulating [Gene] for money. After his heart attack and until his death, [Gene] was not always coherent and was easily manipulated by [Keesee]. It is clear to me from my observations that [Keesee] could force [Gene] to do just about anything she wanted after his heart attack."

In her reply, Keesee countered Kathleen's points by arguing that there is no evidence that Gene lacked the capacity to transact business when he signed the 1999 release, the authenticity of Gene's signature has not been refuted, and Krause's conduct did not invalidate the 1999 release.

3. The trial court's ruling, entry of judgment, and this appeal.

The trial court ruled in favor of Keesee, its order stating: "[T]he [1999 release] was signed by [Keesee] and [Gene] on February 9, 1999; that [the 1999 release] is a valid contract which releases and settles any and all claims known or unknown between [Gene] and [Keesee] including those which are the subject of [Gene's] complaint; there is no substantial credible evidence offered by [Kathleen] in the declarations submitted by [Kathleen] in opposition to the motion for summary judgment that [Gene] was incompetent or under duress or undue influence on February 9, 1999 when he signed the [1999 release]."

The trial court entered judgment on the order.

This timely appeal followed.

STANDARD OF REVIEW

On an appeal from summary judgment, we employ the de novo standard of review. (Merrill v. Navegar, Inc. (2001) 26 Cal.4th 465, 476.) In doing so, we follow the traditional three-step analysis. "We first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion prima facie justifies a judgment, we determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citation.]" (Torres v. Reardon (1992) 3 Cal.App.4th 831, 836.)

We must uphold the trial court's decision if it is correct on any ground, regardless of the reasons the trial court gave. (Biljac Associates v. First Interstate Bank (1990) 218 Cal.App.3d 1410, 1419.) "[W]e construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it." (Szadolci v. Hollywood Park Operating Co. (1993) 14 Cal.App.4th 16, 19.)

Although our review is de novo, "it is limited to issues which have been adequately raised and supported in plaintiffs' brief." (Reyes v. Kosha (1998) 65 Cal.App.4th 451, 466, fn. 6.)

CONTENTIONS

According to Kathleen, there are triable issues as to whether:

1. Gene signed the 1999 release.

2. Gene lacked the capacity to enter into the 1999 release.

3. The 1999 release is invalid due to Krause's conduct.

4. The 1999 release is invalid due to lack of consideration.

DISCUSSION

1. Gene's signature on the 1999 release.

Kathleen argues that she created a triable issue as to the authenticity of Gene's signature on the 1999 release when she declared that "[t]he signature does not look like my husband's signature to me."

We disagree. This statement leaves open the possibility that the signature is Gene's. Further, Kathleen contradicts the implication that Gene may not have signed the 1999 release by stating that

she "cannot believe that [Gene] signed this agreement voluntarily." This latter statement suggests that Gene's signature, although involuntary, is authentic.

While we must liberally construe Kathleen's declaration, we are not obligated to engage in speculation. (See Sinai Memorial Chapel v. Dudler (1991) 231 Cal.App.3d 190, 196-197 ["An issue of fact can only be created by a conflict of evidence. It is not created by `speculation, conjecture, imagination or guess work.' [Citation.] Further, an issue of fact is not raised by `cryptic, broadly phrased, and conclusory assertions' [citation], or mere possibilities [citation]. `Thus, while the court in determining a motion for summary judgment does not "try" the case, the court is bound to consider the competency of the evidence presented'"].) Kathleen's declaration, and the reasonably deducible inferences therefrom, suggest that Gene's signature might be authentic and voluntary, it might by authentic and involuntary, or it might be forged. We need not pick one of these possibilities.

2. Gene's capacity to enter into the 1999 release.

Relying on Winter's declaration and her own declaration, Kathleen reasons that she raised a triable issue as to whether Gene's mental capacity was so impaired that he lacked the power to contract. We disagree. Kathleen failed to present evidence establishing or raising an inference that Gene was "entirely without understanding" at the time he signed the 1999 release.

Civil Code section 38 provides, in relevant part, that a "person entirely without understanding has no power to make a contract of any kind." "[E]ntirely without understanding" has been interpreted to mean the inability to understand the nature, purpose and effect of the transaction in which the person is engaged. (Burgess v. Security-First Nat. Bank (1941) 44 Cal.App.2d 808, 818.) In fact, a person generally regarded as insane can contract if he understands the document. (Ibid.) Further to the point, "[t]he law in this state is clear that senile dementia does not render one incapable of executing contracts or transacting business. [Citations.]" (Holman v. Stockton Sav. & Loan Bk. (1942) 49 Cal.App.2d 500, 508.)

At most, Kathleen's evidence demonstrates that after his heart attack Gene was sometimes disoriented, especially when he consumed alcohol, and on occasion he was forgetful. Neither Kathleen, Lyden, or Winter declared that Gene had trouble understanding legal documents.

Significantly, the record demonstrates that Gene had the presence of mind to retain Lyden for representation in this dispute, to enter into the October 19, 1998 agreement, to explain his cash withdrawals to Winter, to sign a will in front of Winter as a requested witness, to later write out a new will and have it placed in his safety deposit box by Winter, and, most importantly, to ask Krause a legal question before signing the 1999 release, i.e., whether the 1999 release covered future claims.

When added all up, none of these facts suggest that when Gene signed the 1999 release he had the inability to understand the nature, purpose, and effect of what he was signing. To the contrary, the

question he put to Krause suggests that he was particularly astute on the date and time in question.

3. Krause's conduct.

Kathleen contends that Krause violated California Rules of Professional Conduct Rule 2-100 (Rule 2-100) and that therefore the 1999 release is invalid under Scolinos v. Kolts (1995) 37 Cal.App.4th 635 (Scolinos). After consideration, we conclude that Kathleen's reliance on Scolinos is misplaced. [2]

Scolinos, which invalidated a fee splitting agreement between attorneys because they did not obtain the client's written consent, is simply not apposite. Scolinos held that it is contrary to public policy to condone a violation of the ethical duties an attorney owes a client and that it "would be absurd if an attorney were allowed to enforce an unethical fee agreement through court action, even though the attorney potentially is subject to professional discipline for entering into the agreement." (Scolinos, supra, 37 Cal.App.4th at p. 640.) The holding in Scolinos has no bearing on a release entered into by two non-lawyer litigants.

Kathleen urges us to interpret Scolinos as holding that any contract "which is in violation of the Rules of Professional Conduct is void." Even if we were to read Scolinos that broadly, our analysis would remain the same. Unlike the fee splitting agreement in Scolinos, the 1999 release did not violate the Rules of Professional Conduct. In other words, the Rules of Professional Conduct do not regulate the conduct and contracts of parties to a lawsuit, and Rule 2-100 provides no basis for us to hold that the 1999 release signed by Keesee and Gene is invalid.

4. Consideration.

Without any citation to authority, Kathleen lobbies us to conclude that the 1999 release is invalid for lack of consideration.

It is axiomatic that a written release which is plain and explicit need not be supported by consideration. Civil Code section 1541 provides that an "obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration." "Since the adoption of Civil Code, section 1541, it has uniformly been held that where the writing is plain and explicit and given for the express purpose of effecting a complete release of the obligation, a consideration is not necessary [citations]." (Crow v. P.E.G. Construction Co., Inc. (1957) 156 Cal.App.2d 271, 277.)

Here, the release is plain, explicit, and in writing, and Kathleen does not argue to the contrary. Therefore, her challenge lacks force. Simply put, the 1999 release need not be supported by consideration. [3]

DISPOSITION

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The summary judgment is affirmed. Keesee shall recover her costs on appeal.

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We concur:

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1. To avoid confusion, we use first names to identify Gene Hutters and Kathleen Hutters.

2. Due to this conclusion, we need not reach the factual and legal issues surrounding Krause's conduct.

3. We need not reach Keesee's contention that the October 1998 agreement is a separate ground for affirming the summary judgment.