

No. 47063-2-11

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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DEPUTY

COURT OF APPEALS, DIVISION II,
FOR THE STATE OF WASHINGTON

SHERRY KING,

Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE INS. CO.

Respondent,

DILLON MCCARTEN,

Respondent.

BRIEF OF RESPONDENT DILLON MCCARTEN

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I. INTRODUCTION

Respondent Dillon McCarten was involved in the second of the two accidents that were the subject of Appellant Sherry King's personal injury action filed in Thurston County Superior Court. Mr. McCarten disputed liability for the second accident and further disputed the scope of damages claimed by Ms. King. Ms. King proffered that her injuries and damages for the two accidents were indivisible.

The matter was arbitrated and an award was filed. The arbitrator found that Ms. King's injuries were divisible and did not award any damages against State Farm for any time period following the second accident with Mr. McCarten.

The arbitrator awarded the \$50,000 jurisdictional limit against Mr. McCarten and further awarded all of Ms. King's claimed litigation costs and fees against Mr. McCarten only, although a portion of those costs and fees was clearly attributable to the first collision and without ties to Mr. McCarten.

In the days following the filing of the award, Ms. King and Mr. McCarten entered into an agreement to settle Ms. King's claims against Mr. McCarten. As consideration, *inter alia*, Mr. McCarten agreed to pay \$50,000 and agreed to refrain from exercising his

right to file and serve a request for trial de novo pursuant to MAR 7.1. Ms. King agreed to release Mr. McCarten from all claims, which should have resulted in dismissal of her claims against him. Ms. King and Mr. McCarten performed on their obligations under the settlement contract.

In the weeks and months following the settlement agreement, Mr. McCarten attempted to secure dismissal of Ms. King's action against him; however, although Ms. King was willing, State Farm would not agree. State Farm moved for entry of judgment. Mr. McCarten moved for dismissal, which was denied by the court. Although Mr. McCarten had satisfied his obligations to Ms. King pursuant to the settlement agreement between them, and over Ms. King's and Mr. McCarten's objection, the court entered judgment against him.

II. ARGUMENT

- A. Mr. McCarten was a released party prior to the court's entry of judgment and the court had a duty to dismiss Ms. King's claims against Mr. McCarten.

Mr. McCarten concurs with Ms. King on appeal and submits that it was improper for the court to enter a judgment against him when Ms. King had unambiguously released him from any and all

claims pursuant to a previous settlement agreement. There is no dispute as to the validity of the settlement contract between Ms. King and Mr. McCarten. There is no dispute that Mr. McCarten performed his obligations under the settlement agreement, including his promise to pay Ms. King \$50,000, or that Ms. King executed a full release of her claims against Mr. McCarten in exchange.

Once there has been accord and satisfaction, the previously existing claim is discharged and all defenses and arguments are extinguished. An accord is a contract for the settlement of a claim for some performance. Satisfaction occurs when the accord is performed. *Plywood Marketing Associates v. Astoria Plywood Corp.*, 16 Wn.App. 556, 574, 558 P.2d 283 (1976) *citing* Restatement Contracts § 417. Once a party has entered into an agreement to settle an existing claim, that party is precluded from asserting or pursuing the claim. *Id.* at 576.

“The law favors the amicable settlement of disputes, and is inclined to view them with finality.” *Synder v. Tompkins*, 20 Wn. App. 167, 173, 579 P.2d 994 (1978), *citing Wool Growers Serv. Corp. v. Simcoe Sheep Co.*, 18 Wn. 2d 655, 690, 140 P.2d 512 (1943) (valid claims were extinguished by the settlement and

release). Unless the settlement agreement between Ms. King and Mr. McCarten is set aside, it is the duty of the court to enter judgment of dismissal in accordance with its terms. *State ex rel. Gould v. Superior Court*, 151 Wn. 413, 418-419, 276 P. 98 (1929).

By entering a judgment for Ms. King against Mr. McCarten, the court and State Farm proceeded on a claim against Mr. McCarten that was barred by the settlement contract and Ms. King's release of all claims. Mr. McCarten and Ms. King both relinquished legal rights in exchange for consideration that was stripped from them by the court and State Farm.

B. State Farm did not have standing to force a judgment on behalf of Ms. King against Mr. McCarten.

Assuming, arguendo, that Ms. King had the right to seek a judgment against a party that she had previously released, State Farm did not have standing to seek enforcement of such a right.

As pleaded, Ms. King's claims for the two collisions were joined in the same lawsuit merely by Ms. King's claim of indivisible injury. Once the arbitrator found that the injuries and damages were divisible, State Farm, standing in the shoes of the tortfeasor involved in the first accident, could not be jointly and severally liable for any damages caused by Ms. King's accident with Mr. McCarten.

Accordingly, State Farm had no present interest in the claims asserted by Ms. King against Mr. McCarten in the pending lawsuit when it sought judgment against Mr. McCarten.

State Farm outlines law on standing and highlights that a party has standing “if it demonstrates ‘a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and the party must show that a benefit will accrue it by the relief granted.’ *Primark, Inc. v. Burien Gardens Associates*, 63 Wn.App. 900 907, 823 P.2d 1116 (1992).” *Br. of Resp’t State Farm p. 12*. But, State Farm failed to show, and cannot show, that, at the time it sought judgment, it had any real or present interest in the outcome.

State Farm alleges that it had standing because it sought to “preserve its rights” for future claims and because it “enforced the arbitration award utilizing the arbitration rules that applied to all of the parties who participated in that arbitration.” *Br. of Resp’t State Farm p. 12*. State Farm admits, “(o)nly when State Farm sought to formally conclude the case did it learn that King intended to pursue a UIM claim against it . . .” related to the accident with Mr. McCarten. *Br. of Resp’t State Farm p. 15*. State Farm then

attempted to block or otherwise impact future contractual claims between State Farm and Ms. King by seeking an entry of judgment on behalf of Ms. King against Mr. McCarten in the pending lawsuit. State Farm concedes that its perceived interest in the litigation between Ms. King and Mr. McCarten was expectant, future and contingent.

State Farm does not have standing to proceed on claims made by and against other parties simply because it was a party to the lawsuit. The arbitrator determined that the claims were divisible and judgment was not required for the disposition of Ms. King's action against it. State Farm admittedly and expressly sought judgment against Mr. McCarten for the sole purpose of effecting future contractual claims that it anticipated from its insured.

- C. Ms. King is not seeking review or modification of the arbitration award but is challenging the improper entry of judgment.

State Farm submits that a court may not alter an arbitration award, and an award it is not subject to appellate review, when there has been no request for a trial de novo within 20 days. *Br. of Resp't State Farm p. 7*. However, unlike the circumstances in the the cases cited by State Farm, Ms. King is not seeking modification

or review of the arbitration award. Ms. King assigns error to the entry of judgment, which Mr. McCarten agrees was improper.

MAR 6.3 requires the presentation of a judgment for entry when there has been an arbitration award and when the period for requesting a new trial has expired so that the disposition of the arbitrated claims are final. But, the rule quite clearly anticipates that the parties, at the conclusion of the 20 day period, still have rights to pursue, and further compels the parties to conclude the litigation consistent with resolution in civil actions. RCW 7.06.050; MAR 6.3. Any application to create or mandate enforcement of claims after they have been extinguished would be absurd. The mandatory arbitration rules were not likely created to circumvent the law, but to drive quick and effective resolution of qualifying disputes.

- D. Mr. McCarten performed on his obligations pursuant to the settlement agreement with Ms. King and any judgment against him should be deemed satisfied.

Mr. McCarten performed on his obligations under the undisputed settlement agreement with Ms. King. He did not make a request for trial de novo of the arbitration award and the \$50,000 settlement was paid to Ms. King by Mr. McCarten's insurance

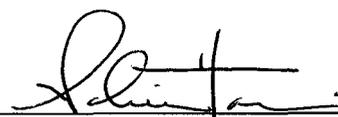
carrier on his behalf. Although Mr. McCarten did not receive the full benefits of his contractual agreement with Ms. King, his obligation to pay damages has been satisfied.

III. CONCLUSION

Ms. King released Mr. McCarten and her claims against him were extinguished. It was improper for the court to deny Mr. McCarten's motion to dismiss and to enter judgment against him. Mr. McCarten respectfully requests that the court's entry of judgment be reversed so that that the lower court should dismiss the case pursuant to Mr. McCarten's motion.

DATED: May 12, 2015.

Respectfully submitted,



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DECLARATION OF SERVICE OF RESPONDENT
DILLON MCCARTEN'S BRIEF

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the date stated below I caused the documents referenced below to be served in the manners indicated below on the following:

- DOCUMENTS:
1. BRIEF OF RESPONDENT DILLION MCCARTEN
 2. DECLARATION OF SERVICE

ORIGINAL & 1 CPY TO: David Ponzoha, Clerk of the Court
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Dated this 12th day of May, 2015, at Seattle, Washington



Karen J. Robichaud