

Appellate Reports

Specific enforcement of settlement — *Mesa RHF Partners, L.P. v. City of Los Angeles*. Code of Civil Procedure section 664.6; requests to retain jurisdiction; signature by parties versus attorneys.

By Jeffrey I. Ehrlich

Mesa RHF Partners, L.P. v. City of Los Angeles (2019) __ Cal.App.5th __ (Second Dist., Div. 1.)

Plaintiffs filed a lawsuit against the City in 2012. challenging various provisions regarding the City's establishment of the Downtown Center Business Improvement District (DCBID) by ordinance of April 10, 2012. On January 13, 2013, counsel for plaintiffs filed a notice of settlement of entire case stating that the parties had settled the case on December 20, 2012. The parties' settlement agreement contained the following language: "The Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 to enforce the terms of the Settlement Agreement." On March 1, 2013, counsel for plaintiffs filed a request for dismissal on Judicial Council form CIV-110 that contained the following language counsel inserted into the document: "Court shall retain jurisdiction to enforce settlement per C.C.P. § 664.6." A deputy clerk entered the dismissal "as requested" on the same day. The plaintiffs filed a similar action challenging a different Business Improvement District (the "SPBID") in November 2012, which the City also settled in 2013, which contained identical language and was dismissed using the same forms.

The DCBID and SPBID each expired on December 31, 2017. They were renewed pursuant to statute for a new term to begin on January 1, 2018. During the parties' discussions regarding the Business Improvement Districts' (BIDs) renewals, the City informed the plaintiffs that it believed the settlement agreements terminated with the BIDs' expiration. The City contended that the renewal discontinued each of the BIDs "in its current formulation," and that the City would therefore no longer be required to remit to plaintiffs the amounts the BIDs had assessed those entities.

On January 4, 2018, plaintiffs filed motions to enforce the settlement agreements under section 664.6. The trial court heard and denied the motions on January 31, 2018 on the merits. Plaintiffs appealed. Affirmed, on the ground that the trial court lacked jurisdiction to hear the motions.

Although the parties tried to characterize the plaintiffs' requests for dismissal as requests to the trial court that it retain jurisdiction under section 664.6 to enforce the parties' settlement agreements, the court disagreed with that characterization. The requests for dismissal were not signed by the "parties" (or even a single "party") as that term in section 664.6 has been uniformly construed by California courts.

A request for the trial court to retain jurisdiction under section 664.6 "must conform to the same three requirements which the Legislature and the courts have deemed necessary for section 664.6 enforcement of the settlement itself: the request must be made (1) during the pendency of the case, not after the case has been dismissed in its entirety, (2) by the parties themselves, and (3) either in a writing signed by the parties or orally before the court." (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440.) The "request must be express, not implied from other language, and it must be clear and unambiguous." (*Ibid.*)

The request to the court that it retain jurisdiction under section 664.6 must be made by the parties. "[A] request that jurisdiction be retained until the settlement has been fully performed must be made either in a writing signed by the parties themselves, or orally before the court by the parties themselves, not by their attorneys of record, their spouses, or other such agents." (*Wackeen*, *supra*, 97 Cal.App.4th at p. 440.) The Judicial Council form CIV-110 in each case was signed only by an attorney for plaintiffs; not by the plaintiffs.

The City contends that the settlement agreements (which were signed by the parties) but which were never presented to the trial court before the plaintiffs requested dismissal, were the request to retain jurisdiction and *that* request was then communicated to the trial court via the Judicial Council form CIV-110. The court disagreed. The settlement agreements were not attached to the Judicial Council form requests for dismissal or otherwise transmitted to the trial court before the cases were dismissed. The City's argument runs directly contrary to our Supreme Court's determination that "the term 'parties' as used in section 664.6 ... means the litigants themselves, and does not include their attorneys of record."

"In this case, the parties could have easily invoked section 664.6 by filing a stipulation and proposed order either attaching a copy of the settlement agreement and requesting that the trial court retain jurisdiction under section 664.6 or a stipulation and proposed order signed by the parties noting the settlement and requesting that the trial court retain jurisdiction under section 664.6. The process need not be complex. But strict compliance demands that the process be followed.


Ehrlich

Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm*, in Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of* Advocate *magazine and a two-time recipient of the CAALA Appellate Attorney of the Year award.*

Copyright © 2019 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**