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Appellate Report

Conditional acceptance of a 998 offer invalidates the offer

By Jeffrey I. Ehrlich

***Siri v. Sutter Home Winery, Inc.* (2022) 82 Cal.App.5th 685 (First Dist., Div. 4.)**

Says Siri sued her employer, Trinchero, for wrongful termination in violation of public policy. Sutter served an offer to compromise pursuant to section 998 of the Code of Civil Procedure. The offer was to pay Siri $500,000 in exchange for her dismissal with prejudice of all claims. The offer stated that it "may be accepted by signing the below Notice of Acceptance," and it was accompanied by a page so captioned, with signature lines for Siri and her lawyer. While the offer was pending, the parties had discussion about the impact Siri's acceptance of the offer would have on her right to recover prejudgment interest based on a prior 998 offer she had served at the outset of the litigation, for $499,000.

Before the offer expired, Siri's lawyer served a document titled "Notice of Conditional Acceptance of [Trinchero's section] 998 Offer." It stated, "Subject to clarification by the court in regard to [Siri's section] 998 offer dated May 12, 2012, entitling her to prejudgment interest, and subject further to clarification by the court in regard to the scope of [Trinchero's section] 998 offer dated October 29, 2019, and clarification in regard to entry of the proposed judgment tendered by [Siri], [Siri] gives formal notice of her conditional acceptance of [Trinchero's section] 998 offer to compromise, in the amount of $500,000, dated October 29, 2019."

The next day, Siri filed the objections to Trinchero's section 998 offer, together with a motion asking the court to enter a judgment in her favor that would be "consistent with [her] conditional acceptance" and include prejudgment interest. Soon afterward, Trinchero filed a "Notice of Plaintiff's Acceptance of [Section] 998 Offer." The notice, to which a copy of the conditional acceptance was attached, stated that "Although [Trinchero] does not waive any right to file an opposition to separately respond to the substantive issues raised in [Siri]'s motion requesting entry of judgment pursuant to ... section 998, ..., [Trinchero] notes [that] the 'conditions' [Siri] addresses in the motion and partially sets forth in her acceptance of [Trinchero]'s [section] 998 offer are simply requests that the court clarify post-resolution questions." Trinchero requested that the court "vacate the trial date and all related deadlines ..., pending entry of the dismissal of the action with prejudice, while retaining jurisdiction to hear [Siri]'s motion" The court did so.

Subsequently, the court issued a minute order denying Siri's motion for entry of judgment. The court reasoned that if Siri had accepted the section 998 offer, she would not be entitled to an order entering judgment in her favor but would be obliged to dismiss her claims with prejudice, which she had not done. The court noted that issues regarding the effect of Siri's "conditional acceptance," and whether the parties had entered a binding settlement, were not yet before it.

Thereafter, Trinchero filed a motion pursuant to section 998 to enforce the purported settlement agreement, supported by a declaration from its lawyer describing her negotiations with plaintiff 's lawyer. Siri filed an opposition and evidentiary objections. The court sustained the objections but granted the motion. In its minute order, the court found that Siri's service of her conditional acceptance created a binding settlement, while adding that its finding was supported by Trinchero's notice of acceptance.

Siri then filed a motion seeking pre- and post-judgment interest. The court denied her request, in an order Siri did not challenge on appeal. The court entered a judgment of dismissal, and Siri filed a timely notice of appeal. Reversed.

To form a binding settlement, an offeree's acceptance of a section 998 offer must be absolute and unqualified. A qualified or conditional acceptance does not form a contract but constitutes a counteroffer. (Civ. Code, § 1585.) At common law, such a counteroffer terminates the offer; in the section 998 context, however, the statute's pro-settlement purpose dictates that a counteroffer does not terminate a section 998 offer but leaves the offer in effect until it expires or is revoked.

Trinchero's offer was to pay $500,000 "in full and complete settlement of [Siri's] claims in this action." Had the section 998 offer been accepted without qualification, the action would have been dismissed without any further proceedings and the possibility that the court might award interest would have been foreclosed. Trinchero's offer was to pay $500,000 without having to risk, among other things, the possibility of being required to pay more. Its offer did not assume the risk that the court, exercising its "ongoing authority to hear those issues," might award prejudgment interest on top of the $500,000 offered "in full and complete settlement of [Siri's] claims." That the court ultimately denied Siri's request for prejudgment interest does not change the fact that the section 998 offer effectively required Siri to abandon any request for such interest, and that her conditional acceptance effectively rejected that element of the offer with a counteroffer that would enable her to make such a request.

Thus, Siri's "conditional acceptance" was precisely that – an "acceptance" conditioned on the addition of new terms to the bargain proposed in the section 998 offer. The acceptance thus did not create a binding settlement enforceable under section 998 and the trial court erred in ruling that it did. The judgment dismissing the action must be vacated.


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