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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ASHLEY COOLEY, as Personal Representative, etc., Plaintiff and Appellant, v. PABLO DANIEL HERNANDEZ et al., Defendants and Respondents.	B312211 Los Angeles County Super. Ct. No. BC556252

APPEAL from orders of the Superior Court of Los Angeles County, Michelle Williams Court, Judge. Reversed with directions.

Horvitz & Levy, Jeremy B. Rosen, Selene Houlis, Alexandra M. Maher and Darren A. Schweitzer for Plaintiff and Appellant Ashley Cooley.

John Sullivan for Defendants and Respondents.

Ashley Cooley, as personal representative of plaintiff and decedent Takako Mikuriya, appeals the trial court's orders denying her motion for substitution and motion to enforce a settlement agreement under Code of Civil Procedure section 664.6.[1]

Mikuriya sued defendants for financial elder abuse and other claims related to a transaction to purchase her home for substantially less than its alleged market value. She died

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[1] Statutory references are to the Code of Civil Procedure, unless otherwise designated.

Cooley filed her notice of appeal in the name of "TAKAKO MIKURIYA by and through ASHLEY COOLEY, Personal Representative." However, because the trial court denied her request to substitute as plaintiff in the proceeding below, Cooley has also moved to substitute as appellant in place of decedent Mikuriya in this appeal. (See Cal. Rules of Court, rule 8.36.) As we will explain, because Mikuriya's causes of action did not abate upon her death (§§ 377.20, 377.21) and Cooley is the duly appointed special administrator of Mikuriya's estate, Cooley was and is authorized to continue this action on Mikuriya's behalf. (See § 377.31; *Pepper v. Superior Court* (1977) 76 Cal.App.3d 252, 260–261 (*Pepper*) ["the right of a personal representative to be substituted for a deceased party is absolute if the cause of action survives death"].) She also properly noticed this appeal in her representative capacity, and she is the proper appellant in this proceeding. Accordingly, although substitution is not necessary to recognize Cooley as the appellant, we will nevertheless grant her motion for substitution. (See, e.g, *Miller v. Bank of America National Trust & Savings Assn.* (1942) 52 Cal.App.2d 512, 517 [although notice of appeal authorized decedent's assignee to represent decedent's interest in appeal without formal substitution, reviewing court nonetheless granted motion to substitute assignee in place of decedent].)

while the case was pending, and Cooley—Mikuriya's granddaughter and heir—initiated probate proceedings, notifying the probate court of this pending action and petitioning the court for letters of administration. The probate court issued letters of special administration expressly authorizing Cooley to represent Mikuriya's estate in this action. Cooley then entered into a settlement agreement with defendants. It provided, among other things, defendants would pay Mikuriya's estate $160,000 in exchange for Cooley dismissing the pending litigation, and the trial court would retain jurisdiction to enforce the settlement under section 664.6. The probate court approved the settlement, Cooley voluntarily dismissed the case, and the trial court entered an order retaining jurisdiction as provided in the agreement. Defendants, however, failed to pay the money due under the settlement.

Cooley obtained a judgment to enforce the settlement under section 664.6, but the trial court later vacated that judgment (on defendants' motion), concluding it lacked "personal jurisdiction" over Cooley because she had not substituted as plaintiff in this action. In response, Cooley moved for substitution and renewed her motion to enforce the settlement, citing her appointment as special administrator of Mikuriya's estate. The trial court denied the motions, concluding Cooley could not continue the action because she had not filed an adequate declaration establishing her rights as Mikuriya's "successor in interest." (See § 377.32.)[2]

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[2] Section 377.32 requires a "decedent's successor in interest" to execute and file an affidavit proving, among other things, "[n]o other person has a superior right . . . to be substituted for the decedent in the pending action or proceeding" before the successor in interest may continue the decedent's action.

The trial court erred. As special administrator of Mikuriya's estate, Cooley had an absolute right to continue Mikuriya's action against defendants, and Cooley effectively was a party to the action upon her appointment and in her dealings with defendants culminating in the settlement agreement. (See § 377.31.) Furthermore, because Cooley was a party to the action when she and defendants signed the settlement agreement asking the court to retain jurisdiction under section 664.6, there was no legal or factual basis to deny her motion for judgment. Accordingly, we reverse the trial court's orders and direct the court to enter judgment in Cooley's favor consistent with the settlement's terms.

FACTS AND PROCEDURAL HISTORY

1. *Mikuriya Sues Defendants for Financial Elder Abuse*

According to the allegations of her complaint, Mikuriya was 86 years old and suffering from advanced cancer and dementia when, on August 21, 2014, defendants came to her home, unsolicited, with an offer to purchase the multiunit building. The property allegedly had a fair market value of approximately $800,000—over $780,000 of which Mikuriya claimed to hold in equity—and it generated at least $3,000 of monthly rental income. Defendants offered to purchase the property for $250,000, plus an additional $60,000 to be paid in $1,000

(§ 377.32, subd. (a)(6).) As we will explain, this statutory requirement does not apply to a decedent's personal representative, including the special administrator of the decedent's estate (Prob. Code, § 58, subd. (a)), who has an "absolute" right to continue a decedent's cause of action that survives death. (*Pepper, supra,* 76 Cal.App.3d at p. 260, citing former § 385 replaced by § 377.31.)

monthly installments for 60 months, and they agreed to allow Mikuriya to stay in her home rent-free for 60 months.[3]

Mikuriya signed documents transferring the property to defendant Romabella Properties (Romabella), but she did not receive copies of these documents. Instead, defendants left her a "memo" outlining the purported sale terms. The memo assessed the property's value at $400,000 and listed the "Total Cost To Buyer" as $430,300, including reduced rent for one of Mikuriya's tenants at a cost to defendants of $28,000.[4]

After her social worker discovered the memo on Mikuriya's coffee table four days later, she contacted Mikuriya's caretaker and granddaughter, as well as an attorney. The attorney met with Mikuriya, notified defendants of Mikuriya's intention to rescind the transaction, and recorded a lis pendens on the property.[5]

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[3] With their answer to the complaint, defendants submitted an appraisal valuing the property at $550,000.

[4] Mikuriya attached the memo as an exhibit to her complaint. A notation to the memo stated, "Including monthly proceeds ($1,000); Complimentary Rent ($1,500); Repair Savings ($700); seller is saving **$3,200 a month!!**" Another notation stated, "Also you have the benefit of the assistance from our company in all aspects of this transaction, now and in the future. We will insure that things are done properly!"

[5] Late in the evening on August 28, 2014, defendants allegedly "barged into" Mikuriya's home to prevent her from undoing the sale. In fear for their safety, Mikuriya's granddaughter contacted law enforcement. Defendants did not leave until the responding officers "forcibly escorted" them off the premises. Mikuriya sued defendants the next day.

On August 29, 2014, Mikuriya commenced this action against defendants. Her six-count complaint asserts causes of action for rescission of contract, quiet title, slander of title, fraud, unconscionability, and financial elder abuse under Welfare and Institutions Code section 15600 et seq.

2. *Cooley Is Appointed Special Administrator of Mikuriya's Estate*

Mikuriya died on November 23, 2014. On December 5, 2014, her granddaughter, Cooley, petitioned the probate court for letters of administration. On December 10, 2014, the probate court appointed Cooley special administrator of the estate and issued letters of special administration. The letters expressly authorized Cooley to represent Mikuriya's estate in the pending civil action against defendants.

On December 18, 2014, Mikuriya's attorney filed a case management statement, notifying the trial court of Mikuriya's death and Cooley's appointment as special administrator of the estate. Counsel also notified the court of a related unlawful detainer case that Romabella had filed against Cooley.

On April 2, 2015, the trial court held a case management conference to review the status of the civil action. Mikuriya's and defendants' counsel were present and appeared on the parties' behalf. The court's minute order memorializing the conference recounted Mikuriya had died after commencing the action; a probate case had been opened; Cooley had been appointed special administrator of Mikuriya's estate and had been named as a defendant in Romabella's unlawful detainer action; and the parties' counsel had advised that a global settlement had been reached, subject to the probate court's approval. In view

of the settlement, the court set an order to show cause regarding dismissal of the action.

3. *Cooley and Defendants Enter a Settlement Agreement for Dismissal of the Civil Action and Retention of Jurisdiction under Section 664.6*

On June 29, 2015, Cooley and defendants executed a global settlement agreement to dispose of this action, Romabella's unlawful detainer case, and the probate case. The agreement, bearing the case caption for this action, stated it was entered "between Plaintiff Ashley Cooley as Special Administrator of the Estate of Takako Mikuriya ('Plaintiff')" and each of the defendants "to provide for the full resolution of the claims asserted in the Complaint in this Action." Under its terms, defendants would pay $100,000 to Mikuriya's estate 30 days after the probate court's approval of the settlement and an additional $60,000 in $2,000 monthly installments beginning 60 days after approval. In exchange, Cooley would move out of the property and withdraw the lis pendens. Cooley, as "Plaintiff," was also charged with filing a Notice of Settlement with the court; dismissing her Probate Code section 850 petition in probate court; and "fil[ing] a Request for Entry of Dismissal with Prejudice with the Court of the entire Action and ask[ing] the Court to retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure Section 664.6."

On June 18, 2015, the probate court approved the agreement and authorized Cooley to settle this action according to its terms. Consistent with the settlement agreement, on July 1, 2015, plaintiff's counsel, "By and through the Administrator of Estate, Ashley Cooley," filed a notice of settlement approval and requested the trial court vacate

the pending order to show cause and dismiss the action while retaining jurisdiction under section 664.6.

On July 2, 2015, the trial court discharged the order to show cause and entered an order providing, "The court shall retain jurisdiction to enforce the terms and conditions of the settlement pursuant to Code of Civil Procedure section 664.6." The same day, plaintiff's counsel filed a form request for dismissal, also requesting the court retain jurisdiction under section 664.6. Counsel attached the settlement agreement, signed by Cooley and each defendant, which required Cooley to request section 664.6 jurisdiction. The superior court clerk entered the dismissal as requested.

After dismissing the civil action, Cooley performed her remaining obligations under the agreement. She withdrew the lis pendens from the property and dismissed her Probate Code section 850 petition in the probate court. She also moved out of what had been Mikuriya's former home. With the title clean, defendants sold the property for "substantial consideration." However, despite numerous requests for compliance with the settlement, defendants made none of the required payments.

4. *The Trial Court Enters Judgment Enforcing the Settlement*

In August 2017, Cooley's counsel moved to enforce the settlement in the probate court. The probate court instructed counsel to request enforcement in the civil action as it was the trial court in this case that retained jurisdiction under section 664.6. On September 11, 2019, Cooley filed an ex parte application for judgment enforcing the settlement agreement.[6]

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[6] As provided in the settlement agreement, Cooley and defendants agreed the court would be authorized to enter

On September 12, 2019, the trial court entered judgment enforcing the settlement under section 664.6. In accordance with the settlement agreement's terms, the judgment awarded "Cooley, Administrator for Takako Mikuriya," $181,275, including $21,275 for attorney fees and costs.[7]

5. *The Trial Court Vacates the Judgment and Denies Cooley's Motion for Substitution*

Defendants moved to vacate the judgment, arguing it was void because Cooley had not substituted as plaintiff in this action and the trial court therefore lacked "jurisdiction over the person of the purported plaintiff [Cooley]."

The trial court granted the motion and vacated the judgment, reasoning Cooley was "not properly a successor in interest" because she had not filed an affidavit under section 377.32. (See fn. 2, *ante*.) Thus, the court concluded it "did not have personal jurisdiction over Cooley to enter the judgment" when it granted her ex parte application.

Cooley moved for substitution on the ground that she was entitled to continue Mikuriya's action as personal representative and special administrator of Mikuriya's estate under section 377.31. (See fn. 2, *ante*.) She also renewed her

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judgment under section 664.6 "on an ex parte application without the necessity of a noticed motion."

[7] The settlement agreement provides, "In the event of a dispute relating to this Agreement, the prevailing party shall be entitled to all attorneys' fees and costs incurred after the execution of this Agreement, including attorney fees and costs relating to the enforcement of this Agreement and the entry, enforcement and collection of the Judgment upon this Agreement."

motion for judgment to enforce the settlement agreement under section 664.6. Defendants opposed the motions, arguing Cooley was not a party to the civil action when she and defendants entered the settlement agreement and the court lost jurisdiction when, at Cooley's request, the case was dismissed.

The trial court denied the motions. The court determined it had maintained jurisdiction under section 664.6, but Cooley could not be substituted as plaintiff because she had not submitted a successor-in-interest declaration under section 377.32.

Cooley timely appealed both orders.

DISCUSSION

1. *The Trial Court Erred in Failing to Recognize Cooley's Right to Continue the Action as Special Administrator of Mikuriya's Estate*

Cooley contends the trial court misunderstood the law governing the survival and continuation of a decedent's legal action. (See § 377.30 et seq.; *Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1522–1523.) As special administrator of Mikuriya's estate with express authority to prosecute Mikuriya's surviving claims against defendants, Cooley argues she effectively stood in Mikuriya's place as plaintiff when she entered into the settlement agreement with defendants, and the trial court thus erred by refusing to recognize her as a party when she moved to enforce the settlement. We agree the court erred.

"Except as otherwise provided by statute, a cause of action for or against a [decedent] . . . survives subject to the applicable limitations period" (§ 377.20, subd. (a)), and a "pending action or proceeding does not abate by the death of a party if the

cause of action survives" (§ 377.21). (See also Welf. & Inst. Code, § 15657.3, subd. (c) [For claims under the Elder Abuse and Dependent Adult Civil Protection Act (*id.,* § 15600 et seq.), "[t]he death of the elder or dependent adult does not cause the court to lose jurisdiction of a claim for relief for abuse of that elder or dependent adult."].)

A decedent's personal representative, including a special administrator of the decedent's estate, has authority to litigate surviving causes of action for the estate's benefit. (See Prob. Code, § 58, subd. (a) [" 'Personal representative' means executor, administrator, administrator with the will annexed, [and] special administrator."]; *id.*, § 9820; see also Welf. & Inst. Code, § 15657.3, subd. (d)(1) ["after the death of the elder or dependent adult, the right to commence or maintain an action shall pass to the personal representative of the decedent"].) Indeed, except to the extent the appointment order prescribes terms, a special administrator has the authority and duty to maintain suits and other legal proceedings on the estate's behalf "without further order of the court." (Prob. Code, § 8544, subd. (a)(3); see also *Estate of Turino* (1970) 8 Cal.App.3d 642, 647, citing former Prob. Code, § 573 replaced by § 377.30 [administrators have a "duty to prosecute and defend . . . suits with respect to claims in favor of or against the estate"].)

Consistent with the foregoing, section 377.31 provides that, "[o]n motion after the death of a person who commenced an action or proceeding, the court *shall* allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, *if none*, by the decedent's successor in interest." (Italics added.) Under the statute, "the right of a personal representative to be substituted for a deceased party

is absolute if the cause of action survives death." (*Pepper, supra,* 76 Cal.App.3d at pp. 260–261; accord, Revised Recommendation: Litigation Involving Decedents (Apr. 1992) 22 Cal. Law Revision Com. Rep. (1992) p. 932 <http://www.clrc.ca.gov/pub/Printed-Reports/Pub176.pdf> [as of June 22, 2023], archived at <https://perma.cc/B2CZ-FKJD> ["Section 377.31 restates part of former Section 385, but recognizes that the personal representative or successor in interest has an absolute right to be substituted for the decedent; substitution in this situation is not discretionary with the court."].)

Here, the probate court appointed Cooley special administrator of Mikuriya's estate with express authority to represent the estate in this action against defendants. However, notwithstanding the clear mandate of section 377.31, in vacating its earlier judgment, and then denying Cooley's motion for substitution and her renewed motion to enforce the settlement, the trial court concluded it could not grant relief to Cooley because she had failed to establish her right to continue the action as Mikuriya's "successor in interest" under section 377.32. This was error.

Under section 377.32, before a "decedent's successor in interest" may continue a pending action, he or she must execute and file an affidavit declaring, among other things, " '[n]o proceeding is now pending in California for administration of the decedent's estate' " and " '[n]o other person has a superior right . . . to be substituted for the decedent in the pending action or proceeding.' " (§ 377.32, subd. (a)(3), (6).) Critically, however, if there *is* a pending administration of the estate (as there was here) and a *special administrator has been appointed* to act as the decedent's *personal representative* (as Cooley had been),

section 377.32 *does not apply* and "the court shall allow [the] pending action or proceeding . . . to be continued by the decedent's personal representative" as mandated in section 377.31. (See *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 301 ["the principal change made throughout the [legislation adding section 377.10 et seq.] was to authorize the decedent's successor in interest to bring or defend an action when there are no probate proceedings pending and hence no personal representative appointed"].) Because Cooley was special administrator of Mikuriya's estate, the trial court erred when it declined to recognize Cooley as a party to the pending action on the ground that she had not filed a section 377.32 affidavit.

2. *Defendants Treated Cooley as a Party to the Action and Were Not Prejudiced by Her Failure to File a Motion for Substitution*

Defendants acknowledge Cooley had the right to continue Mikuriya's action as special administrator of the estate, but they argue she could not become a *party* to the action until she filed a "motion" as provided in section 377.31. Further, because Cooley did not file a motion for substitution, defendants contend the portion of the settlement agreement calling for the trial court to retain jurisdiction under section 664.6 is necessarily void. They maintain this outcome is dictated by the statute's text, which authorizes the procedure only if "*parties to pending litigation* stipulate, in a writing signed by the parties" that "the court may retain jurisdiction over the parties to enforce the settlement until performance in full." (§ 664.6, subd. (a), italics added; see *Levy v. Superior Court* (1995) 10 Cal.4th 578, 583–586 (*Levy*).)

Defendants are correct inasmuch as section 377.31 plainly directs the court to allow a pending action to be continued by a decedent's personal representative "[o]n *motion* after the death of a person who commenced an action." (Italics added.) However, they are mistaken to the extent they contend Cooley's failure to file a motion for substitution renders the court's retention of jurisdiction void. Contrary to that supposition, our courts have consistently held judicial action taken after a party's death and in the absence of a substitution motion should not be set aside unless the personal representative's failure to substitute has caused some prejudice to the other party. (See, e.g., *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957–959 (*Sacks*); *Machado v. Flores* (1946) 75 Cal.App.2d 759, 761–763 (*Machado*); see also *Smith v. Bear Valley Milling & Lumber Co.* (1945) 26 Cal.2d 590, 602 (*Smith*); *Leavitt v. Gibson* (1935) 3 Cal.2d 90, 103–107 (*Leavitt*); *Collison v. Thomas* (1961) 55 Cal.2d 490, 496 (*Collison*); cf. *Judson v. Love* (1868) 35 Cal. 463, 467; *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1004–1005, 1009; *Boyd v. Lancaster* (1939) 32 Cal.App.2d 574, 579–581.) Under these authorities, a judgment or order entered without the substitution of a personal representative is not void, but merely voidable upon a showing of prejudice because of lack of notice, lack of proper presentation, or some other disadvantage. (*Sacks,* at pp. 957–959 [reviewing cases]; cf. *Grappo,* at p. 1009 [applying *Sacks* and finding prejudice sufficient to set aside default judgment against deceased defendant].)

Our Supreme Court has long recognized that " 'the death of a party pending suit does not oust the jurisdiction of the court, and hence that the judgment [entered for or against a deceased party] is voidable only, not void.' " (*Collison, supra,* 55 Cal.2d

at p. 496, quoting *Todhunter v. Klemmer* (1901) 134 Cal. 60, 63; see *Martin v. Wagner* (1899) 124 Cal. 204, 205; *Tyrrell v. Baldwin* (1885) 67 Cal. 1, 4–5; *Phelan v. Tyler* (1883) 64 Cal. 80, 82–83.) Thus, while a court " 'ought not to proceed to judgment without making the [deceased's] representatives or successors in interest . . . parties to the action,' " doing so is " 'irregular merely' " (*Hogan v. Superior Court of San Francisco* (1925) 74 Cal.App. 704, 709–710), and the judgment will be treated as "rendered nominally for or against [the decedent], as representing his heirs, or other successors, who are the real parties intended" (*Todhunter,* at p. 63).

Applying these principles, the court in *Machado* rejected a judgment creditor's contention that the plaintiff's death rendered a default judgment void due to the failure to substitute the plaintiff's personal representative as a party in the enforcement action. (*Machado, supra,* 75 Cal.App.2d at pp. 761–763.) Addressing the issue of voidability, the reviewing court found it "difficult to see how the [defendant] . . . ha[d] suffered prejudice" by reason of the lower court's actions, given that the judgment had been "regularly obtained with the one exception [being] the plaintiff therein had died and no substitution of representatives had occurred." (*Id.* at pp. 762–763.) As the *Machado* court explained, at the time the complaint was filed, the plaintiff was still alive; default was entered "in the customary manner" upon the defendant's failure to appear; the defendant took no steps to set aside the default "until an attempt was made to collect the same"; and the "collection of the judgment [would] merely mean that the [defendant] is satisfying, willingly or unwillingly, an obligation established in the original judgment." (*Id.* at p. 763.) Under those circumstances, the failure to substitute

the plaintiff's representative was "a mere irregularity" that, absent prejudice, did not warrant setting aside the judgment. (*Id.* at pp. 762, 764.)

The *Sacks* court likewise held a technical failure to substitute a deceased defendant's personal representative did not automatically deprive the trial court of jurisdiction to enter summary judgment where the plaintiff had suffered no prejudice due to the defendant's death. (*Sacks, supra,* 7 Cal.App.4th at p. 956.) As the reviewing court explained, while a judgment typically cannot "be rendered for or against a personal representative of a decedent's estate, until the representative has been made a party by substitution," this "general proposition has not been applied blindly, but rather has acted to prevent prejudice to the parties because of lack of notice, lack of proper representation, or some other disadvantage." (*Id.* at p. 957.) Finding no prejudice, the *Sacks* court concluded the summary judgment should stand, as the plaintiff had received sufficient notice of the motion and, notwithstanding the defendant's death, "the trial court, upon a proper motion of any party, could have permitted the action to continue against [the defendant's] personal representative." (*Id.* at pp. 953, 956–957; see also *Smith, supra,* 26 Cal.2d at p. 602 [rejecting argument that trial court lacked authority to render judgment for decedent in absence of substitution, observing "it is apparent that no prejudice has resulted to plaintiffs from the failure to order the substitution"].)

As in *Machado* and *Sacks*, the trial court retained fundamental jurisdiction over this action after Mikuriya's death, and Cooley had an absolute right to continue the action as special administrator of Mikuriya's estate under governing law. (See

§ 377.31.) Although Cooley did not file a substitution motion, the letters of special administration gave her express authority to prosecute Mikuriya's surviving claims against defendants, and, critically, defendants and the trial court recognized and treated Cooley *as a party* when she entered into the settlement agreement with defendants and later dismissed the case.

The settlement agreement recited that it was "entered into by and between Plaintiff Ashley Cooley as Special Administrator of the Estate of Takako Mikuriya" and defendants. It called for Cooley, as plaintiff, to dismiss the pending action against defendants and to ask the trial court to retain jurisdiction to enforce the settlement under section 664.6. Defendants' counsel appeared at two case management conferences where the trial court was informed of Mikuriya's death, Cooley's appointment as special administrator, and the parties' (Cooley's and defendants') settlement of the case. After the probate court approved the settlement agreement and authorized Cooley to dismiss this action, the trial court discharged its pending order to show cause regarding dismissal and entered an order retaining jurisdiction to enforce the settlement under section 664.6. Cooley, as plaintiff, filed a request for voluntary dismissal of the action, and the superior court clerk entered the dismissal as requested. Under these facts, Cooley effectively was a party to the action, and the trial court's orders treating her as a party could not be set aside unless her failure to file a motion for substitution resulted in prejudice to defendants. (See *Machado, supra,* 75 Cal.App.2d at pp. 761–764; *Sacks, supra,* 7 Cal.App.4th at pp. 956–957.)

Defendants do not contend they were prejudiced by these proceedings. Nor could they, as the record plainly establishes they *benefited* from treating Cooley as a party to the action

and acted exactly as they would have had a substitution motion been filed. (See, e.g., *Leavitt*, *supra*, 3 Cal.2d at p. 106 [no prejudice where court would have decided the case the same regardless of death of defendant before plaintiff filed reply brief].) Defendants negotiated the settlement with Cooley—not Mikuriya. They expressly recognized and represented to the court in the settlement agreement that Cooley was the plaintiff in the action with authority to settle and dismiss the case. Upon Cooley's voluntary dismissal, which could be entered only "upon written request of *the plaintiff*" (§ 581, subd. (b), italics added), defendants obtained clean title to the property, which allowed them to sell the property at an apparent profit. And Cooley vacated the property under the terms of the settlement agreement, while defendants avoided the cost of prosecuting their unlawful detainer action. Simply put, there was no "lack of notice, lack of proper representation, or some other disadvantage" to defendants that would justify voiding the trial court's order retaining jurisdiction on account of the mere irregularity that Cooley did not file a substitution motion. (*Sacks, supra,* 7 Cal.App.4th at p. 957; *Machado, supra,* 75 Cal.App.2d at pp. 762–763.)

3. *Cooley Effectively Was a Party to the Action and Had Authority to Enter the Settlement Agreement on the Estate's Behalf under Section 664.6*

Defendants "do not dispute" that a personal representative's failure to file a motion for substitution "is a mere technicality that may be overcome" in "certain situations." However, they argue "this rule should not govern this action" because the "strict nature" of section 664.6 precludes anyone other than the formal "parties" to the litigation from invoking

the statute to enforce a settlement. For the reasons discussed above, we conclude Cooley effectively was a party to the action when she executed the settlement agreement with defendants. And, in any event, regardless of whether she formally substituted, Cooley plainly had authority to enter the settlement agreement as special administrator of Mikuriya's estate and to enforce the settlement under section 664.6 on the estate's behalf. (See *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294, 1296–1297 (*Provost*) [stipulated settlement signed by corporate defendant's "duly authorized representative" enforceable under section 664.6].)

Section 664.6 provides "the court, upon motion, may enter judgment pursuant to the terms of the settlement" and "the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement," if "parties to pending litigation [so] stipulate, in a writing signed by the parties." (§ 664.6, subd. (a).) The Legislature enacted the statute to create a summary procedure for enforcing settlement agreements, which previously could be enforced only by a motion for summary judgment, a separate suit in equity, or an amendment to the pleadings. (*Levy, supra,* 10 Cal.4th at pp. 584–585.)

In *Levy*, our Supreme Court considered whether trial courts may enforce a settlement under section 664.6 when a written stipulation is signed by a litigant's attorney, but not the litigant personally. (*Levy, supra,* 10 Cal.4th at p. 580.) Although the term "party" is recognized in other contexts to include a litigant's attorney of record (e.g., § 437c), the *Levy* court determined the Legislature intended "a narrower meaning" for the word, "namely the specific person or entity by or against whom legal proceedings

are brought." (*Levy,* at p. 583.) Unlike other steps an attorney takes in managing litigation, the court reasoned a settlement ends the lawsuit and is "such a serious step that it requires the client's knowledge and express consent." (*Ibid.*) Thus, to ensure "parties" were protected "from impairment of their substantial rights without their knowledge and consent," the *Levy* court held "the term 'parties' as used in section 664.6 . . . means the litigants themselves, and does not include their attorneys of record." (*Id.* at pp. 585–586; see also *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1121 [interpreting *Levy* to preclude use of section 664.6 "to enforce a settlement agreement signed only by a party's agent" where principal "had no prior knowledge and did not consent to the obligations imposed upon it by the settlements"].)

The reviewing court in *Provost* considered whether *Levy* precluded enforcement under section 664.6 of a stipulated settlement signed by a corporate defendant's employee and "duly authorized representative." (*Provost, supra,* 201 Cal.App.4th at pp. 1294–1295.) In concluding the employee's signature was equivalent to that of a party litigant under *Levy*, the *Provost* court invoked the "well-established rule that a corporation acts through its agents and employees" and reasoned the employee's "designation and action on behalf of [the corporation] fully satisfie[d] the rationale of *Levy*." (*Provost,* at pp. 1296–1297.) The record showed the corporation " 'direct[ly] participat[ed]' " in the settlement "with 'knowledge and consent' [citation] through . . . its employee," and the employee "was intimately and fully familiar with the case [and] understood the 'seriousness and finality' of settling on those terms." (*Id.* at p. 1297, quoting *Levy, supra,* 10 Cal.4th at p. 585.) Because the employee "was

in as good or better a position as anyone to best protect [the corporation's] interests in the settlement," the *Provost* court held her signature was effectively that of a party under section 664.6, even though she was not a corporate officer. (*Provost,* at p. 1297.)

Because Cooley did not move for substitution after Mikuriya's death, defendants contend she "was not a party to the action" and "no one represented Mikuriya's estate in the action when Cooley asked the court to retain jurisdiction" to enforce the settlement under section 664.6. We disagree. As discussed above, the probate court's letters of special administration expressly vested Cooley with authority to litigate the claims against defendants on behalf of Mikuriya's estate and, in approving the settlement, the probate court determined Cooley had reasonably discharged her duty as administrator in settling the estate's claims against defendants. (See *Marsh v. Edelstein* (1970) 9 Cal.App.3d 132, 142 [the probate court has jurisdiction over all property in the estate, with the responsibility to ensure its proper disposition].) For their part, in entering the settlement agreement and presenting it to the trial court, defendants expressly represented and acknowledged Cooley was the plaintiff in the action for purposes of enforcing the settlement under section 664.6, notwithstanding her failure to file a substitution motion. The trial court accepted that representation, both in ordering it would retain jurisdiction and in entering Cooley's voluntary dismissal. (See § 581, subd. (b).) Because defendants were not prejudiced by these proceedings (and, in fact, benefited from them), we conclude Cooley effectively was a party under section 664.6 when she signed the settlement agreement and the trial court's order retaining jurisdiction must therefore

be enforced. (*Machado, supra,* 75 Cal.App.2d at pp. 761–764; *Sacks, supra,* 7 Cal.App.4th at pp. 956–957.)

In any event, a formal substitution motion also was not necessary because, contrary to defendants' assertion, as special administrator of Mikuriya's estate, Cooley was the estate's "duly authorized representative" when she signed the settlement agreement and her actions on the estate's behalf "fully satisfie[d] the rationale of *Levy*." (*Provost, supra,* 201 Cal.App.4th at pp. 1294, 1297.)[8] Like the corporation in *Provost*, the estate " 'direct[ly] participat[ed]' " in the settlement in the only way it could—through Cooley, its duly appointed special administrator. (*Id.* at p. 1297.) As confirmed by the probate court's order approving the settlement, Cooley "understood the 'seriousness and finality' of settling" on the terms set forth in the agreement. (*Ibid.*) Cooley was not just in "as good or better a position as anyone"—she was the *only one* who could "best protect [the estate's] interests in the settlement." (*Ibid.*) On this record, we conclude Cooley's signature as special administrator of Mikuriya's estate met the requirements of section 664.6,

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[8] As defendants tacitly acknowledge, because the claims in this action did not abate upon Mikuriya's death (see § 377.21), the litigation remained pending between the estate and defendants when Cooley executed the settlement agreement on the estate's behalf. (See *County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 566, fn. 6 ["Traditionally, death of a party also abated a civil action; but if the underlying cause of action survived, the action could be 'revived' by substituting the decedent's personal representative into the case. [Citation.] It is now declared by statute [§ 377.21] that no civil action is 'abate[d]' in these circumstances 'if the cause of action survives.' "].)

as interpreted in *Levy*, and authorized the trial court to retain jurisdiction to enforce the settlement under the statute.

4. *The Parties Unambiguously Requested the Trial Court Retain Jurisdiction to Enforce the Settlement*

A request for the court to retain jurisdiction under section 664.6 until a settlement has been fully performed must be made "in a writing signed by the parties" and "it must be clear and unambiguous." (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 440; *Mesa RHF Partners, L.P. v. City of Los Angeles* (2019) 33 Cal.App.5th 913, 917 (*Mesa*).) Defendants contend they did not "clearly agree" to the trial court retaining jurisdiction as required under section 664.6 because the settlement agreement stated only that "Plaintiff shall ask" the court to retain jurisdiction. The agreement is not reasonably susceptible of defendants' proffered interpretation.

The signed settlement agreement, attached to Cooley's notice of settlement and request for dismissal, provided:

> "Plaintiff's counsel shall file a Request for Entry of Dismissal with Prejudice with the Court of the entire Action and ask the Court to retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure [s]ection 664.6. Said provision may be utilized in the event of non-payment by Defendants of the sums hereinabove set forth."

Defendants' contention that Cooley alone agreed to the court retaining jurisdiction under section 664.6 is simply inconsistent with the clear statement that "[s]aid provision"—i.e., the retention of jurisdiction under section 664.6—"may be utilized in the event of non-payment by Defendants."

When defendants signed the agreement, they plainly and unambiguously agreed to the trial court retaining jurisdiction under section 664.6 to enforce the settlement in the event of their nonperformance. In attaching the signed settlement agreement to her request for dismissal, Cooley satisfied all requirements for a proper request to retain jurisdiction under the statute. (Cf. *Mesa*, *supra*, 33 Cal.App.5th at p. 918 [trial court did not retain jurisdiction to enforce settlements because "settlement agreements were not attached to the . . . requests for dismissal or otherwise transmitted to the trial court before the cases were dismissed"]; *Sayta v. Chu* (2017) 17 Cal.App.5th 960, 967 [court did not retain jurisdiction where no request was made and settlement providing for retained jurisdiction was not provided to the court before dismissal].)

Because the requirements under section 664.6 were satisfied here, the trial court erred in denying Cooley's motion to enforce the settlement.

DISPOSITION

The orders are reversed and the trial court is directed to enter judgment in favor of plaintiff Ashley Cooley, as personal representative and special administrator of Takako Mikuriya's estate, consistent with the terms of the parties' settlement agreement, subject to a proper application for attorney fees as provided in the agreement, if any. Cooley is entitled to costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

BENKE, J.*

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* Retired Justice of the Court of Appeal, Fourth District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.