NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AUSTIN J. NEWMAN, Plaintiff and Appellant, v. JOSE LARIOS, Defendant and Respondent.	G057542 (Super. Ct. No. 30-2017-00949469) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Niddrie Addams Fuller Singh, John S. Addams; The X-Law Group, Filippo Marchino, Damon Rogers and Thomas E. Gray for Plaintiff and Appellant.

Horvitz & Levy, Robert H. Wright, Emily V. Cuatto; Cullins & Grandy, James L. Grandy and Allison L. Grandy for Defendant and Respondent.

* * *

INTRODUCTION

The issue presented in this case is whether a plaintiff's offer to compromise pursuant to Code of Civil Procedure section 998 (section 998) was validly accepted by the defendant. Plaintiff Austin J. Newman, through his counsel, served defendant Jose Larios with an offer to settle a personal injury lawsuit for $15,000. That amount was known by Newman's counsel to be the policy limit under an automobile insurance policy issued to Larios by State Farm Mutual Automobile Company (State Farm). Counsel for Larios signed and served an acceptance of the section 998 offer. The snag here is that the acceptance states the offer was accepted by State Farm.

Newman contends the offer was not validly accepted because State Farm was not a party to the lawsuit. Larios contends the statutory requirements for acceptance were satisfied and State Farm had the ability to settle on its insured's behalf. The trial court concluded the acceptance was valid, granted Larios's motion to enforce settlement, and ordered entry of judgment. Newman appealed from the judgment.

We affirm. We conclude the section 998 offer was validly accepted because the acceptance was signed by Larios's counsel. There is no reasonable dispute that Larios accepted and agreed to be bound by the terms of the offer. Upholding the acceptance gives Newman exactly what he asked for in making the offer and frees up trial court resources for use in those cases in which the parties truly do not agree on settlement.

FACTS AND PROCEDURAL HISTORY

In October 2017, Newman filed a complaint for negligence against Christopher Malvin and Larios. Newman alleged he sustained serious and permanent injuries when his motorcycle was struck by cars driven by Malvin and Larios. At the time of the accident, Larios was an insured under an automobile policy issued by State Farm.

One week after the complaint was filed, a State Farm claims representative sent Newman's counsel a letter offering to settle for policy limits of $15,000. The letter identified the insureds as Ruby-Areceli Larios and Jose Larios and included the claim number and the date of loss. About one year later, after Newman had settled with Malvin, James L. Grandy, an attorney with the law firm of Cullins & Grandy, which was defending Larios, wrote to Newman's counsel asking again whether Newman would accept policy limits of $15,000.

Rather than respond directly to this offer, Newman, represented by new counsel, served a section 998 offer to compromise for $15,000. The section 998 offer was served on attorney Grandy as counsel for Larios. The offer permitted acceptance by "a statement that the offer is accepted and signed by Defendant Jose Larios or counsel for the accepting party." At the end of the offer, after the signature block for Newman's attorney, appeared this provision: "Defendant JOSE LARIOS accepts Plaintiff AUSTIN J. NEWMAN's offer to allow a judgment to be entered in Plaintiff Austin J. Newman's favor and against Defendant Jose Larios for the sum of Fifteen Thousand Dollars ($15,000.00) under the terms and conditions set forth in the Offer to Compromise pursuant to Code of Civil Procedure § 998." Beneath this provision was a signature block for Cullins & Grandy and attorney Grandy.

Ten days later, attorney Grandy responded to the section 998 offer by letter stating: "Please be advised *State Farm hereby accepts* your C.C.P. § 998 offer for $15,000.00. Please advise if you are agreeable to proceeding by way of Release and Dismissal. If not, we will file a formal acceptance with the Court." (Italics added.) The letter was signed on behalf of Grandy by another attorney from Cullins & Grandy. The letter referred to the case name, claim number, date of loss, name of insured, and "Our File" number.

In a letter to Newman's counsel dated November 5, 2018, Grandy confirmed the lawsuit against Larios had settled for policy limits "in exchange for

releases and a dismissal with prejudice." Enclosed with this letter was a proposed release agreement identifying Larios as one of the parties to be released.

In early 2019, an e-mail exchange erupted between counsel on whether the section 998 offer had been accepted and the litigation settled. Attorneys from Cullins & Grandy took the position that State Farm had timely accepted the section 998 offer and the litigation had settled. Newman's attorney took the position the section 998 offer had not been accepted because Larios had not accepted it and State Farm, which had, was not a party to the litigation.

Larios brought a motion to enforce settlement, Newman opposed the motion, and the trial court granted it. The court gave this explanation in a minute order: "The acceptance of the § 998 offer by a letter signed by counsel and authorized by State Farm (who, under the standard policy has the right to settle the action and allow judgment to be entered without permission from the insured) is sufficient to convey acceptance in a timely manner. Although it appears plaintiff's counsel may have expressed a desire to resolve this matter by release and settlement, those talks have bogged down. Defendant, though, may still file the § 998 offer and an acceptance (which can be signed by counsel, according to the demand itself), in which case the court will enter judgment."

Larios soon thereafter filed the offer and acceptance, and judgment against Larios for $15,000 was entered. Newman timely appealed from the judgment.

DISCUSSION

"[S]ection 998 establishes a procedure to shift costs if a party fails to accept a reasonable settlement offer before trial. The purpose of the statute is to encourage pretrial settlements." (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 764.) Pursuant to section 998, subdivision (b): "Not less than 10 days prior to commencement of trial . . . , any party may serve an offer

in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time."

If a defendant does not accept a section 998 offer made by a plaintiff, and the defendant fails to obtain a more favorable judgment, then the court may, in its discretion, require the defendant to pay the plaintiff a reasonable sum to cover the plaintiff's expert witness fees. (§ 998, subd. (d).)

As to mode of acceptance, section 998 provides: "Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party." (§ 998, subd. (b).) This requirement was satisfied because attorney Grandy, who was counsel of record for Larios, signed an acceptance of Newman's section 998 offer. No more was required for Larios to accept the offer.

Newman contends the acceptance was invalid because it stated that "State Farm" accepts the section 998 offer. But State Farm was providing Larios a defense under an automobile insurance policy. Newman's counsel knew that to be the case and knew the $15,000 offer represented State Farm's policy limits. State Farm had the right to settle for policy limits without Larios's consent (*Hurvitz v. St. Paul Fire & Marine Ins. Co.* (2003) 109 Cal.App.4th 918, 920) and had a duty to accept a reasonable settlement offer on its insured's behalf (*Camelot by the Bay Condominium Owners' Assn. v. Scottsdale Ins. Co.* (1994) 27 Cal.App.4th 33, 45). Newman's counsel knew that Grandy and his law firm were representing Larios in defending the personal injury suit. After accepting the offer, Grandy sent Newman's counsel a letter confirming a settlement had been reached and enclosing a proposed release agreement that clearly identified Larios as the party being released. There could be no reasonable dispute that by signing the acceptance, Grandy was accepting the offer on behalf of Larios and that Larios would be bound by its terms. The court clerk, when presented with the section 998 offer and

acceptance, could enter judgment without having to resolve any factual issues. (See § 998, subd. (b)(1).)

Section 998 was enacted for the purpose of encouraging settlement of lawsuits before trial. (*Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1017.) "The policy in favor of settlement 'primarily is intended to reduce the burden on the limited resources of the trial courts. The trial of a lawsuit that should have been resolved through compromise and settlement uses court resources that should be reserved for the resolution of otherwise irreconcilable disputes.'" (*Meleski v. Estate of Albert Hotlen* (2018) 29 Cal.App.5th 616, 624.) Rules that "encourage gamesmanship or spawn disputes over the operation of section 998" should be rejected. (*Martinez v. Brownco Construction Co., supra*, at p. 1021.)

These policies strongly support upholding the acceptance of Newman's section 998 offer. Affirming the judgment would mean Newman receives precisely what he wanted in making the section 998 offer. Newman's counsel, knowing State Farm's policy limits were $15,000, made a section 998 for that amount and served the offer on Larios's counsel. There is no question Newman was ready and willing to settle the lawsuit and avoid a trial for payment of $15,000—after all, Newman made the section 998 offer. The offer was accepted, meaning the lawsuit was resolved, trial was avoided, and court resources could be reserved instead for those cases that do not resolve through compromise and settlement. Technically speaking, State Farm, was not the party to the lawsuit, but to try to exploit that technicality, when the acceptance was signed by counsel for Larios, is pure gamesmanship which we reject. "Permitting a rule of overly strict construction . . . despite the parties' actual knowledge of the other's intent, would frustrate this purpose [of section 998] rather than serve it." (*Prince v. Invensure Ins. Brokers, Inc.* (2018) 23 Cal.App.5th 614, 623.)

Newman relies on *Bias v. Wright* (2002) 103 Cal.App.4th 811 (*Bias*) for the proposition that "a dispute over whether the acceptance by State Farm was valid should

have precluded the trial court from entering judgment under Section 998." In *Bias*, the defendant orally accepted the plaintiff's section 998 offer but the written acceptance filed with the court added a term requiring the parties to bear their own costs. (*Id.* at p. 820.) The trial court entered judgment under section 998, but the Court of Appeal reversed because the acceptance was not "'absolute and unqualified'" due to the added term. (*Ibid*.) The Court of Appeal concluded that the trial court erred by adjudicating disputed facts "concerning the parties' intent in reaching a section 998 compromise." (*Id.* at p. 822.)

Bias holds that an acceptance of a section 998 offer is not absolute and unqualified when it changes the substantive terms of the offer: In that situation, the acceptance becomes a counteroffer. (*Bias, supra,* 103 Cal.App.4th at pp. 820, 822; see Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2019) ¶ 12:615.6, p. 12(II)-35 ["A purported acceptance that changes the terms of the offer does not constitute an acceptance" (citing *Bias*)].) Here, the acceptance was absolute and unqualified and added no terms to the section 998 offer.

Newman also relies on cases holding that a section 998 offer must be served on the litigant and is invalid if served on the litigant's insurer. (*Najera v. Huerta* (2011) 191 Cal.App.4th 872, 878, *Arno v. Helinet* (2005) 130 Cal.App.4th 1019, 1025; *Moffet v. Barclay* (1995) 32 Cal.App.4th 980, 984.) Here, Newman's counsel served the section 998 offer on attorney Grandy, who was counsel for Larios in the personal injury lawsuit.

Newman invokes the equal dignities rule, by which "an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing." (Civ. Code, § 2309.) The equal dignities rule "requires that the agent have written authority to bind his principal upon any agreement within the class of contracts covered by the statute of frauds or other sections that make a writing necessary." (1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 389, pp. 415-416.)

Newman argues State Farm's authority to settle on behalf of Larios had to have been in writing because acceptance of a section 998 offer "shall be in writing." (§ 998, subd. (b).)

The equal dignities rule is inapplicable here for several reasons. First, attorney Grandy, who signed the acceptance, was counsel for Larios, the accepting party. Second, there was sufficient evidence to establish that Larios was State Farm's insured under an automobile insurance policy with a $15,000 policy limit and, therefore, State Farm had the authority to accept the section 998 offer. In addition, at the hearing on the motion to enforce settlement, attorney Grandy stated on the record that State Farm was acting as Larios's agent. Third, the equal dignities rule is a defense available only to the principal in actions by third parties to enforce a contract signed by the agent. (1 Miller & Starr, Cal. Real Estate (4th ed. 2019) § 1.87, p. 1-340.) Larios, the principal, is not asserting the equal dignities rule and does not challenge the acceptance of the section 998 offer.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.