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Judicial Estoppel Trumps Denial

Can a party who signs a settlement agreement be stopped from later claiming that it is unenforceable? A recent Court of Appeal case says yes.¹ Here is a brief summary:

Eva Cassidy was a popular singer and songwriter who died in 1996. Her parents, (Cassidy), inherited the rights to Eva's work. Eva's record company (Blix Street) sued Cassidy (and two others) over motion picture rights. Cassidy cross-complained against Blix Street over royalties, and the case went to trial. After the jury was selected, there was a break in the trial. After a mediation, the parties signed a settlement agreement, except one of the Cassidys (who gave authority to sign on his behalf), and two other parties, including one in bankruptcy (who both agreed to sign).

The agreement stated it was binding and subject to judicial enforcement pursuant to section 664.6; Blix Street's principal (Straw), a transactional attorney, believed the settlement was unfavorable and lacked material terms, but did not communicate this belief to the Cassidys or to the trial court; Blix Street's attorney confirmed in open court, with Straw present, that there was an enforceable settlement, that a long form agreement would be prepared, and that bankruptcy court approval would be obtained. Based on the representations of counsel that there was a settlement, the judge dismissed the jury and terminated trial proceedings. Soon after that, Blix Street took the position that there was no enforceable agreement.

Judicial estoppel is an equitable doctrine to protect against fraud on the courts. The trial court had sufficient evidence to conclude that Blix Street took two totally inconsistent positions in judicial proceedings—originally that there was an enforceable settlement agreement, but later that the settlement agreement was not enforceable. The trial court accepted Blix Street's first position that settlement was reached by terminating the trial and discharging the jury. There was no indication that Blix Street believed the contract was enforceable as a result of ignorance, fraud, or mistake. Indeed, Straw, a lawyer, conceded that he believed the settlement agreement lacked material terms at the same time Blix Street was taking the position in the trial court there was an enforceable settlement agreement. Accordingly, the doctrine of judicial estoppel could be applied in this case.

The court rejected Blix Street's arguments that settlement was conditioned upon signing the long-form agreement: "When parties intend that an agreement be binding, the fact that a more formal agreement must be prepared and executed does not alter the validity of the agreement," or that Blix Street would be forced to accept an unenforceable agreement without bargained-for consideration: "Estoppel—whether judicial, equitable or promissory—can, however, be used to bind a party to what would otherwise be an unenforceable contract."

This case illustrates the importance of making consistent representations to the court about settlement.

¹ *Blix Street Records, Inc. v. Cassidy* (Dec. 21, 2010, B219624) __ Cal.App.4th __ [2010 WL 5168828]