

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-14-00163-CV

CIG, L.L.C. AND TUHIN CHAUDHURI, Appellants

V.

**MADNESH PANJWANI, CENTURY VENTURE, INC., TRIPTESH
CHAUDHURY AND WELLS FARGO BANK COMPANY, N.A., Appellees**

**On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-179,393**

MEMORANDUM OPINION

CIG, L.L.C. and Tuhin Chaudhuri appeal from a final judgment rendered by the trial court in enforcement of a Rule 11 agreement. *See generally* Tex. R. Civ. P. 11. In a single issue, the appellants contend the trial court abused its discretion because the judgment affects the property rights of an intervening party that did not join the agreement. We affirm the trial court's judgment.

Background

In 1998, Century Venture, Inc. and Triptesh K. Chaudhury signed a real estate lien note payable to Prime Bank and secured by a deed of trust. Century's charter was revoked in 2005. In 2006, Wells Fargo Bank, N.A., the successor in interest to Prime Bank, transferred the note and lien to Madnesh Panjwani. On February 6, 2007, a substitute trustee foreclosed on the property described in the deed of trust and conveyed the property to Panjwani.

In 2007, Panjwani sued CIG, L.L.C., Century, and Triptesh Chaudhury, seeking a declaratory judgment that the substitute trustee's deed validly conveyed certain property and divested the defendants of any interest in the property. Panjwani's original petition alleged that CIG "is a limited liability company controlled by its sole member, Triptesh Chaudhury, and may be served by serving its registered agent Tuhin Chaudhuri, at its registered office[.]" It does not appear that Triptesh Chaudhury's ownership interest was challenged in a verified pleading. *See generally* Tex. R. Civ. P. 93. CIG, Century, and Triptesh Chaudhury were jointly represented by the same counsel in their defense to Panjwani's claims, in their pursuit of their counterclaim for wrongful foreclosure against Panjwani, and in their third-party claim against Wells Fargo for deceptive trade practices and fraud. On May 9, 2013, Panjwani, Wells Fargo, CIG, Century, and Triptesh

Chaudhury entered into an irrevocable Rule 11 memorandum of agreement to settle all disputes between the parties. Triptesh Chaudhury and the attorney representing him, CIG, and Century, signed the agreement.

In August 2013, Wells Fargo and Panjwani filed motions to enforce the irrevocable Rule 11 agreement. In his response to Panjwani's motion to enforce, Triptesh Chaudhury alleged that he did not execute the settlement documents because the "other member and director of CIG" advised Triptesh that he did not have the authority to sign, negotiate, or mediate on behalf of CIG. In October 2013, the trial court held a hearing, granted Wells Fargo's and Panjwani's motions to enforce the settlement agreement, and ordered CIG to execute a release of claims. In November 2013, CIG and Tuhin Chaudhuri, the brother of Triptesh Chaudhury who had not previously made a personal appearance in the case, filed a motion for reconsideration. The motion for reconsideration urged that "CIG has not signed off on a binding Rule 11[.]" An attorney who had not previously appeared in the case filed the motion for reconsideration on behalf of CIG and Tuhin Chaudhuri.

Triptesh Chaudhury signed the release in his individual capacity and as sole member of Century, but he did not sign for CIG. Wells Fargo and Panjwani filed counterclaims against CIG, Century, and Triptesh Chaudhury for breach of

contract and specific performance of the terms of the Rule 11 agreement, and moved for entry of a final judgment. Tuhin Chaudhuri and CIG, through Tuhin Chaudhuri, objected to requiring Chaudhuri to sign releases when he had not participated in the Rule 11 agreement individually or as an authorized representative of CIG, and they requested that the trial court dispose of the case by signing a final judgment. After conducting a hearing on the motion for reconsideration, the trial court signed a final judgment enforcing the settlement agreement. This appeal followed.

Enforcement of Rule 11 Agreement

It is well settled that a valid Rule 11 agreement may be enforced as a contract.

Although a court cannot render a valid agreed judgment absent consent at the time it is rendered, this does not preclude the court, after proper notice and hearing, from enforcing a settlement agreement complying with Rule 11 even though one side no longer consents to the settlement. The judgment in the latter case is not an agreed judgment, but rather is a judgment enforcing a binding contract.

Padilla v. LaFrance, 907 S.W.2d 454, 461 (Tex. 1995).

CIG and Tuhin Chaudhuri argue that the trial court erred in enforcing the Rule 11 agreement because Tuhin Chaudhuri did not join the agreement, either individually or as CIG. To support their argument that Tuhin Chaudhuri's joinder

was required for the agreement to be enforceable, the appellants point to an excerpt from Triptesh Chaudhury's 2008 deposition that was read into the record at the hearing on the motion to reconsider the motion to enforce the settlement agreement. In the deposition, Triptesh Chaudhury indicated that he formed CIG as its sole owner but that he sold his ownership interest to Tuhin Chaudhuri. However, no evidence was offered in the hearing on the motion to reconsider concerning the ownership, management, and status of CIG as of May 9, 2013, the date the Rule 11 agreement was signed by counsel of record for CIG.

The appellees' failure to obtain Tuhin Chaudhuri's signature on the Rule 11 agreement does not perforce render the agreement unenforceable because "an attorney may execute an enforceable Rule 11 agreement on his client's behalf." *Green v. Midland Mortg. Co.*, 342 S.W.3d 686, 691 (Tex. App.—Houston [14th Dist.] 2011, no pet.). There is a rebuttable presumption that "an attorney retained for litigation . . . possess[es] authority to enter into a settlement on behalf of a client[.]" *City of Roanoke v. Westlake*, 111 S.W.3d 617, 629 (Tex. App.—Fort Worth 2003, pet. denied). The trial court found that CIG's counsel of record "signed the Irrevocable Rule 11 Memorandum of Agreement on behalf of her clients, CIG, LLC, Century Ventures [sic], Inc. and Triptesh Chaudhury." That finding has not been challenged on appeal. Counsel who appeared for CIG and

Tuhin Chaudhuri in the motion to reconsider suggested that “for some reason I guess the Court was obviously not aware that CIG technically wasn’t being represented in this lawsuit.” However, the record does not contain a sworn motion challenging the authority of counsel to represent CIG, and there is no evidence in the record that the lawyer who represented CIG from 2007 through 2013 lacked authority to represent CIG in the case or to settle the dispute on its behalf. *See generally* Tex. R. Civ. P. 12. To rebut the presumption of actual authority, the record must contain affirmative proof that the client did not authorize his attorney to enter into the settlement. *Westlake*, 111 S.W.3d at 629-30. The lawyer, Tuhin Chaudhuri, and Triptesh Chaudhuri were each present at the hearing on the motion to reconsider, but none of them testified in the hearing.

The attorney who filed the third-party petition for CIG signed the settlement agreement on behalf of Triptesh Chaudhuri, Century, and CIG. Therefore, absent any evidence of lack of authority on the part of the attorney, CIG was a party to and was bound by the settlement agreement. *See Green*, 342 S.W.3d at 691. “A motion to enforce a settlement agreement is a sufficient pleading by which to raise a cause of action for breach of contract.” *Barragan v. Nederland Indep. Sch. Dist.*, No. 09-13-00350-CV, 2015 WL 474282, at *3 (Tex. App.—Beaumont Feb. 5, 2015, pet. denied) (mem. op.). The final judgment recites that the trial court

considered evidence, but the appellate record contains only the December 4, 2013 hearing on CIG's and Tuhin Chaudhuri's motion to reconsider. Neither the October 23, 2013 hearing on the motion to enforce nor the January 17, 2014 hearing on the motion to enter judgment was made a part of the appellate record, and the appellants did not file a statement of points with their notice of appeal. *See generally* Tex. R. App. P. 34.6(c). Therefore, we presume the omitted portions of the record support the trial court's judgment. *See Davis v. Kaufman Cty.*, 195 S.W.3d 847, 851 (Tex. App.—Dallas 2006, no pet.). We overrule the single issue.

Citing section 38.001(8) of the Texas Civil Practice and Remedies Code, Panjwani suggests that it would be appropriate for this Court to modify the trial court's judgment to award attorney's fees to him. *See generally* Tex. Civ. Prac. & Rem. Code Ann. § 38.001(8) (West 2015) (a person may recover reasonable attorney's fees on a claim for a written contract). Panjwani failed to file a notice of appeal from the trial court's judgment; therefore, he waived his right to raise a cross-point relating to the trial court's failure to award attorney's fees. *See New York Party Shuttle, LLC v. Bilello*, 414 S.W.3d 206, 219 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). Also, Panjwani suggests this appeal was "clearly made in bad faith as no reasonable argument is presented" in the appellants' brief. Although we have rejected the appellants' contentions on appeal, we do not conclude the

circumstances of this appeal were truly egregious. Therefore, we decline to award damages pursuant to Texas Rule of Appellate Procedure 45. *See generally* Tex. R. App. P. 45. We affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on March 2, 2015
Opinion Delivered March 10, 2016

Before Kreger, Horton, and Johnson, JJ.