"Failure to Mediate Leads to Remediation of Moldy Delusional Dispute"
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This case contains two new twists on two old rules, all of which is a powerful warning to attorneys.

Plaintiff brought suit against Newport Crest Homeowners Association (the "HOA") and others claiming biological, mold and other contamination to her residential unit. The dispute was resolved at a mediation. A settlement agreement was signed that provided for: (i) the HOA to pay $500,000 to plaintiff, (ii) the HOA to conduct remediation, and (iii) in the event of future conflict, the parties must first mediate before seeking judicial relief. The HOA paid the $500,000. Subsequently, plaintiff filed a petition to enforce the settlement agreement pursuant to Code of Civil Procedure Section 664.6 contending that the HOA failed to remediate the biological and mold conditions. The HOA filed an opposition motion and filed its own petition to enforce the settlement agreement pursuant to Code of Civ. Pro §664.6 contending that plaintiff had failed to mediate the dispute which arose subsequent to the settlement. The trial court, on its own motion, set an order to show cause for dismissal, and after hearing, ordered plaintiff's case dismissed.

The court of appeal (the "Court") found that the parties had signed a binding settlement agreement, which had been approved by their counsel at the mediation, and that all parties wanted the settlement agreement to be enforced, except plaintiff wanted the mediation provision "excised". After plaintiff had substituted herself in as attorney of record, defense counsel repeatedly and unsuccessfully attempted to serve her with proposed dates for a mediation to resolve the then current conflict. She was finally served by process server when she appeared in court on another matter. The Court also found that the settlement agreement had been fully performed in that the HOA had paid the $500,000 plus other payments and had done the remediation allowed by plaintiff.

Plaintiff argued a seemingly endless list of issues including that the mediation provision in the settlement agreement applied only to disagreements as to interpretation of the terms of the agreement and not to the performance of the agreement. The Court observed that plaintiff sought to enforce the settlement agreement terms which she believed benefitted her and not to enforce the mandatory mediation provision, or alternately, that use of a mediator was an option. The Court concluded that the entire settlement agreement was enforceable, including the mediation provision, and that plaintiff had failed to first mediate before bringing her petition to enforce the settlement agreement.

There is a subtle undertone to the language used by the Court in this opinion. This undertone suggests that although the Court rendered its decision completely impartially (which I believe it did) it was none the less more than a little put off by the plaintiff's tactics, particularly the plaintiff's tactics when acting as attorney in pro per (pro se).

Two new twists on two old rules

First old rule and new twist: the court will enforce mandatory mediation provisions, here a mediation provision in a settlement agreement reached during mediation. Second old rule and new twist: an attorney who represents him or herself has a fool for a client, especially when the attorney in pro per has already fired three prior counsel, has failed to mediate when required to do so pursuant to a previously signed settlement agreement and has offended the trial and appellate court. Beware: This case appears to indicate that an attorney in pro per can become infected with a virus of self delusion and be incapable of knowing the danger he or she is in.