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The Last Word

May an attorney empowered with advance written authorization to settle a lawsuit on behalf of his client do so despite the client's later objection? The answer is no, pursuant to *Amjadi v. Brown* (2021 68 Cal.App.5th 383).

Plaintiff Amjadi was injured in an auto accident. The week before trial, she fired her attorneys and hired new attorneys from Jolly Berry Law and the Accident Lawyers Firm. The contingent fee agreement between plaintiff and the Jolly Berry firm included this language: "CLIENT agrees that if a settlement offer is tendered in the case by any defendants and the ATTORNEY believes in good faith that the settlement offer is reasonable, and that acceptance of the offer is in the CLIENT's best interest, and should be accepted, CLIENT authorizes ATTORNEY to accept said offer on CLIENT's behalf, at ATTORNEY's sole discretion." The fee agreement further provided that if the client refuses a good faith settlement offer, and then refuses to advance the cost of trial, her attorneys could withdraw from the case.

Problems developed between plaintiff and her new attorneys, and on the morning of the trial, plaintiff's attorneys moved to be relieved as counsel. The trial court denied the motion. Plaintiff's counsel then spoke with defense counsel about a potential settlement of \$150,000, an amount plaintiff had previously rejected. Defense counsel renewed the \$150,000 offer, and plaintiff's counsel advised plaintiff he was accepting the settlement offer on her behalf as permitted by the fee agreement. Counsel orally announced the settlement to the court, over plaintiff's objection. The court instructed counsel to submit a signed settlement agreement. During the lunch break, plaintiff emailed her attorneys, asking them to sign a substitution of attorney form, and objecting to their unilateral action. However, her attorneys signed a settlement agreement on plaintiff's behalf and presented it to the court. The court accepted the settlement and set a hearing for an order to show cause regarding dismissal.

Before the dismissal hearing, plaintiff (in propria persona) filed a declaration asserting she objected to the settlement and dismissal, and had not consented to the settlement agreement signed by her attorneys. The trial court dismissed the case, and stated in a minute order that plaintiff had failed to submit any written material. Plaintiff then hired new counsel, who filed a motion to vacate the judgment. The Jolly Berry firm, acting as "Former Attorneys for Plaintiff," successfully opposed the motion. Plaintiff appealed the judgment of dismissal and the order denying plaintiff's motion to vacate the judgment.

On appeal, plaintiff argued that an attorney may not settle a case over his or her client's objection, regardless of whether the retainer agreement purports to authorize the attorney to do

so. The Court of Appeal agreed. The court noted a State Bar Court of California case, *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 [2014 WL 1979258], which held that retainer agreements purporting to grant the attorney the unfettered right to settle the client's case are invalid. The Court of Appeal further noted that the California Rules of Professional Conduct, rule 1.2, comment [2], permits clients to provide their attorneys advance authorization to settle, but does not permit an attorney to settle a case over the client's contemporaneous objection. In fact, it expressly forbids such a maneuver: "The client may revoke [settlement] authority at any time." (*Ibid.*)

The court held that "an attorney may not settle a client's case over the client's objection and any provision of a retainer agreement purporting to give an attorney such authority violates the Rules of Professional Conduct and is void." Further, "the settlement was entered without authority and was voidable by plaintiff. And when plaintiff objected to the settlement and resulting dismissal, she voided the settlement." The judgment was reversed, because the dismissal was based upon an invalid settlement. The court referred plaintiff's former attorneys to the State Bar for potential discipline.

The Takeaway

This case gives teeth to *Guzman*, and makes it clear that the client has the last word on settlement. Peter R. diDonato, an attorney of record for plaintiff's appeal (with co-counsel Jewels J. Jin), expressed that a client can never give advance settlement authority in a vacuum. He surmised that the fee agreement was also unenforceable as an illusory contract, because the client had no idea what settlement authority she was granting in advance. But even if the fee agreement had provided a specific dollar amount to meet or exceed, the ultimate decision to settle remains with the client.