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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ANNE C. TAUBMAN,
Plaintiff and Appellant,

v.

U.S. BANK, N.A. et al.,
Defendants and Respondents.

B170609
B173609
(Super. Ct. No. BC283506)

RICHARD J. TAUBMAN,
Cross-Complainant and Respondent,

v.

ANNE C. TAUBMAN,
Cross-Defendant and Appellant.

APPEALS from a judgment and orders of the Superior Court of Los Angeles County. Leonard S. Wolf, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Hill, Farrer & Burrill, Michael K. Collins; and John T. Blanchard for Plaintiff,
Cross-Defendant and Appellant.

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, Nabil L. Abu-Assal and
Amman A. Khan for Defendant and Respondent U.S. Bank.

Law Offices of Paul L. Stanton, Paul L. Stanton, John F. Eyrich and Robert J. Muller for Cross-Complainant and Respondent Richard J. Taubman.

Anne Taubman appeals from a judgment rescinding a stock purchase agreement between her and her brother Richard Taubman (Ricky). In a second consolidated appeal, Anne challenges the trial court's order awarding Ricky attorney fees under the stock purchase agreement and an order prohibiting all parties from voting the disputed shares of stock until the judgment becomes final. We affirm.

FACTS AND PROCEEDINGS BELOW

On April 15, 2002, Anne and Ricky entered into an agreement under which Anne agreed to purchase Ricky's ownership interest in Marwyn, a closely-held corporation founded by their father (the Agreement). Marwyn is a consulting company which does business with merchants at Seaport Village in San Diego. Before they entered into the agreement, Anne and Ricky each owned 21.875 shares of Marwyn. Another individual named Roger Manfred owned 12.5 shares. The Janice L. Taubman 1990 Revocable Trust (the Trust), established by Anne and Ricky's mother, owned the remaining 43.75 shares of Marwyn.

Anne agreed to purchase Ricky's Marwyn shares for \$175,000. As part of the Agreement, the parties agreed to waive objections to the Trust's allocation of income and expenses. At the time, Anne had probate petitions pending against U.S. Bank, the Trustee of the Trust. The Agreement also provided for a reduction in the size of the Marwyn board of directors. In any dispute between the parties concerning the Agreement, the prevailing party is entitled to an award of fees and costs.

The deal closed and Anne paid Ricky for the stock. But U.S. Bank refused to consent to the reduction in the size of the board of directors. As a result, Anne filed a declaratory relief action against U.S. Bank seeking a judgment deeming her "the legal and equitable owner of Ricky's personal shares in Marwyn." In a first amended complaint for declaratory relief, Anne also named Ricky as a defendant.

Ricky filed a cross-complaint against Anne. He sought compensatory and punitive damages for Anne's alleged constructive fraud and breach of fiduciary duty. He alleged Anne had mismanaged Marwyn's corporate assets and had failed to follow "corporate formalities." Ricky also sought rescission of the Agreement, declaratory relief, removal of Anne as a Marwyn director, inspection of Marwyn's books and records, an accounting and imposition of a constructive trust.

Ricky's cause of action for rescission is the claim at issue on appeal. Ricky alleged Anne fraudulently obtained his consent to the Agreement by concealing material facts about the transaction and "secret profits" she intended to make. Ricky asserted Anne failed to disclose she had been in negotiations with a company called GMS Realty "to sell Marwyn shares for a substantial profit."

The court tried this matter along with some probate petitions pending between the parties.¹ After numerous rounds of objections by Anne, the trial court issued a statement of decision and entered judgment in favor of U.S. Bank and Ricky on Anne's first amended complaint, and in favor of Ricky on his cross-complaint. The court ordered the Agreement rescinded as of the date it was made. Ricky was entitled to possession of his 21.875 Marwyn shares after he paid Anne \$175,000 plus interest from April 15, 2002. The court permitted Ricky to offset this amount by the sum Anne owed him in dividends and/or other profits on the shares as well as attorney fees to which Ricky was entitled as the prevailing party under the Agreement.

As reflected in its statement of decision, the trial court found Anne breached her fiduciary duty as an officer and director of Marwyn to disclose to Ricky all material facts which would affect his decision to sell his Marwyn shares to her under the Agreement. The court explained: "Anne had available to her 'inside information' concerning the plan by GMS Realty ('GMS') to develop and expand the Seaport Village. The evidence

¹ Anne previously appealed from four judgments on the probate petitions, which this court affirmed. (*Taubman v. U.S. Bank, N.A.* (Sept. 15, 2004, B170510) [nonpub.opn.])

presented established that Anne had been negotiating a deal with GMS since mid-2001. The GMS transaction provided an opportunity for the future development and expansion of Seaport Village including a significant ground lease extension which provided for the potential extension of the Marwyn consulting agreements and for additional future revenues.” The court found: “An agreement in principle for GMS to acquire Anne’s Marwyn shares (including the shares she acquired from Ricky) had been reached by April 2002 and was subsequently revised (from an outright purchase to capturing the cash flows associated with the shares) in order to avoid negative tax consequences to Anne personally.”²

The trial court concluded: “Anne was obligated to fully disclose the pending negotiations with, and potential ramifications of, the GMS transaction because (1) it potentially increased the value of Marwyn by virtue of the contemplated expansion of Seaport Village and the possible extension of ground leases and consulting agreements with tenants, (2) it increased the demand for Ricky’s shares, and (3) it enhanced the value of Ricky’s shares.”

Two post-judgment orders of the trial court are at issue on appeal. First, the trial court awarded Ricky \$199,875 in attorney fees pursuant to the attorney fees clause in the Agreement. Second, in response to an ex parte application filed by Ricky, the trial court issued an order prohibiting all persons including Anne, Ricky and U.S. Bank from voting the disputed Marwyn shares until the judgment rescinding the Agreement becomes final.

DISCUSSION

I. RICKY’S CROSS-COMPLAINT ADEQUATELY ALLEGED THE BASIS FOR HIS REQUEST FOR RESCISSION.

Anne contends the trial court improperly granted relief to Ricky on a ground he did not allege in his cross-complaint. Specifically, Anne argues Ricky did not plead

² The GMS transaction closed in January 2003.

nondisclosure of the GMS transaction as a basis for rescission of the Agreement. Anne maintains she was “misled to her prejudice” by “the variance between Ricky’s pleading and his proof.” Anne’s claim finds no support in the record.

Anne asserts she “assume[ed] that Ricky’s pleading of Anne’s mismanagement of Marwyn’s affairs stated his operative claims” and was the basis for his request for rescission of the Agreement. It is not clear why Anne adopted such a narrow view of the basis for Ricky’s claims. In the allegations common to all of his causes of action Ricky alleged: “[P]rior to the time she sought to purchase Ricky’s and the Trust’s shares, Anne had been in negotiations with a third party (GMS Realty) to sell Marwyn shares for a substantial profit. Anne did not disclose her anticipated secret profit to Ricky or to the Bank as Trustee.” As a ground for his request for rescission, Ricky cited Anne’s “concealment of material facts concerning the transaction and the secret profits contemplated by Anne.”

After Ricky pointed to these allegations in his appellate brief, Anne revised her argument, claiming in her reply brief she was “completely ‘blind-sided’” because the GMS transaction Ricky alleged in the cross-complaint was not the “true ‘GMS Transaction’” the trial court cited as the basis for rescission of the Agreement. Anne stated: “What all of these parties and the court have always meant (at least until now) when using the collective term ‘the GMS transactions’ is not a secret deal for resale by Anne of the Marwyn stock she bought from Ricky as alleged in the Cross-Complaint. Instead, what all parties and the court have always meant when using the collective term ‘the GMS transactions’ is the group of transactions . . . that closed in January of 2003, under which GMS Realty acquired an interest in the Yasuda Note (the mortgage on Seaport Village) and secured control over the daily management of the shopping center.”³

The allegations in Ricky’s cross-complaint put Anne on notice Ricky was taking issue with Anne’s nondisclosure of negotiations with GMS Realty which involved Ricky’s stock. The factual findings the trial court actually made concerning the GMS

³ Footnotes omitted.

transaction are consistent with Ricky's allegations. As the court set forth in its statement of decision: "An agreement in principle for GMS to acquire Anne's Marwyn shares (including the shares she acquired from Ricky) had been reached by April 2002 and was subsequently revised (from an outright purchase to capturing the cash flows associated with the shares) in order to avoid negative tax consequences to Anne personally." The fact Ricky might not have described the exact details or scope of the "true" GMS transaction is not fatal to his claim nor is it surprising. After all, Ricky was attempting to describe secret negotiations Anne had intentionally hidden from him. Ricky says he only learned Anne had negotiated some type of deal with GMS Realty a few months before he filed his cross-complaint.

The trial court believed Ricky adequately stated his request for relief in his cross-complaint. The court also concluded, even if that was not the case, Anne nevertheless had a full and fair opportunity to rebut Ricky's claims at trial. In its statement of decision, the trial court explained: "Ricky's Cross-Complaint and action for rescission adequately addresses the requested relief. Had the Court felt the relief was not adequately pled, the Court would have, on its own motion or upon motion by Ricky, if necessary, granted a motion for leave to conform to proof. The court has broad discretion to allow such an amendment where, as in the instant case, no injury appears and Anne has not demonstrated that she was misled, prejudiced or prevented from making an adequate presentation on the issues."

As Ricky points out, "A variance between the allegations of a pleading and the proof will not be deemed material unless it has actually misled the adverse party to his prejudice in maintaining his action or defense on the merits, and a variance may be disregarded where the action has been fully and fairly tried on the merits as though the variance had not existed." [Citations.]"⁴ At trial, Anne presented evidence about the scope of the "true" GMS transaction and she vigorously denied she had a duty to disclose her negotiations with GMS Realty to Ricky at the time they entered into the Agreement.

⁴ *Waller v. Southern Pacific Company* (1967) 66 Cal.2d 201, 215.

Based on our review of the record, Anne had a full and fair opportunity to rebut Ricky's cause of action for rescission based on the "true" GMS transaction. Her loss at trial certainly was not the result of a variance between pleading and proof.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S CONCLUSION ANNE BREACHED HER FIDUCIARY DUTY TO RICKY BY FAILING TO DISCLOSE MATERIAL FACTS ABOUT HER PURCHASE OF RICKY'S MARWYN SHARES.

Anne challenges the trial court's decision, asserting the court was unable to describe the "fact" she supposedly failed to disclose to Ricky. Her challenge is spurious. As set forth above, the trial court's statement of decision specifically provides: "Anne had available to her 'inside information' concerning the plan by GMS Realty ('GMS') to develop and expand the Seaport Village. The evidence presented established that Anne had been negotiating a deal with GMS since mid-2001. The GMS transaction provided an opportunity for the future development and expansion of Seaport Village including a significant ground lease extension which provided for the potential extension of the Marwyn consulting agreements and for additional future revenues. Anne failed to disclose this information to Ricky." The trial court also explained: "An agreement in principle for GMS to acquire Anne's Marwyn shares (including the shares she acquired from Ricky) had been reached by April 2002 and was subsequently revised (from an outright purchase to capturing the cash flows associated with the shares) in order to avoid negative tax consequences to Anne personally." The real issue here is not that the trial court failed to identify the facts Anne withheld from Ricky. The issue is Anne disputes the court's legal conclusions and factual findings.

According to Anne, she "had no obligation to disclose [to Ricky] the pendency of negotiations [with GMS Realty] until an 'agreement in principle' had been reached." Anne cites *Eldridge v. Tymshare, Inc.*, a case in which shareholders of a publicly traded company sued the company after they "sold their stock at a loss shortly before their company announced a merger agreement which would have yielded to them a higher

price per share.”⁵ The Court of Appeal held, “as a matter of law corporate directors are under no duty to make a public disclosure of merger negotiations until an agreement in principle has been reached.”⁶

The present case, however, does not involve a sale of stock by some anonymous shareholders of a publicly traded corporation. Rather, this case involves a much more intimate transaction in which an officer of a closely held corporation purchased all of the shares of one of only three other shareholders in that corporation. In the latter situation, “where an officer or a director of a corporation has knowledge of special facts affecting the value of its stock, he cannot deal with a stockholder at arm’s length but is under a duty to disclose such facts before making a purchase or sale of the stock.”⁷ As an officer of Marwyn, Anne had a duty to inform Ricky “of those matters relating to the corporate business of which the officer has knowledge and which the shareholder has a right to know about, so that the latter may have the benefit of such information in judging the advantages of the deal.”⁸

Substantial evidence supports the trial court’s conclusion Anne owed a fiduciary duty to Ricky to disclose the negotiations with GMS Realty before she entered into an agreement to purchase Ricky’s Marwyn shares. Anne’s negotiations with GMS Realty commenced in mid-2001. By Anne’s own account, the parties to the GMS transaction already were discussing the possibility of an assignment of the cash flows from Anne’s Marwyn shares by the summer of 2001. In the spring of 2002, Anne met with GMS Realty’s CEO for the last time before the deal closed in January 2003. In June 2002, Anne’s accountant reviewed a draft of deal documents for the GMS transaction to determine the tax implications of the deal. Thereafter, the deal was restructured to avoid negative tax consequences to Anne.

⁵ *Eldridge v. Tymshare, Inc.* (1986) 186 Cal.App.3d 767, 770.

⁶ *Eldridge v. Tymshare, Inc.*, *supra*, 186 Cal.App.3d at page 776.

⁷ *Hobart v. Hobart Estate Company* (1945) 26 Cal.2d 412, 432-433; *Jaynes v. Jaynes* (1950) 98 Cal.App.2d 447, 451.

⁸ *Hobart v. Hobart Estate Company*, *supra*, 26 Cal.2d at page 433.

As the trial court found, long before Anne agreed to purchase Ricky's shares in April 2002, it was clear GMS Realty "intended the transaction to capture all of the Seaport Village-related cash flows controlled or received by Anne, including from the Marwyn shares she held." Based on the evidence presented in this matter, including the testimony of GMS Realty's C.E.O., the Marwyn shares clearly were a part of the negotiations with GMS Realty at the time Anne purchased Ricky's stock, despite Anne's claim to the contrary.

Anne concealed from Ricky this increased demand for Marwyn shares as well as facts about the transaction indicating the shares soon might be more valuable. As the trial court explained: "The potential for expansion and increased revenue impacted the value of Marwyn itself. The value of Ricky's Marwyn shares also was impacted by GMS's acquisition of Anne's Marwyn shares (including the shares she acquired from Ricky) and the other Seaport Village interests held by her and the Taubman Trust either by purchasing the shares outright or by capturing all cash flows associated with those assets. The demand for the Marwyn stock made Ricky's Marwyn shares more valuable to Anne and she had a personal motive to obtain the best deal for herself at Ricky's expense. Furthermore, the fact that there was a buyer seeking to purchase or capture Marwyn's cash flow impacted the value and sale of Ricky's Marwyn shares."

Based on the foregoing, we find the trial court's conclusion Anne breached her fiduciary duty to Ricky by failing to disclose material facts about her purchase of Ricky's Marwyn shares was proper and supported by substantial evidence.⁹

⁹ In a separate section of her brief, Anne asserts this court may not presume the judgment in this case is correct because the trial court ignored her requests for findings. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ("All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown").) Aside from the fact the record does not support Anne's assertion the trial court ignored her requests, Anne failed to identify in her brief any specific issues on which the trial court did not make findings and how such omissions would be germane to her claims on appeal. Thus, the point of this argument is not clear.

III. RESCISSION WAS AN APPROPRIATE REMEDY.

The trial court concluded the “transaction should be rescinded because there is no open market for Marwyn shares.” Anne contends rescission was not an appropriate remedy in this case because the trial court could not return the parties to the exact status quo ante. Under the Agreement, Anne waived certain claims against Ricky concerning objections to U.S. Bank’s petition and the allocation of income and expenses. She says the trial court “could not, and made no attempt to, restore [her] to those rights.”

The record reveals otherwise. In its statement of decision, the trial court acknowledged the remedy of rescission “requires that the parties be returned, insofar as possible, into status quo ante.” To that end, the trial court awarded Anne interest on the \$175,000 she paid Ricky for the stock. The court also ruled: “The rescission of the stock purchase agreement will result in the reinstatement of Anne’s rights to pursue her claims against Ricky in the still pending probate proceedings which were waived under the terms of the agreement, although Anne successfully asserted the same claims against the Bank. In any event, the alleged relinquishment of the claims would not render the remedy of rescission unfair or inequitable.” Thus the same judge who was presiding over the probate proceedings ruled Anne could assert her reinstated claims against Ricky in those probate proceedings.

Anne characterizes the trial court’s “purported reinstatement” of her claims as “an empty gesture.” She says “all evidence had been taken as to the probate petitions in which Anne had previously made charges against Ricky, argument was complete and, in fact, an initial tentative ruling had been issued.” Be that as it may, it is clear from its ruling the trial court intended to afford Anne a full and fair opportunity to litigate her claims against Ricky in the probate proceedings. We cannot imagine the trial court would have denied a request by Anne to re-open the evidence phase of the proceedings. We have no way of knowing whether Anne would have been truly prejudiced by the late date at which her claims were reinstated. Rather than make a go of it, Anne simply chose

not to assert the claims. Her failure to pursue her rights does not demonstrate rescission was an inappropriate remedy.

In any event, we note California law does not require the trial court to return the parties to the exact status quo ante as Anne argues. Our Supreme Court has made clear “It is the purpose of rescission ‘to restore both parties to their former position as far as possible’ [citation] and ‘to bring about substantial justice by adjusting the equities between the parties’ despite the fact that ‘the status quo cannot be exactly reproduced.’ [Citations.]”¹⁰ Here, the trial court concluded rescission was the appropriate remedy because there was no open market for Marwyn shares. The court ordered Ricky to pay Anne the purchase price plus interest. By ordering Anne’s claims against Ricky reinstated, the court did all it could do to restore Anne to her former position. As the court noted, Anne already had asserted the waived claims against U.S. Bank in the probate proceedings with some success. Any prejudice to Anne resulting from the late date of the trial court’s reinstatement of her waived claims against Ricky would not have been a sufficient basis for overturning the court’s decision to rescind the Agreement.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING RICKY ATTORNEY FEES UNDER THE AGREEMENT.

Anne contends the trial court improperly awarded Ricky attorney fees in this matter under the Agreement for services rendered in the probate proceedings. The record reveals the trial court acted within its discretion in making its fee award.

In his motion for attorney fees, Ricky stated the total amount of legal fees he incurred in this matter and the related probate proceedings was \$611,207.50. He claimed half of this amount or \$305,604 represented “the reasonable fees he has incurred in connection” with this matter. Ricky asserted that was a reasonable amount because this matter and the probate proceedings “include common issues of law and fact that are

¹⁰ *Runyan v. Pacific Air Industries, Inc.* (1970) 2 Cal.3d 304, 316.

inextricably intertwined.” Anne opposed the motion based on the same argument she raises on appeal, among others.

At the first hearing on Ricky’s motion for fees, the trial court stated it could not award fees without allocating the time between this matter and the probate proceedings. Based on the papers Ricky submitted, however, the court was not able to “segregate the services relating to Marwyn [this matter] from the services relating to the other trust aspects of the case.” The court asked Ricky’s counsel to go through all of his bills and identify which items related specifically to services rendered in this matter. The court recognized fees for discovery conducted in the probate proceedings could be allocable to this matter if the issues were relevant to this matter.

Ricky’s counsel submitted another declaration in support of the motion for attorney fees. He attached to the declaration “revised time records detailing those services related to the Marwyn Action alone.” Anne asserted the same objection based on improper apportionment of fees between the two actions.

At a further hearing on the motion for fees, the trial court stated it found Ricky’s supplemental papers “very helpful” and considered the 60 or so hours counsel spent preparing the declaration and the revised time records to be “worth it.” The court did not question whether counsel actually spent the time he claimed on this matter. Instead the court questioned “how much of it was needed on this case with the limited issues involved in this case.”

After a lengthy oral argument on Ricky’s motion for fees, the trial court took the matter under submission. About a month later the court issued its order granting Ricky \$199,875 in attorney fees. The court found not all of the services identified in the supplemental papers “were rendered in, or directly necessary to, the Rescission Action [this matter].” The court awarded fees for 615 hours of attorney time spent on this matter as opposed to the 1055.6 hours Ricky requested. The court set the reasonable blended hourly rate for attorney time at \$325 per hour rather than \$337 per hour as requested in the motion.

Anne maintains the trial court improperly awarded Ricky fees for services incurred in the probate proceedings. She makes a non-specific reference to discovery conducted before Ricky was joined in the action. Her argument is disingenuous. This matter and the probate proceedings were tried together and certain discovery conducted in the probate proceedings was relevant to and used in the litigation of this matter. As the prevailing party in this matter, Ricky is entitled to an award of attorney fees under the Agreement. He should not be short-changed simply because the matters were tried together. There is no evidence the trial court awarded fees for services which were not necessary to Ricky's prosecution of his cross-complaint.¹¹ The court was intimately involved in both this matter and the probate proceedings and had the ability to discern what fees Ricky reasonably incurred in this matter. The record reveals no abuse of discretion.¹²

V. THE TRIAL COURT DID NOT EXCEED ITS JURISDICTION IN ISSUING AN ORDER PROHIBITING THE PARTIES FROM VOTING THE DISPUTED MARWYN SHARES.

Almost two months after the trial court entered the judgment rescinding the Agreement, Ricky moved ex parte for an order directing Anne, as constructive trustee of Ricky's shares, to execute a proxy authorizing U.S. Bank to vote his shares to elect new Marwyn board members at a special shareholders' meeting or, in the alternative,

¹¹ *Carter v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 498, 504 is inapposite. That case involved an apportionment of attorney fees where a party was entitled to recover fees on one claim but was barred by statute from recovering fees on another claim in the same action. Here Ricky was entitled to recover attorney fees for all services rendered in the prosecution of his cross-complaint. Based on the documentation Ricky's counsel submitted, the trial court was able to craft an award which gave Ricky only those fees to which he was entitled under the Agreement.

¹² See *Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1507 ("Where a contract provides for attorneys' fees but does not specify a particular sum, it is within the trial court's discretion to determine what constitutes reasonable attorneys' fees. [Citations.] The award will be disturbed on appeal only where there has been a manifest abuse of discretion").

confirming Ricky's authority to execute the proxy himself. In opposition, Anne argued, among other things, (1) the trial court did not have the authority to hear a post-trial enforcement proceeding under the parties' stipulation appointing the Judge Pro Tem, (2) the judgment was automatically stayed upon the filing of her notice of appeal and (3) as constructive trustee, she was acting in Marwyn's best interests by refusing to cede control of the company to U.S. Bank.

The trial court did not receive Anne's opposition by the time set for the hearing. After a discussion about the merits of the requested relief, the trial court suggested the parties postpone the shareholders' meeting and the hearing on the ex parte application. The parties agreed and the court denied Ricky's ex parte application without prejudice.

Three months later, Ricky filed another ex parte application. He sought an order confirming his authority to vote the shares or, in the alternative, an order directing Anne to execute a proxy in favor of U.S. Bank or an order prohibiting Anne from voting the shares. Ricky pointed out, since the time he made his previous application, the trial court awarded him \$199,875 in attorney fees. The judgment allowed him to offset the \$175,000 he owed Anne for the purchase price of the stock against the amount of attorney fees he was awarded as the prevailing party under the Agreement. Ricky argued, under the terms of the judgment, Anne was required to transfer to him title and possession of the shares. Anne did not submit an opposition to this second ex parte application.

At the outset of the hearing on this and other issues, the trial court stated its tentative decision was to issue an order prohibiting both Anne and Ricky from voting the disputed shares. With no argument or objection, all parties immediately stated they would submit on the tentative ruling. A few days later the trial court issued an order prohibiting all persons from voting the shares until the judgment in this case becomes final.

After Anne filed her notice of appeal, she petitioned this court for a writ of supersedeas staying enforcement of the order prohibiting her from voting the shares. This court denied her petition and the Supreme Court denied review.

On appeal Anne contends the trial court exceeded its jurisdiction under the parties' stipulation appointing the Judge Pro Tem when it issued an order "designed to enforce the Judgment." We agree with Ricky and U.S. Bank's contention Anne waived this claim. Although Anne challenged the trial court's authority to issue such an order in her opposition to Ricky's first ex parte application, she submitted no opposition to the second ex parte application on which the trial court issued its order. At the hearing, Anne did not raise an objection to the court's jurisdiction. Her counsel immediately submitted on the court's tentative ruling with no argument. Anne gave the court (and Ricky and U.S. Bank) no reason to believe she was continuing to assert this objection.

Even if Anne had preserved this claim, we would decide it against her. She correctly states the trial court did not have the authority to hear "post judgment enforcement and modification proceedings." But she incorrectly characterizes Ricky's ex parte application as such a prohibited "enforcement" proceeding. In ruling no party could vote the disputed shares, all the court did was clarify (not modify) the scope of Anne's powers as constructive trustee of Ricky's shares. The court did nothing to enforce the judgment in favor of Ricky (i.e, get involved in the transfer of title and possession of the shares from Anne to Ricky).¹³

¹³ We deny Anne's request for this court to take judicial notice of "the fact that" Ricky recorded an abstract of judgment "against [her] property." The information Anne submitted is not material to our resolution of this issue.

DISPOSITION

The judgment and orders are affirmed. Respondents are awarded costs on appeal.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

We concur:

PERLUSS, P.J.

ZELON, J.