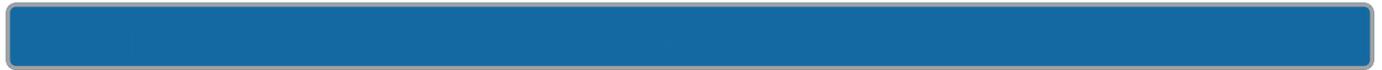




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Friday, July 28, 2000

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

WILLIAM NOYES and PAMELA NEN-NOYES,

No. 99-12032

[Debtor](#) ⓘ(s).

_____ /

WILLIAM NOYES and PAMELA NEN-NOYES,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 00-1010

K & L ENTERPRISES, et al.,

[Defendant](#) ⓘ(s).

_____ /

In 1994, plaintiffs William Noyes and Pamela Nen-Noyes purchased a home from Knittel Development Company, a general contractor which had constructed the home. As part of the transaction, the Noyes gave a note secured by the property to defendant K & L Enterprises, an affiliated entity. The Noyes also agreed to give K & L an option to repurchase a part of the property at a later date. In this [adversary proceeding](#), the Noyes allege that the note and the option agreement are unenforceable. K & L argues that the Noyes waived any right to make these claims by entering into a 1998 settlement of two prior lawsuits which contained a general release of all claims. Its motion for summary judgment is now before the court.

The 1998 settlement contained a full release of all claims, known and unknown, and required the Noyes to dismiss the two lawsuits with prejudice. It also expressly provided that the note and the option remained in full force and effect. The Noyes received \$612,000.00 as consideration. Although there is no proof of it that the court can find, the Noyes argue that one of the principals of K & L, Donald Logan, was a lawyer. According to the Noyes, Logan violated Rule 3-300 of the California Rules of Professional Conduct by acting as their attorney while having an interest adverse to them, thereby rendering the note and option void. The Noyes argue that their right to attack the note and option survived the settlement agreement and dismissal of the two prior lawsuits with prejudice, event though the Noyes were represented by other counsel in those lawsuits and even though the *exact same argument* had been made in one of the lawsuits before the settlement.⁽¹⁾ The court has reviewed all of the cases cited by the Noyes.⁽²⁾ Not one of them stands for the proposition that a settlement is not binding, or principles of res judicata do not apply, if prior to the settlement there had been an alleged violation of Rule 3-300. Just because an unenforceable contract cannot be ratified does not mean that a [claim](#) that a contract is unenforceable cannot be *settled*. The Noyes are not free to raise the same issues after entering into a full settlement, taking the defendants' money, and dismissing their lawsuits with prejudice. Accordingly, K & L's motion for summary judgment will be granted. Counsel for K & L shall submit an appropriate form of order granting its motion and dismissing this adversary proceeding with prejudice.

Dated: July 28, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. In their brief, the Noyes seem to dispute that they raised their attorney-client argument in the dismissed cases. However, the declaration establishing the fact is unrebutted.

2. Including [Downey Venture v. LMI Ins. Co.](#) (1998) 66 Cal.App.4th 478, 78 Cal.Rptr.2d 142, mis-cited in the Noyes' b

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