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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

SANDRA TERZIAN-FELIZ,
Plaintiff and Appellant,
v.
VARTAN AJAMIAN et al.,
Defendants and Appellants;
AMERICAN CONTRACTORS
INDEMNITY COMPANY,
Real Party in Interest and Appellant.

A128900
(Marin County
Super. Ct. No. CV053110)

After we affirmed the underlying 2007 judgment against appellant Sandra Terzian-Feliz in this matter on appeal, the trial court ordered her and surety American Contractors Indemnity Company (ACIC) to pay \$75,000 on an injunction bond to appellants Vartan and Margarita Ajamian. It ordered this payment as a new 2010 judgment, not as a modification of or amendment to the 2007 judgment as the Ajamians had sought. Accordingly, it denied their request for prejudgment interest on this award. (Civ. Code, § 3287; Code Civ. Proc.,¹ § 529.) In the same order, the trial court granted Terzian-Feliz's motion to compel execution of the Ajamians' acknowledgment of full satisfaction of the 2007 judgment. As the prevailing party on the motion to compel, Terzian-Feliz was awarded \$2,938 in attorney fees, but the trial court denied her requests for other

¹ All subsequent statutory references are to the Code of Civil Procedure unless otherwise indicated.

damages and penalties. (§§ 724.010, subd. (a), 724.030, 724.050, subds. (a)-(b), 724.070, subd. (a).)

Both sides appeal. The Ajamians contend that the trial court (1) should have denied the motion to compel because they had a reasonable basis on which to decline Terzian-Feliz's demands for acknowledgement of full satisfaction of judgment; and (2) should have granted them prejudgment interest on the injunction bond from 2006, when they assert that Terzian-Feliz's obligation on the bond became fixed. For her part, Terzian-Feliz challenges (3) the trial court's summary award of the full \$75,000 of the injunction bond without allowing her an opportunity to conduct discovery to determine the amount of damages that the Ajamians suffered from her preliminary injunction; and (4) its denial of damages and statutory penalties in conjunction with her motion to compel. We affirm the order.

I. FACTS

A. *Background*

The underlying action arose as a property dispute between neighboring landowners who were also parties to a failed construction contract. Sandra Terzian-Feliz alleged causes of action against Vartan and Margarita Ajamian and their construction company—Ajamian Enterprises, Inc. (AEI)—for inter alia breach of contract, fraud, misappropriation/breach of fiduciary duty and elder financial abuse. She sought a prescriptive easement and an implied easement entitling her to use the Ajamians' driveway, as well as damages, declaratory and injunctive relief, and an order quieting title to an easement. The Ajamians cross-complained, alleging causes of action for inter alia breach of contract, quantum meruit, and declaratory relief relating to an express easement. They also sought to quiet title to their own prescriptive easement, to rescind the construction contract, and to obtain other declaratory and injunctive relief. Among their affirmative defenses to Terzian-Feliz's complaint, they asserted a bona fide purchaser defense. (*Terzian-Feliz v. Ajamian* (Feb. 11, 2010, A119333) [nonpub. opn].)

During trial, the Ajamians were granted nonsuit on Terzian-Feliz's causes of action for breach of contract and implied easement. Ultimately, a jury found against

Terzian-Feliz and for the Ajamians and AEI on all remaining causes of action. We affirmed that August 2007 judgment on appeal in February 2010. (*Terzian-Feliz v. Ajamian, supra*, A119333.) The trial court's resolution of postjudgment issues brings this matter to us again. We are familiar with the underlying facts of this case from the earlier appeal. We recount only those facts necessary to resolve the issues now pending on appeal.

B. Preliminary Injunction and Injunction Bond

In July 2005, before the trial that resulted in the judgment against her, Terzian-Feliz moved for a preliminary injunction. She sought to preclude the Ajamians from preventing her from using their driveway, over which she asserted an easement. She asserted that it was virtually certain that she would prevail on her easement claim at trial. In December 2005, the trial court granted her a preliminary injunction, contingent on the posting of a \$75,000 bond. (§ 529, subd. (a).) In January 2006, Terzian-Feliz filed an undertaking obligating her surety ACIC to pay a \$75,000 injunction bond to the Ajamians if she could not establish her right to an easement.

In June 2006, the Ajamians moved to increase the amount of the injunction bond. Their motion was supported by a declaration from their counsel that, as of that date, the Ajamians had incurred more than \$160,000 in attorney fees litigating the easement part of the case. On June 13, 2006, over Terzian-Feliz's opposition, the trial court granted the motion, giving her 10 business days to increase the bond to \$150,000. (§ 996.010, subds. (a), (c).) On June 27, 2006, at Terzian-Feliz's request, the trial court dissolved the preliminary injunction. The Ajamians asked for an award of the \$75,000 value of the injunction bond at that time, but the trial court denied this request. It required them to make a separate motion to enforce the injunction bond at a later time, according to procedures set out in statute. (§ 996.440, subds. (a), (b).)

C. Trial, Judgment and Costs

In August 2007, after the jury found against Terzian-Feliz on all causes of action submitted to them, the trial court entered judgment against her. Among other things, that judgment rejected her claim to a prescriptive and/or implied easement over the Ajamians'

driveway. The judgment also defined the Ajamians' use of their own express easement over Terzian-Feliz's property, granted them a prescriptive easement over her property and found them to have been bona fide purchasers of their property. AEI was awarded \$58,061 on its cross-complaint for damages for breach of a construction contract, of which Terzian-Feliz had already paid all but \$13,000.

The judgment also provided that AEI was entitled to an award of costs from Terzian-Feliz. (§ 1021.) Later that month, the Ajamians and AEI filed a memorandum of costs, seeking more than \$56,000 from Terzian-Feliz. In October 2007, the trial court ordered Terzian-Feliz to pay \$47,552.64 of the Ajamians' costs as part of the judgment.² (See § 998.)

D. Appeal and Appellate Bond

In October 2007, Terzian-Feliz appealed from the August 2007 judgment. (*Terzian-Feliz v. Ajamian, supra*, A119333.) In January 2008, she filed an undertaking obligating her surety ACIC to pay an appellate bond of \$38,054.27 to the Ajamians and AEI if the judgment was affirmed on appeal. These undertakings stayed enforcement of the judgment pending determination of Terzian-Feliz's appeal, allowing her to continue to assert her right to an easement over their property until the appeal was resolved. (See § 917.1, subd. (a).) The Ajamians and AEI objected to the sufficiency of these undertakings, asking that the amount of the appellate bonds be increased to more than \$90,000, and that an additional bond of \$175,000 be filed because of the stay of enforcement of the judgment that Terzian-Feliz held no easement over their property. (§§ 917.9, subd. (b), 996.010, subd. (a).) Terzian-Feliz opposed these motions. In February 2008, the trial court denied the motion to increase the undertaking, finding that the \$43,274.27 total undertaking of the two appeal bonds was properly calculated to include the money judgment and expert witness fees owed to the Ajamians. It also rejected their request for a supplemental bond to protect them from losses if they were forced to sell their property during the pendency of the appeal.

² The Ajamians made a pretrial offer to compromise of \$60,000 and a right to an easement, which Terzian-Feliz did not accept. (See § 998.)

On February 11, 2010, we affirmed the August 2007 judgment on appeal, rejecting all of Terzian-Feliz's claims of error. That decision became final on April 13, 2010.

E. Motion to Compel Satisfaction of Judgment

On February 25, 2010, Terzian-Feliz paid the Ajamians \$75,533.20, which she asserted was the full amount of the \$13,000 money judgment, the \$47,552.64 costs order and postjudgment interest due. Her payment came with a demand that the Ajamians and AEI execute and file an acknowledgment of full satisfaction of judgment. That demand included a notice that conditioning a satisfaction of judgment on payment of an amount in excess of that to which they were entitled would make them liable for damages.

(§§ 724.010, subd. (a), 724.030, 724.050, subds. (a)-(b), 724.070, subd. (a).)

On March 8, 2010, the Ajamians and AEI acknowledged receipt of that payment. They advised Terzian-Feliz that their judgment had not been fully satisfied, as they believed they were entitled to \$514.50 in additional interest on the judgment, appellate costs with interest, and \$75,000 due on the injunction bond with interest from the date of the June 2006 dissolution of the preliminary injunction. They filed acknowledgments of partial satisfaction of judgment. Four days later, Terzian-Feliz sent a check for \$500.01 for additional interest on the judgment. Again asserting that the judgment had been fully satisfied, Terzian-Feliz demanded an acknowledgement of full satisfaction of judgment. The Ajamians and AEI filed further acknowledgments of partial—but not full—satisfaction of judgment.

In April 2010, Terzian-Feliz moved to compel the Ajamians and AEI to execute acknowledgments of full satisfaction of judgment. She also sought \$350 in penalties and damages from each of them, as well as attorney fees related to her motion to compel. (§§ 724.050, subds. (d), (e), 724.070, subd. (a), 724.080.) The Ajamians and AEI opposed the motion, arguing that an acknowledgment of full satisfaction of judgment would foreclose them from obtaining appellate costs and the \$75,000 injunction bond. In May 2010, the Ajamians and AEI filed a memorandum of appellate costs, seeking

\$3,084.63 from Terzian-Feliz. On June 10, 2010, AEI filed an acknowledgment that Terzian-Feliz had fully satisfied its judgment against her.³

F. Motion to Enforce Injunction Bond

In April 2010, the Ajamians moved for an amended or modified judgment, seeking to include an award of \$75,000 on the injunction bond in the August 2007 judgment. (§ 996.440.) Terzian-Feliz and ACIC opposed the motion to enforce the bond, arguing that the motion was premature because the Ajamians had not obtained a court order awarding them damages as a result of the preliminary injunction.⁴

G. Resolution of the Motions

On June 14, 2010, the trial court conducted a hearing on both motions. On the Ajamians' motion for an amended or modified judgment, the trial court rejected Terzian-Feliz's claims that triable issues of material fact warranted discovery and an evidentiary hearing on the motion. It found that Terzian-Feliz's obligation on the bond was fixed because she was not entitled to the injunction. Relying on the declaration that the Ajamians' counsel filed in June 2006 in support of their motion to increase Terzian-Feliz's \$75,000 bond, the trial court found that by that date, they had incurred reasonable attorney fees and costs demonstrating that their damages resulting from the improperly issued injunction were at least \$75,000. Thus, it awarded the Ajamians \$75,000 on the injunction bond, but as a separate judgment—not as part of a modified or amended version of their August 2007 judgment, as the Ajamians had sought. Accordingly, the trial court also denied their request for interest dating from the August 2007 judgment. (§ 996.495.)

The trial court granted Terzian-Feliz's motion to compel acknowledgments of full satisfaction of judgment. Having concluded that the Ajamians' recovery on the injunction bond formed the basis of a separate judgment and finding their right to

³ AEI is not a party to this appeal.

⁴ Once a practicing attorney, Terzian-Feliz became an inactive member of the State Bar of California in 1990. On April 1, 2010, she reactivated her membership, representing herself and ACIC at the June 14, 2010 hearing opposing the motion for an amended or modified judgment.

appellate costs was also separately enforceable, the trial court concluded that they were not justified in refusing to acknowledge full satisfaction of the August 2007 judgment based on these independent claims. (See Cal. Rules of Court, rules 3.1700(b)(4), 8.278(c)(3).) It granted Terzian-Feliz a reduced award of \$2,938 in attorney fees, but rejected her request for penalties and damages. (§§ 724.050, subd. (e), 724.070, subd. (a), 724.080.) On June 24, 2010, the Ajamians sent Terzian-Feliz a check for \$2,948 for the attorney fees and interest. They stated that their payment did not constitute a waiver of their right to appeal the underlying judgment. Initially, Terzian-Feliz returned the check, but later appears to have accepted it.

H. *Exoneration of Appeal Bonds*

On June 10, 2010, the Ajamians acknowledged in writing that Terzian-Feliz had paid their appellate costs of more than \$3,000. A week later, they sent a written release of any right to make a claim against the appellate bonds. Beginning the day after the trial court ruled on the two motions on June 15, 2010, Terzian-Feliz repeatedly requested that the trial court issue an order exonerating her appeal bonds.⁵ The Ajamians opposed the request.

II. INJUNCTION BOND

A. *Award of Injunction Bond*

1. *Challenge to Bond Enforcement*

In her cross-appeal, Terzian-Feliz raises a host of challenges to the trial court's summary award of the full \$75,000 injunction bond to the Ajamians. In essence, she challenges the trial court's determination that the Ajamians had spent at least \$75,000 to defend against the injunction. That injunction was in effect from January 3 until June 27, 2006. In June 2010, the trial court found that the declaration of the Ajamians' counsel supporting its June 2006 ruling that the \$75,000 injunction bond was insufficient by half also demonstrated that by June 2006, the Ajamians had expended at least \$75,000

⁵ We find that the transcript of the August 11, 2010 hearing is relevant to the issues on appeal. (See 10/20/10 order granting request for judicial notice without determination of relevance)~ (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).)

defending against the easement claims underlying the injunction. Accordingly, it summarily granted the bond enforcement motion, rejecting Terzian-Feliz’s call for discovery and an evidentiary hearing.

2. *Standard of Review*

Preliminarily, the parties disagree about our standard of review on appeal. Terzian-Feliz contends that we must conduct a *de novo* review of the trial court’s decision. She reasons that when we examine whether there was a triable issue of fact warranting discovery and an evidentiary hearing, we must view the evidence in the same manner that we would on a motion for summary judgment. The Ajamians argue that application of summary judgment standards would be inappropriate in this bond enforcement matter. On the question of whether the motion was akin to a motion for summary judgment, we are guided by the applicable statutes on bond enforcement.

When an injunction is granted, the applicant for the injunction must provide an undertaking that he or she will pay any damages—up to a specified amount—that the enjoined party may sustain as a result of the injunction. (§ 529, subd. (a); *ABBA Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 10.) Liability on this bond may be enforced on a motion as part of the original action. (§ 996.440, subd. (a); *Grade-Way Construction Co. v. Golden Eagle Ins. Co.* (1993) 13 Cal.App.4th 826, 829-833 (*Grade-Way*).) If sought, judgment *must* be entered against the bond’s principal and surety *unless* they file affidavits⁶ in opposition to the motion to enforce the bond showing facts “as may be deemed by the judge hearing the motion” to be sufficient to present a triable issue of fact. If such a showing is made, a trial on those issues is conducted after discovery. (§ 996.440, subd. (d).)

The summary bond enforcement procedures established by section 996.440 differ significantly from the procedures for a motion for summary judgment under section 437c. Section 996.440 requires the trial court to enter judgment against the principal and surety—the *opponents* of the motion—unless they serve and file affidavits in opposition

⁶ A declaration filed under penalty of perjury satisfies the requirement of an affidavit. (§§ 2003, 2015.5.)

to the motion showing triable issues of fact. (*Grade-Way, supra*, 13 Cal.App.4th at p. 837; see § 996.440, subd. (d).)⁷ In a summary judgment proceeding, the *moving party* must show that there are no triable issues of fact. (§ 437c, subd. (c).) Thus, the Legislature places the burden of proof on different parties in summary judgment and bond enforcement proceedings. While summary judgment is disfavored as a drastic remedy, summary bond enforcement is favored in the law. (See, e.g., *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 849; see also § 996.440.) To apply the summary judgment procedures that Terzian-Feliz urges us to apply—construing the Ajamians’ affidavits strictly and construing her own liberally—in a summary bond enforcement proceeding would be inconsistent with her and her surety’s burden of proof as specified in the bond enforcement statute. (See § 996.440, subd. (d).)

3. *Expenses of Injunction or Underlying Action*

On the merits, Terzian-Feliz first claims that the Ajamians are not entitled to attorney fees incurred for the general defense of the lawsuit, but only those spent solely or principally to obtain a dissolution of the injunction. She asserts that the 2006 declaration of the Ajamians’ counsel set the amount of attorney fees spent on the easement causes of action, not on litigation specific to the preliminary injunction itself. She contends that she presented a triable issue of fact about whether the Ajamians incurred \$75,000 fees related to dissolution of the injunction alone, thus making summary bond enforcement improper.

In support of her legal reasoning, Terzian-Feliz relies on older cases that both predate our current statutory scheme and have been superseded by other case law for more than 60 years. (See *Lambert v. Haskell* (1889) 80 Cal. 611, 624-625; *Handy v. Samaha* (1931) 117 Cal.App. 286, 288, 290.) Modern cases provide that when it is

⁷ Terzian-Feliz’s briefs cite *Grade-Way* as if it supported the application of all summary judgment procedures to bond enforcement proceedings, but that case expressly states that the two types of proceedings are significantly different. (See, e.g., *Grade-Way, supra*, 13 Cal.App.4th at p. 837.) She also cites other cases contrary to the actual holding of *Grade-Way*, which are clearly distinguishable because they were decided under now-repealed statutes that have been superseded by sections 995.010-996.560.

necessary to defend the underlying action on the merits in order to defeat a preliminary injunction, a trial judgment against the party obtaining that injunction is tantamount to an adjudication that he or she had not been entitled to injunctive relief when the injunction was issued. In these circumstances—identical to those in the case at bar—attorney fees incurred in the defense of the underlying action *are* recoverable from an injunction bond if it was necessary to defend that action in order to defeat the claimed injunction. (See *Reachi v. National Auto. & Cas. Co.* (1951) 37 Cal.2d 808, 811-813; *Russell v. United Pacific Ins. Co.* (1963) 214 Cal.App.2d 78, 85-86.) Thus, we reject this aspect of her claim that the trial court erred in enforcing the bond in a summary manner.

4. *Effect of June 2006 Declaration*

a. *Timing of Entitlement Determination*

In her primary challenge to the injunction bond enforcement, Terzian-Feliz asserts that the June 2006 motion challenging the sufficiency of the \$75,000 bond was not the equivalent of a determination that the Ajamians were entitled to this sum. She notes that in 2006, the trial court specifically declined to rule that the Ajamians were *entitled* to the amount of the bond proceeds. On appeal, she now complains that the trial court in 2010 erred by concluding that it was bound by its 2006 ruling to find that they were so entitled.

We disagree with Terzian-Feliz's assumption that the 2010 trial court felt that the 2006 ruling precluded it from reaching any other conclusion. As we read its ruling, the 2010 trial court gave *credence* to the 2006 declaration of counsel about the amount of attorney fees expended to litigate the easement issues. That declaration, which supported the trial court's 2006 determination that the injunction bond had to be increased to \$150,000, stated under penalty of perjury that by that time, the Ajamians had incurred more than \$160,000 in attorney fees on that issue as of that date. Faced in June 2010 with the issue of the Ajamians' entitlement to the lesser amount of \$75,000 and having personally observed⁸ *four more years* of hotly disputed litigation, the trial court found

⁸ The same trial judge presided over the pretrial, trial and posttrial matters, and so was familiar with the extent to which the easement issues underlying the injunction were interconnected in the many proceedings before him.

this declaration sufficient to establish that the Ajamians incurred at least \$75,000 in attorney fees and costs related to the injunction. It necessarily found that Terzian-Feliz did not establish a triable issue of fact that a lesser amount was due to the Ajamians. Discovery and a further evidentiary hearing were not necessary, because in June 2010, it was clear to the trial court that the Ajamians had expended an amount at least as large as the value of the injunction bond to defend against Terzian-Feliz's baseless easement claim by June 2006. (See § 996.440, subd. (d).) Our reading of the record satisfies us that the trial court did not find that the question of entitlement to the amount of the bond was determined until the time of the 2010 hearing. The 2010 ruling was based on evidence that had been adduced in support of its 2006 rulings.⁹ The record supports the trial court's 2010 finding that the Ajamians were entitled to the entire \$75,000 injunction bond, without the need for further hearing.

b. *Hearsay*

Terzian-Feliz also attacks the declaration of opposing counsel filed in 2006 as hearsay. She reasons that the trial court could not properly rely on this declaration in this bond enforcement proceeding because the credibility of the statements contained in the declaration were in dispute. We disagree. As a procedural matter, affidavits submitted in accordance with statutory requirements are admissible, despite the hearsay rule. California law provides that hearsay evidence is inadmissible, *except as provided by law*. (Evid. Code, § 1200, subd. (b); see *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1355.) Numerous California laws permit or require the use of affidavits in support of certain motions. (See § 2009; *Elkins v. Superior Court, supra*, 41 Cal.4th at pp. 1355-

⁹ Terzian-Feliz also objects that because ACIC was not served with the motion challenging the sufficiency of the \$75,000 bond in June 2006, it cannot be bound by this determination. She reasons that because the June 2006 motion objecting to the sufficiency of the bond was not served on ACIC and because neither was given the statutorily required 30 days' notice for a motion to enforce a bond, the earlier determination cannot be used against her or ACIC without violating their statutory and due process rights. (See § 996.40, subd. (c).) As this argument turns on her incorrect assertion that the Ajamians' entitlement to \$75,000 was determined in June 2006 rather than at the June 2010 bond enforcement proceeding, we necessarily reject it as well.

1356.) When a party seeks to increase the amount of a bond, it must file a motion supported by affidavit. (§ 996.010, subd. (b).) Likewise, state law requires the submission of affidavits setting forth facts in support of and in opposition to a motion for bond enforcement. (§ 996.440, subds. (c)-(d).) The declaration of the Ajamians' counsel in June 2006 was filed under penalty of perjury in support of the motion to increase the amount of the injunction bond. As both statutes on motions to increase the amount of a bond and to enforce a bond require affidavits, we conclude that the hearsay nature of the declaration did not render it inadmissible at the hearing on the motion for bond enforcement. (See Evid. Code, § 1200, subd. (b).)

To the extent that the credibility of the different affidavits was at issue, the trial court resolved the crucial facts contained in the declaration of the Ajamians' counsel against Terzian-Feliz and ACIC. The judge in this matter presided over all proceedings bearing on the issues before us. As such, it was familiar with the credibility of all parties and counsel, the ferocity with which Terzian-Feliz's easement claims underlying the injunction had been litigated, the jury's finding that those claims were completely meritless, and our affirmance of those jury's findings in the original appeal. If there were credibility issues before the trial court, it impliedly found the assertions of the Ajamians' counsel about the extent of her work to be believable.

5. Equitable Estoppel

Terzian-Feliz also contends that the Ajamians are equitably estopped from obtaining the full value of the injunction bond because they withheld material facts from her that should have been disclosed during pretrial discovery relating to a settlement reached with the Ajamians' title insurer. She reasons that because the Ajamians purchased title insurance covering unrecorded easements when they purchased their property, it necessarily follows that they had notice of her easement. She asserts that the Ajamians failed to disclose key facts about their title insurance coverage during pretrial

discovery.¹⁰ Terzian-Feliz reasons that evidence of this insurance coverage would have provided evidence that the Ajamians were on notice of her unrecorded easement, which could have defeated their bona fide purchaser defense. Based on this reasoning, she contends that she is entitled to offset against the \$75,000 injunction bond sums that the Ajamians received from their title insurer.

The trial court rejected Terzian-Feliz’s “suppression of material evidence” argument. On appeal, we discuss only two of the many flaws in her argument. First, the “evidence” of the Ajamians’ action against their title insurer is not properly before us. Terzian-Feliz and ACIC asked the trial court to take judicial notice of the complaint filed in this action. Margarita Ajamian opposed the motion, contending that the proffered evidence was irrelevant. The trial court did not expressly rule on the request for judicial notice. Its rejection of Terzian-Feliz’s “suppression of material evidence” argument as a “nonissue” is consistent with a denial of the request for judicial notice for lack of relevancy.

When the same matter was presented to this court in conjunction with Terzian-Feliz’s appeal from the August 2007 judgment, we denied her request for judicial notice, concluding that to the extent that the proffered material had any probative value, that minimal probative value was substantially outweighed by its prejudicial effect. (See Evid. Code, §§ 210, 350, 352, 450-452, 454, 459, 1152.) In the present appeal, Terzian-Feliz has not asked us to take judicial notice of the title insurance matter in this appeal. If she had done so, we would deny the request, for the same reasons that we cited in the appeal from the August 2007 judgment.

Even if we assume arguendo that it was appropriate for us to take judicial notice of the complaint in the title insurance matter, it does not prove what Terzian-Feliz asserts that it does. The mere fact that the Ajamians contracted for title insurance to cover unrecorded easements such as the one that Terzian-Feliz later claimed does not constitute

¹⁰ Margarita Ajamian disputes this factual claim, stating that the Ajamians made a timely disclosure of the fact that they had title insurance, the contact information for their insurer and the fact that they had a coverage dispute with their title insurer.

notice that they knew that she held such an unrecorded easement at the time that they purchased the insurance.¹¹ Even if Terzian-Feliz were able to establish this seemingly tenuous legal proposition, her further assumption that she was entitled to an offset of \$45,819 that the Ajamians received from their title insurer in this separate action is certainly meritless. A review of the allegations of the complaint in that matter makes this conclusion clear.

In their March 2008 action, the Ajamians alleged the following facts. In 2001, they paid for a title insurance policy that included coverage for any unrecorded easements claimed against their property. The title insurer failed to issue this policy to them, but sent them a copy of a less generous policy. Terzian-Feliz filed suit against the Ajamians in July 2005 alleging a prescriptive easement across their property. In September 2005, the Ajamians delivered a copy of her complaint to their title insurer asking it to undertake the defense of the action. During its investigation of their claim, the insurer determined that it had issued the incorrect policy to the Ajamians. In October 2005, it accepted coverage for Terzian-Feliz's easement claim, but refused to defend the Ajamians against it. Relying on language in the insurance policy for which the Ajamians paid but never received, the title insurer opted to pay them \$40,000 for the diminution in value of their property resulting from Terzian-Feliz's easement claim, and \$5,819 in costs and attorney fees incurred from the date when the Ajamians tendered the action to them for defense until the date when it accepted coverage. Under the terms of that policy, the title insurer's payments ended its duty to defend them. In their subsequent action against the title insurer, the Ajamians claimed that it continued to have an obligation to defend them and that its refusal to undertake defense of the Terzian-Feliz action was made in bad faith.

Terzian-Feliz reasons that the Ajamians collected \$45,819 as compensation for her easement claim. Our reading of the complaint satisfies us that the title insurance

¹¹ As Terzian-Feliz failed to establish her right to a prescriptive easement, the fact that the jury also concluded that the Ajamians enjoyed bona fide purchaser status was not needed to constitute an affirmative defense to such an easement. (*Terzian-Feliz v. Ajamian, supra*, A119333.) The mootness of the bona fide purchaser issue further undercuts Terzian-Feliz's claim of error.

company paid that sum to avoid any further duty to defend the Ajamians under the terms of their policy, rather than to compensate the Ajamians for her claimed easement. Equitable estoppel applies only if Terzian-Feliz can show that the Ajamians concealed a *material fact*. (*Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2009) 170 Cal.App.4th 554, 571.) Our review of Terzian-Feliz’s argument satisfies us that the facts alleged in the Ajamians’ complaint against their title insurer are not material to the bond enforcement issue. Thus, even if the Ajamian complaint in the title insurance matter was properly before us, it would not establish any grounds for an offset against the amount of the bond that Terzian-Feliz owes to the Ajamians.

6. *Equitable Subrogation*

Terzian-Feliz also contends that the Ajamians were not proper parties to bring the motion for bond enforcement. She reasons that by settling the title insurance case, the title insurer must have acquired all rights to reimbursement from the Ajamians. Terzian-Feliz raised this claim in the trial court and Margarita Ajamian opposed it, noting that the terms of settlement of the title insurer action were confidential. The trial court found that Terzian-Feliz did not establish that the Ajamians were not proper parties to the bond enforcement motion. As this claim of error turns on evidence that is not before us—both the allegations of title insurance action and the terms of the confidential settlement—we agree that Terzian-Feliz’s speculation is unproven.

7. *Conclusion*

In essence, the trial court ruled that no matter what other evidence could be adduced, that contained in the 2006 declaration alone was sufficient to support enforcement of the total amount of the bond. It necessarily found credible the Ajamians’ claim to have spent at least that sum in defense of Terzian-Feliz’s claim of an underlying easement. (See *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324-1328 [trial court reasonably calculated that billed hours were not credible].) As no other evidence would have proven that less than \$75,000 had been expended in defense of the easement claim related to the injunction, no discovery or evidentiary hearing was

required. We are satisfied that the trial court properly granted summary enforcement of the injunction bond. (§ 996.440, subd. (d).)

B. *Interest on Bond*

In their appeal, the Ajamians contend that they are entitled to prejudgment interest on Terzian-Feliz's \$75,000 liability on the injunction bond, computed from the time that her obligation under the bond became fixed. They reason that her obligation was fixed in June 2006 when the preliminary injunction was dissolved. The trial court disagreed, finding that they were not entitled to prejudgment interest from the June 27, 2006 dissolution of the injunction to the August 14, 2007 entry of judgment on the jury verdict, because Terzian-Feliz's lack of entitlement to an injunction was not resolved until the verdict.

The trial court's ruling was proper. Liability on a bond may be enforced on a motion in the underlying action. (§ 996.440, subd. (a).) However, that enforcement cannot be made until entry of final judgment in the underlying action in which the bond has been given and the appeal of that judgment has been finally determined. (§ 996.440, subd. (b); *Satinover v. Dean* (1988) 202 Cal.App.3d 1298, 1300-1301.) Thus, the trial court had no statutory authority to enforce the \$75,000 injunction bond until after Terzian-Feliz's appeal of the August 2007 judgment became final in April 2010.

Alternatively, the Ajamians contend that they were entitled to postjudgment interest on the \$75,000 injunction bond from the date of the August 2007 judgment. This claim of error relates to their assertion that they were entitled to modify or amend the August 2007 judgment to include the bond enforcement, rather than to a separate judgment. Interpreting the bond enforcement statutes, the trial court ruled that the Ajamians were not entitled to interest on the \$75,000 bond dating from the August 2007 judgment because the enforcement of the injunction bond resulted in a new, separate judgment. (See §§ 996.495.)

As the interpretation of the applicable statutes is a question of law, we review these issues anew on appeal. (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 749.) We agree that a new judgment was required. Once the August 2007 judgment had been

affirmed on appeal, the trial court had no authority to modify it. (See § 43; *People v. Randazzo* (1957) 48 Cal.2d 484, 487 [finality of appellate judgments after remittitur issues]; see also 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 853, pp. 916-917.) The bond enforcement statutes provide for a judgment of liability on the bond that may be enforced in the same manner and to the extent as any other money judgment. (§ 996.495.) Interest began to accrue on the date of the judgment on the new bond enforcement motion. (§ 685.020, subd. (a).) Thus, the Ajamians are not entitled to interest predating this new judgment.

III. SATISFACTION OF JUDGMENT

A. Decline of Demand

1. Right to Attorney Fees

The trial court awarded Terzian-Feliz \$2,938 in attorney fees from the Ajamians after she prevailed on her motion to compel acknowledgment of full satisfaction of judgment. On appeal, the Ajamians contend that the trial court erred in awarding Terzian-Feliz attorney fees.

A money judgment is satisfied by payment of the full amount required to satisfy it. (§ 724.010, subd. (a).) Terzian-Feliz paid the Ajamians the full amount due on the August 2007 judgment. Once a money judgment has been satisfied, the judgment creditor *must* file an acknowledgment of satisfaction of judgment with the court. (§§ 724.030, 724.050, subd. (c).) The judgment debtor may demand that the judgment creditor do so. (§ 724.050, subds. (a)-(b).) If a judgment creditor does not, the judgment debtor may file a motion to compel, asking the trial court to order the judgment creditor to comply. (§ 724.050, subd. (d).)

The Ajamians contend that they acted reasonably when they refused to execute acknowledgments of full satisfaction of the August 2007 judgment because they had yet to recover appellate costs and the \$75,000 injunction bond that Terzian-Feliz owed them. Assuming *arguendo* that the Ajamians reasonably believed that execution of a satisfaction of the August 2007 judgment would jeopardize their legal ability to recover these other amounts due to them, they were mistaken. Statutory law forbids a judgment

creditor from conditioning delivery of an acknowledgment of full satisfaction of judgment on payment of an amount in excess of *that* judgment. (§ 724.070, subd. (a).) In this matter, the bond enforcement formed the basis of a new judgment, as the trial court had no authority to modify or amend the August 2007 judgment. (§ 996.495.) We have already upheld this determination. (See pt. II.B., *ante*.) Likewise, an award of appellate costs forms the basis of a new judgment separate from that which issued in August 2007. (See Cal. Rules of Court, rule 8.278(c)(3).)

The Ajamians were required to obtain separate judgments to recover the injunction bond and their appellate costs. They had no legal basis to refuse acknowledgment of full satisfaction of the August 2007 judgment. When a judgment debtor prevails on such a motion to compel acknowledgment of full satisfaction of judgment, the trial court *must* award reasonable attorney fees. (§ 724.080; *Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 140; see *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1143 [shall is usually mandatory].) Terzian-Feliz was the prevailing party on that motion. Thus, the trial court properly granted her motion for attorney fees related to the motion to compel. (§ 724.080.)

2. Amount of Attorney Fees

Alternatively, the Ajamians urge us to conclude that the trial court erred by granting excessive attorney fees to Terzian-Feliz. They reason that the attorney fees award given covered time devoted to both their motion to amend the judgment and Terzian-Feliz's motion to compel, but that the statute only authorizes an award of fees related to the motion to compel. A trial court has discretion to determine what constitutes a reasonable attorney fee. (See, e.g., *Mustachio v. Great Western Bank* (1996) 48 Cal.App.4th 1145, 1150-1151.) There is no question that the trial court exercised that discretion, as it reduced the attorney fees award sought from \$3,380 to \$2,938.

An abuse of discretion is established if the trial court's decision exceeds the bounds of reason, when that ruling is viewed in light of applicable law and relevant circumstances. (*Jhaveri v. Teitelbaum, supra*, 176 Cal.App.4th at p. 749.) The trial court could have segregated the time spent by Terzian-Feliz's counsel on these two motions,

but it did not. These two motions were intertwined, as each turned on the determination that bond enforcement required a separate judgment and could not be enforced by means of an amended judgment. As the two motions were connected in this manner, we conclude that to set a reasonable attorney fees award based on time spent addressing both motions did not exceed the bounds of reason.

B. *Related Remedies*

For her part, Terzian-Feliz contends that she was entitled to damages and statutory penalties along with the satisfaction of judgment.¹² The trial court awarded her \$2,938 in attorney fees, but found that she was not entitled to any damages or penalties.

(§§ 724.050, subd. (e), 724.070, subd. (a).)

When a judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand for acknowledgment of full satisfaction of judgment within the time required by statute, the judgment creditor is liable for \$100 damages by reason of this failure. (§ 724.050, subd. (e).) If the judgment creditor intentionally conditions delivery of an acknowledgment of full satisfaction of judgment on payment of

¹² She also faults the trial court for not granting exoneration of her appeal bonds, but Terzian-Feliz did not seek this remedy in her April 2010 motion to compel satisfaction of judgment. She admits as much in her reply brief. That omission was reasonable, as her motion to compel was filed two months *before* she paid her the Ajamians' appellate costs. In her June 1, 2010 response to the Ajamians' opposition to her motion to compel, she first made reference to exoneration of appeal bonds. Terzian-Feliz added the remedy of exoneration of appeal bonds in her proposed order, but the trial court fashioned its own order which did not include this matter. The first evidence that Terzian-Feliz paid her appellate costs—a necessary predicate to exoneration of the appeal bonds—was not given until June 10, 2010. Immediately after the order granting her motion to compel was issued, Terzian-Feliz asked the trial court to issue a “corrected” order that also ordered exoneration of her appeal bonds, to no avail. The Ajamians objected that Terzian-Feliz's request for an order exonerating her appeal bonds was beyond the scope of the trial court's June 15, 2010 ruling, in part because Terzian-Feliz's motion to compel pertained to her satisfaction of the judgment, not satisfaction of her obligation to pay appellate costs. An appellate cost award is a new judgment, unrelated to the August 2007 judgment that Terzian-Feliz's motion to compel addressed. (See Cal. Rules of Court, rule 8.278(c)(3).) Factually and legally, Terzian-Feliz's request for exoneration of her appeal bonds was outside the scope of the motion to compel.

an amount in excess of the judgment, the creditor is liable to the judgment debtor for damages of up to \$250 sustained by this action. (§ 724.070, subd. (a).) Terzian-Feliz claims damages resulting from premiums on her appeal bond, filing and service costs, and interest.

The trial court ruled that Terzian-Feliz was not entitled to damages under either statute. Both provisions require a finding that Terzian-Feliz suffered some damage *as a result* of the failure of the Ajamians to act. (§§ 724.050, subd. (e), 724.070, subd. (a).) Impliedly, the trial court concluded that she did not. Having witnessed many years of Terzian-Feliz's litigious conduct, the trial court would have been within its power to find that any damage she suffered from the Ajamians' suspicion that she would use an acknowledgment of full satisfaction of judgment to their prejudice was damage of her own making.

On appeal, we must uphold the trial court's factual finding supporting its order for satisfaction of judgment if those findings are supported by substantial evidence. We presume the existence of every fact that the trial court could reasonably deduce from the evidence in support of that order. We presume that the order is correct, indulging in all presumptions supporting the judgment to the extent that the record is silent. Error must be affirmatively shown on appeal. As the appellant, Terzian-Feliz has the burden of proving that there is no substantial evidence to support the challenged factual findings. (*Jhaveri v. Teitelbaum, supra*, 176 Cal.App.4th at pp. 748-749.) We find that the record contains substantial evidence to support the trial court's implied finding that she suffered no damage as a result of the Ajamians' refusal to execute an acknowledgment of full satisfaction of judgment. Under these circumstances, the statutes do not require the imposition of any penalty or damage award.¹³

¹³ In these posttrial motions and in this appeal, Terzian-Feliz has lived up to her characterization of herself as an attorney practiced in making simple things complicated. (See *Terzian-Feliz v. Ajamian, supra*, A119333.)

The order is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.