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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**RAFFAELE ZOCCA et al.,**  
**Plaintiffs and Appellants,**  
**v.**  
**WILLIAM M. BALIN et al.,**  
**Defendants and Respondents.**

**A131112**

**(San Francisco City & County  
Super. Ct. No. CGC-04-431080)**

Plaintiffs/appellants<sup>1</sup> appeal a summary judgment in favor of defendants William M. Balin and Balin & Kotler, LLP (Balin), in appellants' action for legal malpractice, breach of fiduciary duty and intentional misrepresentation. Appellants contend the trial court erroneously denied their request for a continuance to obtain expert witness testimony (Code Civ. Proc., § 437c, subd. (h)), and summary judgment was improperly granted. We reject these contentions and affirm.

**BACKGROUND**

*Underlying Consolidated Cases Between Appellants and Giovanni*

The instant action comes before us after years of protracted litigation in San Mateo Superior Court stemming from an intra-family real estate dispute. In 1991, Giovanni

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<sup>1</sup> Appellants are Raffaele Zocca, Mary Zocca, and Anna Maria Zocca. Solely to avoid confusion, and intending no disrespect, we refer to appellants individually by their first names.

Zocca (Giovanni)<sup>2</sup> obtained a judgment for costs against his brother Raffaele and sister-in-law Mary in the sum of \$11,820. After not receiving payment, Giovanni placed a judgment lien on Raffaele and Mary's house on Hazelwood Drive in South San Francisco (Hazelwood property).

Sometime prior to 1998, Anna Maria, the daughter of Raffaele and Mary, was added as a co-owner of the Hazelwood property. In 1998, as part of an overall retirement plan, appellants decided to refinance the Hazelwood property in order to purchase a house for Anna Maria. When they attempted the refinance, they were informed of the judgment lien by escrow company Commonwealth Land Title (Commonwealth). Appellants and Giovanni could not agree on the amount of accrued interest on the judgment and the lien was not paid. At Commonwealth's request, appellants agreed to allow \$30,000 of the payout they were to have received from the refinance to be withheld so that Commonwealth could deposit it with the court and file an interpleader action to determine the amount due to Giovanni.

In 1999, Commonwealth filed an interpleader action against Giovanni and appellants (case No. 408705) (the interpleader action). Appellants initially hired Attorney Brian Beckwith<sup>3</sup> to represent them in the interpleader action and have the lien on the Hazelwood property removed.<sup>4</sup>

In 2000, after becoming dissatisfied with Beckwith's actions on their behalf, appellants retained Balin to represent them in the interpleader action, in further litigation involving Giovanni, and in an attorney malpractice action against Beckwith (case No. 416076) (the Beckwith malpractice action). In the Beckwith malpractice action, appellants claimed they lost the value of the house they were to purchase for Anna Maria and lost the ability to refinance their properties. As a result, they did not have the funds

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<sup>2</sup> Giovanni is not a party to this appeal.

<sup>3</sup> Beckwith is not a party to this appeal.

<sup>4</sup> In return for Commonwealth capping its fees and costs at \$5,000, the parties to the interpleader action subsequently stipulated to dismiss Commonwealth from that action.

to raze a single family dwelling they owned and in its place erect a small apartment building.

In January 2001, appellants filed a tort action against Giovanni for interference with prospective advantage and slander of title based on Giovanni's conduct in allegedly demanding an excessive payout amount to release his judgment lien (case No. 415615) (the tort action). In both the interpleader action and the tort action, appellants again claimed they had lost the value of a house they were going to purchase for Anna Maria and lost the financial advantage of refinancing their properties in order to raze a single family dwelling they owned and put up a small apartment building in its place.

In October 2001, Giovanni filed an action against appellants on the 1991 judgment requesting a new judgment for the original principal amount plus accrued interest (case No. CLJ 184823) (the action on the judgment). Thereafter, appellants and Giovanni stipulated to consolidation of the interpleader action, the tort action, and the action on the judgment (hereafter jointly referred to as the consolidated cases) for all purposes.

In January 2002, appellants obtained an order in the interpleader action summarily adjudicating that Giovanni's 1991 judgment had expired, and, therefore, he had no claim for the interpleaded funds and his judgment lien was of no further force or effect.

In August 2002, the remaining issues in the tort action and the action on the judgment were tried by the court. After the court ruled Giovanni's recording of an abstract of judgment was immune from tort liability under the litigation privilege (Civ. Code, § 47), appellants stipulated to dismiss their tort claims. The court concluded the action on the judgment was barred by the statute of limitations. The court entered a single judgment in the consolidated cases. Thereafter, the court granted Raffaele and Mary's motion for new trial of their tort action, concluding it was not barred by the litigation privilege because Code of Civil Procedure section 724.070<sup>5</sup> specifically

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<sup>5</sup> All undesignated section references are to the Code of Civil Procedure.

Section 724.070, subdivision (a) provides: "If a judgment creditor intentionally conditions delivery of an acknowledgment of satisfaction of judgment upon the performance of any act or the payment of an amount in excess of that to which the

authorized damages to be awarded in such cases. However, the court held that Anna Maria's claims were barred because she was not a "judgment debtor" pursuant to section 724.070.

Giovanni appealed from the judgment in the consolidated cases and, in 2004, the Court of Appeal reversed the grant of new trial to the extent it permitted Raffaele and Mary to proceed on their tort claims. It remanded the matter to the trial court to determine whether they could proceed with a statutory claim under section 724.070, and dismissed, as premature, Giovanni's appeal from the order dismissing the action on the judgment. The court affirmed the judgment against Anna Maria and in favor of Giovanni and concluded that Giovanni should be awarded \$17,051.04 in costs against her. (*Commonwealth Land Title Co. v. Zocca* (Apr. 21, 2004, A101821, A101822, A102844, A103712) [nonpub. opn.] (*Zocca I*).)<sup>6</sup>

Following remand in *Zocca I*, Raffaele and Mary amended the tort action complaint to allege a single cause of action against Giovanni for violation of section 724.070 (hereafter the 724.070 action), claiming they lost opportunities to improve their real property holdings. The parties agreed to sever the issue of offsets for a court trial following the jury trial. In September 2007, the jury issued a special verdict in the 724.070 action in favor of Raffaele and Mary, finding that Giovanni intentionally conditioned delivery of an acknowledgment of satisfaction of judgment upon the payment of an amount in excess of that to which he was entitled under the judgment. However, the jury also found that Raffaele and Mary suffered no resulting damages.

In November 2007, following a court trial of the offset issue, the court entered judgment in the consolidated cases. It found that Mary and Raffaele were each entitled to a damage award of \$250 under section 724.070, but due to offsetting amounts they owed

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judgment creditor is entitled under the judgment, the judgment creditor is liable to the judgment debtor for all damages sustained by reason of such action or two hundred fifty dollars (\$250), whichever is the greater amount."

<sup>6</sup> In the instant action, the trial court took judicial notice of *Zocca I*; some of the background facts herein are taken from that decision.

to Giovanni, the judgment awarded Raffaele and Mary no net damages in the 724.070 action. In the interpleader action, the court awarded \$25,000 of the interpleaded funds jointly to appellants and the remaining \$5,000 to Commonwealth pursuant to the parties' prior agreement. The court adopted its prior order that the action on the judgment was time-barred. It also determined that Raffaele and Mary were prevailing parties for purposes of costs under section 1032 et seq. because they prevailed on Giovanni's claim for enforcement of the 1991 judgment against them and they were awarded \$25,000 in the interpleader action, which offset the fact that they were awarded no net recovery in their tort action. The amended judgment credited appellants with \$4,791.31 in costs against Giovanni. Giovanni unsuccessfully appealed the judgment, amended judgment, and postjudgment order regarding prevailing party issues. (*Commonwealth Land Title Co. v. Zocca* (Oct. 15, 2009, A120397, A122294) [nonpub. opn.] (*Zocca II*).)<sup>7</sup>

*Giovanni's Malicious Prosecution Action Against Appellants and Balin*

In November 2004, Giovanni filed a malicious prosecution action against appellants and Balin (case No. CGC 04-436457) (the malicious prosecution action) alleging they conspired to maliciously prosecute him by filing the tort action. In 2005, Balin successfully demurred to the malicious prosecution action on the ground that Balin had probable cause to file the tort action. In 2006, appellants successfully moved for summary judgment on the grounds that appellants acted on the advice of Balin in bringing the tort action against Giovanni and a reasonable attorney could have believed there was probable cause to bring that action against him.

*Beckwith Malpractice Action*

In January 2002, appellants retained Balin to represent them in the previously filed Beckwith malpractice action, which alleged Beckwith's deficient representation of them in the interpleader action. In the Beckwith malpractice action, appellants claimed as damages that they had lost the value of a house they were to purchase for Anna Maria

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<sup>7</sup> In the instant action, the trial court took judicial notice of *Zocca II*; some of the background facts herein are taken from it.

and had lost the ability to refinance their properties in order to raze a single family dwelling they owned and put a small apartment building in its place. While represented by Balin, appellants ultimately settled the Beckwith malpractice action for \$35,000.

*The Instant Action*

In May 2004, appellants filed their original complaint for professional negligence against Balin. In May 2010, appellants filed their second amended and operative complaint against Balin alleging attorney malpractice, breach of fiduciary duty, and intentional misrepresentation.

The first cause of action for attorney malpractice relates to Balin's representation of appellants in the interpleader action. It alleges that Balin, inter alia, failed to proceed against Giovanni for execution and delivery of a satisfaction of judgment pursuant to section 724.050, and negligently advised appellants to release Commonwealth from the case, resulting in loss of part of their escrow funds. Appellants claimed they were damaged because they were unable to refinance their properties and use the funds from the refinancing, lost the use of their money that was tied up in the interpleader action, lost the ability to purchase a house with a mortgage rate they could afford, lost the increased value of that house, lost the cost of an appraisal they had performed, and were unable to build a property they wanted to build. The second cause of action for breach of fiduciary duty contains the same factual allegations and damage claims as the first cause of action.

The third cause of action for attorney malpractice relates to Balin's representation of appellants in the tort action and the action on the judgment. It alleges Balin failed to: assert claims on behalf of Mary and Raffaele against Giovanni under section 724.070; advise Anna Maria she had no viable claims against Giovanni; and, develop evidence and timely obtain expert witnesses. It also alleges Balin requested an unnecessary continuance of the trial of the consolidated cases. Appellants allege they were damaged by incurring costs and fees associated with the unnecessary litigation, and by failing to obtain a fair and just recovery against Giovanni. Appellants also allege Anna Maria was damaged due to lost time and money in pursuing litigation against Giovanni. The fourth

cause of action for breach of fiduciary duty asserts the same factual allegations and damage claims as the third cause of action.

The fifth cause of action for attorney malpractice alleges that Balin negligently represented appellants in the Beckwith malpractice action by failing to adequately and timely prepare so as to avoid continuances that were against appellants' interest and by failing to advise appellants that William Balin might have to testify in the action against Beckwith, resulting in appellants agreeing to accept a lower settlement than they otherwise would. It also alleges appellants were damaged by incurring increased costs and unnecessary fees associated with the needless litigation. The sixth cause of action for breach of fiduciary duty alleges the same factual allegations and damages as the fifth cause of action.

The seventh cause of action for intentional misrepresentation/fraud alleges that Balin misrepresented to appellants its knowledge and ability to remove a judgment lien. In addition to general damages, appellants seek exemplary damages under Civil Code section 3294 resulting from Balin's fraud.

As to all causes of action the complaint's prayer seeks damages, "including damages for additional court fees, unnecessary attorneys' fees, lost time, loss of use of money, loss of the ability to refinance properties and purchase a house at affordable price and low interest rates, increased value of said house, loss of value to build on land [appellants] owned," and punitive or exemplary damages.

*Balin's Summary Judgment Motion*

On June 14, 2010, Balin moved for summary judgment on the ground that appellants cannot establish damages and Anna Maria's claim against him is barred by the judicial estoppel doctrine. Balin contended the damages appellants asserted against him were the same damages they asserted in the trial on the consolidated cases and are, therefore, barred by the doctrine of collateral estoppel. Balin also asserted that Raffaele and Mary suffered no damages due to any delay in the underlying cases caused by Balin.

In opposing the summary judgment motion, appellants argued triable issues of fact exist as to whether Balin's conduct resulted in damage to appellants, and Balin failed to

establish the elements of collateral estoppel, in part because the Beckwith malpractice action settled and was not litigated. Appellants also argued they were damaged because they lost \$30,000 in legal fees to Balin plus \$5,000 in legal fees to Commonwealth's counsel, and any damage awards received by appellants do not exceed the amount of their damage claims. Finally, they argued that, but for Balin's negligent representation, Anna Maria would not have had to pay \$24,000 to Giovanni and \$5,000 to Balin.

Mary's declaration supporting the opposition stated that Balin's requests for continuances during its representation on all matters, particularly the Beckwith malpractice action, "cost [appellants] a retainer paid to one of [their] experts, the I.T.S. Group." A March 2004 letter from I.T.S. Group to Mary, referred to in Mary's declaration, indicated that I.T.S.'s July 2002 invoice included a \$2,295 retainer for preparation for an anticipated August 2002 hearing and an October 2002 trial that never took place. Anna Maria's supporting declaration stated William Balin pressured her to be a plaintiff in the tort action, encouraged her to appeal after the trial court ruled she was not entitled to damages in the tort action, and said he would represent her on appeal for \$5,000. After losing the appeal, Anna Maria was ordered to pay approximately \$24,000 in costs plus interest to Giovanni. Raffaele's supporting declaration stated, "we ended up paying significantly more than we received. Beckwith's position increased our risk and further tied up the property that we were trying to finance . . . ."

For the first time at the August 12, 2010 hearing on the summary judgment motion, appellants requested a continuance under section 437c, subdivision (h) so that they could depose William Balin and obtain a declaration from an expert witness on the issue of damages. In opposing the request, Balin noted that trial was set for September 13, the discovery cutoff was in three or four days, and discovery had been open for almost a year, during which William Balin had been available for deposition. Balin also argued that William Balin's deposition was irrelevant because proof of the damages issue was barred by collateral estoppel and judicial estoppel. Appellants conceded the parties had stipulated that William Balin's and Mary's depositions would be put off until issuance of the tentative ruling on the summary judgment motion.

The trial court’s 12-page order granting Balin’s motion for summary judgment first rejected appellants’ request for a continuance to conduct additional discovery. The court found that the requested discovery, William Balin’s deposition and expert witness testimony, did not involve facts essential to the opposition concerning the issue of damages and that the discovery could and should have been obtained prior to the summary judgment hearing. The court expressly found that William Balin’s deposition had apparently been scheduled prior to the summary judgment hearing, but was “dropped” by the parties’ mutual agreement. The court granted summary judgment on the grounds that Raffaele and Mary cannot establish damages and Anna Maria’s claims are barred by judicial estoppel. Appellants filed a timely notice of appeal.

## DISCUSSION

### I. *Standard of Review*

Summary judgment is properly granted “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (§ 437c, subd. (c).) As to each claim framed by the complaint, the defendant moving for summary judgment must present facts to negate an essential element or to establish a defense; only then will the burden shift to the plaintiff to demonstrate the existence of a triable, material issue of fact. (*Overton v. Walt Disney Co.* (2006) 136 Cal.App.4th 263, 268.) When the defendant has met its evidentiary burden, the burden of proof shifts to the plaintiff to show, by responsive separate statement and admissible evidence, that a triable issue of material fact exists.

(*Rosenblum v. Safeco Ins. Co.* (2005) 126 Cal.App.4th 847, 856.) In ruling on the summary judgment motion, the trial court must draw all reasonable inferences from the evidence in favor of the opposing party. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

On appeal, we review the trial court’s grant of summary judgment de novo. (*Aguilar, supra*, 25 Cal.4th at p. 860.) In doing so, we view the evidence in the light most favorable to appellants, the losing parties, resolving any evidentiary doubts or

ambiguities in their favor. (*McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1102.)

II. *No Abuse of Discretion in Denying Appellants' Belated Request for a Continuance*

Appellants contend the court erred in denying their request for a continuance under section 437c, subdivision (h).<sup>8</sup> They argue that deposing William Balin regarding the issue of damages “may have discredited [his] declaration and other evidence” and could have been used by their proposed expert on the damages issue.

“Subdivision (h) was added to section 437c ‘ “[t]o mitigate summary judgment’s harshness,” . . . [Citations]’ [citation] ‘for an opposing party who has not had an opportunity to marshal the evidence[.]’ [Citation.] The statute mandates a continuance of a summary judgment hearing upon a good faith showing by affidavit that additional time is needed to obtain facts essential to justify opposition to the motion. [Citations.] Continuance of a summary judgment hearing is not mandatory, however, when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing under section 437c, subdivision (h). [Citations.] Thus, in the absence of an affidavit that requires a continuance under section 437c, subdivision (h), we review the trial court’s denial of appellant’s request for a continuance for abuse of discretion. [Citation.]” (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254.) We conclude the court acted within its discretion to decide the merits of the summary judgment motion because the request for a continuance was procedurally improper and substantively unfounded.

First, the request for a continuance was untimely. Section 437c, subdivision (h) provides that a request for a continuance may be made by affidavits submitted in opposition to the summary judgment motion or “by ex parte motion at any time on or

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<sup>8</sup> Section 437c, subdivision (h) provides: “If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.”

before the date the opposition response to the motion is due.” Appellants’ oral request for a continuance at the time of the summary judgment hearing was clearly untimely. As the court noted, although appellants apparently scheduled William Balin’s deposition prior to the summary judgment hearing, appellants agreed to cancel it.

Second, appellants did not submit an affidavit in accordance with section 437c, subdivision (h) establishing good cause for a continuance. “ ‘The code section specifically requires a good faith showing by affidavit. It is not enough to merely raise the issue in the opposition memorandum.’ [Citation.]” (*Fisher v. Gibson* (2001) 90 Cal.App.4th 275, 283.)<sup>9</sup>

Since appellants did not properly request a continuance and did not make the requisite showing to warrant a continuance under section 437c, subdivision (h), the court did not abuse its discretion in denying a continuance and deciding the summary judgment motion on the merits.

### III. *Summary Judgment Was Properly Granted*

“To state a cause of action for legal malpractice, a plaintiff must plead ‘(1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney’s negligence.’ [Citation.] To show damages proximately caused by the breach, the plaintiff must allege facts establishing that, ‘*but for* the alleged malpractice, it is more likely than not the plaintiff would have obtained a more favorable result.’ [Citations.]” (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 179.)

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<sup>9</sup> Appellants’ points and authorities memorandum in opposition to the motion did not request a continuance pursuant to section 437c, subdivision (h).

A. *Balin Presented Evidence in Support of the Collateral Estoppel Claim*

Appellants' initial argument appears to be that Balin failed to present evidence in support of the claim that appellants' damages were barred by collateral estoppel.<sup>10</sup>

With no citation to the appellate record, appellants argue that Balin's "first contention on the issue of collateral estoppel was limited to the argument that [appellants] had no evidence on damages and thus summary judgment is appropriate." They cite *Aguilar, supra*, 25 Cal.4th at pages 853-855 for the proposition that a defendant moving for summary judgment must do more than point to the absence of evidence to support an element of a plaintiff's cause of action. Instead, the moving defendant must support the motion with evidence. (*Id.* at p. 855.) Appellants' failure to cite to the appellate record waives this claim on appeal. (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799-801 (*Dietz*); Eisenberg et al, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 9:36, pp. 9-12 to 9-13 (rev # 1, 2011).) In any case, Balin did present evidence in support of the claim that appellants' real estate damages were barred by collateral estoppel. Balin relied on William Balin's declaration, appellants' case management statement in this action, the jury's verdict in the tort action, the amended judgment in the consolidated cases, and the Court of Appeal's opinion in *Zocca II*.

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<sup>10</sup> " 'Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings." [Citation.] [Citation.]" (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82, fn. omitted.) "Collateral estoppel precludes the relitigation of an issue only if (1) the issue is identical to an issue decided in a prior proceeding; (2) the issue was actually litigated; (3) the issue was necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding or in privity with a party to the prior proceeding. [Citation.] Even if the minimal requirements for application of collateral estoppel are satisfied, courts will not apply the doctrine if considerations of policy or fairness outweigh the doctrine's purposes as applied in a particular case [citation], or if the party to be estopped had no full and fair opportunity to litigate the issue in the prior proceeding. [Citations.]" (*Ibid.*)

B. *Collateral Estoppel and Appellants' Damage Claims Against Giovanni*

Appellants appear to argue that the trial court improperly concluded their claimed real estate damages against Balin are the same damages appellants claimed against Giovanni in the consolidated cases and are, therefore, barred by the doctrine of collateral estoppel. They assert that the issue of real estate damages was not, and could not, be fully litigated against Giovanni because there was continuing financial loss, including loss of opportunity, loss of income and other damages, which could have been confirmed by an expert, that continued beyond the date of the jury's verdict in that action. Once again, appellants have waived this claim of error by failing to provide any citation to the appellate record. (*Dietz, supra*, 177 Cal.App.4th at pp. 799-801; Eisenberg et al, Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 9:36, pp. 9-12 to 9-13 (rev # 1, 2011).) Waiver notwithstanding, in their response to Balin's separate statement of facts, appellants conceded it was undisputed that the interpleader action and the 724.070 action were tried for the lost opportunities to improve their real property holdings and the jury determined they had not suffered such damages. Moreover, we previously rejected appellants' assertion that the court erred in failing to grant them a continuance of the summary judgment hearing in order to obtain expert opinion testimony on the issue of damages.

C. *Collateral Estoppel and the Beckwith Malpractice Action*

Appellants also contend that collateral estoppel could not have barred their claim against Balin as to the handling of the Beckwith malpractice action because that action settled. With no citation of authority appellants assert, "If an action has been settled by the agreement of the parties, most jurisdictions will not apply collateral estoppel, since the issues have not been fairly and fully litigated." By failing to cite any authority or reasoned analysis for this proposition, appellants have forfeited our consideration of it. (See *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 (*Dabney*).)

D. *Other Damages Not Considered by the Court*

Appellants argue their damages claim against Balin was not limited to real estate damages and included other damages not considered by the trial court. With no citation

to the record, appellants appear to argue that in the interpleader action they lost \$30,000 in legal fees to Balin and \$5,000 in legal fees to Commonwealth's attorneys. Again with no citation to the record, appellants assert they made an "offer of proof of further cost[s] resulting from the prolonged litigation. Thus, the [c]ourt was clearly in error when it concluded that any damage awards received by [a]ppellants exceeded the amount of their present claims." Any claim regarding the offer of proof is waived due to appellants' failure to cite to the appellate record. (*Dietz, supra*, 177 Cal.App.4th at pp. 799-801.)<sup>11</sup>

Appellants next argue Balin's assertion that the amount appellants obtained in their settlement of the Beckwith malpractice action should not be set-off against Balin's "own negligence is self-contradicting and erroneous reasoning." Because appellants have failed to cite to the appellate record and provide any citation of legal authority or analysis in support of this claim of error, they have forfeited our consideration of it on appeal. (*Dabney, supra*, 104 Cal.App.4th at p. 384.)

Finally, appellants appear to argue that Balin erroneously maintained that Giovanni was entitled to an offset in the amount of \$23,640 for the unpaid obligation and interest owed to him resulting from the 1991 judgment. This assertion fails because it appears to be directed at Balin and not to any ruling by the trial court, does not cite to the appellate record, and does not cite legal authority.

Appellants have failed to demonstrate that the court erred in granting summary judgment.

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<sup>11</sup> Assuming appellants' reference to an offer of proof is to the same offer of proof that appellants reference elsewhere in their opening brief as an "itemized statement of damages that included all of the legal fees and cost[s]," which the court declined to accept, appellants do not assert any claim of error regarding the court's refusal to accept it.

DISPOSITION

The judgment is affirmed. Costs on appeal to Balin.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.