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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JOEL S. LEVINE, as TRUSTEE, etc.,

Plaintiff and Respondent,

v.

MILLARD TONG,

Defendant and Appellant.

A132142

(San Mateo County
Super. Ct. No. CIV483350)

Millard Tong appeals a judgment of monetary recovery and a related order for attorney fees and costs following a bench trial in this action brought by Joel S. Levine, Trustee of the Joel Sherman Levine Revocable Trust, on an unconditional guarantee (the guarantee) that the parties executed in connection with a loan of \$75,000 that Levine made to Irvin Waring (not a party to this action or appeal).

Tong proposes as grounds for reversal that the guarantee was an unenforceable contract of adhesion, that there was fraud or breach of fiduciary duty by Levine, and that Waring had “competency” issues when executing the underlying loan. Whatever their *potential* merits, however, no such theories were raised below by Tong’s pleadings, and they cannot be raised now for the first time on appeal. Because no challenge is raised to the issues actually adjudicated in the case, we affirm the judgment and order.

BACKGROUND

The facts presented at trial were essentially undisputed. Levine was his own, sole witness. Tong represented himself, as he did throughout the case. He cross-examined Levine, was briefly examined by Levine as an adverse witness (Evid. Code, § 776), but

did not testify in his own behalf or call any witnesses. All documents were admitted without objection.

Trial Evidence

Levine, a real estate investor living in Ukiah, California, had spent decades buying, holding, fixing up, and reselling single family residences. As the market went higher, he started loaning money against real property, and twice did business with Tong. The first time was rather indirect. Tong and two partners, including mortgage broker Bill Katsaros, came looking for a loan against some property in Santa Rosa, and Levine's wife, having cash available when Levine did not, made the partnership a two-year loan of about \$300,000, secured by a note. That loan was repaid, and the second time, Levine loaned them \$120,000, secured by a trust deed, against a condominium in Hawaii. Levine had not actually met Tong yet.

Tong had been a San Francisco Bay Area licensed general building contractor since the 1980's. He purchased and owned rental property and had done construction management for real estate developments in which, as the developer, he negotiated and signed contracts with various trades. Kay Lowrey, a business associate and longtime friend of his, had been an escrow agent for him. In early January 2006, Lowrey found herself in financial straits due to cancer. She was near the end of her recovery and expecting to work again by April or May, but had lost her employment during her illness. Tong wanted to help her out and so, in connection with repaying the loan on the Hawaii condominium early, spoke with Levine—apparently by phone and e-mail—about making her a loan of \$70,000, as a favor to himself and her. Levine had not known of Lowrey but now exchanged e-mails with her, and learned that she now wanted to borrow \$75,000 to cover some loan costs.

When it developed that security for the loan would be not realty, but a 1971 mobile home in Rocklin, California, owned and occupied by Lowrey's ex-husband, Waring, Levine e-mailed Tong to express discomfort. He said he was unfamiliar with valuing personal property or the land lease, was having Katsaros look into that, saw the "red flag" of Lowrey's unemployment, and was accustomed to having borrowers with

good credit and a very high loan-to-value ratio so that they could refinance at the end of the loan term. “Normally,” he wrote, “I would just pass on a loan like this because it does not seem to fit my comfort zone well. Your referral and her story make[] me want to help if I can get comfortable. We’ll see.” A credit report Levine ran on Lowrey came back with an expected very poor score.

Levine did not have a formal appraisal done on the mobile home but learned from Katsaros and a trailer broker that the home was well sited, purchased for \$80,000 two years earlier, and now could be worth \$140,000. But he was put off by not understanding the market and Lowrey not being the owner. When Lowrey suggested that Tong guarantee the loan and spoke to Tong about it, Levine agreed to make the loan, but only if Tong personally guaranteed it. Lowrey had told Levine that she expected to begin working again within a month, typically made \$125,000 a year as an escrow agent, and felt she could repay the loan within two years.

Levine, through his trust, made the loan of \$75,000 at 10 percent annual interest. It was made to the mobile home owner, Waring, by a promissory note dated March 6, 2006. The loan called for interest-only payments, with the entire loan to be repaid in April 2009. The loan was backed by a mobile home security agreement, and everything passed through an escrow. Lowrey was then living in the mobile home with Waring. Tong reviewed and signed the guarantee, bearing the same date, and this was done outside of escrow, with a chance to consult an attorney if he wished. He understood that the loan would not be made without his guarantee. Levine funded the loan only after receiving it.

Tong’s guarantee, titled “UNCONDITIONAL GUARANTEE,” obligated him to guarantee payment of all sums owing under the note, upon written demand, without the lender having to first “seek payment from any other source.” He also waived various rights and notices, plus any defenses based on claims, among others, that the lender: failed to obtain, perfect or maintain a security interest; improperly impaired or valued the collateral; did not conduct a commercially reasonable sale; or did not obtain fair market value for the collateral. Tong also waived all defenses “arising out of election of

remedies by the creditor, even though such an election . . . has destroyed the guarantor's rights of subrogation and reimbursement against the principal" It also stated: "Guarantor promises to pay all expenses Lender incurs to enforce this Guarantee, including . . . attorney's fees and costs." Lowrey executed a guarantee as well, although the document is not in the record.

Lowrey began making monthly interest payments of \$625, but soon fell behind as her job failed to generate enough income. Tong stepped in with payments but, in paying \$1,000 in December 2008 that did not bring the loan up to date, e-mailed Levine: "This is the last check I will send. I believe you have the option to take the property if you wish. [¶] This is all I can do. I would hope you can work with Kay on the balance. She told me she is working part time and soon to be full time." Now about 30 months into the loan, Levine e-mailed back to thank Tong for the payment but said that if Kay (Lowrey) could not keep the loan up to date, he would pursue his "other options, including trailer security and your guarantee."

The situation deteriorated, with further defaults and insurance on the mobile home lapsing so that Levine had to make trailer space payments and buy a policy to protect his interests. Further e-mail exchanges between Levine, Tong and Lowrey did not resolve the situation, although Tong did make more payments. In a June 2008 letter to Tong, Levine expressed frustration at the time and trouble he spent servicing the loan, writing, "I undertook this loan at your urging and guarantee. I even priced it under market as an accommodation to you and out of sympathy to Kay. This is the only loan I have ever owned that is secured by personal property. It was a mistake. [¶] Our contract provides that at any time and without notice I can take the trailer for any breach of contract. Irvin and Kay would be evicted and the trailer would be sold. [¶] If I seize the trailer and sell it for an amount that does not fully meet the note obligations I can and will look to you and your unconditional note guarantee. You are fully obligated by this guarantee to make me whole. [¶] The interests of all of us would be best served if you quickly buy the note from me and resolve the debt with your friends in your own way. Please advise me by

the end of the month of your intentions. Understand that I am resolved to proceed with my remedies if there are continuing breaches.”

As the April 2009 close of the loan term neared, Waring had Alzheimer’s Disease, and Tong phoned Levine to say Waring was moving to a care facility, and that Lowrey and Waring were moving and could make no payments. Tong was not making payments, either, and Levine now had to make space rental payments on the home. After Lowrey confirmed that the home was abandoned, Levine used a notice of belief of abandonment (Health & Saf. Code, § 18037.5) to formally declare his intent to sell the home by mid-May. Lowrey had power of attorney for Waring. Tong said he would handle the sale, but then never did. Levine kept him apprised of plans to list and sell the home, also trying to engage him in the process, but Tong did not reply.

Pending an August 2009 offer that did not pan out, Levine wrote to Tong: “I have been very disappointed that so far you have not responded appropriately in this situation we are in. You must know that your lack of cooperation in clearing your debt to me will just make my attorney need to file more papers and in the end cost you more money. I am open to having a discussion with you to try to work something out that fits into both of our needs. Don’t hesitate to contact me if you want to do things the easy and cheapest way for you.”

In opting to sell the property, Levine understood that Waring and Lowrey were both destitute, and he therefore did not resort to legal action against them. The housing market had declined, and Levine wound up listing the home for \$25,000, upon realtor advice that he would be lucky to get \$20,000. An offer of \$22,000 from one buyer fell through, the mobile home sold in December 2009 for \$17,000. Adjusted for the commission and other costs Levine had incurred, the credit put Tong’s remaining obligation for principal and ever-accruing interest at \$75,625.

Procedure Through Trial

Levine filed the instant complaint on the guarantee in April 2009, seeking the \$75,625, plus interest, and contractual attorney fees and costs. Tong answered, acting as his own counsel. He listed affirmative defenses as the statute of limitations, failure to

mitigate damages, estoppel, waiver, laches, unclean hands, failure to perform conditions precedent, and that Levine “caused his own damages”—evidently meaning comparative fault or negligence. The matter was ordered to judicial arbitration and, when that did not occur, Levine moved to compel arbitration and set a trial date.

A settlement conference was set to precede a trial date of September 27, 2010, but on that date, Tong filed a “Motion to Exonerate” under Civil Code section 2819,¹ seeking its resolution before trial. (No action on that motion appears from the record, and it was evidently not calendared.) When a further conference also yielded no settlement, trial was continued to March 14, 2011. Four weeks before then, however, Tong raised his exoneration claim again, this time through a motion for summary judgment, and sought a hearing on May 9, eight weeks beyond the trial date. On the eve of trial, Tong sought a continuance since his summary judgment motion was pending. The court denied the continuance, noting that a summary judgment motion would have to be heard at least 30 days before trial and that Tong had sought a hearing date beyond the trial date.

Trial began the next day, and Tong raised his exoneration claim yet again, now as a motion in limine. The court, however, observed that the issue appeared to pose factual questions requiring testimony and opted against pretrial resolution. Noting also that this was a potential defense that appeared to lie outside the allegations of Tong’s answer, the court treated the motion as one to amend the answer, and granted it.

Trial, arguments, and oral decision took less than a day. Tong argued that he was not liable on the guarantee because Levine failed a “fiduciary duty to protect my rights” by making a risky loan—that Levine, who had experience in making loans, should never have made this one or relied on Tong’s guarantee. Also, he should have sought recovery against Waring and Lowrey and “assigned the judgment to me [so] I’d have ten years to

¹ Civil Code section 2819 provides in part: “A surety is exonerated, except so far as he or she may be indemnified by the principal, if by any act of the creditor, without the consent of the surety the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended. . . .”

collect on that.” The court inquired extensively into Tong’s rationale, asking him about the invitation in Levine’s June 2008 letter to work something out, the prior relationship they had upon which to do that, Tong’s ability now to proceed against Waring and Lowrey, and Levine having brought Tong along in the process despite Tong’s waivers of notices and rights in the guarantee.

The court issued an oral statement of decision and a written memorandum, ruling that Tong had not carried his burden to establish any affirmative defenses in his answer. The exoneration claim (added by amendment at trial) failed because it fell within the defenses waived in the guarantee and, in any event, was unsupported by a preponderance of the evidence. Nothing done by Levine had altered or impaired Tong’s rights against Waring and Lowrey under the original obligation. There was no prejudice to Tong, and he still had rights of subrogation against them. Levine had also given notice of the sale (despite waiver of that right), and there was no evidence that the sale was done in an improper manner. For the same reasons, there was no proof of failure of a condition precedent or failure by Levine to mitigate damages.

Comparative fault, to the extent it might apply in this contract action, was not supported by the evidence, and for the statute of limitations, there was no evidence that suit was not brought within four years of Tong’s breach of the written guarantee. Nor was there support for equitable defenses of estoppel, waiver, laches or unclean hands. Levine had given notice of the sale (despite Tong’s waiver) and “at least two opportunities that are clear to step in and take control of either the debt or the sale of the mobile home” Also working against Tong was a seven-month period when he would not submit to court-ordered nonjudicial arbitration—noncompliance that could be used to strike an unclean hands defense.

On the merits of the Levine complaint, a preponderance of the evidence showed him entitled to recover in all, under the guarantee, \$88,507.91 plus attorney fees and costs in an amount to be established by a subsequent motion.

Posttrial Motions

Tong moved for a new trial based on asserted error in law, excessive damages, insufficient evidence, and irregularity (Code Civ. Proc., § 657, subds. 1, 5, 6 & 7), but his actual arguments were that: (1) the court “failed to read” the note and guarantee, to find the guarantee “unenforceable,” to grant exoneration, or to determine “the fiduciary or non-fiduciary capacity of Levine to Tong”; the court “mischaracterized” the transaction as an “investment” rather than “credit and lending” where Tong relied solely on Levine to determine creditworthiness, and “where Waring . . . had insufficient mental capacity to understand the consequences of signing the [note]” and lacked sufficient income to repay the loan. Buried in accompanying points and authorities were arguments that the denial of Tong’s motion for trial continuance (by a different judge) left him with insufficient time to call Waring or Lowrey as witnesses, and that the trial court should have decided the exoneration claim in limine, as a matter of law, without hearing evidence.

Tong offered a declaration by Lowrey that contained information not in evidence at the trial. Lowrey said that she and Tong had a purely business relationship and that she never discussed her personal life with him. Waring’s only income was monthly social security of \$850.00, and Levine had wanted her own unconditional guarantee (attached to her declaration) since she was no longer married to Waring and did not own the mobile home. “Shortly after the Levine loan was made to Irv in May of 2006,” she stated, “I began to notice changes in Irv’s behavior and mental condition.” At some unstated time he developed problems with short-term memory, had trouble sleeping, ceased bathing or changing his clothes, stopped reading, and stopped all social contacts. By the end of 2006, he denied having any problems and refused to see a doctor. By the time the note came due in 2009, Lowrey had to “find a place to take care of him,” and neither of them could make the \$630 interest payments. She was “not sure that given Irv’s mental condition in 2006 that he was even aware of the consequences of signing the loan papers and that he lacked the qualified [*sic*] mental capacity to enter into the loan with Mr. Levine” (*sic*).

In a supporting declaration of his own, Tong said he was “completely unprepared” for trial because the denial of his continuance motion less than 24 hours beforehand left him unable to present witnesses “that would have included Kay Lowery and Irv Waring.” He also stated that he had a strictly business relationship with Lowrey before the loan, and knew nothing about hers or Waring’s personal lives or Waring’s business dealings. He stated, “I trusted Levine to do the required due diligence before having me sign[] the ‘unconditional’ guarantee.”

In written opposition, Levine disputed each of Tong’s bases for new trial, pointing out in part that breach of a fiduciary obligation was not pleaded and not before the court, and that Tong had not relied on the ground of newly discovered evidence in his new trial motion or shown that any new evidence he offered now was unknown to him or could not have been presented at trial with the exercise of reasonable diligence.

Levine’s motion for attorney fees and costs was not opposed based on the reasonableness of amounts sought or hours claimed. Rather, Tong reiterated the arguments from his new trial motion, adding a completely new argument that the guarantee (containing the fees and costs provision, among other things) was a contract of adhesion and thus unenforceable.

In a combined hearing on the new-trial and fees-and-costs motions, the court first summarily rejected the claim of insufficient time to prepare for trial, noting that the case’s initial filing in April 2009 and initial trial date in September 2010 gave Tong “plenty of time” to prepare for the March 2011 trial. Then the court carefully inquired into each of Tong’s claims, accommodating his self-represented status by treating the motion for new trial as raising “all available grounds.”

The court found no factual basis for claimed failure to read the documents and no error in deferring resolution of the in limine motion for exoneration until after evidence was heard. The court reiterated its trial view that evidence was needed and cited its broad discretion to determine the order of issues in a bench trial. Issues of Waring’s capacity and Levine’s fiduciary relationship, the court observed, had not been raised by the pleadings or properly raised at trial, and it appeared that Tong had every opportunity to

raise them. The trial evidence, such as it was, had not shown any special relationship upon which to premise a fiduciary duty on Levine's part.

Treating the new information in the declarations as offered on grounds of newly discovered evidence, the court observed that none of the information was shown to have been unknown or unavailable at the time of the March 2011 trial, and that, as opposing counsel noted, even if Lowrey's doubts about Waring's competency were admissible on that basis, they only showed that Waring began to have memory and other problems *after* he executed the May 2006 note and was not moved to a care facility until March 2009. Tong urged that the court's failure to rule on his motion in limine (or, as he kept referring to its earlier incarnation, motion for summary judgment) kept him from preparing to call Lowrey as a witness. However, he cited no authority that a pending pretrial motion of any kind is an excuse to delay preparing for an imminent trial date. The court also observed that Tong's summary judgment motion, raising the same issues just a month before trial, never made it to law and motion before trial because it was calendared for a date well after the trial, and another judge had since denied the motion as moot. His earlier motion for exoneration, filed on the eve of the original trial date, had apparently never been calendared at all. The trial court also, in fact, reached the exoneration issue on the trial evidence. The court did not expressly mention the adhesion contract theory but implicitly rejected it, no doubt because it was another theory never presented or supported by evidence at trial. Nor had Tong raised any issue about the enforceability of the underlying note by his answer or a cross-complaint.

The motion for new trial was denied. On the fees and costs motion, having rejected all of Tong's arguments during discussion of the other motion, the court awarded Levine a total of \$27,947.76, an amount that Tong did not dispute.

DISCUSSION

Tong raises several contentions against the trial judgment, denial of a new trial, and ensuing award of fees and costs. We address and reject them in the following order.

Adhesion Contract

A main contention appears to be that the court should have raised on its own motion at trial the issue of whether the guarantee was an unenforceable adhesion contract, or should have granted a new trial on that basis, and that this issue would have foreclosed reliance on the contractual provision in the guarantee for attorney fees and costs. There are several reasons to reject his position.

First, as for trial error, adhesion contract was a theory never pleaded in the answer or raised in a cross-complaint, and was therefore not before the court at trial. The court did exercise its discretion to allow an amendment to raise exoneration as a claim after Tong indicated that he was relying on it (*Moss Estate Co. v. Adler* (1953) 41 Cal.2d 581, 585), but Tong never relied on an adhesion contract theory at trial. We are also aware of no authority that a trial court has an obligation in a civil case to raise a new theory on its own motion. Trial error is therefore not shown.

Second, as for the motion for new trial, the theory was not raised by Tong in his moving papers. He raised it for the first time in opposition to the fees and costs motion. But even if the court considered the issue, at the joint hearing, as bearing on the motion for new trial, no error is shown in that respect either. A new trial motion, of course, is not a way to raise a theory neglected at trial, but the court did soundly reject the idea that any of the information Tong presented by way of declarations merited a new trial based on newly discovered evidence. Tong failed to show that he had, in the words of the statute, “[n]ewly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.” (Code Civ. Proc., § 657, subd. 4.) He claimed he was unable to present evidence or call Lowrey to testify because he relied on the fact that he had filed a motion for summary judgment a month earlier, but there is no merit to that excuse. His motion was filed on February 16, 2011, four weeks before the trial date, and with a date in May specified for the hearing. It was late. A summary judgment motion must be filed early enough to be “*heard* no later than 30 days before the date of trial, unless the court for good cause orders otherwise” (*id.*, § 437c, subd. (a), italics added), which means, adding time for

parties to be served and opposition to be filed, at least 58 days before the trial date (*St. Mary's Medical Center v. Superior Court* (1996) 50 Cal.App.4th 1531, 1537-1538). We see no order in the record granting permission for the late filing or vacating the trial date. Tong thus had no reasonable basis for assuming that his late-filed motion would result in suspension of the trial date.

Third, we cannot consider the adhesion contract issue for the first time on appeal. “The general rule that a legal theory may not be raised for the first time on appeal is to be stringently applied when the new theory depends on controverted factual questions whose relevance thereto was not made to appear at trial” (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 780), and that is the case here. Tong seems to rely on the idea that the interpretation of a written contract, when not turning on the credibility of extrinsic evidence, poses a question for an appellate court’s independent determination (*Estate of Dodge* (1971) 6 Cal.3d 311, 318; *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865), but the question here would not be the interpretation of the guarantee, which is apparently undisputed. Rather, pertinent questions would be whether, in the particular circumstances, Levine was the party of superior bargaining strength and gave Tong no choice but to adhere to the guarantee or reject it (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817), and perhaps whether certain provisions fell within the reasonable expectations of Tong, as a weaker party (*id.* at p. 820). These are factual questions not explored at trial or, to the extent that any relevant evidence appears, not presented in the context of these issues so that “probably no different showing could be made on a new trial” (*Panopulos v. Maderis* (1956) 47 Cal.2d 337, 341.)

Waring’s Mental Capacity

The same problems defeat Tong’s efforts to premise error on failure to consider Waring’s capacity to enter into the underlying promissory note. For trial purposes, the issue was never pleaded or raised as a basis for amending the pleadings. For new trial purposes, there was no showing that Tong could not have presented his or Lowrey’s declaration information in time for trial so as to merit considering the declarations by Tong and Lowery as newly discovered evidence. For appeal purposes, capacity is not a

pure question of law we could entertain for the first time and conclude that probably no better evidentiary showing could be made. The only evidence was of e-mail and telephone communications in late February and March of 2009, nearly three years *after* Waring signed the note, that he had Alzheimer’s Disease and competency problems. The trial evidence reveals absolutely nothing about his capacity at the time of contracting, in May 2006.

Fraud or Breach of Fiduciary Duty

Tong complains that Levine “duped” him into signing the guarantee, against his financial interests. This part of his briefing may be simply designed to support a claim of *unconscionability* for his adhesion contract theory, but to the extent he offers it to support fraud or breach of fiduciary duty, those, too, were not issues pleaded for consideration at trial. Fraud requires specific factual pleading (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47), and while Tong has spoken in this case of “fiduciary” duty, he has never identified any fiduciary *relationship* with Levine that would support such a duty. He identifies nothing more than a lender/guarantor relationship now and, in two prior dealings, only that of creditor/borrower. His pleading is silent on this point, as is his appellate briefing. Absent a fiduciary relationship recognized by case law, it would seem that the duties owed by Levine to Tong in this case are those identified in the exoneration issue resolved by the trial court. Tong has not raised appellate arguments directly attacking that resolution.

Denial of Trial Continuance

Tong contends in his reply brief that the court did not allow him to “recite his reasons for not being prepared for trial,” and he goes on to discuss his relationship with an individual named Mike Jones, evidently a law student who, while not Tong’s attorney of record, nevertheless assertedly gave him assistance and then left him unassisted before the trial date. Citing to the trial court’s summary rejection of his claim of unpreparedness at the hearing on his new trial motion, Tong complains that he had no time to explain about his relationship with Jones. This information is not contained anywhere in the

record. The trial record has several passing references to Jones without elaboration of his role.

This argument is misguided in several respects. First, it is improperly presented for the first time in a reply brief, where Levine has not had an opportunity to respond in his own briefing. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11.) Second, it relies on matters not in the record. Review of a ruling is limited to materials that were before the court when it ruled, other materials being legally irrelevant. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

Third, the time to present those materials was when the court denied the trial continuance, and the register of actions reflects that the ruling was made the day before trial by Judge Beth Labson Freeman, whereas it was Presiding Judge Gerald J. Buchwald who conducted the trial and posttrial hearings. Tong has not provided us with a transcript of the ruling before Judge Freeman, and the register of actions states only: “Court . . . denies Defendant’s motion for trial continuance on the basis that Defendant has filed a motion for summary judgment set for hearing in May 2011. A motion for summary judgment would have to have been heard at least 30 days prior to trial.” As we have already held in this opinion, that reasoning was correct. The record does not reflect any other basis for the continuance before Judge Freeman, and it is Tong’s burden as the appellant to show error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.) When Judge Buchwald considered the issue of continuance, it was when Tong raised it as an error or irregularity justifying a new trial, and the court was correct at that point not to consider new evidence or reason for a continuance. Like this court, Judge Buchwald’s role was to examine the continuance motion as it had been raised before Judge Freeman.

Attorney Fees and Costs

As below, Tong does not dispute the reasonableness of the fees and costs awarded. Having rejected his attacks on the predicate trial judgment, we affirm the award as well.

DISPOSITION

The judgment and the order awarding attorney fees and costs are affirmed.

Kline, P.J.

We concur:

Haerle, J.

Lambden, J.