

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

**JOSEPH BYRNE,**  
**Plaintiff and Appellant,**  
**v.**  
**PENINSULA HEATING AND**  
**APPLIANCE, INC. et al.,**  
**Defendants and Respondents.**

**A134664**

**(San Mateo County**  
**Super. Ct. No. CIV 489595)**

Joseph Byrne appeals from a judgment awarding him attorney fees incurred in litigation against his brother, respondent James Byrne. The litigation arose out of disputes stemming from the brothers' decision to end their joint operation of Peninsula Heating and Appliance, Inc. (PHA), a company they had inherited from their father.

Joseph and James eventually resolved the litigation by entering into a settlement agreement. When James failed to fulfill certain of his obligations under that agreement, Joseph moved to enforce it. The trial court granted his motion in part. Because the agreement provided for an award of attorney fees to the prevailing party in any action brought to enforce it, and the trial court found Joseph was the partially prevailing party, it ruled he was entitled to an award of attorney fees for a portion of the underlying litigation. After reviewing the parties' voluminous submissions on the attorney fee issue, the trial court awarded less than 10 percent of the amount of fees claimed.

Dissatisfied with the award, Joseph now appeals, contending the trial court abused its discretion in failing to award him all of his requested fees. We discern no abuse of discretion and therefore affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

In 1989, Joseph and James took over PHA, a business their father had founded decades earlier. Together, the brothers operated the business for many years, but on or about August 2001, they decided to cease joint operation of PHA. Joseph and James each continued to operate his own business after the end of the joint operation, however, with both of the brothers' companies using the words "Peninsula Heating" in their names and both using a single telephone number that had been associated with PHA.

Dissolution of the business led to disputes between Joseph and James, disputes that eventually led to the filing of a number of lawsuits in San Mateo County Superior Court. Joseph, James, and PHA were the sole litigants in the San Mateo actions. In addition, the Byrne brothers and PHA were defendants in an action in Sacramento County Superior Court brought in December 2009 by Slakey Brothers, Inc. (Slakey). Slakey sought damages for PHA's alleged failure to pay for approximately \$38,000 worth of equipment and materials Slakey had supplied to PHA.

In July 2010, Joseph and James entered into a settlement agreement (the Agreement) which resolved all of the claims between them and resulted in the dismissal of the San Mateo actions. The Agreement also provided for the handling of the Slakey action. The Agreement required James to indemnify Joseph in the Slakey suit and to take all steps necessary to ensure that suit was dismissed with prejudice. The Slakey action was resolved by a stipulated judgment and stipulation for supervised settlement entered in October 2010. The terms of the stipulated judgment required James to pay the full amount of the debt to Slakey by March 10, 2011.

The Agreement also required James to repay Joseph about \$84,000 James had used from a line of credit Joseph had made available to him. To secure the promise to repay, James gave Joseph a promissory note and deed of trust on certain real property in

San Mateo County.<sup>1</sup> The promissory note and deed of trust were incorporated into the Agreement, and they provided that “the total of unpaid principal and accumulated interest [were] due and payable on March 1, 2011.”

Other terms of the Agreement are also relevant here. First, the Agreement provided that, once executed, it would be enforceable pursuant to Code of Civil Procedure section 664. Second, paragraph 27 of the Agreement contained a provision for attorney fees, which states: “In the event that any action or other proceeding is commenced to seek enforcement of this Agreement or declare rights hereunder, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys’ fees, costs, and expenses incurred in connection with that action or proceeding, and also obtain reasonable attorneys’ fees, costs, and expenses incurred in connection [with] the enforcement of any judgment hereunder.”

James did not make the March 1, 2011 payment to Joseph. Joseph then recorded a notice of default and instituted foreclosure proceedings against James. James also did not make the March 2011 payment to Slakey, leading Slakey to file a notice of failed conditions in Sacramento County Superior Court, together with a request that the case be placed on the civil active list.

In March 2011, Joseph engaged his present counsel, Robert B. Jacobs, who began representing Joseph in the Slakey matter on or about April 19, 2011. On April 19, 2011, Jacobs wrote to James’s counsel demanding that James comply with a number of terms of the Agreement, including payment of the balance due on the promissory note, obtaining dismissal of the Slakey suit, payment of debts to various vendors, and the handling of

---

<sup>1</sup> This promissory note and deed of trust appear to have been executed after Joseph’s prior counsel filed a motion under Code of Civil Procedure section 664.6 to enforce the Agreement. This first motion to enforce the Agreement is not part of the record before us, and it appears it was never decided. Instead, the parties were ordered to mediation, after which the promissory note and deed of trust were executed.

calls to the telephone number that had been associated with PHA.<sup>2</sup> Jacobs's letter also demanded payment of Joseph's attorney fees, citing paragraph 27 of the Agreement. James's lawyer responded on April 25, 2011, asking that Joseph provide an accounting of the amount due to him under the Agreement and asserting that Joseph was not in compliance with his own obligations under that agreement.

James decided to pay his obligations by refinancing the property on which Joseph held a deed of trust. On April 25, 2011, James deposited \$125,000 into an escrow account at North American Title Company. At this time, Jacobs was aware of James's attempts to refinance the property and was in communication with a North American Title Company employee about it.

On May 6, 2011, Jacobs wrote to James's counsel, Colleen Coen, attaching an 11-page draft addendum to the Agreement that he proposed the brothers execute.<sup>3</sup> Jacobs again raised the issue of his attorney fees, which at that point amounted to approximately \$15,000. Counsel spoke by telephone on May 10, and they appear to have discussed a number of issues remaining under the Agreement. During that conversation, Coen apparently expressed the view that Joseph was not entitled to attorney fees under the Agreement. Jacobs wrote to Coen the next day, explaining why he believed James was liable for Joseph's attorney fees.

Coen responded on May 13, proposing a resolution of ongoing issues regarding advertising and the names of the brothers' respective businesses. Her letter noted that the funds needed to pay off the promissory note had been in escrow since April 25, and she asked that Joseph accept \$90,000 in return for dismissal with prejudice of all of the pending San Mateo actions and return of the original deed of trust and promissory note. Over the next several days, Coen made further offers to resolve the matter, but she disputed Joseph's claimed entitlement to attorney fees under the Agreement. On May 23,

---

<sup>2</sup> Joseph's opening brief admits the dispute over the telephone line was resolved by April 29, 2011, thereby fulfilling James's obligations under the Agreement with respect to this issue.

<sup>3</sup> In her declaration in the court below, Coen stated that this addendum had been prepared on Jacobs's own initiative and without any consultation with her.

2011, Jacobs rejected her offers, contending that James had not properly “tendered” the amount due on the promissory note and insisting that James pay Joseph’s attorney fees, which then amounted to just over \$30,000.

With regard to the dispute over attorney fees, Joseph’s opening brief explains: “[Coen] claimed the . . . Agreement only provided that fees were recoverable in the event any ‘Action or Proceeding’ had been filed, and that since none had been filed, . . . [Joseph] had no right to recover attorney fees from [James]. In order to address this expected attack, [Joseph] filed a cross-complaint on May 23, 2011 in the Slakey Suit for enforcement of the . . . Agreement.” In the court below, Jacobs candidly admitted this cross-complaint had been filed only to overcome Coen’s argument that Joseph had no right to attorney fees because no “‘action or proceeding’” had been filed within the meaning of paragraph 27 of the Agreement. The cross-complaint was never served on James.

Slakey dismissed its claims against Joseph, James, and PHA in July 2011. In addition, at some time before August 1, 2011, James had paid the amount due to Joseph under the promissory note. James had also acknowledged his liability for the amounts due to various vendors, as required by paragraph 7 of the Agreement.

On August 1, 2011, Joseph filed a motion to enforce the Agreement and for an award of attorney fees. In a declaration attached to this motion, Joseph stated that the only terms of the Agreement with which James had yet to comply were his claimed obligation to pay Joseph’s attorney fees and payment of amounts due to AT&T and Home Depot. Joseph argued he was entitled to attorney fees under paragraph 27 of the Agreement. At the time the motion was filed, those fees amounted to \$54,167.54. Work on Joseph’s reply to James’s opposition to the motion added another \$11,276.80, so that by the time the motion was heard, the total fee request stood at \$65,424.44.

The trial court held a hearing on the motion on October 31, 2011. At that hearing, it determined that James had paid Joseph the amount due on the promissory note, and thus there was no basis for including that obligation in the motion. It therefore denied the motion with respect to that ground. With respect to the AT&T and Home Depot debts,

Jacobs conceded that the Agreement required only that James acknowledge his liability for those debts and that James had done this “very early on[.]” As a consequence, the court found there was no dispute for it to decide as to that issue. Jacobs also raised a the possibility of a dispute over the PHA telephone line, but conceded it was only a potential one. Since the dispute had not yet arisen, the trial court found there was nothing to enforce as to that issue, either.

On the question of attorney fees, the court acknowledged that the Slakey suit had been dismissed before Joseph filed the motion to enforce, but it determined he could recover the fees incurred in defending that suit. It asked Jacobs to identify the amount of attorney fees Joseph had incurred “specifically limited to . . . the Slakey litigation in Sacramento County[.]” The court found Joseph the prevailing party in part, and it ruled attorney fees should be awarded. According to the court, the fee award would be “restricted to the Sacramento litigation, the Slakey litigation, and those issues of indemnification.” It ordered Jacobs to “break those fees out” and to submit a “detailed analysis of [Joseph’s] request for attorney’s fees[.]” Near the conclusion of the hearing, the court told the parties, “Whatever the award of attorney’s fees is it’s going to be fractional compared to the request here today.” The trial court later set a schedule for further briefing on the issue.

Jacobs then submitted a declaration claiming that the total amount of fees and costs “attributable to Joseph Byrne’s claim for defense and indemnity in the Slakey suit is \$62,155.64[.]” In addition, he requested fees for the work done after the October 31 hearing to break out the fees related to the Slakey matter.<sup>4</sup> With this work included, the total fee request amounted to \$85,070.30.

James opposed the fee request, contending that an appropriate award for the Slakey matter would be \$2,641. The trial court agreed, and on February 10, 2012, it entered a judgment enforcing the settlement agreement that awarded the suggested

---

<sup>4</sup> Jacobs attributed all fees incurred in preparing the fee breakdown to the Slakey matter.

\$2,641 in fees for the Slakey matter and an additional \$5,000 for the work related to the motion to enforce the settlement agreement, for a total award of \$7,641.

Joseph filed this appeal on February 23, 2012.

## DISCUSSION

Joseph's opening brief tells us that "the issue in this appeal is the amount of fees awarded by the Court." We agree. After we set out the governing law and our standard of review, we will address Joseph's challenges to the amount of the trial court's fee award.<sup>5</sup>

### I. *Governing Law and Standard of Review*

When authorized by contract, attorney fees are recoverable as costs under Code of Civil Procedure section 1032. (Code Civ. Proc., § 1033.5, subd. (a)(10)(A).) Civil Code section 1717, subdivision (a), governs contractual attorney fees provisions in actions involving contract claims: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. [¶] . . . Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit."

As explained earlier, paragraph 27 of the Agreement permits the "prevailing party" to recover "its reasonable attorneys' fees, costs, and expenses incurred in connection" with "any action or other proceeding . . . commenced to seek enforcement of this Agreement or declare rights hereunder[.]" On appeal, the parties do not dispute

---

<sup>5</sup> Before turning to the merits of this appeal, "[w]e feel compelled to comment on the . . . excess indulged in by both sides in briefing this case." (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 143, fn. 15.) Given the single issue tendered by appellant, this might have been a relatively simple appeal. Yet the briefs in this case total over 180 pages, and they illustrate the Fourth District's observation that "the extra length of the 'briefs' in appellate and reviewing courts is not always a good thing[.]" (*In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409.)

Joseph's legal *entitlement* to attorney fees under this provision of the Agreement. Their dispute concerns only the *amount* of the fees awarded.

“With respect to the *amount* of fees awarded, there is no question our review must be highly deferential to the views of the trial court.” (*Children’s Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 777.) “The ‘experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ [Citations.]” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) Trial courts thus possess “broad discretion” to determine what constitutes a reasonable fee award, “and the award of such fees is governed by equitable principles.” (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774 (*EnPalm*), citing *PCLM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095.) Because of the discretion granted to the trial court and the deference we owe to its determinations, “[t]he only proper basis of reversal of the amount of an attorney fees award is if the amount awarded is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination. [Citation.]’ [Citation.]” (*In re Lugo* (2008) 164 Cal.App.4th 1522, 1544-1545. )

We defer to the trial court’s factual determinations when the evidence is in conflict, and “[w]e may not reweigh on appeal a trial court’s assessment of an attorney’s declaration.” (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1323 (*Christian Research Institute*)). The trial court is not required to issue a statement of decision when making the fee award. (*Ibid.*) Where, as in this case, neither party requested a statement of decision, we indulge all intendments and presumptions in support of the trial court’s order as to matters on which the record is silent, and we presume the trial court properly considered the appropriate factors. (See *Building A Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874.)

“[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and

the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.]" (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095.) When an attorney submits billing statements in support of a fee request, these form the "starting point" for the "hours reasonably expended" portion of the lodestar calculation. (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1324.) Nevertheless, the trial court is not bound to accept the evidence submitted by counsel when making its determination. (*Id.* at p. 1326.)

Once the lodestar has been calculated, "it may be adjusted upward *or downward*" based on a number of factors. (*In re Lugo, supra*, 164 Cal.App.4th at p. 1545, italics added.) Among the factors a trial court may consider in adjusting the lodestar are the "necessity for and the nature of the litigation[.]" (*EnPalm, supra*, 162 Cal.App.4th at p. 774.) If the trial court finds that a party engaged in conduct that made much of the litigation unnecessary, it may find that the number of hours expended was unreasonable and reduce the amount of the award on that basis. (*Id.* at pp. 774-775; see *11382 Beach Partnership v. Libaw* (1999) 70 Cal.App.4th 212, 220 (*Libaw*) [affirming reduction of fee award where trial court determined parties had made case "more complicated than it really had to be"].) As the California Supreme Court has explained, "[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635, fn. omitted.)

## II. *Joseph Forfeited the Argument that Attorney Fees May Be Recovered as Damages.*

Joseph devotes a considerable portion of his opening brief to arguing that attorney fees can constitute damages. This argument was not made in any of his filings below. At the hearing, when Jacobs attempted to raise the issue of entitlement to fees based on the "tort of another" doctrine, the trial court explained, "You haven't described that at all."

Because this specific claim was not made in the trial court, it has been forfeited on appeal. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [argument raised in general fashion at hearing on attorney fees but not included in written submissions to trial court held forfeited on appeal].)

Even if this argument were not forfeited, we fail to see its relevance. The trial court found Joseph entitled to attorney fees under paragraph 27 of the Agreement. There is thus no dispute that Joseph was entitled to an award of *some* fees. As noted earlier, the only dispute concerns the amount of those fees. In this regard, we disagree with Joseph that there is an inconsistency in the legal basis for the trial court's ruling. The trial court found that James had not fulfilled his obligation under the Agreement to defend and indemnify Joseph in the Slakey suit. The court therefore found this breach was a valid reason for Joseph to move for enforcement, and it granted attorney fees related to Joseph's defense of the Slakey suit. Joseph was therefore the prevailing party under the Agreement with respect to this issue, and under paragraph 27, he became entitled to an attorney fee award.<sup>6</sup>

### III. *The Attorney Fee Award for the Slakey Matter Was Not an Abuse of the Trial Court's Discretion.*

Joseph contends the award of \$2,641 in fees for defense of the Slakey case was an abuse of discretion. He correctly notes that the trial court adopted the fee amount proposed by James's counsel. This section of his brief then goes on to list other tasks for which he believes he should have been awarded attorney fees. We have examined the portions of the record cited in the list, but most are unhelpful to our review. Many of the citations refer us either to letters or e-mails Jacobs exchanged with other counsel, rather than to Jacobs's bills for those tasks. Without reference to the actual time entries,

---

<sup>6</sup> Joseph argues the fee award should not have been limited only to the fees incurred to enforce the terms of Agreement of which James remained in breach at the time of the hearing on the motion to enforce. This argument is difficult to understand, and he cites no authority in support of it. We therefore need not address it. (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827, fn. 1 (*Sheily*).)

however, we are unable to assess such issues as whether the tasks performed were properly documented and whether the time expended on each task was reasonable. In addition, Joseph provides no analysis of why these particular tasks were necessarily compensable. His failure to provide proper citations to the record or an analysis of the issue has left us with no way to evaluate his claims. (See *EnPalm, supra*, 162 Cal.App.4th at p. 775 [appellants claiming trial court’s fee award was unsupported by evidence forfeited claim by failing to provide proper argument, discussion, analysis, or citation to the record].)

The list of tasks does provide some references to actual billing entries, but again, these do not permit us to perform our function as an appellate court. For example, Joseph contends the trial court improperly denied fees for tasks such as Jacobs’s initial meeting with him, for the time Jacobs spent familiarizing himself with the case, and for counsel’s “analysis, evaluation of strategies, [and] planning.” Unfortunately, Joseph’s brief directs us to entire pages of the record, each of which contains multiple billing entries, without telling us which entries relate to the Slakey matter. In an abundance of caution, we have reviewed the cited pages of the record, but none of them makes specific reference to the Slakey case. To illustrate, the cited entry for Joseph’s initial meeting with Jacobs reads in its entirety, “Meeting with Joe Byrne.” There is nothing in this entry indicating what portion of the meeting was devoted to the Slakey matter. Indeed, the cryptic entry does not tell us whether the Slakey matter was discussed at all. To further illustrate, the record page cited for time devoted to the “analysis, evaluation of strategies, [and] planning” contains eight different time entries by three different timekeepers. One entry by Jacobs reads, “Evaluate strategy for further handling. Several Emails to Linda. Prepare for meeting with Joseph and Linda.” A trial court presented with such “vague billing entries” may properly deny a request for fees. (See *Christian Research Institute, supra*, 165 Cal.App.4th at p. 1325 [time entries that described work as “further handling” and did not refer to issue for which fees were awardable held too vague to satisfy burden of party seeking fee award].)

We recognize that after the hearing on the motion to enforce, Jacobs did prepare a chart that allocated the time expended to the various matters his office handled for Joseph. The problem for us is that he has not cited to that document in this portion of his brief, and we are under no obligation to undertake an independent review of the record to ferret out the factual basis for counsel’s arguments. (*Sheily, supra*, 122 Cal.App.4th at p. 826, fn. 1 [“It is not the task of the reviewing court to search the record for evidence that supports the party’s statement; it is for the party to cite the court to those references.”]; see *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 [record citations in “factual background” portion of brief do not cure failure to include pertinent record citations in argument].) This is particularly true here, because the chart is 107 pages in length.

Perhaps more significant is the failure of Joseph’s opening brief to deal with the arguments James made below regarding the reasonableness of some of the fee requests. As noted above, Joseph requested an award of fees for his initial meeting with Jacobs, contending that one-third of this meeting was devoted to the Slakey matter. This meeting occurred on March 16, 2011. In the chart explaining his fee allocation, Jacobs claimed that “[t]he event that precipitated that meeting was the request of Slakey’s counsel that the Sacramento case be restored to the civil active list, and as a result the entire amount could arguably be included.” But as Coen pointed out in her declaration opposing the request for fees, Slakey’s notice of failed conditions—the event that Jacobs claimed “precipitated” his meeting with Joseph—was not even mailed until March 29, 2011, almost *two weeks after* the meeting took place.<sup>7</sup>

---

<sup>7</sup> In his reply brief, Joseph concedes this point. Counsel explains that “[m]inor errors in memory can inadvertently occur.” While this is true, we observe that Jacobs devoted a great deal of time to preparing his chart analyzing the fees incurred, and it appears that his office’s fees for preparing the chart exceeded \$8,000. If such an error remained even after Jacobs conducted such a detailed analysis, the trial court could justifiably have viewed the remainder of the fee request with some skepticism. (See *Christian Research Institute, supra*, 165 Cal.App.4th at p. 1326 [explaining that “vague, block-billed time entries inflated with noncompensable hours destroy an attorney’s credibility with the trial court”].)

Other portions of the request to which James objected included \$4,265.97 for preparation of an addendum to the Agreement, although the trial court had already ruled that the only work for which fees could be recovered were the defense of the Slakey action and preparation of the motion to enforce the Agreement. On appeal, Joseph has not disputed the correctness of the trial court's ruling that he was not entitled to recovery of fees unrelated to either the Slakey case or the motion to enforce, and thus it is clear these fees should not have been claimed. (See *Libaw, supra*, 70 Cal.App.4th at p. 220 & fn. 12 [affirming substantial reduction of fee request where request sought compensation for matters unrelated to enforcement of lease that provided for attorney fee award].) "Counsel's willingness to flout the . . . restriction on the scope of [the] fee claims justified the trial court in taking a jaundiced view of the fee request." (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1325.)

Also included in James's objections to the fee request were a number of entries for which Jacobs admittedly could provide no details. For example, an entry by Jacobs dated April 29, 2011, reads "Assess matter status and evaluate further handling." In Jacobs's 107-page chart, he explained he billed this time to the Slakey matter, but noted the reasons for its assignment to that case were "not possible to identify with specificity, but necessitated due to James' breaches." An entry by Jacobs dated May 12, 2011, recorded an "[e]xtended Telephone conference with Colleen Coen," and in his fee breakdown, Jacobs assigned half of this time to the Slakey matter, an assignment justified only by the phrase, "Details not possible to provide." If Jacobs himself was unable to explain how this time related to the matters for which the trial court had found Joseph entitled to fees, the court below certainly did not err in refusing to compensate for it. (See *El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1366 [contractual fee award properly denied where attorney declaration "did not categorize the hours, describe the services or state facts showing why they were necessary and reasonable"].)

Finally, although we are not obligated to undertake an independent review of the record, we have examined some of the billing entries Jacobs claimed were related to the Slakey matter. It appears to us that he took an extremely broad view of what constituted

“related” work. In the chart, Jacobs states that work he and his associate performed on May 17 and 18, 2011, “concerned the San Mateo cases[.]” Jacobs sought to justify attributing this time to the Slakey matter by claiming that “handling of the San Mateo cases was necessary due to the failure of James to obtain a dismissal of the Slakey case.” Although the tasks performed admittedly concerned the San Mateo cases, the time was billed *entirely* to the Slakey matter. Here again it appears that Jacobs claimed fees for services rendered in connection with matters the trial court had ruled noncompensable. Because his fee request included such items, the trial court was well within its discretion in refusing to award fees for these services. (See *Christian Research Institute, supra*, 165 Cal.App.4th at p. 1325.)

“Where, as here, the trial court severely curtails the number of compensable hours in a fee award, we presume the court concluded the fee request was padded.” (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1325.) The trial court could well have concluded that “the matter was not particularly complicated . . . , and nothing in counsel’s billing submission establishes otherwise.” (*Id.* at p. 1326.) Our own experience and review of the record confirm the trial court’s apparent conclusion that “the matter was not so complex as to require anywhere near the . . . number of hours for which counsel demanded fees.” (*Id.* at p. 1327.) Accordingly, we hold the trial court did not abuse its discretion in awarding \$2,641 in fees for the Slakey matter.

#### IV. *The Trial Court Did Not Abuse its Discretion in Awarding \$5,000 in Fees Related to the Motion to Enforce the Agreement.*

Joseph also contends the award of \$5,000 for fees incurred in the enforcement of the Agreement was an abuse of discretion. He explains that after dismissal of the Slakey suit in June 2011, essentially all of the fees he incurred were for the purpose of seeking enforcement of the Agreement. These fees amounted to approximately \$34,000.

While Joseph argues these fees were properly documented, his counsel’s rates were reasonable, the amount of time expended was commensurate with the complexity of the case, and counsel obtained excellent results, his opening brief does not point us to the specific time entries he believes are compensable. Instead, he simply invites us to review

documents filed in the trial court so that we may obtain a “better idea of the complexity” of this case. As we have explained, however, “[a]n appellant cannot rely on incorporation of trial court papers, but must tender arguments *in the appellate briefs.*” [Citation.]” (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18.) Joseph’s failure to identify the specific services for which he contends fees should have been awarded leaves us unable to determine with any certainty how he believes the trial court erred. Furthermore, although Joseph views the matter as a complex one, the trial court appears to have concluded otherwise, and since the parties did not request a statement of decision, we indulge all intendments and presumptions in support of its order. (*Building a Better Redondo, Inc. v. City of Redondo Beach, supra*, 203 Cal.App.4th at p. 874.) Joseph has failed to demonstrate that the trial court was clearly wrong in its apparent conclusion that the case was not so complex as to justify the fee requested. (See *Libaw, supra*, 70 Cal.App.4th at pp. 219-220 [affirming substantial reduction of fee request despite appellant’s claims concerning the novelty and contentiousness of the litigation].)

Joseph’s other arguments are equally unavailing. He states in his opening brief that “it appears . . . the [trial] court entirely disregarded” the chart breaking down the attorney fees. He cites no evidence to support this assertion, however, and to accept this argument, we would be required to presume the trial court failed to perform its duty. The law is clear that we may not do so. (See *Christian Research Institute, supra*, 165 Cal.App.4th at p. 1324, citing Evid. Code, § 664.) For the same reasons, we decline to speculate, as Joseph does, about the trial court’s “apparent mindset” in making the fee award. Such speculation cannot serve as a basis for reversing the trial court’s award. (See *People v. Lindsey* (1972) 27 Cal.App.3d 622, 637 [“Trial court judgments which are on their face correct, are not overturned because a reviewing court suspects the trial judge based his decision on an unexpressed and improper ground, in violation of his oath of office.”].)

Joseph contends the award of fees was so low as to shock the conscience. He bases this argument on the difference between the total amount of his fee request—

\$85,070.30—and the \$7,641 actually awarded.<sup>8</sup> As explained earlier, however, an attorney’s fee submission is only the starting point for the trial court’s determination of the number of hours reasonably expended on the case. (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1324.) Moreover, “a trial court has discretion to reduce a prevailing party’s contractual attorney fees to the extent they were unnecessary.” (*EnPalm, supra*, 162 Cal.App.4th at p. 775, fn. omitted.) In this case, the trial court could justifiably have concluded that a significant portion of Joseph’s attorney fees were unnecessarily incurred. James does not appear ever to have disputed his obligation to carry out the terms of the Agreement, and based upon the declarations filed in the court below, the trial court could certainly have found that the funds needed to pay off the promissory note and deed of trust were already in escrow by April 2011. The court may have been unwilling to compensate Joseph for his counsel’s expenditure of time on a matter that appeared susceptible to earlier resolution by settlement. There is also no dispute that by the time Joseph filed the motion to enforce the Agreement, James had already complied with most of its terms. In these circumstances, it was within the trial court’s discretion to conclude that much of the legal work performed was unnecessary and to reduce the award on that basis. (*Id.* at pp. 773-775, 778 [affirming 90% reduction in fee request where party could have avoided most of what transpired in litigation].)

If the trial court concluded counsel’s fee requests were inflated by the inclusion of unnecessary work, it was entitled to make a reduction in the award. (*Christian Research Institute, supra*, 165 Cal.App.4th at pp. 1325-1326.) The trial court’s comment that the fee award would be “fractional compared to the request” suggests the court found the bills inflated. The record certainly supports this finding. For example, in his reply brief, Joseph admits his counsel prepared three different times for the hearing on the motion to enforce. This was supposedly necessary because the hearing was postponed twice—once from August 23 to September 20 and then again from September 20 to October 31. Jacobs’s chart reflects 4.7 hours of preparation prior to the August 23 hearing date, 3.2

---

<sup>8</sup> This argument appears to relate both to the fee award for the Slakey matter and the fee award for the motion to enforce the Agreement.

hours of preparation for the September 20 hearing date, and 2.6 hours of preparation for the October 31 hearing. The trial court might well have concluded that this work was unnecessarily duplicative and thus the fee request was unreasonably inflated.

An unreasonably inflated fee request is a special circumstance that may justify the reduction, and indeed the denial, of the award. (*Serrano v. Unruh, supra*, 32 Cal.3d at p. 635.) “‘If . . . the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked in the first place. To discourage such greed, a severer sanction is needful. . . .’ [Citation.]” (*Ibid.*) Because “the trial court severely curtail[ed] the number of compensable hours in [the] fee award, we presume the court concluded the fee request was padded.” (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1325.) “Inasmuch as we are not convinced the attorney fees award was clearly wrong, we do not disturb it on appeal.” (*Libaw, supra*, 70 Cal.App.4th at p. 220, fn. omitted.)

DISPOSITION

The judgment is affirmed. James shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

---

Jones, P.J.

We concur:

---

Simons, J.

---

Needham, J.