

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

Estate of MITCHELL J. BILAFER,
Deceased.

MARTIN J. BILAFER,
Petitioner and Appellant,

v.

CATHERINE DOYLE et al.,
Objectors and Respondents.

A135675, A135949, A136707, A137063

(San Mateo County
Super. Ct. Nos. PRO117648, PRO115002)

This appeal from four separate judgments or orders arises in the context of complicated and extended litigation concerning three family trusts created by the decedent, Mitchell Bilafer. The first trust is a revocable trust created in 1992, under which his two children, Martin Bilafer and Judith Doyle, are beneficiaries. The others are irrevocable trusts created in 1999, one for each of the two children (the MBT and JDT trusts). Martin has two children and Judith has five children, including Catherine Doyle, who appears in these proceedings both individually and as the trustee of the 1992 revocable trust. Martin was the petitioner in the trial court and is the appellant on appeal, and Judith and her five children were objectors in the trial court and are the respondents on appeal.

Martin challenges: (1) the trial court’s denial of his petition to compel Catherine Doyle, as trustee of the 1992 revocable trust, to enforce a 1995 promissory note from Judith to the revocable trust, on the ground that the note was released in a settlement

agreement entered by the parties in 2008; and (2) the court's denial of his request for attorney fees incurred in defending a civil contempt proceeding initiated by respondents, on the ground that respondents voluntarily dismissed the contempt proceedings.

We shall affirm the denial of Martin's request for attorney fees, but conclude that the trial court erred in finding that Martin's claim to compel enforcement of the promissory note is barred by the release in the settlement agreement. Accordingly, we shall reverse and remand the May 3, 2012 judgment concerning enforcement of the promissory note and the related attorney fee orders entered on May 3 and August 2, 2012.

Factual and Procedural History

In 2006, Mitchell Bilafer initiated litigation against his son Martin, seeking to modify the two 1999 irrevocable trusts based on alleged drafting errors. (Super. Ct. San Mateo County, No. 115136.) Mitchell sought to change provisions calling for the distribution of assets to his grandchildren per stirpes to per capita, so that each of his grandchildren ultimately would receive equal distributions. Around the same time, Judith Doyle filed a petition to surcharge Martin, as the trustee of the JDT trust, for alleged breaches of fiduciary duty. (Super. Ct. San Mateo County, No. 115002.)

While this litigation was pending, Mitchell executed "Amendment 12" to the 1992 trust. Paragraph 3 of Amendment 12 reads: "The Trustor recently filed Petitions for Modification with respect to the Martin J. Bilafer Gift Trust dated December 30, 1999 and the Judith A. Doyle Gift Trust dated December 30, 1999. . . . While the Trustor believes such Petitions for Modification will ultimately be granted, the Trustor desires to modify his existing estate plan to provide for the possibility that such Petitions for Modification are unsuccessful or have not been granted at the time of the Trustor's death. Accordingly, if either Petition for Modification has not been granted prior to the Trustor's death or is unsuccessful, namely the outcome of the matter does not result in correction of the drafting errors as set forth in the Petitions for Modification, the Trustor hereby modifies the following provisions of the Declaration of Trust in the manner set forth below. By contrast, if both Petitions for Modification are successful prior to the Trustor's death, the modifications to the Declaration of Trust set forth below shall be null and

void.” Under paragraphs 3.1 and 3.2, 50 percent of the residue from the 1992 trust is distributed to trust “M” for the benefit of Martin and 50 percent is distributed to trust “J” for Judith’s benefit.¹ Paragraph 3.1, however, further modifies the distribution of Martin’s 50 percent interest in the trust so that if Martin predeceases Mitchell, his half would be divided equally between Judith’s children. Paragraph 3.1 also adds: “In addition, if at any time before or after the Trustor’s death MARTIN J. BILAFER, whether individually or in a fiduciary capacity, raises the rent or participates in raising the rent charged to Carlos Nogueiro, D.D.S. for the space he utilizes for his dental practice at 2484 Mission Street above Four Thousand One Hundred Dollars (\$4,100) per month, or evicts or participated in evicting Carlos Nogueiro, D.D.S., then MARTIN J. BILAFER shall be deemed to be deceased without a surviving spouse as of the date of such increase in the rent for purposes of administering Trust “M”. The Trustor understands that as a result of this provision if MARTIN J. BILAFER raises or participates in raising the aforementioned rent above \$4,100, MARTIN J. BILAFER will no longer be a beneficiary of Trust “M” and the then remaining balance of Trust “M” shall be distributed in accordance with the provisions of Paragraphs 4.1.4 and 4.2.4, as the case may be.”

In May 2008, the parties entered into a comprehensive settlement resolving the pending litigation. The settlement agreement provides for the division of certain real property and other assets and liabilities held by a limited partnership between the two 1999 irrevocable trusts. According to its terms, “The intent and purpose of the agreement is that real properties and other Limited Partnership assets and liabilities shall be separated and exchanged and all existing Trust and Limited Partnership and other agreements modified as necessary so there is no co-ownership between the trusts. The intent and purpose of this agreement is that upon completion of this process there shall be no connection between said trusts.” The agreement was designed “primarily to update the

¹ Trust “M” and trust “J” are the subtrusts through which the assets of the 1992 revocable trust were to be distributed following Mitchell’s death. They are entirely separate from the 1999 MBT and JDT irrevocable gift trusts.

legal entities that own and manage the real property identified [in the agreement] and secondarily to preserve tax benefits as much as reasonably possible.”

Paragraph 10 of the settlement agreement contains the following release provision: “Except as provided herein, in consideration of the payments and other consideration provided for herein, and the execution of this Agreement, the Parties, and each of them, jointly and severally, for themselves, all of their spouses, heirs, administrators, executors, agents, attorneys, representatives, predecessors and successors-in-interest, assigns, consultants, experts, insurers, and each of them, and anyone claiming through, by or under them (collectively, “Releasers”), completely release and forever discharge the other Parties, all past and present trustees, trust advisors and each of their spouses, heirs, administrators, executors, agents, attorneys, representatives, predecessors and successors-in-interest, assigns, consultants, experts, insurers, and each of them, and anyone claiming through, by or under them (collectively, “Releasees”). This release encompasses and includes all any and all past or present claims, demands, causes of action, actions, damages, losses, costs, expenses, attorneys’ fees, compensation and all other damages and liabilities of any kind or nature whatsoever, direct or indirect, whether or not now known or unknown, suspected or unsuspected, contingent or non-contingent, liquidated or unliquidated (collectively, “Claims”), which the Releasers, and each of them, ever had, or now have, or otherwise have acquired or might acquire, against the Releasees, or any of them, *by reason of any matter, act, transaction or occurrence relating in any way to the parties, Trusts, limited partnership, agreements or matters pending or included in [the two then-pending superior court actions], or reasonably related thereto.*” (Italics added.)

In June 2008, the court approved the settlement agreement and incorporated its terms in a final order and judgment. The court’s order states: “To carry out the intent and purpose as provided in the settlement agreements the real properties and other Limited Partnership assets and liabilities shall be separated, all existing entities and agreements are terminated or conformed so that there is no co-ownership or connection between said Trusts, the Trusts will have no common present or future beneficiaries, Mitchell Bilafer

has waived and he, his estate and/or his trust have no rights or standing as to anything regarding either Trust or the Limited Partnership or their property, and that the secured promissory notes owing by each Trust to Mitchell are modified and separated with 3/7 owing by Martin's trust and 4/7 owing by Judith's trust and the modified notes owing by each Trust are to be conveyed by Mitchell to that respective Trust upon the deaths of Mitchell and his wife Marie such that at that time each trust will owe nothing on those notes."

In October 2008, Martin filed a safe harbor petition seeking a determination that a proposed petition to determine the extent of his beneficial interest in the 1992 trust would not violate the no-contest clause contained in that trust. The proposed petition, attached to the safe harbor petition, sought to "clear any interpretation questions as to Mitchell Bilafer's 1992 Revocable Trust and in particular as to paragraphs 3 and 4 of the 2006 Amendment 12 in light of the Settlement Agreement executed by Mitchell Bilafer on April 11, 2008" and, among other things, to deem paragraphs 3 and 4 of Amendment 12 "satisfied or reformed," confirming that he is entitled to 50 percent of the 1992 trust assets.

Respondents objected to the safe harbor petition, arguing that the petition was barred by the covenant not to sue in the settlement agreement and that if not barred, "Martin's request for relief is contrary to the 'no contest clause' in Mitchell's Trust: it is a material challenge to the language of Amendment 12 of the Mitchell Trust, and would require a material change to the Trust documents." At the same time, respondents applied for an order to show cause asserting that in filing the safe harbor petition Martin had violated the court's order that incorporated the settlement agreement. Following a hearing on the order to show cause, the parties were referred to mediation and, at respondent's request, the order to show cause was discharged. Following a hearing, the court issued an order finding that Martin's proposed petition would not violate the no-contest provision of the 1992 trust.

On April 1, 2011, Martin filed his petition to determine his continuing rights under the 1992 revocable trust. At the same time, Martin filed a second petition for accounting

instructions and attorney fees seeking, among other things, to compel Catherine as trustee of that trust to enforce a promissory note to the trust that Judith signed in 1995 or alternatively to surcharge Catherine for failing to do so, and an order awarding Martin attorney fees incurred in defending the prior contempt proceedings that were initiated by respondents but later voluntarily discharged.

With respect to the request to compel enforcement of the 1995 promissory note, the petition alleges “On or about January 27, 1995, the settlor, Mitchell Bilafer, made a loan from Mitchell Trust Funds to [Judith Doyle] on which the amount due with interest would be approximately \$260,000 Said loan obligation was secured by a Deed of Trust and Assignments of Rents recorded on May 5, 1997 On or about June 20, 2001, settlor issued a full reconveyance of the real property security for said loan. Martin worked closely with his father nearly every day on their joint business affairs and on his father’s affairs and Martin and his father discussed this loan. Mitchell never said it was forgiven or a gift and never reported it as such. During the administration of the Settlor’s estate following his death, [Catherine] made a determination that the loan statute of limitations expired and ‘was not enforced and therefore is considered a gift.’ After Settlor’s death, [Catherine] also filed an amendment to the Settlor’s 1999 Gift Tax return, which previously did not mention any such gift, so as to report a \$100,000 gift. However, [Catherine] has not explained or substantiated that reasoning. It actually appears that settlor’s act of reconveyance did not extinguish the underlying obligation, it merely waived the remedy of foreclosure.”

At Judith’s request, and over Martin’s objection, the court bifurcated the trial and considered first whether the release in the settlement agreement barred Martin’s claim for enforcement of the promissory note. After hearing evidence, the court found that Martin’s claim to enforce the promissory note against Judith was released in the settlement agreement. The court did not reach the merits of the claim and “assume[d] for purposes of this affirmative defense that the promissory note [was] enforceable.” The court entered a judgment in favor of Judith and thereafter awarded her attorney fees based on the attorney-fee provision in the settlement agreement. Martin filed a timely notice of appeal.

The trial on the remaining issues commenced in October 2011. With respect to Martin's petition to ascertain his status as a beneficiary under the 1992 trust, respondents argued that the settlement agreement did not satisfy the contingencies in Amendment 12 and that, in all events, Martin forfeited his interest in the 1992 trust by raising Dr. Nogueiro's rent. Martin argued that the settlement agreement satisfied the contingencies in Amendment 12 and that he had not violated the rental increase provision. Alternatively, he argued that the court, having previously ruled that the settlement agreement released all claims relating to the 1992 trust, must apply its prior ruling to conclude that respondents had released any claim that Martin forfeited his interest in the 1992 trust by raising Dr. Nogueiro's rent.

The trial court agreed with Martin on all of these issues. The court found that the successful settlement of the litigation on Mitchell's petitions to modify the 1999 irrevocable trusts satisfied the contingencies in Amendment 12 and reinstated the prior estate plan contained in the 1992 trust, and that there was no evidence that Martin raised the rent or participated in raising the rent charged to Dr. Nogueiro. As an alternative ruling, the court found that the settlement agreement released any claim that Martin forfeited his right as a beneficiary under Amendment 12. The court entered judgment in favor of Martin and ordered that Martin's subtrust under the 1992 revocable trust be funded forthwith. Respondents have not challenged this ruling and its correctness is not at issue on appeal.

On the same day, the court entered judgment denying Martin's petition for attorney fees incurred in the contempt proceeding. The court denied the fee request on the ground that Civil Code section 1717, subdivision (b)(2)² barred an award of fees because Judith and her children had voluntarily requested dismissal of the order to show cause. Martin filed a timely notice of appeal.

On August 2, 2012, the court entered an order awarding attorney fees as between Martin and respondents on Martin's successful petition to determine his rights under the

² All statutory references are to the Civil Code unless otherwise noted.

1992 trust and his unsuccessful petition for accounting instructions and attorney fees. The court found that while Martin was the prevailing party on the petition to ascertain his rights, there was no basis on which to award attorney fees until after January 26, 2012, when Martin first asserted that the release in the settlement agreement barred respondent's forfeiture claim. The court awarded Martin \$48,430 in fees incurred after January 2012. The court also awarded respondents \$96,084.96 as the prevailing parties on Martin's petition for accounting and attorney fees. Martin filed a timely notice of appeal.

On September 11, 2012, the court denied Martin's motion for new trial and/or for reconsideration, and on October 9, 2012, the court awarded respondents \$9,915 in attorney fees relating to the denial of the motion for new trial. Martin filed a timely notice of appeal.

At the request of all parties, the four appeals have been consolidated for all purposes.

Discussion

1. *Martin's claim to compel enforcement of the 1995 promissory note was not released in the settlement agreement.*

Settlement agreements are “ ‘governed by the legal principles applicable to contracts generally.’ [Citation.] They ‘regulate and settle only such matters and differences as appear clearly to be comprehended in them by the intention of the parties and the necessary consequences thereof, and do not extend to matters which the parties never intended to include therein, although existing at the time.’ [Citations.] Thus they ordinarily conclude all matters put in issue by the pleadings—that is, questions that otherwise would have been resolved at trial. [Citation.] They do not, however (absent affirmative agreement of the parties), conclude matters incident to the judgment that were no part of the cause of the action.” (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 677.) In determining the intent of the parties, we are guided by the outward expression of the settlement agreement and not by any party's unexpressed intentions. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.)

Here, although the terms of the general release are broad and there is a strong desire to bring this unfortunate family litigation to a conclusion, neither the language of the release contained in the settlement agreement nor the circumstances under which it was entered suggests that the parties intended to release claims under the 1992 trust. To the contrary, the language of the agreement conflicts with such an interpretation.

Under the express terms of paragraph 10 of the settlement agreement, the release applies only to those claims “relating in any way to the parties, trusts, limited partnership, agreements or matters pending or included in San Mateo Superior Court case numbers 115002 and 115136, or reasonably related thereto.” While claims need not be identical to those that were at issue in the litigation that was settled, in order for the release to apply the claims must at least be related to the disputes that were settled in the identified litigation. (*Morales v. TWA* (1992) 504 U.S. 374, 383-384 [the “ordinary meaning of [‘relating to’] is a broad one—‘to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with’ ”].) The two actions to which the settlement agreement referred related to the modification of the provisions of the two 1999 irrevocable trusts, increasing the benefits that ultimately would flow to each of Judith’s five children at the expense of Martin’s two children, and the agreement provided for a complete division and separation of both assets and liabilities held jointly by the two trusts. Nothing in the agreement or the circumstances under which it was entered suggests that the parties intended the release to apply to claims arising with respect to the 1992 trust. Although the agreement carefully identifies the beneficiaries, assets and liabilities of the 1999 trusts, the settlement agreement makes no mention of the 1992 trust or of its separate assets, including the 1995 promissory note. The complete absence of any reference to that trust or its assets is a compelling indication that any claims relating to the 1992 trust were never considered or intended to be released by the settlement agreement.

Moreover, paragraph 5(f) of the settlement agreement provides a further explicit indication that the agreement was not intended to affect any rights under the 1992 trust. Section 5 of the settlement agreement concerns the separation of assets and liabilities

between the two 1999 trusts. Paragraph 5(f) reads in full: “With respect to each trust, the respective portion of that total secured debt to Mitchell Bilafer is to remain or transfer solely on and to the properties that trust received in the exchange and this will also be accomplished in the same escrow as the like kind exchange. All parties will cooperate and immediately accomplish any necessary or reasonable financing of the assets to be received to accomplish this separation of secured debt and assets. The promissory notes to Mitchell shall be distributed to the MBT and JDT trusts [Trust M and Trust J] in the proportions they are responsible for, upon the death of the survivor of Mitchell or his wife, Marie Bilafer, and this shall be further memorialized in his estate plan, and Mitchell waives any and all rights to revoke or modify distribution of these notes. This Agreement itself shall not cause any tax to be incurred by Mitchell or his estate, but the parties recognize that estate plan as currently existing may cause taxable liability and these are Mitchell’s responsibility. *Except for the provisions in this paragraph, this agreement does not affect or involve any other aspect of Mitchell Bilafer’s estate plan or estate.*”

Mitchell’s estate plan and estate were the subject of, and reflected in, the 1992 revocable trust. The final sentence of paragraph 5(f) thus confirms that the settlement agreement was not intended to “affect or involve” any provisions of the 1992 trust or the rights of the parties under those provisions. Respondents make the unpersuasive argument that the term “agreement” in the final two sentences of paragraph 5(f) must be read to refer only to Mitchell’s agreement in paragraph 5(f) to waive any right to modify the distribution of the promissory notes. If read as respondents suggest, the final sentence would be nonsensical: “Except for the provisions in this paragraph, [the provisions in this paragraph do] not affect or involve any other aspect of Mitchell Bilafer’s estate plan or estate.”³

³ At oral argument, respondents argued that reading the word “agreement” in the final sentence of paragraph 5(f) to refer to the entire settlement agreement would nullify other provisions of the settlement agreement, specifically paragraphs 3 and 4. However, neither those paragraphs nor any others in the settlement agreement make any reference to the 1992 revocable trust or contain provisions that are rendered meaningless or are otherwise affected by reading the final sentence of paragraph 5(f) to apply to the entire settlement

Respondents also argue that Martin waived his right to appeal from the adverse judgment on his petition for accounting and attorney fees by accepting the benefits of the favorable judgment on the petition determining his rights under the 1992 trust. Respondents cite the general rule that “ ‘ “the voluntary acceptance of the benefit of a judgment or order is a bar to the prosecution of an appeal therefrom.” ’ ” (*Satchmed Plaza Owners Assn. v. UWMC Hosp. Corp.* (2008) 167 Cal.App.4th 1034, 1041.) They argue, “Martin Bilafer seeks here to do exactly what this longstanding rule bars. Multiple interrelated judgments and orders were issued in this matter throughout the course of trial. Martin Bilafer appeals as to only *some* of those interrelated determinations. In so doing, Martin Bilafer seeks to retain the fruits of the trial court’s judgment that the release in the settlement agreement applies to his prevailing on the Nogueiro issue; but on appeal he seeks to deny Judith Doyle and the Doyle children the trial court’s *consistent* application of the release to claims related to the 1995 promissory note.”⁴

Initially, we note that the trial court entered separate judgments on Martin’s separate petitions. Martin may well lack standing to appeal from the judgment entered on his petition to ascertain the extent of his rights inasmuch as he prevailed on the petition and obtained the funding of his subtrust.⁵ (Code Civ. Proc., § 902 [“Any party aggrieved may appeal in the cases prescribed in this title.”]; *Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947 [“A party is aggrieved only if its ‘rights or interests are injuriously affected by

agreement. The final sentence of paragraph 5(i) does provide that “[n]either ‘The Judith Doyle Group’ nor ‘The Martin J. Bilafer Group’ will bring any proceedings against Mitchell, his trust or his estate,” but this restriction is entirely consistent with reading paragraph 5(f) to say that the settlement agreement does not affect Mitchell’s estate plan or estate. It may well be that the reason for which Catherine was identified as trustee of the 1992 trust (in addition to special administrator of Mitchell’s estate and executor of his will) when signing the settlement agreement for Mitchell, was to bind the 1992 trust to the understanding that nothing in the settlement agreement affected its terms.

⁴ Respondents’ motion to augment the record with documents showing that Martin’s subtrust was fully funded after entry of the judgment is granted.

⁵ While the court also awarded attorney fees to Martin based on the attorney fee provision in the settlement agreement, that order has been appealed and is subject to correction on appeal.

the judgment.’ ”].) However, there is no inconsistency between the rights he was determined to have under the resolution of that petition and the claim he asserts in the second petition that the trustee is failing to preserve the assets of the 1992 trust. Reversal of the judgment on the petition for accounting and attorney fees will not disturb or conflict with the judgment entered on the petition to determine his rights. Moreover, the favorable judgment upholding his continuing beneficial interest under the 1992 trust does not rest upon the trial court’s alternative holding that the settlement agreement released the claim that he forfeited his interest in the trust by raising the rent of Dr. Nogueiro, because the court also held that there was no basis for forfeiture because he had not raised the rent. Accordingly, Martin’s acceptance of the benefits under the favorable judgment does not conflict with his present appeal.

Respondents make a similar judicial estoppel argument that is also without merit. “The courts invoke judicial estoppel to prevent judicial fraud from a litigant’s deceitful assertion of a position completely inconsistent with one previously asserted, thus compromising the integrity of the administration of justice by creating a risk of conflicting judicial determinations. [Citations.] The inconsistent position generally must be factual in nature. [Citation.] [¶] As a general rule, the court should apply the doctrine only when the party stating an inconsistent position succeeded in inducing a court to adopt the earlier position or to accept it as true. If the party did not succeed, then a later inconsistent position poses little risk of inconsistent judicial determinations and consequently introduces ‘ “little threat to judicial integrity.” ’ ” (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.)

To the extent that Martin asserted inconsistent positions with respect to the scope of the release in the settlement agreement, they were at most inconsistent legal positions, not factual assertions. More importantly, there can be no suggestion of fraud or deceit. Martin argued strenuously that the settlement agreement did not release any claims regarding the 1992 trust, but once the court ruled against him, he reasonably asserted that if the release barred his claims regarding the promissory note, it must also bar respondents’ forfeiture claim regarding Dr. Nogueiro’s rent. His brief submitted in

closing argument explains his position: “Earlier in this proceeding, Martin argued that the release executed as part of the settlement of the other (irrevocable) trust dispute was never intended to apply to claims related to the living (revocable) trust that is currently at issue here. [Citation.] However, as it stands now, this court has ruled that the claims of the revocable living trust to a promissory note owed by Judy was barred by the irrevocable gift trust release. [¶] . . . [¶] It would be inconsistent for this court to rule that Martin’s claims against the trustee are barred, but that the objectors’ claims of forfeiture against Martin are not barred by estoppel. [Citation.] . . . [¶] . . . [¶] The bottom line is that if Martin’s claims against the trustee (and/or the claims of the trustee against Judy) are barred by the prior release, the claims against Martin are likewise barred.” Under these circumstances there is no basis to invoke judicial estoppel as a bar to Martin’s appeal.⁶

2. *Martin’s claim for attorney fees incurred in the civil contempt proceeding is barred by section 1717, subdivision (b)(2).*

Martin’s petition sought to recover under the attorney-fee provision of the settlement agreement \$46,000 in fees that were incurred in defense of the order to show cause.⁷ The trial court denied the application on the ground, among others, that section 1717, subdivision (b)(2) barred the recovery of fees because respondents had voluntarily requested dismissal of the order to show cause.

Section 1717, subdivision (b)(2) provides: “Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing

⁶ In light of this conclusion, we do not reach Martin’s collateral estoppel argument. Martin’s request for judicial notice of documents in support thereof is denied on the ground of relevancy. Martin’s request that we take judicial notice of this court’s decision in *Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363 is also denied.

⁷ The attorney-fee provision reads as follows: “In the event of any controversy, claim or dispute arising out of or related to this Agreement, or to which this Agreement is a defense, the prevailing party in such controversy, claim or dispute shall be entitled to recover from the losing party all reasonable attorney fees, costs and expenses related to such dispute, if the court deems attorney fees, costs and expenses appropriate.”

party for purposes of this section.” Section 1717 and all of its subdivisions apply only to provisions awarding attorney fees to the prevailing party in an action to enforce a contract; the section has no application to provisions awarding fees to the party prevailing on noncontractual claims. (*Maynard v. BTI Group, Inc.* (2013) 216 Cal.App.4th 984, 990; *Moallem v. Coldwell Banker Com. Group, Inc.* (1994) 25 Cal.App.4th 1827, 1830.) Section 1717, subdivision (b)(2) does not bar recovery of attorney fees incurred in defending tort or other noncontract claims. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 603; *Del Cerro Mobile Estates v. Proffer* (2001) 87 Cal.App.4th 943; 948.) Martin argues that because the contempt proceeding is “quasi-criminal in nature,” section 1717, subdivision (b)(2) is not applicable. We disagree.

The foundation of Martin’s argument was rejected in *Share v. Casiano Bel-Air Homeowners Assn.* (1989) 215 Cal.App.3d 515. In that case, the court held that attorney fees incurred in a civil contempt proceeding initiated to enforce a contractual obligation are recoverable under a contractual attorney fee provision. (*Id.* at p. 523.) The court rejected the argument that “because a contempt proceeding is a special proceeding of a criminal character [citation], it is not an ‘action on a contract’ for purposes of section 1717.” (*Share*, at p. 522.) The court explained, “Civil contempt is a means of enforcing a contractual right as judicially determined in an order or judgment. . . . [¶] Civil contempts are ‘instituted to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made to enforce the rights and administer the remedies to which the court has found them to be entitled.’” [Citation.] Such proceedings are ‘remedial and coercive in their nature, and the parties chiefly in interest in their conduct and prosecution are the individuals whose private rights and remedies they were instituted to protect or enforce.’” (*Id.* at p. 523.) As in *Share*, respondents in this case instituted the contempt proceeding as a means of enforcing the terms of the settlement agreement that was incorporated into the court’s judgment. The action, therefore, was on the contract for purposes of section 1717 and subdivision (b)(2) bars the recovery of attorney fees.

Martin’s suggestion that the holding in *Share* relates “to a wholly separate question” is incorrect. Contrary to Martin’s characterization, the question in *Share* was whether the parties that initiated the contempt proceeding “were ‘the party who recovered a greater relief in the action on the contract’ ” under section 1717, subdivision (b)(1).⁸ (*Share v. Casiano Bel-Air Homeowners Assn.*, *supra*, 215 Cal.App.3d at p. 519.) If contempt proceedings are an “action on the contract” for purposes of determining the prevailing party under section 1717, subdivision (b)(1), it necessarily follows that that the exception found in subdivision (b)(2) applies as well.⁹

Disposition

The judgment entered on April 11, 2012, is affirmed. The judgment entered on May 3, 2012, and orders entered on May 3 and August 2, 2012, are reversed and remanded for further proceedings. The parties shall bear their respective costs on appeal.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.

⁸ Section 1717, subdivision (b)(1) provides: “The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.”

⁹ In light of this conclusion, we do not reach Martin’s additional arguments regarding the amount of fees to which he would have been entitled. Martin’s request for judicial notice of documents in support of those contentions is denied on the ground of relevancy.