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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

RICHARD C. SINCLAIR et al.,

Plaintiffs and Appellants,

v.

ANDREW KATAKIS et al.,

Defendants and Respondents.

F060497

(Super. Ct. No. 332233)

**OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Richard C. Sinclair, in pro. per., and for Plaintiffs and Appellants.

McCormick, Barstow, Sheppard, Wayte & Carruth, Todd W. Baxter and John M. Dunn for Defendants and Respondents.

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In this appeal, appellants challenge posttrial orders awarding respondents \$750,000 in attorney fees and denying their motion for reconsideration. Appellants are Richard C. Sinclair, who serves as counsel for these appellants; Sinclair's company, Lairtrust, LLC; Sinclair's son, Brandon Sinclair (Brandon); Brandon's company,

Capstone, LLC; and Gregory Mauchley.<sup>1</sup> Respondents are Andrew Katakis, his company California Equity Management Group (CEMG), and the Fox Hollow of Turlock Owners Association (FHOA).

Appellants raise three issues and make a number of claims in relation to the issues. They contend: (1) the trial court abused its discretion in failing to continue a hearing on posttrial motions in light of Sinclair's disability; (2) the trial court should have reconsidered the rulings because respondents' counsel had a disqualifying conflict of interest; and (3) the trial court abused its discretion in awarding respondents attorney fees. We will affirm.

### **FACTUAL SUMMARY**

Relevant facts are set forth in the discussion as each argument is based on discrete specifics.

### **DISCUSSION**

#### **I. Appellants Request for a Continuance**

##### **Posttrial Procedural Summary**

The trial court filed the statement of decision and judgment on August 18, 2009, reserving the issues of costs and attorney fees. On September 8, respondents submitted a memorandum of costs requesting \$38,031.89. They also sought to amend the judgment to add Mauchley as a judgment debtor, which was set to be heard on October 8. Sinclair, on behalf of appellants, opposed that motion.

Appellants, also through Sinclair, moved to strike respondents' memorandum of costs or to tax costs. That motion was set to be heard on December 1.

On October 23, respondents filed a motion to be declared the prevailing parties and sought attorney fees of \$1,202,604.50.

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<sup>1</sup>Mauctrst, LLC, a company owned by Mauchley and comanaged by Sinclair, filed a certificate of cancellation in 2011. This court granted respondents' motion to dismiss Mauctrst, LLC as an appellant in *Sinclair v. Katakis*, F058822. An identical motion is filed in this appeal. The motion is granted.

On November 9, 2009, Sinclair filed an ex parte application to continue the hearings on the motions until February 6, 2010, due to his disability. Sinclair stated that trial counsel, the law firm of Neumiller & Beardslee, was no longer representing appellants; he was. He attached a doctor's note that said he should be excused from activities for 90 days due to a medical condition. Respondents opposed the motion, noting that trial counsel continued to be listed on appellants' filings and they had not moved to withdraw from representation. The trial court continued the hearings on all motions to December 18.

In late November, Sinclair submitted a declaration that disclosed he was scheduled to have surgery on November 30, 2009, and would be unable to work until February 6, 2010. On January 13, 2010, Sinclair requested another continuance to March 23, 2010. He declared that he had two cervical discs replaced during the surgery and was still heavily medicated, which impeded his ability to concentrate. His physician had extended his work restriction to March 1, 2010. Although the ruling is not in the record, Sinclair said in subsequent filings that the trial court denied the additional continuance.

On February 3, appellants, through Sinclair, filed opposition to respondents' motion for attorney fees. Sinclair asked the court to reconsider his request for a continuance because he was "currently disabled and unable to protect myself or my clients [*sic*] interests." On February 9, Sinclair, for appellants, filed a reply to the opposition to the costs motion.

About February 16, Sinclair filed an ex parte application to delete Stanley Flake, as an individual, from the statement of decision and judgment. Respondents opposed the application. Sinclair did not appear at the hearing on the application and it was dropped. The court on its own motion continued all hearings until February 26, 2010.

The trial court posted tentative rulings on the pending motions, and Flake's new counsel requested a hearing. Flake's new counsel, however, was involved in a traffic collision the morning of February 26th and did not appear. The trial court continued the motions as to Flake.

Respondents' counsel asked if the trial court would consider granting the motions as to appellants because they had not requested a hearing in response to the tentative ruling. The trial court asked, "Can anybody tell me the status of Mr. Sinclair?" Respondents' counsel replied that Sinclair had filed responsive pleadings to each motion as well as an ex parte application. Sinclair had requested a further extension of time to designate the record in the Court of Appeal, which was denied on February 24. Further, Sinclair was appearing by telephone in the related federal court matter on Monday, March 1.<sup>2</sup>

The trial court concluded, under the circumstances, it would confirm its tentative rulings and grant the motions for attorney fees and costs against all parties except Flake. The trial court also granted the petition to amend the judgment to add Mauchley as a judgment debtor.

On March 19, 2010, Sinclair filed a notice of continued disability until April 18, 2010, with a note from a different doctor, which stated, "unable to return work until 4-18-10." (Capitalization omitted.) On April 19, appellants filed a motion for reconsideration of the trial court's rulings and a motion to set aside the judgment and orders. As grounds for the motions, appellants reargued the trial facts and rulings, alleged that respondents' counsel had a disqualifying conflict of interest, and Sinclair asserted that he remained disabled and unable to protect himself or his clients' interests. Respondents opposed appellants' motion and filed a motion to hold Sinclair in contempt under Code of Civil Procedure section 1008, subdivision (d) and to impose sanctions against Sinclair and appellants for filing meritless motions. Appellants opposed those motions and filed a reply brief in support of their motion for reconsideration.

Appellants' motions for reconsideration and to set aside the judgment and respondents' motions for sanctions and to hold Sinclair in contempt were heard on June 4, 2010. At the onset, the trial court addressed statements in appellants' filings that

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<sup>2</sup>February 26, 2010, the date of the hearing, was the Friday before Monday, March 1.

the court “deliberately erred and decided matters when the Court ... knew that [Sinclair] was supposedly unavailable because of illness or medical condition.” The trial court stated, “I can assure you, unhesitatingly, that at no time during my legal career or my judicial career have I ever done any such thing.” The trial court reviewed the procedural history of the posttrial motions on the record and stated that Sinclair’s statement that the trial court had deliberately heard these matters while aware that Sinclair had a disability was inaccurate. The trial court then invited Sinclair to address his motions.

Sinclair stated he had faxed his request for a continuance to the trial court and the trial court wrote him saying, “I didn’t get everything.” The trial court responded that it “[did not] write notes to counsel on one side. That would be ex parte communication.” Sinclair then asserted he had received a note from “someone” and thought it was from the judge. Because he had informed the trial court of his continued disability, he assumed the trial court knew of it.

The trial court asked Sinclair why he had not requested a hearing in response to the posted tentative ruling. Sinclair responded he was unable to do so. The trial court clarified, “You were unable to request a hearing?” Sinclair responded, “Well, I was unable to attend, so I couldn’t request a hearing.” The trial court asked Sinclair why he had not contacted the court by e-mail or telephone or contacted opposing counsel’s office to voice his objection to the tentative ruling and see about getting the matter continued. Sinclair responded only that he had submitted his notice of continued disability.

At the conclusion of the hearing, the trial court said to Sinclair:

“I don’t understand why, after the Court issued its tentative ruling on the 25th of February, why you couldn’t have had somebody pick up a telephone ... and say, wait a minute, the judge is not being fair here in giving me an extension.

“I give people extensions all the time if they say they have a health issue .... But it seems to me you kind of just sat there hoping that things would go away, or that maybe this is something you could use down the road to argue that the Court’s decisions were erroneous.

“But you can’t convince me at this point this morning that there was nothing you could have done about that to ... contact the Court and say, listen, I want to have a hearing on this, Judge. I’m simply not ready physically and mentally, and I’m asking you to put this over.... [¶] Do you honestly think I would have said, no, tough luck?”

Sinclair responded, “I thought that we had submitted an extension to March 2nd that the Court had also on file. And then another, ‘I’m disabled. I can’t appear.’”

The trial court then confirmed its tentative rulings to deny appellants’ motions to reconsider and to set aside the judgments and orders. The trial court also denied respondents’ request for sanctions and to hold Sinclair in contempt but stated, “it’s a close call.”

The trial court filed an amended judgment on June 21, 2010, that awarded costs and attorney fees in favor of respondents and against appellants, jointly and severally, in the amount of \$783,141.67, which included \$750,000 in attorney fees and \$33,141.67 in costs.

### **Analysis**

A trial court has the discretion to deny a request for a continuance when there is no good cause for granting one or when there is a lack of diligence or other abusive circumstances. On the other hand, a request for a continuance supported by a showing of good cause usually ought to be granted. And, when the denial of a continuance has the practical effect of denying a party a fair hearing, it is reversible error. (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395-1396.)

In reviewing a trial court’s exercise of discretion, the court will not disturb the exercise of discretion unless there has been a miscarriage of justice. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Appellants raise two claims relative to whether the court abused its discretion in failing to continue the hearing on February 26 when Sinclair failed to appear. They contend respondents’ trial counsel violated the Business and Professions Code, the Penal Code, and Rules of Professional Conduct because counsel (1) disobeyed federal district

court judge Oliver Wanger’s “order” of February 5, 2010; and (2) “lied to” the trial court at the hearing and suppressed evidence they were obligated to disclose to the court. Respondents submit that appellants have waived these claims by failing to cite to the record, ignoring the standard of review, and failing to develop legal arguments in relation to their claims. We agree appellants have waived or abandoned certain claims and conclude the trial court did not abuse its discretion or violate due process in not continuing the matter further. We consider each claim in turn.

**A. Federal Court “Order”**

Appellants contend respondents’ trial counsel violated a federal court order “by Judge Wanger ... that Mr. Sinclair was seriously disabled through March 1, 2010.” Further, that respondents violated the order by alluding to Sinclair’s “alleged disability” in pleadings they filed on February 9 and in failing to disclose the order to the trial judge at the February 26 hearing. Not so.

First, appellants never mentioned the federal order in their motion for reconsideration in the trial court, and they raise the issue for the first time on appeal. For this reason alone, the court may refuse to consider the issue. (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 46 [issue not cognizable on appeal when never raised in trial court].) Second, appellants failed to include a copy of the order in the appellate record. Documents not presented to the trial court are disregarded as beyond the scope of review. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.) Third, appellants’ claim is based on a misrepresentation of the substance and effect of the federal court documents.<sup>3</sup>

In pertinent part, Judge Wanger’s memorandum decision of February 8 addressed trial counsel Neumiller & Beardslee’s motion to withdraw and Sinclair’s motions to substitute himself as counsel of record and to continue all matters until March 21 because

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<sup>3</sup>On August 22, 2011, this court granted respondents’ request that we take judicial notice of federal district court judge Oliver Wanger’s memorandum decision and related order of February 8, 2010.

of his disability. The federal court granted Neumiller & Beardslee's motion to withdraw and noted:

“Neumiller cannot be forced to remain as counsel of record for Mr. Sinclair and the other [appellants] solely because the substitution will result in delay. Moreover, unless [respondent] has evidence that Mr. Sinclair and his doctors are lying, he has a serious medical condition that necessitates the continuance. While [respondent] is concerned that Mr. Sinclair will keep returning to seek additional continuances, that will be dealt with if and when it occurs.”

The court granted Sinclair's motion for a continuance, but only to March 1 rather than the March 21 date that he had requested, and ordered Sinclair to appear either personally or telephonically on March 1.

Simply put, the memorandum decision did not order respondents to do or refrain from doing anything in relation to the state court action. Nor did it order counsel to recognize Sinclair's medical disability through March 1, 2010. Rather, the federal court told respondents that it accepted Sinclair's representation that he was presently disabled absent evidence to the contrary. Accordingly, we reject appellants' claim that respondents' counsel violated the federal court order.

***B. Counsel's Representations to the Trial Court***

In a related argument, appellants contend respondents' trial counsel were obligated to disclose their knowledge of Sinclair's medical condition, including the contents of Judge Wanger's memorandum decision, to the trial court at the February 26 hearing. Instead, counsel misled the trial court “into believing that Mr. Sinclair was only ‘allegedly disabled’ when they knew” Sinclair had advised them and the courts of his “serious disability,” and “Judge Wanger had ordered them to cease” because Sinclair was disabled until March 1, 2010.

Appellants contend counsel's actions violated Business and Professions Code section 6103 (willful disobedience of a court order connected with attorney duties) and Penal Code section 166 (willful disobedience of a court order). These claims fail for the

reason set forth above—respondents’ statements at the February 26 hearing did not violate a court order.

Moreover, in responding to the trial court’s inquiry regarding Sinclair’s status on February 26, respondents’ counsel stated that Sinclair had fully briefed the matters at issue, he was appearing telephonically in a related federal court matter the following Monday, and he had not requested a hearing in response to the court’s tentative rulings. Those statements were true and appellants do not claim otherwise. Further, as the trial court noted at the motion for reconsideration, if the court did not have current information about Sinclair’s status on February 26, the blame lay with Sinclair, who failed to notify the trial court of his inability to appear in response to the posted tentative rulings.

Finally, respondents have requested judicial notice of a number of pleadings filed in San Francisco Superior Court, as well as invoices from Sinclair’s law office billing for legal work, that indicate Sinclair was practicing law in February and March 2010, including making court appearances, at the time he told the trial court he was disabled and unable to do legal work.<sup>4</sup>

### *C. Motion for Reconsideration*

Appellants’ caption to this argument states in part, “[t]he court erred in not granting the motion for reconsideration as it said it would.” (Capitalization and emphasis omitted.) Appellants then quote and paraphrase from the June 4th hearing and state the trial court was unaware of Sinclair’s disability even though “it had all of the documents, except Judge Wanger’s Order.” And, respondents’ counsel “chose not to tell the truth”

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<sup>4</sup>Respondents’ request that we take judicial notice is unopposed and may be granted for that reason. (Cal. Rules of Court, rule 8.54(c).) While the documents are not necessary to resolve the appeal, they disclose why respondents were so averse to Sinclair’s requests for extensions of time and continuances in this case. They remove the potential taint to respondents’ counsel’s reputation from Sinclair’s disparaging remarks in appellants’ briefs. Appellants briefly refer to the documents in their reply brief and note that one of the declarations is from a disgruntled client.

about Sinclair's disability "but instead to mislead the Court to their financial gain." Appellants conclude, the "Court Erred and acknowledges that if it had known, it would have changed its decision."

There are no citations to the record in the opening brief. Appellants added citations in their reply brief, but the added citations do not necessarily support the accompanying statements. For example, appellants state "[the trial judge] ... in a motion to reconsider stated that if he had known of Sinclair's disability, he would have continued the matter and not ordered Sinclair or any plaintiff[] to pay." They cite to the portion of the transcript where the trial court responded to statements Sinclair made in appellants' pleadings that accuse the trial court of deciding the matter when it knew of Sinclair's supposed unavailability because of his medical condition. The trial court said it had never done any such thing. The trial court did not say it would not have ordered plaintiffs to pay. (See *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846 [court looks askance at practice of stating what purport to be facts without support in record, a violation of rule 8.204(a)(1)(C) of Cal. Rules of Court; such assertions will, at a minimum, be disregarded].)

Further, appellants make no legal argument in relation to this contention. The appellate court is not required to consider alleged error where the appellant merely complains of it without pertinent legal argument. The appellate court deems such claims to be without foundation and abandoned. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 710.) As such, we deem abandoned appellants' claims that the trial court abused its discretion in not continuing the February 26 hearing and in denying the motion for reconsideration, and that the rulings deprived them of due process.

Also, we see no abuse of discretion or denial of due process. Sinclair's failure to contact the trial court in response to the posted tentative rulings demonstrated lack of diligence. Further, despite appellants' claim that they responded to the motions with "skeletal briefs," they had the opportunity to expand on their opposition in the motion for reconsideration, but presented little, if any, new facts or law to support their opposition.

Thus, appellants have failed to demonstrate that they were denied a fair hearing or that the court abused its discretion in not continuing the hearing.

## **II. Allegation that Respondents' Counsel Had a Disqualifying Conflict of Interest**

Appellants contend that respondents' trial counsel violated the California Rules of Professional Conduct, rules 3-600 (Organization as Client)<sup>5</sup> and 3-310 (Avoiding the Representation of Adverse Interests), and breached a fiduciary duty owed to them as members of the FHOA by representing adverse interests without appellants' written consent. They submit this conflict of interest and breach of fiduciary duty require reversal of the court's orders. Respondents submit the claim is meritless because (1) appellants never filed a motion to disqualify respondents' trial counsel; (2) any potential conflict was waived by failing to raise the issue until the motion for reconsideration of posttrial orders; and (3) there was no conflict of interest—the homeowners association, not its individual members, was respondents' counsel's client. (*Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639, 644.) We conclude that appellants waived this issue by failing to timely move to disqualify respondents' counsel.<sup>6</sup>

Respondents' counsel substituted into the case in February 2008, 10 months before trial commenced. Appellants first challenged counsel's ability to represent the homeowners association in April 2010 in their motion for reconsideration of the court's order awarding respondents attorney fees and costs. In the three-page discussion, they contended the trial court should reconsider its orders awarding respondents costs and attorney fees because respondents' counsel, by representing "some of the plaintiffs"

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<sup>5</sup>"In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement...." (Rules Prof. Conduct, rule 3-600(A).)

<sup>6</sup>We do not address appellants' challenge to the order denying without prejudice their motion to disqualify prior defense counsel. That challenge was considered and rejected in *Sinclair v. Katakis*, F058822.

while representing interests adverse to the plaintiffs (the homeowners association), had a conflict of interest during the “entire trial through this date.” (Capitalization and emphasis omitted.) Appellants did not address their delay in raising the issue.

Respondents countered that there was no conflict because counsels’ representation of the homeowners association did not make the members of the association their clients. Further, appellants’ delay in raising the issue waived any alleged conflict. Since substituting into the case, counsel had spent over 4,400 hours on the litigation and respondents had incurred attorney fees in excess of \$950,000. Thus, appellants’ argument represented “the epitome of gamesmanship in litigating an action, holding in reserve an argument, and then seeking to use it only after one is disappointed with the result.” The trial court did not mention the argument at the hearing or in its order denying reconsideration.

A party may waive opposing counsel’s disqualification by failing to bring the motion in a timely manner. (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.*, *supra*, 194 Cal.App.4th at p. 844.) For example, in *River West, Inc. v. Nickel* (1987) 188 Cal.App.3d 1297, a case out of this court, a defendant moved to disqualify the plaintiffs’ attorney because the attorney had represented the defendant in a related matter many years before. The defendant filed the motion more than three years after he was aware of the conflict, after the attorney had worked more than 3,000 hours on the case, at a cost of some \$387,000. The defendant attempted to excuse the delay by claiming there had been no court available to hear the motion due to pending motions for change of venue and judicial disqualification. The excuse was insufficient. The inability of a court to determine the motion did not excuse the defendant from filing the motion to give notice to the plaintiffs and their attorney of the claimed conflict. (*Id.* at pp. 1311-1312.) By comparison, appellants’ delay in this case—until after they had lost at trial and been ordered to pay respondents’ costs and attorney fees—was far more egregious.

Appellants’ delay in raising the disqualification issue is also an indication that they did not view the alleged conflict of interest as serious or substantial. And the trial court

properly can consider the possibility that the disqualification motion is a tactical device to delay the litigation. (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.*, *supra*, 194 Cal.App.4th at p. 847.) Both are reasonable inferences in this case.

Accordingly, appellants' extreme delay in raising the conflict of interest issue after judgment was entered constitutes a waiver of the issue.

### **III. The Award of Attorney Fees**

#### ***Procedural Summary***

Respondents moved to be declared prevailing parties and requested attorney fees of \$1,202,604.50. They contended that Civil Code section 1354, subdivision (c) authorized them to recover attorney fees from all appellants on their claims to enforce the FHOA governing documents. And Civil Code section 1717 authorized them to recover attorney fees from all appellants based on the promissory notes, deeds of trust, and CC&R's (covenants, conditions and restrictions). The motion was supported by hundreds of pages of billing documents and counsels' declarations. Appellants argued that respondents' request must be reduced to exclude the nonfee claims, which included the unclean hands defense, and any fees awarded must be attributed to a particular cause of action and made against only the responsible appellants.

The trial court awarded respondents \$750,000 in attorney fees against appellants jointly and severally. The trial court found respondents were the prevailing parties in an action to enforce the governing documents of the FHOA and were entitled to attorney fees under Civil Code section 1354, subdivision (c). They were also the prevailing parties in an action on contract (the CC&R's, promissory notes and deeds of trust, each of which had an attorney fees clause) and were entitled to attorney fees under Civil Code section 1717. And the issues related to the defense of those actions were "inextricably intertwined."

Concerning the amount of attorney fees, the trial court excluded time spent on nonfee claims, the cross-complaint, and any duplicative work required by respondents' change of counsel in 2008. The trial court reviewed the bills and declarations supporting

the fees and found sufficient evidentiary support for an award of \$750,000 as reasonable attorney fees.

The trial court exercised its discretion not to apportion fees among the various causes of action for which fees were awardable, but awarded them against each appellant, jointly and severally. The trial court also ordered Mauchley to be added to the judgment to the same extent as Mautrst, LLC.

### ***The Basis of the Award***

#### **Contractual Provisions**

The declaration of the CC&R's of the FHOA provides, "[i]n the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees." The CC&R's also authorized the FHOA to collect attorney fees from lot owners in actions to collect assessments.

The Granite Bay Funding notes and deeds of trust connected to lots 3, 7, 9, and 14 included attorney fee provisions. The notes provided that the borrower will pay the costs and expenses of enforcing the note to the lender, or anyone who took the "Note by transfer and who is entitled to receive payments under" the note. The deeds of trust provided that in a legal proceeding involving the breach of the security instrument, the lender was entitled to recoup its expenses from the borrower, including reasonable attorney fees and costs.

#### **Parties Liable for and Entitled to Attorney Fees**

Mauchley, as borrower, and Granite Bay Funding, as lender, were the parties to the notes and deeds of trust. CEMG was the successor of Granite Bay Funding and, as such, was subject to the terms of the notes and deeds of trust. Mauchley assigned his rights and obligations under the notes and deeds of trust to Mautrst, LLC. The trial court found Mauchley and Sinclair were the alter egos of Mautrst, LLC.<sup>7</sup> Respondents

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<sup>7</sup>Mauchley did not challenge the finding on appeal, and Sinclair's challenge to the finding was rejected in *Sinclair v. Katakis*, F058822.

incurred fees to enforce the note holder/lender's rights under those contracts. Thus, respondents were entitled to attorney fees under those contracts.

### **Pleadings Creating Liability For and Entitlement to Attorney Fees**

Appellants' fifth amended complaint included 44 paragraphs of allegations common to all causes of action. Most of the allegations were not specific, but refer generally to "plaintiffs" and "defendants." For example:

"Defendants acquired title to a number of lots in the Fox Hollow Subdivision from the note holders and subsequent owners with knowledge of Plaintiffs' prior rights and contracts and interfered with Plaintiffs' acquisition, ownership and contractual rights."

"[In relation to lots 9 and 14,] Plaintiffs contend that the foreclosure and application of payments were inappropriate and that the foreclosure process was in violation of California Civil Code Section 2900 et seq."

"[In relation to lots 3 and 7,] Plaintiffs contend that the non-judicial foreclosure and the application of payments were inappropriate and that the foreclosure process was in violation of Civil Code Section 2900 et seq."

"These sales are or were unfairly conducted, improperly organized, and held at the various behest of ... Defendants. Each party acted with knowledge of the impropriety and of the Preliminary Injunction and with knowledge that Plaintiffs claim a prior right and interest in and to the property. The action taken by Defendants were without authority and are null and void."

"... Defendants have wrongfully asserted claims superior to those of Plaintiffs in and to the Fox Hollow properties."

"... Defendants conspired to deprive Plaintiffs of their properties and their livelihood. Defendants also negligently, intentionally and knowingly demanded more money than was due and owing by Plaintiff. Defendants further improperly conducted the non-judicial foreclosure process ...."

"Defendant Katakis conspired with third parties to ... take over the Homeowner's Association for his own personal gain and to obtain control so that he could acquire all the property in the subdivision and interfere with Plaintiffs' ownership, acquisition and business advantage...."

Appellants incorporated the general allegations into each of their 12 causes of action:

(1) Declaratory relief: as to disputes regarding the Fox Hollow ownership interests of “Plaintiffs” and “Defendants.”

(2) Injunctive relief: against “Defendants” who improperly interfered with “Plaintiffs” ownership, acquisition and operation of Fox Hollow and who improperly operated the homeowners association.

(3) Accounting: for money owing from “Plaintiffs” to secured deed holders and the homeowners association.

(4) Slander of title: for “Defendants” wrongful publication of false statements about “Plaintiffs” ownership of the property.

(5) Conversion: “Defendants” converted “Plaintiffs” property, rents, and profits to the loss and detriment of “Plaintiffs.”

(6) Misrepresentation: “Defendants” misrepresentations were made without a good faith basis for believing them to be true and were relied upon to “Plaintiffs” financial detriment.

(7) Interference with contractual relationship: “Defendants” intentionally interfered with “Plaintiffs” contracts with the holders of the notes and deeds of trust and with the homeowners association, to “Plaintiffs” detriment.

(8) and (9) Tort claims for intentional and negligent interference with prospective economic advantage. (These claims are immaterial because the court excluded fees incurred to defend the tort actions.)

(10) Negligent interference with contract: “Defendants” negligently interfered with “Plaintiffs” contracts with its lenders and others causing damages.

(11) To set aside foreclosure: “Defendants” nonjudicial foreclosures of “Plaintiffs” property resulted in invalid trust deeds.

(12) Violation of privacy and credit statutes: “Defendants” obtained and disclosed “Plaintiffs” financial applications in violation of their privacy rights for the purpose of harming “Plaintiffs.”

By way of relief, appellants requested “judgment against Defendants, and each of them,” on each cause of action and attorney fees on all causes of action.

### **Prevailing Parties**

Respondents prevailed on all of appellants’ contract claims regarding the notes and deeds of trust for lots 3, 7, 9, and 14. The trial court found against appellants on the merits of each of their claims, and also found the doctrine of unclean hands precluded recovery on those claims. Respondents also prevailed on appellants’ claims to enforce the governing documents (primarily in relation to lots 1 and 19). In ruling against appellants on these claims, the trial court found, “Plaintiffs are indistinguishable from one another for the purposes of the [unclean hands] doctrine as Mr. Sinclair was acting for them and Mauctrst was a sham and alter ego for Mr. Sinclair and Mr. Mauchley.”

Similarly, in ruling on the attorney fees request, the trial court found that the issues related to the defense of the actions on contract and on the governing documents were “inextricably intertwined.” For that reason, the trial court exercised its discretion not to apportion fees among the various causes of action on which fees were awardable. The trial court, however, awarded only \$750,000 of the requested \$1.2 million, about 62.5 percent of the fees requested.

### **Standard of Review**

The experienced trial judge is in the best position to value an attorney’s services rendered in the judge’s court. Thus, while the judgment is subject to review on appeal, it will not be disturbed unless appellant establishes that it is clearly wrong or constitutes an abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

### **Analysis**

Appellants claim the trial court erred in awarding attorney fees to respondents by: (a) awarding fees for nonfee claims, (b) awarding fees for work related to the unclean hands affirmative defense, (c) failing to apportion fee liability among only the applicable appellants, (d) awarding attorney fees under Civil Code section 1717 to nonsignatories and against nonsignatories of the contracts, (e) failing to properly apply lodestar and

segregate the fees requested among the causes of action, (f) awarding an unreasonable amount, and (g) awarding fees notwithstanding respondents' unclean hands.

**(a) *For duplicative, nonfee and cross-complaint legal work***

We can quickly dispose of appellants' claim that the award erroneously included amounts for duplicative, nonfee, and cross-complaint work. Respondents' motion for fees specifically identified bills for that work and eliminated those fees from their request. And, the trial court's order expressly states the fee award did not include fees for time spent on duplicative, nonfee and cross-complaint work. This claim fails because it is not supported by the record.

**(b) *For work related to unclean hands defense***

Appellants contend the trial court improperly awarded fees for the hours spent preparing and litigating respondents' unclean hands affirmative defense. Not so.

The trial court found, in part, that respondents were the prevailing parties on appellants' claims to enforce the governing documents of the homeowners association and the notes and deeds of trust for lots 3, 7, 9, and 14 because of appellants' unclean hands. The unclean hands evidence served as a defense to appellants' actions on a contract and to enforce the governing documents of the FHOA. Because the prevailing homeowners association and the prevailing defendant on a contract claim may be awarded fees, respondents' counsel were entitled to attorney fees for their work on the affirmative defense that defeated appellants' claims. (*Hunt v. Smyth* (1972) 25 Cal.App.3d 807, 832 [award to defendant creditor in plaintiff debtor's unsuccessful action to enjoin sale under trust deed].)

**(c) *Failing to apportion fee liability among appellants***

Appellants next argue the award is erroneous because all appellants did not make claims to enforce the governing documents or claims on a contract. Thus, respondents were not entitled to fees under Civil Code sections 1354 and 1717 from all appellants. Appellants contend their claims were distinct and not intertwined. They attempt to attribute the claims to enforce the governing documents of the FHOA to Lairtrust, LLC,

and Capstone, LLC, only, and all the claims on contract to Mautrst, LLC, only. They contend the individual appellants are not liable for attorney fees. We disagree.

**(1) All appellants made claims on the governing documents**

Civil Code section 1354, subdivision (c) provides, “In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney’s fees and costs.” Appellants submit that the trial court erred in making the attorney fee award against all appellants; the award should have been made against Lairtrust, LLC, and Capstone, LLC, only. We conclude there was no abuse of discretion.

To determine who the parties to an action are, courts consider the allegations of the complaint. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 547.) As set forth above, all appellants alleged every cause of action against every respondent. After trial, respondents provided the court with a detailed chart setting forth the parties to the litigation, the allegations to enforce the governing documents and those to enforce the contractual obligations, and the claims appellants asserted in their posttrial briefs. The allegations and evidence supported the conclusion that all appellants made claims to enforce the governing documents of the homeowners association.

The complaint alleged that all appellants objected to the actions of the homeowners association and made claims to enforce the governing documents. It further alleged that respondents conspired with others to terminate and interfere with “Plaintiffs’” ownership by improperly taking over the homeowners association, improperly using the FHOA for respondents’ personal gain, and failing to use the FHOA funds as required by the governing documents.

In addition, the evidence showed that Sinclair, on behalf of all appellants—Mautrst, LLC; himself; Brandon; Capstone, LLC; Lairtrust, LLC; Capstone Trust; Flake; and Mauchley—repeatedly challenged Katakis’s assumption of leadership of the FHOA and objected to the actions of the homeowners association as being in violation of the governing documents. Further, Brandon, Sinclair and Mauchley claimed they were the directors and existing officers of the association and that the October 2002 board

meeting was invalid because the existing board was not given notice and an opportunity to call the meeting. And because the meeting was invalid, all subsequent board actions, including the decisions to levy special assessments and to foreclose on lots 1 and 19, were invalid.

Thus, the record does not support appellants' assertion that only Lairtrust, LLC, and Capstone, LLC, made claims to enforce the governing documents of the FHOA. To the contrary, the record demonstrates that every appellant made claims to enforce the governing documents of the FHOA.

**(2) All appellants made contract claims**

Civil Code section 1717, subdivision (a) provides:

“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.”

Appellants submit the trial court erred in making the attorney fee award against all appellants because only Mauctrst, LLC, made claims to enforce the notes and deeds of trust. Again, we conclude there was no abuse of discretion.

Respondents were entitled to attorney fees under the documents. Although only Mauchley and Granite Bay Funding signed the promissory notes and deeds of trust, the trial court found that CEMG was the successor-in-interest/assignee of Granite Bay Funding. CEMG incurred attorney fees to enforce its rights under those contracts and to protect its rights in the property. Thus, CEMG, as the prevailing party, was entitled to fees under the contracts and Civil Code section 1717. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.)

Appellants also alleged that FHOA was the agent and alter ego of Katakis and CEMG. A defendant, sued on an alter ego theory, can recover attorney fees under Civil Code section 1717. (*Reynolds Metals Co. v. Alperson, supra*, 25 Cal.3d at p. 128.)

Appellants also were liable for fees under the notes and deeds of trust. The allegations and evidence supported the conclusion that all appellants made claims on the promissory notes and deeds of trust on lots 3, 7, 9, and 14. Mauchley, the original borrower, assigned his rights and obligations under the notes and deeds of trust to Mauctrst, LLC. As an assignee, Mauctrst, LLC, became liable for the debts under those contracts. The trial court then found that Mauchley and Sinclair were the alter egos of Mauctrst, LLC. So Mauchley and Sinclair were liable for attorney fees to the same extent as Mauctrst, LLC.

Finally, the trial court found appellants did not distinguish among themselves or their causes of action in their pleadings or at trial. Rather, every cause of action included allegations relating to every appellant. And at trial, the voluminous evidence disclosed the tangled web of actions and transactions that appellants had woven around the Fox Hollow property for years.

Appellants cite authority for the proposition that the trial court may, in its discretion, apportion liability for attorney fees among the nonprevailing parties. But none of the cases cited compel the trial court to do so. For example, in *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 272, the court noted that while the county defendants were responsible for fewer of the abuses remedied by the litigation, the county actively opposed the litigation and thus generated the expenses compensated by the award of attorney fees. Therefore, the trial court did not abuse its equitable powers by imposing attorney fees jointly and severally on all appellants.

For all of these reasons, the trial court wisely exercised its discretion not to apportion fees among the causes of action for which fees were awardable or among appellants. While some appellants played a much larger role than others in the transactions on which the claims were based, appellants failed to segregate their claims and thereby provide the court with a basis to apportion liability for fees.

**(d) Awarding fees on contract to nonsignatories and against nonsignatories**

Appellants contend respondents are not entitled to attorney fees because none of them was a signatory to the notes and deeds of trust. Further, Mauchley, who signed as borrower, was not a plaintiff and “all plaintiffs” did not sign the operative documents so cannot be liable for fees under Civil Code section 1717. Appellants are mistaken.

A nonsignatory defendant’s right to recover attorney fees as a prevailing party turns on whether it would have been liable for fees had the other side won. Thus, a nonsignatory sued as if it were a party to the contract can recover attorney fees as the prevailing party as if it would have been liable for fees had it lost. (*Reynolds Metals Co. v. Alperson, supra*, 25 Cal.3d at p. 128.)

The same rationale applies when the plaintiff is the nonsigning party. Where a nonsignatory plaintiff sues a signatory defendant in an action on a contract and the defendant prevails, the signatory defendant is entitled to attorney fees if the nonsignatory plaintiff would have been entitled to its fees if the plaintiff had prevailed. (*California Wholesale Material Supply, Inc. v. Norm Wilson & Sons, Inc.* (2002) 96 Cal.App.4th 598, 608.)

All appellants alleged every cause of action and all alleged they were entitled to attorney fees from respondents on each cause of action. Had appellants prevailed on their claims under the contracts, they would have been entitled to attorney fees under the language within the governing documents, promissory notes, and deeds of trust. Thus, under *Reynolds Metals Co. v. Alperson, supra*, 25 Cal.3d at page 128 and *California Wholesale Material Supply, Inc. v. Norm Wilson & Sons, Inc., supra*, 96 Cal.App.4th at page 608, the nonsignatory respondents were entitled to attorney fees and the nonsignatory appellants were liable for attorney fees.

**(e) *Failing to apply lodestar properly and segregate fees among the causes of action***

Appellants summarily contend that respondents were not entitled to attorney fees because they did not comply with the requirements of lodestar to segregate their attorney fee claims as to parties and causes of action. Appellants cite no authority for the proposition that respondents bore the burden of apportioning attorney fees, and case law is to the contrary.

By way of analogy, in *Acosta v. SI Corp.* (2005) 129 Cal.App.4th 1370, 1376, the court stated that it found no authority to support the proposition that a defendant who prevailed against all of the plaintiffs bore the burden of apportioning costs where the plaintiffs were represented by the same law firm and pursued a single cause of action in a joint trial. While this case is different because appellants did not allege just one cause of action, it is analogous because the interwoven nature of appellants' causes of action made their various claims indistinguishable.

In addition, in *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 837-838, the court stated the nonprevailing parties are not entitled to an apportionment of their liability as to the successful party. The court noted, if the attorney fee award is not joint, the prevailing party faces greater difficulty in collecting the attorney fees, and some of the attorney fees will not be recoverable if any opposing party is insolvent. (*Id.* at p. 838.) The same reasoning applies here.

Given the interwoven allegations and evidence in this case, respondents bore no burden to segregate their attorney fee request among the parties and the fee causes of action. And the trial court did not abuse its discretion in not apportioning the fee award among the appellants or the causes of action.

**(f) *Awarding an unreasonable amount of fees***

Appellants next contend the amount of fees awarded—\$750,000 of the \$1.2 million requested—was unreasonable under the lodestar analysis. Specifically, they assert the amount should be reduced due to (1) inefficient use of multiple counsel, (2)

duplicative work, (3) overly lengthy trial preparation and trial, (4) inclusion of work associated with the cross-complaint, and (5) it being “unreasonably inflated.” This contention fails.

***Factual and Procedural Summary***

Respondents provided the trial court with detailed declarations and billing documents to support their fee request. They summarized the attorney fees requested as follows:

<b>Attorney</b>	<b>CEMG/Katakis</b>		<b>FHOA</b>		
Prior counsel	\$18,592.99		\$0		
Prior counsel’s firm	\$284,532.39		\$37,535.07		
McCormick Barstow <sup>8</sup>	\$695,936.00		\$173,984.00		
(less 3% for tort issues) <sup>9</sup>	<u>&lt;\$29,971.84&gt;</u>		<u>&lt;\$6,354.57&gt;</u>		
Subtotals:	\$969,089.54	+	\$205,173.50	=	\$1,174,263.04
Fees for attorney fee motion	<u>\$22,673.20</u>	+	<u>\$5,668.30</u>	=	<u>\$28,341.50</u>
	<b>TOTAL FEES:</b>				<u><u>\$1,202,604.54</u></u>

Trial counsel’s declarations set forth precisely how much time was spent by each attorney and paralegal in litigating the matter and their hourly billing rates, which ranged from \$105 to \$295. Appellants opposed the fee request on grounds similar to those they raise on appeal. The trial court exercised its discretion and awarded respondents \$750,000, which constitutes about 62.5 percent of the fees requested.

***The Law***

In calculating the amount of attorney fees to award, the trial court begins with the “lodestar,” the number of hours reasonably expended multiplied by the reasonable hourly rate in the community. (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095.) In

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<sup>8</sup>Total bills amounted to \$958,406.50. Counsel reduced that amount by \$88,486.50 to eliminate bills for duplicative work due to the attorney substitution, the nonfee claims, and respondents’ cross-complaint.

<sup>9</sup>The contract interference claims related to lots 11 and 18.

making the determination, the court considers a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, and the success or failure. (*Id.* at p. 1096.) Many trial courts have their own expertise regarding the reasonable value of attorney services. (*Ibid.*) The attorney fee award should ordinarily compensate for all the hours reasonably spent in litigating the action to a successful conclusion. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394.)

### ***Analysis***

We consider each contention in turn.

#### **(1) Inefficient use of multiple counsel and duplicative efforts**

Appellants' contention regarding the inappropriate use of multiple counsel is vague. They challenge the costs of "training, research and education" of previous counsel, who prepared the case for trial in 2007, but substituted out in 2008, necessitating McCormick Barstow to prepare for trial anew in 2008. Appellants argue, in effect, that ordering them to pay for two firms' separate preparation for trial was unreasonable. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 840-841 [fee award should be reduced because parties filed essentially duplicative actions].) Appellants' argument ignores that the trial court did not award respondents all the fees requested; it awarded less than two-thirds of the amount asked for. As such, appellants provide no basis for us to conclude that the trial court abused its discretion by awarding fees for duplicative work.

#### **(2) Overly lengthy trial preparation and trial**

Appellants next challenge the amount of fees based on respondents' use of eight attorneys and five paralegals to prepare and litigate the case. We again conclude there was no abuse of discretion. The number of hours devoted to the case by respondents' trial counsel plus one associate and one paralegal accounted for more than 90 percent of the total number of hours billed. Further, the time involved in litigating the case was due

to appellants' shotgun approach<sup>10</sup> in alleging and attempting to prove their numerous claims. Respondents' counsel were forced to expend extensive time and effort to prepare and try the case in an orderly and efficient manner.

**(3) The amount was “unreasonably inflated”**

Appellants also contend “the fee award should be denied because [it was] unreasonably inflated.” They cite case law for the proposition that a prevailing party's fee request that appears unreasonably inflated is a special circumstance that permits the trial court to reduce the award or deny it altogether.

In *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635, the court noted that if a court were simply required to award a reasonable fee when the prevailing party requested an outrageously unreasonable one, claimants would be encouraged to make unreasonable demands, knowing that the only consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place. To discourage such greed, courts were permitted to deny an unreasonably inflated award altogether. (Accord, *Abouab v. City and County of San Francisco* (2006) 141 Cal.App.4th 643, 674 [Counsels' legal work consisted of filing three petitions, opposing motions to dismiss and one demurrer, filing motions to amend, to stay, and to consolidate, preparing status conference statements and paperwork in connection with the fee motion. For this, the petitioners sought \$16 million from the city's public coffers. That amount was not reasonable or equitable. Rather, it was a special circumstance permitting the court to deny an award altogether.]; *Meister v. Regents of University of California* (1998) 67

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<sup>10</sup>Appellants take somewhat the same approach on appeal. They summarily raise additional meritless claims that respondents, in an abundance of caution, respond to. These claims include: a challenge to the time respondents spent opposing appellants' motion to enforce the settlement agreement, a challenge based on the case not being brought to trial within five years, a redundant claim that the fees should be reduced to exclude the costs of litigating the cross-complaint, a claim that fees should be a percentage of amount recovered, and a rehash of the alter ego ruling that is not at issue in this appeal. We do not address these alleged errors because they are not supported by the record or by pertinent legal argument. (*Rossiter v. Benoit, supra*, 88 Cal.App.3d at p. 710.)

Cal.App.4th 437, 455 [fee request was unreasonably inflated where plaintiff's attorneys attempted to justify more than \$500,000 in fees for case that achieved modest financial award and stipulated injunctive relief, which required defendants to do little more than obey the law. The court did not abuse its discretion in denying attorney fees incurred in attempting to justify this unreasonable request].)

Appellants' contention is not supported by citations to the record or reasoned legal argument. Their bare assertion that a \$750,000 attorney fee award following an aggressively litigated action involving 12 causes of action and a 36-day trial is "unreasonably inflated" does not make it so. Appellants have failed to demonstrate the trial court abused its discretion in awarding the amount of attorney fees it did.

**(g) *Special circumstances***

Finally, appellants contend that special circumstances required the court to deny fees altogether. They argue that respondents' unclean hands, their lack of an "unqualified win," and their behavior during settlement and discovery militate against the award of fees.

The case law they cite, *Hsu v. Abbata* (1995) 9 Cal.4th 863, holds to the contrary. There, the court held that when a party obtains a "simple, unqualified win" on the contract claim in an action, the trial court may not invoke equitable considerations unrelated to litigation success, such as the parties' behavior during settlement negotiations or discovery proceedings, except as expressly authorized by statute. (*Id.* at p. 877.)

Further, appellants' contention regarding respondents' unclean hands is futile. As set forth in *Sinclair v. Katakis*, F058822, whether respondents engaged in unclean hands was neither raised nor litigated at trial. Respondents' behavior was not at issue, except to the extent it was relevant to establish appellants' causes of action.

For all of the reasons set forth above, we reject appellants' claims that the trial court abused its discretion in awarding the amount of attorney fees it did.

## DISPOSITION

The posttrial orders are affirmed. The motion to dismiss Mautrst, LLC is granted. The respondents' requests that we take judicial notice are granted. The respondents are awarded their costs on appeal. The trial court is directed to determine the amount of attorney fees to be awarded to respondents for legal services on appeal.

*(Abdallah v. United Savings Bank (1996) 43 Cal.App.4th 1101, 1112.)*

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CORNELL, J.

WE CONCUR:

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WISEMAN, Acting P.J.

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LEVY, J.