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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

BEVERLY HILLS TRIANGLE, LLC, et al., Plaintiffs and Respondents, v. AYN PHARMACY CORPORATION et al., Defendants and Appellants.	B230188 (Los Angeles County Super. Ct. No. BC399678)

APPEAL from a judgment of the Superior Court of Los Angeles County. Malcolm H. Mackey, Judge. Affirmed.

Ecoff Blut, Lawrence C. Ecoff and Philip H.R. Nevinny, for Defendants and Appellants.

Steckbauer Weinhart Jaffe, William W. Steckbauer and Sean A. Topp, for Plaintiffs and Respondents.

This case involves a dispute between a commercial tenant and landlord. At the end of two years of litigation and trial, a jury rendered a special verdict in favor of the landlord. The tenant claimed the landlord breached the parties' amended lease. The landlord claimed the lease amendment was forged. The tenant now appeals from the judgment, challenging the trial court's pretrial discovery rulings, orders sustaining a demurrer and motion for summary adjudication, a motion in limine ruling and related evidentiary rulings, and the court's order awarding attorney fees. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Lease Documents at Issue, the Pleadings, and Demurrer

AYN Pharmacy Corporation (the pharmacy) was a tenant in a commercial medical building in Beverly Hills owned by Beverly Hills Triangle, LLC (BHT). In October 2008, BHT and Ezatollah Delijani (collectively respondents) filed a complaint seeking declaratory relief and asserting a claim of elder abuse against the pharmacy and Afshin Nassir (collectively appellants). The complaint alleged respondents leased space to appellants pursuant to a written lease executed on August 9, 2007 (August 9 lease). According to the complaint, the parties executed a written modification of one term of the lease on August 13, 2007 (August 13 amendment).

The August 9 lease provided BHT would lease certain space to the pharmacy for a four-year term. The August 9 lease did not give the lessee any right to extend or renew the lease. It allowed the lessee three unreserved parking spaces at a rental rate to be determined by the lessor or the parking operator. The August 9 lease further provided that the lessee was taking the premises in an "as is" condition. Work on the premises was to be done at the lessee's sole cost and expense. Nassir executed a guaranty of the lease. The August 13 amendment provided in relevant part that the "[l]essee shall have conditional rent credit against base rent in terms of the aforementioned Lease. Lessee shall not pay base rent for the month of September, 2007. [¶] All other terms and conditions of the Lease shall remain the same." Delijani and Nassir signed both the

August 9 lease and August 13 amendment. Delijani signed for BHT and Nassir for the pharmacy.

Respondents' complaint alleged that in September 2008, Nassir presented a "fraudulent and forged letter dated August 15, 2007" (August 15 letter), purporting to set forth several lease terms that contradicted the August 9 lease. According to the complaint, Nassir made demands of Delijani and BHT based on the August 15 letter, including that BHT honor additional five-year options to renew the lease and that BHT reimburse the pharmacy for rent paid between August 9, 2007 and September 3, 2008. The complaint asserted neither Delijani nor anyone with authority to sign on his behalf had signed or consented to the August 15 letter, and that Delijani's signature on the document was forged.

The August 15 letter purported to give the lessee a "conditional rent credit against base rent" as follows: "After September 2007 any rent collected by Lessor from Lessee, until all permits on premises leased are completed and until all Tenant Improvements on premises leased are completed shall be added to the security deposit owed to lessee by lessor of $10,277.88 at an annual interest rate of 8% until all monies owed to lessee by Lessor is paid in full at Lessee's own discretion. All Tenant Improvements and permits except for Pharmacy cabinets are to be paid by lessor." The August 15 letter also provided that the lessor would provide parking for all of the lessee's employees at "fair market value not to exceed $100.00 monthly for the entire term of the lease and options." The lessor was also to provide parking validations for the lessee's customers at a specified rate.

The August 15 letter granted the lessee four five-year options to extend the lease. The option rent would be: "based on fair rent market value for Pharmacies in Beverly Hills. If such cannot be obtained options will be based on median rent market value for Pharmacies in the United States. Options may be exercised by lessee from lessor at any time during and after the lease." The August 15 letter gave the lessee the right to display signs "in elevators, in parking lots, in front of the Pharmacy, in the lobby and hallways, and etc . . . as it deems necessary. The signs are to be placed by lessor at lessors [*sic*]

own cost as [*sic*] discretion." The August 15 letter further indicated the "obligations of the lessor under this lease shall be guaranteed by Mr. Ezatollah Delijani and/or its successors."

Respondents' complaint sought a judicial declaration that the August 9 lease was the operative lease governing the parties' agreement, and that the August 15 letter was a forgery and not a valid amendment to the August 9 lease.

Appellants filed a cross-complaint. After a series of demurrers and amendments, appellants filed a third amended cross-complaint alleging claims for breach of lease, fraud, unjust enrichment, money had and received, and declaratory relief. In support of the fraud claim, appellants alleged respondents intentionally misrepresented that they intended to perform the terms of the August 15 letter, when they never intended to perform.

Respondents demurred to the third amended cross-complaint. The trial court sustained respondents' demurrer to the fraud cause of action, without leave to amend.

Discovery

There were numerous contested discovery issues in the course of the litigation. We describe only those relevant to the issues on appeal. In October 2008, appellants served respondents with requests for production of documents, including documents relating to respondents' finances, and all leases, and documents pertaining to leases, between respondents and other tenants in the building over a five-year period. Respondents asserted numerous objections, including objections based on undue burden, relevance, confidentiality, and privilege. In February 2009, appellants moved to compel responses. The trial court denied appellants' motion to compel.

In February 2010, appellants filed additional motions to compel. Appellants moved to compel responses to interrogatories seeking identification of Delijani's membership or shareholder interests in other business entities, information regarding Delijani's dispute with another party involving "fair market value," identification of tenants to whom respondents had provided certain lease terms, and information relating to the creation of respondents' letterhead. Respondents objected to the interrogatories.

Appellants also moved to compel deposition testimony. During the deposition of Tom Walas, the building manager, Walas testified he was aware of one instance in which respondents had granted a tenant two five-year options to extend a lease. However, respondents' counsel instructed Walas not to answer when appellants' counsel asked for the name of the tenant. Appellants moved to compel a response to the question. Appellants additionally moved to compel production of respondents' "tenant file" for the pharmacy, and documents pertaining to the file, as well as operating agreements for BHT and related entities. The trial court largely denied the motions to compel.

Motion for Summary Adjudication

In June 2010, respondents filed a motion for summary judgment or, alternatively, summary adjudication. Respondents argued the trial court should dismiss all claims against Delijani because appellants could not prove he signed any of the lease documents in his individual capacity. Respondents asserted even the August 15 letter purported to show Delijani signed the document on behalf of BHT. Respondents further argued appellants' alter ego allegations against Delijani failed as a matter of law because appellants could not establish Delijani disregarded corporate formalities, there was a unity of existence between BHT and Delijani, or that piercing the corporate veil was necessary to avoid an injustice. Respondents also contended an express exculpatory provision in the August 9 lease shielded Delijani from any personal liability. The trial court granted summary adjudication of the claims against Delijani. The court denied the motion as to claims against the other cross-defendants.

Motion in Limine Regarding a Criminal Investigation

Prior to trial, appellants moved to exclude any references to a criminal investigation into possible forgery of the August 15 letter, and to exclude the testimony of expert witnesses from the Sheriff's department. Delijani had testified in a deposition that he mentioned the dispute with appellants to the Los Angeles County Sheriff when he happened to speak to him at an event. Delijani testified the sheriff told him he must report the "crime," and a few days later a detective came to his office and asked questions. In their motion in limine, appellants argued references to the criminal

investigation should be excluded under Evidence Code section 352 as unduly prejudicial, and inadmissible under Evidence Code section 787, because the investigation did not result in a conviction.[1] Appellants contended Torres's testimony would confuse and mislead the jury, and if apprised of an investigation, the jurors would assume appellants had engaged in wrongdoing.

In a supplemental declaration supporting the motion, appellants further sought to exclude the Torres testimony because their own expert from the Sheriff's Department Questioned Documents section had recused himself. The expert informed appellants' counsel that the sheriff's department required he recuse himself because of "the pending criminal investigation." Appellants' counsel declared, based on conversations with a deputy district attorney, that although the investigation was closed due to insufficient evidence, it was later re-opened at the sheriff's request. Counsel declared she believed that Torres, as a sheriff's department employee, also had an agreement precluding her from testifying in a case in which there was a pending criminal investigation.

In opposition to the motion in limine, respondents asserted their experts would not discuss the criminal investigation, and counsel would not ask them any questions about the investigation. Respondents further argued Torres was a qualified expert and her testimony would not be prejudicial within the meaning of Evidence code section 352. Respondents challenged appellants' assertions about Torres being precluded from testifying due to Sheriff's department policy as impermissible hearsay, and also simply incorrect.

The trial court denied the motion in limine, with a cautionary statement. The court explained: "Well, I'm going to do the weighing under 352. I find the probative outweighs the prejudicial. That would be allowed, but watch it. . . . Let's not get into the

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[1] In the motion, appellants asserted: "Eight months after this lawsuit had been pending, the Delijani family contacted Sheriff Lee Baca, who made a special request for an investigation of Cross-Defendants' claim that the Pharmacy and/or Afshin Nassir had committed forgery. Detective David Lingscheit spearheaded the investigation and retained the services of the Sheriff's Questioned Documents Section, and expert Barbara Torres."

criminal because the cross-complaint is going to say, well, you know, nothing ever happened . . . ."

Trial and Jury Verdict

At trial, Nassir testified about his negotiations with Delijani that purportedly formed the basis of the August 15 letter. He denied preparing the August 15 letter, signing Delijani's name, or directing anyone to prepare the document or sign Delijani's name. Respondents' witnesses contradicted Nassir's version of events. Delijani denied agreeing to the terms of the August 15 letter or signing the document. He indicated several of the terms in the letter were provisions he rarely, if ever, agreed to in a lease. The employee who prepared the August 9 lease and August 13 amendment denied preparing the August 15 letter. Walas, the building manager, testified that he did not prepare the August 15 letter. He testified that he had worked for the Delijanis since 2002 and had never known them to give four options of any length to a tenant in the building. An expert in commercial leasing in Beverly Hills testified that many of the terms in the August 15 letter were commercially unreasonable, poorly worded, and even "wacky and absurd," particularly in view of the busy commercial real estate market that existed in Beverly Hills at the time.

Both sides offered testimony from forensic document examiners. Respondents' expert, Barbara Torres, compared the signature on the August 15 letter with other Delijani signature exemplars, and conducted additional tests. Torres opined "that the person who produced the exemplar documents may not be the same person who produced the questioned signature."[2] Appellants' opposing expert, Frank Hicks, testified that he thought Torres had done an "excellent job" on the scientific portion of her analysis, but he disagreed with her conclusion. Hicks opined that the "Delijani signature on the questioned document . . . was probably prepared by the writer of the known signatures that were submitted . . . as genuine signatures of Mr. Delijani."

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[2] In addition to conducting a forensic analysis of the signature on the August 15 letter, Torres also noted other aspects of the letter that "stood out." One such factor was inconsistent capitalization of words such as "lessor," and grammatical errors.

The parties submitted a special verdict to the jury. The first question asked the jury to decide whether the signature on the August 15 letter was authentic. If the jury concluded it was not, they were directed to answer no further questions. The jury concluded the signature was not authentic.

Attorney Fees

Respondents filed a motion seeking $671,892.50 in fees as the prevailing party under the August 9 lease's attorney fees provision. Appellants opposed the motion. Appellants argued respondents' fee request improperly included amounts appellants had been awarded in discovery sanctions against respondents, respondents should not receive fees for time billed on discovery motions respondents ultimately lost, respondents should not recover more fees for work on discovery motions than what they previously requested as discovery sanctions on those motions, respondents should not recover fees relating to tort claims at issue in the case, respondents should not recover fees for time spent communicating with individuals not related to the causes of action at issue in the case, and the requested fees were unreasonable and excessive. The trial court awarded respondents $671,852 in fees.

DISCUSSION

I. There was No Prejudicial Error in Connection with the Trial Court's Pre-Trial Rulings

A. Discovery Rulings

Appellants contend the trial court abused its discretion when it denied appellants' motions to compel: (1) production of BHT financial documents; (2) production of BHT's leases with other tenants; (3) production of the pharmacy's tenant file; (4) production of the BHT operating agreement and similar agreements for related entities; (5) an interrogatory response identifying Delijani's membership in business entities; (6) an interrogatory response identifying instances in which respondents agreed to certain lease

terms; and (7) deposition testimony from Walas providing the identity of the tenant to whom respondents had provided two five year options. We find no reversible error.[3]

On appeal we "must keep liberal policies of discovery statutes in mind when reviewing decisions denying or granting discovery" and "liberal policies of discovery rules will generally . . . militate in favor of overturning a decision to *deny* discovery." (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 987.) However, " ' "[m]anagement of discovery generally lies within the sound discretion of the trial court." [Citation.] "Where there is a basis for the trial court's ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was 'no legal justification' for the order granting or denying the discovery in question." ' [Citation.] [¶] The foregoing standard is highly deferential to the trial court; however, [appellants] face an additional burden as well. Because [appellants] did not seek writ review of the trial court's denial of their motion to compel, and instead sought review only on appeal from the judgment [entered on the jury verdict]. . . they must show not only that the trial court erred, but also that the error was prejudicial . . . ." (*Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 740.) In other words, appellants "must show that it is reasonably probable" they would have secured a more favorable result at trial had the court granted their motions to compel. (*Ibid*, citing *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800–802 (*Cassim*) [discussing prejudicial error in civil cases].)

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3 Although appellants mention other items they requested in discovery, their appellate briefing only provided legal argument and explanation related to the items we have listed. To the extent appellants intended to challenge the trial court's order denying the motions to compel additional documents or information, appellants have forfeited any such challenge by failing to provide legal argument or discussion. (*EnPalm, LCC v. Teitler* (2008) 162 Cal.App.4th 770, 775.)

1. BHT Financial Documents

Appellants sought production of a wide range of respondents' financial documents, including: "All WRITINGS, that pertain to, reflect, refer to or constitute a rent roll for the Project and each Tenant within the Project"[4]; "All WRITINGS, that pertain to, reflect, refer to or constitute financial statements pertaining to the Project for the last five years";"All WRITINGS, that pertain to, reflect, refer to or constitute a loan made by any person, firm or company, as lender, to Plaintiff, as maker, secured by the Project";"All WRITINGS that pertain to, reflect, refer to or constitute a profit and loss statement with respect to the Project for the last five years past"; and "All WRITINGS, that pertain to, reflect, refer to or constitute a cash receipts and disbursement journal with respect to the operation of the Project for the last five years past."

Respondents asserted a number of objections to these requests, including that they were overbroad and unduly burdensome, infringed on the privacy of BHT and third parties, and called for documents not relevant to the subject matter of the action or reasonably calculated to lead to the discovery of admissible evidence. On appeal, appellants contend the trial court should have compelled production of the requested financial documents because they were "relevant to whether Respondents promised Appellants that they would reimburse Appellants for tenant improvements at the Subject Property, and whether such an agreement was fiscally necessary." Appellants further argue respondents' privacy objections were unfounded. Appellants assert they sought BHT's financial documents to demonstrate that the "requirement that Respondents reimburse Appellants for Tenant Improvements and rent paid during construction" was plausible and reasonable.

The trial court could reasonably conclude appellants' document requests were overly broad and unduly burdensome in relation to the information appellants were actually seeking. Appellants sought financial data for the building for several years

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[4] The "project" was defined as "the real property commonly known as 9735 Wilshire Boulevard, in the City of Beverly Hills, County of Los Angeles[.]"

before the events giving rise to the action. Some of the requests sought documents for an indefinite time period. The requests had a notably broad scope as they called for both certain types of documents, and writings pertaining to these documents. Some also directly called for disclosure of third-party financial information, such as the rent roll and documents related to the rent roll. Appellants' rationale for seeking the documents was vague at best; the purported connection between the commercial plausibility of the August 15 letter's tenant improvement provision and respondents' financial health was unclear.[5] There was no indication that appellants offered to narrow the scope of these requests during the parties' efforts to meet and confer. The trial court did not abuse its discretion in denying the motion to compel production of the requested financial documents. The court could reasonably conclude the potential value of the documents sought did not warrant the burdens of production and the significant intrusion on the privacy of respondents and third parties. (*Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court* (2006) 137 Cal.App.4th 579, 595 [assuming without deciding artificial entity entitled to some privacy rights; balancing that right and right to discovery]; *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223 (*Calcor*).)

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[5] Appellants justified their request for respondents' financial documents with the following argument: "[O]ne of the issues between the parties is whether the agreement entered into between the parties was fiscally necessary. [Respondents] have asserted, and will contend, that the terms of the amendment to the agreement (the 'Amendment') are implausible, and specifically that there was no consideration for the amendment which requires the Landlord to reimburse the tenant for all rent paid until certain tenant improvements were complete and to repay the Landlord for all monies advanced to the contractor who completed such improvements. [Respondents] further contend that they did not need to ask [appellants] to pay rent up front which they would refund earlier, during a period for which [appellants] were otherwise constructively evicted. [¶] In effect, [respondents] have turned their financial condition into circumstantial evidence of liability. The tenant's position is that the Amendment is in fact plausible and that the Landlord specifically asked Nassir to advance money to the contractor and to keep paying rent because (a) the Landlord was having financial difficulties and (b) the Landlord was required by its lender to provide evidence that it was collecting rent (income) from the Pharmacy."

2. Leases with other tenants, related documents, and interrogatory on BHT's agreement to certain lease terms

Appellants also challenge the trial court order denying their motion to compel production of respondents' leases with other tenants in the building. We note appellants' request sought documents beyond the other tenants' leases. The request demanded "[a]ll WRITINGS, that pertain to, reflect, refer to or constitute a lease by and between" respondents and "tenants" within the building "for the last five years past." Appellants also moved to compel a further response to interrogatories seeking identification of "each tenant to whom YOU have granted an option to renew a commercial lease, from 1999 to present" ; "each tenant on whose behalf YOU have paid for the tenant improvements completed on such tenant's leased premises"; and "each tenant with whom you have entered into an agreement whereby YOU would reimburse the tenant all or a portion of the money the tenant paid for tenant improvements completed on such tenant's leased premises." Respondents asserted objections, including that the document request and interrogatories were unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and that they sought privileged information and confidential information of respondents and third parties.

In response to appellants' motion to compel, respondents pointed out that when appellants' definitions were considered, appellants were seeking information relating to the leasing practices of Delijani, any business entity in which he had ever held a membership interest, and any business entity of which he had been a shareholder. Respondents also asserted that the demand for all documents relating to all leases with all of the tenants at the building was unjustifiably overbroad. We conclude the trial court could reasonably find the document request and interrogatories were extremely overbroad and unduly burdensome. Some subset of the requested information may have been relevant to the action, or may have led to the discovery of admissible evidence. However, appellants' requests were not limited to such information. Instead, appellants demanded information regarding leasing practices of entities of which Delijani had ever been a member or shareholder, with no date limitation, or geographic limitation, and for a

nine-year period preceding the events in this case. The document request sought not only the leases of other tenants in the multi-tenant commercial building, but all documents referring to or pertaining to such leases, and not just leases containing certain provisions at issue in the case. (See *Calcor, supra*, 53 Cal.App.4th at p. 223.) There is no indication appellants ever narrowed these requests to render them less broad or burdensome. While the trial court could have exercised its discretion to compel a subset of the documents or suggest modifications to the original demands, it was not an abuse of discretion for the court to decline to re-write appellants' discovery requests. (*Deaile v. General Telephone Co. of California* (1974) 40 Cal.App.3d 841, 851.)

3. Appellants' tenant file and related documents

Appellants moved to compel production of respondents' "tenant file" for the pharmacy. The request at issue sought "[a]ll WRITINGS, that pertain to, reflect, refer to or constitute YOUR tenant file for Ayn Pharmacy Corporation, d/b/a The Prescription Center, as referenced in YOUR deposition on August 17, 2009." The request was propounded to "Delijani," defined as Delijani and "any business entity in which Ezatollah Delijani holds a membership interest and/or has been a shareholder." Respondents represented they had produced "the non-privileged, non-confidential portions of Defendants' tenant file" in 2008.[6] At the hearing on the motion to compel, respondents' counsel argued the request to compel a further response was improper because it requested documents from Delijani that he did not own. Counsel also argued the request called for privileged documents, and not just the file, but any documents pertaining to the file. Counsel further argued the documents were produced in response to the earlier

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[6] In 2008, appellants propounded discovery requests to BHT that included the following: "All WRITINGS, that pertain to, reflect, refer to or constitute communication between Plaintiff and [the pharmacy] pertaining to or concerning the Lease of the Premises within the last five years past," and "All WRITINGS, that pertain to, reflect, refer to or constitute communication between Plaintiff and AFSHIN NASSIR pertaining to or concerning the Lease of the Premises within the last five years past." BHT asserted objections to these requests, but stated it would produce responsive documents "as reasonably interpreted by the Responding Party, to which no objection has been made." The response was verified.

requests to BHT. Appellants' counsel argued respondents should have produced certain other documents with the file, but she did not specifically identify such documents. Under the circumstances, the trial court's conclusion that respondents had sufficiently responded to the request by producing non-privileged documents was not an abuse of discretion.

4. Walas deposition testimony

Appellants moved to compel Walas to answer a deposition question seeking the name of the tenant to whom BHT had provided two options to extend a lease. Respondents asserted privacy objections, which the court accepted in denying the motion to compel. Courts have recognized that artificial entities have at least a limited right to privacy when confidential documents are sought in discovery, including financial documents. (*Hecht, supra,* 137 Cal.App.4th at pp. 594-595.) Some courts have thus employed a balancing test to determine whether financial information of third parties should be protected from discovery. (*Ibid.*)

Here the trial court did not abuse its discretion in balancing appellants' right to and need for discovery and the privacy rights of third parties whose information was sought. In some cases, disclosure of names and identifying information of potential witnesses may not be considered a significant invasion of privacy. (*Pioneer Electronics (USA), Inc. v. Superior Ct.* (2007) 40 Cal.4th 360, 367, 373.) But in this case, Walas had already testified about a term in the tenant's lease. Disclosing the tenant's name would thus reveal the tenant's business information, rather than identity alone. In addition, Walas had already provided the most relevant information (respondents had previously granted multiple options to extend a lease), and there is no indication that he was instructed not to answer other questions about the details of that lease, or that appellants were prevented from seeking additional information by other means, such as third-party discovery. Under these particular circumstances, we find no abuse of discretion.

5. Discovery regarding Delijani's membership interests in other entities and BHT/ related-entity operating agreements

Appellants cannot show the trial court's refusal to compel production of documents relating to Delijani's membership interests, or the corporate documents of BHT and related entities, was prejudicial. The jury determined Delijani's signature on the August 15 letter was not authentic. As a result, neither BHT nor its related entities could be held liable for breach of that purported agreement. Evidence about the organizational structure of BHT or other related entities was not probative of the issue of the authenticity of the August 15 letter. Even if the trial court erred in denying appellants' motion to compel these documents, appellants have not met their burden to demonstrate prejudice from that ruling.

B. Demurrer and Summary Adjudication

Appellants also challenge the trial court's orders granting in part respondents' demurrer and motion for summary adjudication. But even if the trial court improperly granted these motions, we could not find the error reversible under the circumstances of this case. "When the trial court commits error in ruling on matters relating to pleadings, procedures, or other preliminary matters, reversal can generally be predicated thereon only if the appellant can show resulting prejudice, and the probability of a more favorable outcome, *at trial.*" (*Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 833.)

The trial court sustained the demurrer to appellants' fraud claim, without leave to amend. The claim was based on the allegation that respondents unlawfully led appellants to believe they would perform under the August 15 letter when they had no intention of doing so. But the jury concluded the signature on the August 15 letter was not authentic. That determination was fatal to all claims based on respondents' alleged nonperformance of the terms of the August 15 letter. Had appellants still had a fraud claim at trial, it too would have failed with the jury's determination that the August 15 document was invalid.

We do not reverse the jury's verdict in this appeal based on appellants' other arguments.[7] Thus, we need not determine whether the trial court erred in sustaining respondents' demurrer to the fraud claim because appellants cannot demonstrate prejudice, even if the ruling was in error. (See *Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1307 [order sustaining improperly filed demurrer harmless where case was later resolved against plaintiff on summary judgment based on statute of limitation]; *Curtis v. 20th Century-Fox Film Corp.* (1956) 140 Cal.App.2d 461, 464-465 [two counts of complaint based on same allegations; order sustaining demurrer on first count was not prejudicial where second count was later resolved against plaintiff].)

The same is true of appellants' challenge to the trial court's order granting summary adjudication of the claims against Delijani in his individual capacity. The jury's verdict eliminated respondents' potential liability because it was based on the August 15 letter, which the jury found invalid. Whether Delijani could have been personally liable became inconsequential. Given the ultimate outcome of the case, appellants cannot show they were prejudiced by the trial court's order granting summary adjudication of their claims against Delijani in his individual capacity, which were otherwise identical to the claims against BHT. (Cf. *Safeco Ins. Co. of America v. Parks* (2009) 170 Cal.App.4th 992, 1002-1003 [erroneous denial of summary adjudication cannot result in reversal of final judgment unless the error resulted in prejudice to defendant; not prejudicial where jury later resolves fact issues adversely to moving party]; Cal. Const., art. VI, § 13.)

The threshold issue in this case was whether the August 15 letter was valid and could serve as the basis for appellants' claims, including the fraud claim and the claims against Delijani in his individual capacity. Despite the order sustaining a demurrer to the fraud claim and the summary adjudication of the claims against Delijani, the jury was

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[7] Appellants do not challenge the sufficiency of the evidence supporting the jury's verdict. Their only challenge to the trial proceedings relates to the court's evidentiary rulings. We reject this argument, *infra*, and we have found no reversible error in connection with the trial court's discovery rulings.

still required to resolve this threshold question, which it did, adversely to appellants. Appellants therefore cannot show they were prejudiced by any error in the trial court's orders sustaining the demurrer or granting summary adjudication.

II. The Trial Court Did Not Abuse its Discretion in Denying Appellants' Motion in Limine to Exclude the Torres Testimony

Appellants argue the trial court erroneously denied their motion to exclude the Torres testimony. They contend that the testimony, combined with the trial court's admission of references to a criminal investigation, was prejudicial error. We disagree.

A. Torres Testimony

In general, a trial court's ruling on a motion in limine is reviewed for abuse of discretion. This standard applies here, where appellants argued the court should exclude the Torres testimony as unduly prejudicial under Evidence Code section 352. (*People Ex Rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 639-640.) We find no error.

Torres was a qualified expert prepared to offer an expert opinion on the authenticity of the Delijani signature on the August 15 letter. This testimony was highly relevant to the proceedings. Appellants' only arguments in seeking to exclude the testimony were that their own expert had to recuse himself, thus Torres should not be permitted to testify, and that the Torres testimony would impermissibly inform the jury of a criminal forgery investigation. The trial court could reasonably reject the first argument. Appellants offered no evidence that Torres was subject to a policy or directive that prevented her from testifying. There was no legal basis for appellants' contention that because their designated expert was subject to such a policy, it was impermissible for Torres to testify.

As to the second argument, respondents asserted they would not raise the criminal investigation as part of the Torres testimony, and the court cautioned the parties not to refer to the investigation. Although the jury would likely discern from Torres's testimony that the Sheriff's department conducted some form of investigation, the trial court could reasonably determine the probative value of Torres's testimony far

outweighed any potential prejudice, particularly since the testimony would not include any explicit discussion of a criminal investigation. (Evid. Code, § 352.) The trial court's order denying the motion to exclude the Torres testimony was not an abuse of discretion.

B. References to an Investigation

Appellants also contend respondents' counsel made prejudicial references to the criminal investigation. However, appellants largely forfeited this argument by failing to object in the trial court. To the extent the argument was preserved for appeal, we find any error harmless.

1. Background

Our review of the record reveals only one instance in which respondents' counsel mentioned the Sheriff's department investigation. In respondents' counsel's opening statement, counsel told the jury it would hear from Torres, then stated: "She works for the L.A. County Sheriff's Department in their forensic laboratory. She was given this assignment to look at this document and the signature. And she's made a number of – we'll go through that. . . . Sheriff's crime lab. Yes, Mr. Delijani reported this to the Sheriff's department and yes, they have an investigation." Appellants' counsel asked to approach the bench. The trial court refused and indicated the parties could raise any concerns at the end of the day. At the end of the day's proceedings, appellants' counsel objected that respondents were "going right to that line talking about the Sheriff's investigation." The following colloquy ensued:

"Court: There was no criminal filing, right?

[Appellants' counsel]: That's right.

Court: There was an investigation. There was a criminal filing. And the D.A. rejected it. Sheriff rejected it. I don't know. But you can stipulate to that. They did investigate it. They're going to testify, but they're not testifying there was no criminal – we can stipulate to that.

[Respondents' counsel]: Your honor, it's not. She's going to come in, Barbara Torres. She's with the Sheriff's Department. She did the investigation. There's going to be some examination on that. That's it. I don't have any unless they go astray because we've already had a motion in limine on this. If there's something that comes in, we had a motion in limine on the issue. I don't intend to put that on.

Court: I'm sure you want to show there was no criminal investigation.

[Appellants' counsel]: Of course. It's my motion. [Respondents' counsel] was exceedingly close if not crossing the line in his opening statement. That's the only point I'm making.

Court: Opening statements are not evidence. Okay. Yes.

[Respondents' counsel]: Motion was denied.

[¶] . . . [¶]

Court: We've just covered it.

[Appellants' counsel]: We've covered it. I think you're right.

Court: If there is an objection, make it, I'll rule on it."

For the remainder of the trial, there were no explicit references to a criminal investigation. Appellants now charge that respondents' counsel made "repeated references" to a criminal investigation, but their citations to the record show otherwise. Appellants cite to two portions of the Torres examination. In the first, respondents' counsel asked Torres how she learned of the questioned document. Torres responded: "It had been brought into the office by an investigator, and we knew that they – the document had come under scrutiny. There was some question regarding the legitimacy of the signature and perhaps the document entirety [*sic*], and we were to examine the document to determine if there was anything that seemed unusual about it." Appellants did not object to the question or the answer. In the second portion, respondents' counsel marked a document that explained the opinion standards used in the Sheriff's Department. In the cited portion of the transcript, respondents' counsel stated: "This is entitled Los Angeles Sheriff Department Scientific Bureau Questioned Document Section Handwriting Opinion Terminology." Appellants did not object. Appellants also did not request a curative instruction or admonishment with respect to any references to an investigation, or the Sheriff's department.

2. Reference to Sheriff's investigation in opening statement

Even if respondents' counsel's mention of a Sheriff's department investigation should have been excluded, or the jury instructed to disregard the comment, we would find any error harmless. The jury was instructed that statements of counsel were not evidence. This was the only explicit reference to a Sheriff's department investigation.

We cannot conclude that counsel's statement caused a miscarriage of justice. (*Cassim, supra,* 33 Cal.4th at pp. 801, 803-805.)

3. Other "investigation" references

As to the challenged portions of the Torres examination, appellants' failure to object to the challenged statements forfeits any argument of error on appeal. (*Avalos v. Perez* (2011) 196 Cal.App.4th 773, 776-777; Evid. Code, § 353, subd. (a).) The trial court told appellants' counsel it would entertain objections on this issue. Appellants did not make any. Even had appellants preserved an objection for appellate review, we would find the trial court did not abuse its discretion. The trial court could reasonably determine that explanatory references to the Sheriff's department in connection with Torres's testimony were relevant and not unduly prejudicial. The Sheriff's department was mentioned because it employed Torres. But Torres' testimony was appropriately presented as that of an expert witness in a civil case, rather than as a law enforcement witness offering an explanation of her role in a criminal investigation.

Appellants assert respondents' counsel made other prejudicial statements, such as that the August 15 letter was "fraudulent," that forgery is a criminal term, or that Nassir had a "mind that's criminal." Appellants did not object to any of these statements. As explained above, the statements were not evidence, and the jury was so instructed. The statements were a minor part of counsel's opening and closing statements. Even if appellant did not forfeit this argument, and the trial court improperly allowed the statements, any error was harmless.[8]

III. The Trial Court's Award of Attorney Fees was Proper

Appellants contend the trial court erred in awarding attorney fees because respondents did not present "evidence of a lodestar analysis." We note that appellants did not assert this objection in opposition to respondents' attorney fees motion in the trial

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[8] In their reply brief, appellants argue for the first time that respondents' counsel engaged in prejudicial attorney misconduct. Even were we inclined to consider this argument which was not raised below, we would find any misconduct harmless for the reasons described above.

court. But assuming appellants did not forfeit their argument by failing to raise it below (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 776), we find their assertion incorrect. In support of the motion, respondents provided all of their billing records, which identified the time billed by each attorney each day, listed by task, time spent on the task or group of tasks, and the resulting amount billed for work completed. This was sufficient for the court to conduct the lodestar analysis.

Appellants' argument seems to be that respondents did not provide a summary of these billing records. In other words, respondents did not organize the billing records or summarize them to show the total number of hours each attorney separately billed for the length of the case. In the motion for attorney fees, respondents provided the billing rate of each attorney and paralegal who worked on the case, a description of the experience of each attorney and paralegal, the total number of hours worked by all attorneys and paralegals, and a total number of fees. Respondents informed the court they spent a total of 2,168.3 hours on the case, which, when multiplied by the applicable billing rates, totaled $671,892.50 in fees. Respondents did not provide a summary indicating, for example, that Attorney X, whose billing rate was A, billed a total of B hours, for a total of C fees, where C was a portion of the total fees requested. Yet, the billing records provided this information, just without a separate subtotal of each attorney's hours.[9] In the absence of evidence to the contrary, we will not presume the court failed to conduct the lodestar analysis with the detailed information respondents provided. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) In addition, the trial court was familiar with the quality of the services performed and the amount of

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[9] Appellants do not argue that when the hours are considered by attorney, they are unreasonable, or that, when broken into subtotals by attorney, the sums do not equal the total number of hours respondents represented to the court. In their reply brief, appellants argue for the first time, and without supporting legal authority, that the trial court should not have awarded fees for time billed by respondents' paralegals. Appellants did not raise this argument in the trial court or in their opening brief. We decline to consider an argument made for the first time in a reply brief. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894-895, fn. 10.)

time respondents' counsel devoted to the case. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096.) We find no abuse of discretion in the trial court's order awarding attorney fees.

DISPOSITION

The trial court judgment is affirmed. Respondents shall recover their costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.