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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BUTLER ENTERPRISES, L.P. et al., Cross-complainants and Appellants, v. WEINTRAUB FINANCIAL SERVICES, INC. et al., Cross-defendants and Respondents.	B268961 (Los Angeles County Super. Ct. No. BC529945)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rita J. Miller, Judge. Dismissed in part; affirmed in part.

Berney Law Corporation and Russel L. Bernery; Kozberg & Bodell and Gregory Bodell for Cross-complainants and Appellants.

Doll Amir & Eley, Gregory L. Doll and Brett H. Oberst for Cross-defendants and Respondents.

I. INTRODUCTION

This is an appeal from a summary judgment motion granted on a first amended cross-complaint. Cross-complainants, who are appealing, are: Butler Enterprises, L.P.; Frank W. Butler and Jean Butler as co-trustees for the Butler Family Trust; and Russell Berney, trustee for several other trusts. For clarity, we shall collectively refer to the cross-complainants as the Butler parties. The cross-defendants who successfully secured summary judgment on the first amended cross-complaint are: Weintraub Financial Services, Inc.; Richard Weintraub; and Sebitna, LLC. Sebitna, LLC is also a plaintiff who has filed a second amended complaint which remains unresolved. Because no final judgment has been entered as to Sebitna, LLC, the appeal is dismissed as to it.

Thus, the sole remaining cross-defendants are Weintraub Financial Services, Inc. and Mr. Weintraub. The action involves a November 2, 2010 purchase agreement for real property. At issue on appeal are two provisions of the purchase agreement. The first issue involves what the parties characterize as the contingent payment obligation. The gravamen of the first issue is whether Weintraub Financial Services, Inc. and Mr. Weintraub paid the proper amount under the purchase agreement's contingent payment provisions. The second issue concerns whether Weintraub Financial Services, Inc., Mr. Weintraub, and Sebitna, LLC breached the purchase agreement's indemnification provisions. As to Weintraub Financial Services, Inc. and Mr. Weintraub, we affirm the judgment.

II. BACKGROUND

A. Purchase Agreement, Subsequent Assignments, and Attempted Sale

Most of the relevant facts are undisputed. On November 2, 2010, Weintraub Financial Services, Inc. entered into a purchase agreement to buy real property located at 21200 Victory Boulevard in Los Angeles, California (the property) from Butler Enterprises, L.P. The purchase price was $21.5 million. Weintraub Financial Services, Inc. and Butler Enterprises, L.P. are California companies.

Section 1.2 of the purchase agreement governs what is referred to as contingent payments: "In addition to the Cash Purchase Price, Buyer shall pay to Seller ten percent (10%) (the 'Contingent Payment') of any and all monies, benefits . . . and any and all other consideration, paid to or received by Buyer, and/or Buyer's successors, assigns, related parties . . . for any and all reasons, in connection with or related in anyway [sic] to the Property, as they are received by Buyer . . . . The Contingent Payment shall include payments and/or the receipt of funds in connection with the Property, made to or received by Buyer, Richard Weintraub, and/or any and all individuals or entities related, co-owned, controlled, partnered, or co-ventured with and/or otherwise affiliated with Buyer and/or Richard Weintraub, the relatives and/or family members of Richard Weintraub, and/or their respective successors and assigns, in whole or in part, directly or indirectly. Buyer shall handle such payments to Seller as a fiduciary, and provide full and complete accountings to

Seller on at least a quarterly basis commencing the first quarter following the execution of this Agreement, and continuing until there are no further monies possibly due to Seller under the terms of this Agreement. Seller shall not be obligated or required to fund, pay and/or contribute anything to the ownership entity either or on account of the Property before or after sale of the Property to Buyer."

Section 1.3 of the purchase agreement further provides: "The Contingent Payment shall not be due on the sale of an interest in the Property by a successor or assign of Buyer (a) who is truly and completely, directly and indirectly, independent of Buyer, Richard Weintraub and/or his relatives and/or family members and/or any and all entities owned in whole or in part by any of them, and (b) for which and to the extent a Contingent Payment has previously been paid to Seller for the full value of the interest sold or conveyed. The intent of this paragraph is that if Buyer or anyone related in anyway [sic] to Buyer sells an interest in the property to a truly independent party for full value, then the independent holder of that interest would not owe another Contingent Payment on the sale of that same interest; however, the intent is not to exclude payments on assignments or transfers by Buyer to related or affiliated entities or parties or to those who acquire an interest for less than full value." Under section 1.4 of the purchase agreement, Mr. Weintraub personally guaranteed payment of any contingency compensation.

Section 20.1 of the purchase agreement governs indemnity, "Buyer shall indemnify and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including actual attorneys' fees) arising out of Buyer's inspections or tests of the Property or any violation

of the provisions of this Agreement. Buyer's indemnification and hold harmless obligations shall survive the termination of this Agreement and shall survive the Closing." Section 31.4 of the November 2, 2010 purchase agreement contains an attorney fee clause which states, "If any action or proceeding is commenced by either party to enforce their rights under this Agreement, interpret this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court." No claim for attorney fees has been made by the Butler parties under section 31.4 of the purchase agreement.

In February 1, 2012, Weintraub Financial Services, Inc. assigned its rights under the purchase agreement to Sebitna, LLC for $215,000. Sebitna, LLC is a related entity to Weintraub Financial Services, Inc. and a California company. On April 13, 2012, Liane Weintraub, on behalf of Sebitna, LLC signed a letter of intent to sell its rights to the property to Hopactcong Developers for $40,125,000. There is no evidence this sale occurred or that Hopactcong Developers paid Sebitna, LLC any money regarding the property. No employee of Sebitna, LLC or Weintraub Financial Services, Inc. disclosed the existence of the April 13, 2012 letter of intent until after suit was filed in this action.

Weintraub Financial Services, Inc. paid the Butler parties $21,500 on or around September 6, 2012, as a contingent payment under the purchase agreement. In an e-mail dated

September 19, 2012, Mr. Weintraub indicated Sebitna, LLC is not a completely independent third party. As a result, Sebitna, LLC would continue to pay contingent payments as required under the purchase agreement.

On December 18, 2012, Butler Enterprises, L.P. transferred title to the property to the Butlers and Mr. Berney as trustees. As noted, the Butlers are co-trustees of the Butler Family Trust. Mr. Berney is the trustee of: the Frank and Jean Butler Children's Holding Trust; the David Butler Irrevocable Trust; the Nancy Bear Irrevocable Trust; the Mary Linn Irrevocable Trust; the Deborah Reese Irrevocable Trust; the Robert Butler Irrevocable Trust; the Steven Butler Irrevocable Trust; and the Karen Butler Irrevocable Trust. Butler Enterprises, L.P., the Butlers and Mr. Berney as trustees are named as cross-complainants.

Closing of the escrow was scheduled on or before March 1, 2012. The deadline to close escrow was extended to June 3, 2013. Sebitna did not pay the $21.5 million purchase price at that time. At oral argument, the parties verified there has been no closing of the sale contemplated by the purchase agreement.

B. Second Amended Complaint

Weintraub Financial Services, Inc. and Sebitna, LLC filed suit against the Butler parties on December 6, 2013. On October 9, 2014, Weintraub Financial Services, Inc. and Sebitna, LLC, filed a second amended complaint against defendants. The second amended complaint alleges 11 causes of action against the Butler parties: 3 causes of action for fraud and deceit pertaining to the purchase agreement; negligent misrepresentation; contract

breach implied covenant breach; violation of Business and Professions Code section 17200; relief from forfeiture; equitable conversion; promissory estoppel; and a common count for money had and received. The parties do not dispute the second amended complaint's causes of action are for violations of the purchase agreement's provisions. Weintraub Financial Services, Inc. was later dismissed as a plaintiff but remains as a cross-defendant. The sole plaintiff is now Sebitna, LLC.

C. First Amended Cross-Complaint

On April 24, 2015, the Butler parties filed their first amended cross-complaint against Mr. Weintraub, Weintraub Financial Services, Inc. and Sebitna, LLC. The Butler parties allege three causes of action. First, the Butler parties allege Weintraub Financial Services, Inc. and Sebitna, LLC breached the purchase agreement by failing to pay the correct contingent payment under section 1.2. Second, the Butler parties allege Weintraub Financial Services, Inc. and Sebitna, LLC breached their fiduciary duty to provide full accountings of the contingent payments. Third, the Butler parties allege they were entitled to indemnity from Weintraub Financial Services, Inc. and Sebitna, LLC. The Butler parties allege Weintraub Financial Services, Inc. and Sebitna, LLC commenced the action which resulted in the filing of the second amended complaint. As noted, the second amended complaint seeks various forms of relief from the Butler parties. The first amended cross-complaint alleges: "[Weintraub Financial Services, Inc.] and/or Sebitna have breached the Purchase Agreement. They have failed to undertake to 'hold [the Butler parties] harmless from and against any liens, claims,

causes of action, damages, liabilities and expenses (including actual attorney fees) and all claims arising out of . . .any violation of this Agreement.'" So there is no doubt, at oral argument the Butler parties agreed they were not seeking to enforce the hold harmless language *in this appeal*. The Butler parties expressly denied they are seeking exculpation from liability for the conduct detailed in the second amended complaint in section 20.1 *in this appeal*.

D. The Summary Judgment Motion of Weintraub Financial Services, Inc., Mr. Weintraub, and Sebitna, LLC

On September 3, 2015, Weintraub Financial Services, Inc., Mr. Weintraub and Sebitna, LLC moved for summary judgment on the first amended cross-complaint. The Weintraub Financial Services, Inc., Mr. Weintraub and Sebitna, LLC asserted: the Butler parties' interpretation of the purchase agreement was not supported by the contractual language or any extrinsic evidence; they did not breach the contract or their fiduciary duty under section 1.2 of the purchase agreement; and thus, the Butler parties were not entitled to indemnity under section 20.1.

The Butler parties argued: Weintraub Financial Services, Inc and Sebitna, LLC breached the contingent payment under section 1.2 of the purchase agreement by failing to pay the proper amount; Mr. Weintraub as a personal guarantor was liable for these damages; Weintraub Financial Services, Inc and Sebitna, LLC breached their fiduciary duty by failing to properly account for their contingency payment obligations; and Weintraub Financial Services, Inc. and Sebitna, LLC had an indemnification duty under sub-section 20.1 of the purchase agreement.

According to cross-complainants, "Paragraph 40.1 requires [Weintraub Financial Services, Inc.] and Sebitna[, LLC] to indemnify the Butler Parties against the claims asserted by them in this action." According to the Butler parties, the second amended complaint contains claims and causes of action arising out of a violation of the purchases agreement. These claims and causes of action fall within the indemnification duty provided by section 2.1.

On November 17, 2015, the trial court issued its ruling. The trial court granted the summary judgment motion of Weintraub Financial Services, Inc., Richard Weintraub, and Sebitna, LLC. The trial court ruled Weintraub Financial Services, Inc. met its initial summary judgment burden by showing it fulfilled its obligations to pay the correct contingent payment. The trial court ruled that the Butler parties provided no evidence that the option paid by Sebitna LLC to Weintraub Financial Services, Inc. had any value. The trial court also ruled cross-defendants were not harmed by any fiduciary duty breach regarding accountings. Regarding indemnity, the trial court ruled the purchase agreement did not have unambiguous language indicating the parties intended for any party to be indemnified for its own misconduct. Judgment was entered in favor of Weintraub Financial Services, Inc., Mr. Weintraub, and Sebitna, LLC on December 2, 2015.

III. DISCUSSION

A. Appeal of Summary Judgment Ruling in Favor of Sebitna, LLC

At present, no final judgment has been entered as to the claims of the Butler parties and Sebitna, LLC. All the Butler parties remain in the litigation as defendants. All of the claims of Sebitna, LLC in its role as a plaintiff in the second amended complaint remain to be resolved. Until the second amended complaint is resolved, we have no jurisdiction over the appeal of the summary judgment motion order as to Sebitna, LLC. (*Nicholson v. Henderson* (1944) 25 Cal.2d 375, 381; *American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 556-557; see *Dang v. Smith* (2010) 190 Cal.App.4th 646, 656.) The appeal from the order granting summary judgment as to Sebitna, LLC must therefore be dismissed.

B. The Appeal of the Summary Judgment in Favor of Weintraub Financial Services, Inc. and Mr. Weintraub

1. Standards of review

In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burden on summary judgment motions as follows: "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is

because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof . . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted; see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 877-878.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra,* 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673, overruled on a different point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5.) These are the only issues a summary judgment must

address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.)

The Butler parties raise two arguments on appeal. First, the Butler parties assert they have raised triable issues on their first cause of action for contract breach. The Butler parties reason Weintraub Financial Services, Inc. and Mr. Weintraub failed to make a proper contingent payment. Second, the Butler parties contended Weintraub Financial Services, Inc. and Mr. Weintraub must provide indemnification under the purchase agreement. The Butler parties make no arguments concerning the fiduciary duty breach cause of action for failure to make accountings. Any issue regarding the second cause of action is forfeited. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66, 70 disapproved on another point in *Bailey v. Los Angeles* (1956) 46 Cal.2d 132, 139; *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1504, fn. 2; *Tan v. Cal. Federal Savings & Loan Assn.* (1983) 140 Cal.App.3d 800, 811.)

2. The contingent payment provision

The property's purchase price consists of two elements. The first element is a cash payment of $21.5 million. The second element consists of a contingent payment obligation which is set forth in sections 1.2 through 1.4 of the purchase agreement. The contingent payment provision allows the Butler parties, as sellers, to recover 10 percent of any funds received by the buyer, Weintraub Financial Services, Inc., from another entity.

Weintraub Financial Services, Inc. and Mr. Weintraub argue they did not violate the contingent payment provision. As previously discussed, the purchase agreement was entered into on November 2, 2010. On February 1, 2012, Weintraub Financial Services, Inc. assigned its rights under the purchase agreement to Sebitna, LLC for $215,000. They contend under section 1.2, Weintraub Financial Services, Inc. was required to only pay 10 percent of the $215,000 it actually received from Sebitna, LLC to the Butler parties. As we noted previously, section 1.2 provides in pertinent part: "Buyer shall pay to Seller ten percent (10%) (the 'Contingent Payment') of any and all monies, benefits . . . and any and all other consideration, paid to or received by Buyer, and/or Buyer's successors, assigns, related parties . . . for any and all reasons, in connection with or related in anyway [sic] to the Property, as they are received by Buyer . . . ."

The Butler parties' position is as follows. Weintraub Financial Services, Inc. transferred its rights to Sebitna, LLC. When that occurred, Sebitna, LLC received benefits in excess of $20 million, that is, at a minimum, the property's value. The Butler parties argue that under section 1.2, Weintraub Financial Services, Inc., Mr. Weintraub and Sebitna, LLC were required to pay at least $2 million as a contingent payment.

The Butler parties' argument has no merit. Section 1.2 provides in pertinent part: "Buyer shall pay to Seller ten percent of any and all monies, benefits, . . . and any and all other consideration, paid to or received by Buyer, and/or Buyer's successors, assigns, related parties, . . . directly or indirectly, for any and all reasons, in connection with or related in anyway [sic] to the Property, *as they are received by Buyer*. . . . The Contingent Payment shall include payments and/or the receipt of

funds in connection with the Property, made to or received by Buyer, Richard Weintraub, and/or any and all individuals or entities related, co-owned, controlled, partnered, or co-ventured with and/or otherwise affiliated with Buyer and/or Richard Weintraub, the relatives and/or family members of Richard Weintruab, and/or their respective successors and assigns . . . ." (Italics added.) Under section 1.2, the obligation to pay 10 percent of all benefits was specified with the language "as they are received by" Weintraub Financial Services Inc. The undisputed evidence indicates Weintraub Financial Services, Inc. received $215,000 from Sebitna, LLC for the assignment.

Based on the requirements of section 1.2, Weintraub Financial Services, Inc. was to pay 10 percent of the amount it received to cross-complainants. That is all Weintraub Financial Services, Inc. was obligated to do regarding contingent payments under the purchase agreement. And it is undisputed Weintraub Financial Services, Inc. did pay $21,500 to cross-complainants.

C. The indemnity provision

For the third cause of action, Weintraub Financial Services, Inc. and Mr. Weintraub argue the indemnity provision does not apply in this context. Weintraub Financial Services, Inc. and Mr. Weintraub argue the first amended cross-complaint seeks indemnification for the Butler parties from their own conduct. Since that is the case, Weintraub Financial Services, Inc. and Mr. Weintraub reason indemnification is unavailable unless the purchase agreement clearly and unambiguously provides for such. As noted, section 20.1 of the purchase agreement governs indemnity: "Buyer shall indemnify and hold Seller harmless

from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including actual attorneys' fees) arising out of Buyer's inspections or tests of the Property or any violation of the provisions of this Agreement. Buyer's indemnification and hold harmless obligations shall survive the termination of this Agreement and shall survive the Closing." Weintraub Financial Services, Inc. and Mr. Weintraub contend the purchase agreement does not clearly and unambiguously provide for indemnification for disputes involving the Butler parties.

The Butler parties assert: the indemnity clause applies to "any and all liens, claims, causes of action, damages, liabilities and expenses . . . any violation" of the purchase agreement; this language is sufficiently broad to indemnify them for their attorney's fees arising out of the alleged violation of the purchase agreement; and they seek only the actual attorneys' fees they have accrued as a result of the claims against them for violations of the purchase agreement. The Butler parties' analysis has no merit.

Civil Code section 2772 provides, "Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person." The Court of Appeal has explained: "Indemnity generally refers to third party claims. 'A clause which contains the words "indemnify" and "hold harmless" is an indemnity clause which generally obligates the indemnitor to reimburse the indemnitee for any damages the indemnitee becomes obligated to pay third persons. [Citation.] Indemnification agreements ordinarily relate to third party claims.' (*Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 969 []; see

also *Queen Villas Homeowners Assn. v. TCB Property Management* (2007) 149 Cal.App.4th 1, 5 []; *Wilshire–Doheny Associates, Ltd. v. Shapiro* (2000) 83 Cal.App.4th 1380, 1396[] ["'[A]n indemnitor in an indemnity contract *generally* undertakes to protect the indemnitee against loss or damage through liability to a third person'"].)" (*Zalkind v. Ceradyne, Inc.* (2011) 194 Cal.App.4th 1010, 1024 (*Zalkind*); see *Myers Building Industries, Limited v. Interface Technology, Inc., supra*, 13 Cal.App.4th at p. 968 (*Myers*).) However, the parties are free to contract for indemnity on direct claims. (*Hot Rods, LLC v. Northrup Grumman Systems Corp.* (2015) 242 Cal.App.4th 1166, 1179; *Zalkind, supra*, 194 Cal.App.4th at p. 1024.) An indemnity provision is to be interpreted according to the general rules of contract interpretation. (*Zalkind, supra*, 194 Cal.App.4th at p. 1024; *Myers, supra*, 13 Cal.App.4th at pp. 968-969.) Civil Code section 1636 provides, "A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Civil Code section 1641 provides, "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (See *Rideau v. Stewart Title of Cal., Inc.* (2015) 235 Cal.App.4th 1286, 1294; *Continental Heller Corp. v. Amtech Mechanical Services, Inc.* (1997) 53 Cal.App.4th 500, 504.) Civil Code section 1643 provides, "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." And a contract must be interpreted as a whole and to avoid surplusage. (*Rebolledo v. Tilly's Inc.* (2014) 228 Cal.App.4th 900, 923;

Appalachian Ins. Co. v. McDonnell Douglas Corp. (1989) 214 Cal.App.3d 1, 12.)

To begin with, the payment of $21,500 did not violate the contingency payment provisions as we have explained. Thus, as to that issue, Weintraub Financial Services, Inc. and Mr. Weintraub are the prevailing parties. At argument, counsel of the Butler parties agreed as to that narrow issue, the $21,500 contingency payment, his clients would not be entitled to attorney fees under section 20.1.

Rather, the Butler parties argue they are entitled to their attorney fees and costs incurred *in the defense of the second amended complaint*. Under the Butler parties' interpretation, all attorney fees incurred *in defense of the second amended complaint* would be payable under section 20.1, the indemnity clause. The Butler parties argue the broad nature of the indemnification duties under section 20.1 apply to both first and third party claims.

The problem is the Butler parties interpretation renders section 31.4, the attorney fee provision, entirely surplus language. As noted, section 31.4 provides in litigation between the contracting litigants, the prevailing party is entitled to all reasonable costs and expenses. That includes reasonable attorney fees and costs and any other relief ordered by the court. This right to recover costs and fees extends to trial, appellate and insolvency proceedings. If section 20.1 covers first party claims, then there would have been no need to include section 31.4 which expressly provides for attorney fees under specified circumstances. Thus, section 20.1, the indemnity clause, does not provide a right to attorney fees in the context of first party claims. The reason for our conclusion is we are to give meaning

to every provision of the contract. And to hold that section 20.1, the indemnity provision, grants the right to attorney fees in a first party case is to render section 34.1 meaningless.

We agree with the trial court that the indemnity provision, despite its broad language, only applies to *third party* indemnification disputes. Such is the general rule. (*Queen Villas Homeowners Assn. v. TCB Property Management*, *supra*, 149 Cal.App.4th at p. 5; *Myers¸ supra*, 13 Cal.App.4th at p. 969.) And to construe section 20.1 to apply here would render as complete surplusage the section 34.1 attorney fee clause thereby by violating well established rules of contract interpretation. (*Rebolledo v. Tilly's Inc, supra*, 228 Cal.App.4th at p. 923; *Appalachian Ins. Co. v. McDonnell Douglas Corp.*, *supra*, 214 Cal.App.3d at p. 12.) And we reach these conclusions after reviewing the purchase agreement as a whole. Thus, there is no triable issue as to whether the Butler parties are entitled to their fees and costs incurred resisting the allegations of the second amended complaint.

IV. DISPOSITION

The judgment is affirmed. The appeal is dismissed as to cross-defendant, Sebitna, LLC. No costs are awarded in connection with the appeal of cross-defendants from the ruling in favor of Sebitna, LLC. The judgment is affirmed in all other respects. Cross-defendants, Weintraub Financial Services, Inc. and Richard Weintraub, shall recover their costs incurred on appeal from cross-complainants: Butler Enterprises, L.P.; Frank W. Butler and Jean Butler as co-trustees for the Butler Family Trust; and Russell L. Berney as trustee for the Frank and Jean Butler Children's Holding, the David Butler Irrevocable, the Nancy Bear Irrevocable, the Mary Linn Irrevocable Trust, the Robert Butler Irrevocable, the Steven Butler Irrevocable and the Karen Butler Irrevocable Trusts.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J. KUMAR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.