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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 SEVEN

CITY OF WHITTIER,

Plaintiff and Respondent,

v.

SOUTHLAND DISPLAY COMPANY, et al.

Defendants and Appellants.

MARK S. ADAMS,

Receiver and Respondent.

B255573, B257744 and B260292

(Los Angeles County
Super. Ct. No. VS021242)

APPEALS from orders of the Superior Court of Los Angeles County, Thomas McKnew, Jr., Judge. Case Nos. B255573 and B257744 are dismissed; the order in Case No. B260292 is affirmed in part and reversed in part.

John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes; The Stone Law Firm and Elliott H. Stone, for Defendants and Appellants.

Jones & Mayer, Dean J. Pucci, Krista MacNevin Jee and Baron J. Bettenhausen, for Plaintiff and Respondent.

California Receivership Group, Mark S. Adams and Andrew F. Adams for Court appointed Receiver and Respondent.

Defendant Steven Claro, acting on behalf of himself and his two companies Southland Display and Village Inn, entered into a stipulation with the City of Whittier agreeing to the appointment of a receiver to abate code violations at an apartment complex. (See Health and Safety Code, § 17980.7.) The trial court authorized the receiver to finance the abatement through the issuance of receiver certificates that were secured by a deed of trust to the property. After expending substantial sums to rehabilitate the property, the receiver filed a motion to sell the property to raise funds to pay the amount due on the receiver certificates. The court granted the motion, and the defendants appealed, thereby staying the sale of the property. The court then ordered the defendants to pay the receiver the amount due on the receiver certificates, concluding the payment was necessary to avoid a foreclosure. The defendants appealed that order, which we consolidated under Case No. B250819 with defendants' prior appeal of the order authorizing the sale of the property.

While Case No. B250819 was pending, the lender on the receiver certificates initiated a foreclosure of the receivership property. Defendants filed an application for preliminary injunction to terminate the foreclosure proceedings, which the court denied. Defendants also filed a complaint in federal court alleging the receiver had conspired with the City of Whittier to unlawfully seize their property without providing just compensation. The trial court authorized the receiver to retain counsel in the federal matter, and ordered defendants liable for the resulting attorneys' fees. Several months later, the court ordered defendants Steven Claro and Southland Display to pay the receiver $225,000 for attorneys' fees incurred in the federal action and other receivership costs. Defendants appealed the order.

On February 25, 2015, we issued *Southland Display v. The City of Whittier* (Feb. 25, 2015, B250819) [nonpub. opn.] (*Whittier I*), which affirmed the trial court's order authorizing the sale of the property, but remanded the matter to allow the trial court to determine whether the sale of the property was still appropriate. We also affirmed the trial court's order requiring defendants to pay the amount due on the receivership

certificates as to defendants Steven Claro and Village Inn, but reversed as to defendant Southland Display.

In this decision, we address the defendants' appeals of three orders the trial court issued while *Whittier I* was pending: (1) an order dated May 20, 2014 denying defendants' application for preliminary injunction (Case No. B257744); (2) an order dated January 14, 2014 authorizing the receiver to retain counsel in the federal action (Case No. B255573); and (3) an order dated November 3, 2014 directing defendants Steven Claro and Southland Display to pay the receiver $225,000 for attorneys' fees in the federal action and other receivership costs (Case No. B260292). We dismiss Case No. B257744, concluding that subsequent events have rendered the defendants' appeal of the denial of their application for preliminary injunction moot. We dismiss Case No. B255573 for lack of jurisdiction, concluding the trial court's order authorizing the receiver to retain counsel is not appealable. In Case No. B260292, we affirm the trial court's attorneys' fees award as to defendant Steven Claro, and reverse as to defendant Southland Display.

## FACTUAL AND PROCEDURAL BACKGROUND[1]

### *A. Appointment of the Receiver*

Steven Claro is the president and sole proprietor of Southland Display Company and Village Inn, LLC. In 2006, Claro purchased an apartment building located in Whittier, California. Southland Display was named the title owner of the property. Southland later transferred the property to Village Inn through a quitclaim deed recorded in July of 2010.

In the fall of 2010, the City of Whittier discovered numerous code violations at the property, which included "exposed electrical work"; "unsanitary waste improvements"; "significant water damage"; substantial roofing problems and lack of heating. After meeting with City officials, Claro agreed to sign a declaration stipulating to the

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**1** A more detailed account of the facts regarding the receivership proceedings can be found in *Whittier I*.

appointment of a receiver to remedy the conditions at the property pursuant to Health and Safety Code section 17980.7.[2] In his declaration, Claro acknowledged he was the "sole owner" of the property and "president" of both Southland and Village Inn. Claro also admitted he was "aware of the violations present on the [p]roperty," and that the conditions posed "threats" to the public. Claro explained that he currently "lack[ed] the ability or resources to immediately redress the City's emergency concerns," and therefore agreed it was in "both parties' best interests to have a neutral court officer, the Receiver, put in place to mediate between the parties and to neutrally assess all options as they relate to abatement of the substandard conditions present at the property."

Two days after Claro signed his declaration, Whittier filed an emergency petition against Claro, Southland and Village Inn (collectively defendants) for an "order to abate the substandard" conditions and "to appoint a receiver." In support of the petition, Whittier filed Claro's declaration stipulating to the receivership and several declarations from city officials who had participated in the property inspections. The court granted Whittier's application, noting that the defendants had admitted the conditions at the property "violated the. . . Health and Safety Code [and the] Whittier Municipal Code."

The court's order named Mark Adams as receiver, and directed him to "correct all of the existing violations now existing upon the property and to see to it that the violations do not reoccur." The order authorized Adams to "manage and control the property"; "secure a cost estimate and construction plan . . . for the repairs necessary to correct conditions cited in the Notice of Violation"; "enter into a contract to conduct the repairs"; "borrow funds to pay for the repairs . . . and . . . any [tenant] relocation benefits"; and secure debts for repairs "with a recorded lien on the property." The order also authorized Adams to immediately issue "receiver certificates . . . with first lien status in an amount not to exceed $50,000 in order to perform emergency actions" or "any other actions deemed immediately necessary by the receiver." The receiver was directed to seek court approval for any additional funding requests.

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[2] Unless otherwise indicated, further statutory citations are to the Health and Safety Code.

Several days after the issuance of the appointment order, the receiver filed a "First Report" seeking approval of a sample deed of trust containing a power of sale provision that it intended to use to secure the financing authorized in the trial court's prior order. The receiver's memorandum in support of the First Report asserted that Health and Safety Code section 17980.7, subdivision (4)(g) permitted a receiver to borrow funds "with a lien on the property," which "contemplate[d] a receivers certificate with a deed of trust on the property." The court issued an order approving the First Report and the sample certificate containing the deed of trust.

***B. The Receiver's Attempts to Rehabilitate and Sell the Property***

Between December of 2010 and March of 2013, the receiver developed a rehabilitation plan for the property. In July of 2011, the court authorized the receiver to issue up to $864,000 in receiver certificates to finance the rehabilitation, which was to be performed by "Miken Construction." An affiliate of Miken, DDCFRJ Investments, agreed to loan the receiver the necessary funds, which were secured by a deed of trust.

Between December 2011 and March 2013, Miken and the receiver worked with the City of Whittier to obtain approval for the construction project. In April of 2013, the receiver informed the court that although the City had fully approved the project, construction had not begun due to financing issues. The receiver explained that it had already expended approximately $350,000 on the project, and that the outstanding receiver certificates had become due on April 1. The receiver further explained that DDCFRJ was willing to finance the remainder of the project (which had an estimated additional cost of $650,000), but only if the defendants agreed to give Miken full control and management of the property until the loan was repaid. DDCFRJ informed the receiver that if the defendants refused those conditions, it intended to issue a notice of foreclosure pursuant to the deed of trust that had been issued as security for the receiver certificates.

In May of 2013, the receiver filed a motion seeking authority to sell the property to pay the amounts due on the receiver certificates. In support of its request, the receiver

explained that while DDCFRJ remained willing to "finance and build out the project," defendants continued to refuse to give Mike control and management of the property. The receiver believed a "market oriented approach to the sale" was likely to "yield more money than the . . . alternative of a foreclosure sale." Defendants objected to the sale, claiming that they were currently in the process of "putting together an alternative plan" for the property. The court authorized the receiver to seek a buyer for the property.

On July 30, 2013, the receiver informed the court that Orchard Investments had offered to purchase the property for $610,000 in its current condition, which was approximately $100,000 more than the property's appraised value. Orchard had also agreed to utilize the City-approved development plan and to use Miken as the contractor. Defendants continued to object to the sale, asserting they had developed their own plan of abatement that had an estimated cost of $616,000. Defendants also asserted defendant Steven Claro had sufficient resources to finance the project himself. The court entered an order approving the sale to Orchard. Defendants filed a notice of appeal, staying the sale.

In August of 2013, the receiver filed a motion for an order requiring the defendants to "pay directly to the receivership lender the approximate sum of $449,282.20 representing principal and accrued interest due on the receivership certificates previously approved by [the] Court." The receiver explained that because the sale of the property had been stayed, an order requiring defendants to pay the amount due on the receivership certificates was necessary to avoid foreclosure. The receiver filed additional motions for orders directing Claro, Southland and Village Inn to pay various receiver costs the court had previously approved, which totaled approximately $46,000. The receiver filed a memorandum in support of these payment requests asserting that Health and Safety Code section 17980.7, subdivision (c)(15) authorized the court to order the owners of the receivership property to pay the unrecovered costs of the receivership.

The defendants opposed the payment requests, arguing that section 17980.7, subdivision (c)(15) did not apply. Defendants asserted that in the absence of a statute authorizing the court to order defendants to pay the receivership costs directly, the receiver could only use the receivership property to pay off the amount due on the

receiver certificates. Defendants separately argued that neither Steven Claro nor Southland could be ordered to pay the receivership costs because neither of them qualified as an owner of the property. According to defendants, the title documents showed Village Inn was the sole legal owner of the property.

During a hearing on the payment requests, the court rejected Claro's assertion he was not an owner of the property. The court noted that Claro had identified himself as the owner of the property in a declaration and other court filings, and offered to use his own money to finance abatement of the property. The court issued three separate orders directing the defendants to "jointly and severally pay" the receiver approximately $450,000 for the amount due on the receivership certificates, and an additional $53,000 for receivership costs that had previously been approved by the court (collectively referred to as "payment orders").

Defendants appealed each of the payment orders, which we consolidated with their prior appeal of the court's order authorizing the sale of the property under Case No. B250819.

### *C. Events Occurring During the Pendency of Case No. B250819*

#### *1. The trial court's order authorizing the receiver to retain counsel in the federal action*

While Case No. B250819 was pending before this court, defendants Steven Claro and Village Inn filed a complaint in federal court alleging the City of Whittier, the receiver and their attorneys had conspired to deprive them "of their civil rights" in violation of 42 United States Code section 1983 "by taking [their] private property. . . for public use without just compensation and by depriving Plaintiffs of due process of law." The complaint named Mark Adams's corporate entity, California Receivership Group (CRG), as a defendant, and also named CRG employees Mark Adams and Andrew Adams in their individual capacities.

On December 19, 2013, the receiver filed a motion seeking permission to retain attorney Jeanne Irving to represent CRG and its employees (Mark and Andrew Adams) in

the federal action. (See Cal. Rules of Court, rule 3.1180 ["A receiver must not employ an attorney without the approval of the court"].) The motion further requested that that the court order Steven Claro, Village Inn and Southland Display jointly and severally liable for any fees incurred in the federal action based on their status as the owners of the receivership property. In support of its motion, the receiver noted that the court had previously denied Claro and Village Inn's request for permission to file a state court action against the receiver. According to the receiver, Claro and Village Inn were now attempting to "get around that [order] by filing in a separate courthouse [federal court]."

On January 21, 2014, the court issued an order authorizing "[r]eceivers Mark Adams, Andrew Adams and [CRG] to hire and retain counsel to represent them in the federal lawsuit . . . ." The order also stated that the "reasonable fees and costs of the attorneys" would be treated as a "receivership expense, and thus assignable against the receivership property and its owners." The order further provided that Claro, Southland Display and Village Inn were each owners of the receivership property, and therefore "jointly and severally liable for the incurred [attorneys' fees and costs]." Defendants appealed the order.

*2. Foreclosure proceedings*

On February 4, 2014, Orchard Investments, which had previously offered to purchase the receivership property, recorded a notice of default stating that it intended to foreclose on the property. The notice indicated DDCFRJ Investments had assigned its deed of trust to the receivership property to Orchard in November of 2013.

On April 30, 2014, defendants filed an application for "an order directing the receiver to rescind the Notice of Default," or to enjoin the receiver from taking any action to foreclose the property. Defendants argued that by participating in the foreclosure, the receiver had "violated his duty of neutrality by acting as an agent of a . . . creditor to the receivership estate, at the same time he was acting as borrower of the estate by recording, or causing to be recorded, the Notice of Default." Defendants asserted the receiver had "orchestrated" DDCFRJ's assignment of the deed of trust to Orchard, and then induced

Orchard to initiate the foreclosure. The defendants also argued that the deed of trust was "null void and of no legal effect" because the trial court had no authority to permit the receiver "to secure his receiver's certificates with a deed of trust containing a power of sale provision."

In opposition, the receiver argued he had no authority to "forestall the foreclosure sale for the simple reason that the beneficiary/lender on the Receivership Certificate [Orchard Investment] was the foreclosing party, not the Receiver." The receiver asserted it had no relationship with Orchard "beyond the one created by their Deed of Trust funding this Courts' orders." The receiver also argued that numerous authorities recognized a court's inherent authority to permit a receiver to secure financing with a deed of trust to the receivership property containing a power of sale provision.

The trial court denied the application for a preliminary injunction, concluding the defendants had provided no "viable basis to enjoin the foreclosure." The court found that the orders it had issued in December of 2010 specifically authorized the receiver to "borrow funds via a receivership certificate secured by a deed of trust . . . with a power of sale." The court rejected the remainder of the defendants' arguments based on the fact that Orchard, not the receiver, was the foreclosing party.

*3. The defendants' motion for attorneys' fees incurred in the federal action*

On March 28, 2014, the receiver filed a motion seeking payment of approximately $22,000 in attorneys' fees incurred in the federal action, plus an additional $25,000 retainer for anticipated future defense costs. The defendants opposed the motion, arguing that all issues related to the award of attorneys' fees incurred in the federal action were stayed by their appeal of the court order dated January 21, 2014, and their pending appeal of the payment orders at issue in Case No. B250819. Defendants also argued that if the court elected to award the receiver attorneys' fees, it had no authority to order defendants Claro or Southland Display to pay those fees because Village Inn was the sole owner of the receivership property.

Following a hearing held on May 20, 2014, the court issued an order finding that the defendants' prior appeals did not divest the court of jurisdiction to determine the amount of attorneys' fees the receiver had incurred in the federal action. Although the order concluded that the amounts the receiver had sought appeared to be reasonable, the court requested that the receiver file a supplemental motion that included all fees it had incurred since the original motion had been filed.

On June 4, 2014, the receiver filed a supplemental motion stating that as of May 23, 2014, it had incurred $82,402 in fees in the federal action. This amount included $61,477 for legal work that Jeanne Irving had performed, and $20,925 for legal work that Mark and Andrew Adams had conducted on CRG's behalf. The receiver sought an additional $62,456 for additional receivership costs unrelated to the federal action. Defendants did not file an opposition to the receiver's supplemental motion.

The day before the court was scheduled to hear the motion for attorneys' fees, defendants filed a "notice of stay of proceedings" informing the court that Village Inn had filed a bankruptcy petition, thereby requiring the stay of all proceedings affecting the receivership property and all of its owners. The court entered an order staying the motion for attorneys' fees until the receiver and the City of Whittier obtained relief from the bankruptcy court.

After obtaining a ruling from the bankruptcy court that the stay did not apply to defendants Steven Claro or Southland Display,[3] the receiver filed a motion on September 5, 2014 seeking an order requiring defendants Claro and Southland Display (but not Village Inn[4]) to pay $251,065 for attorneys' fees and other receivership costs

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[3] The receiver's appellate brief asserts that during a hearing on August 4, 2014, the bankruptcy court "affirmed that . . . the stay did not apply to Claro or Southland," which "cleared the way for the Superior Court to address the fee motion as it applied to Claro and Southland." Although the record does not contain any documentation from the bankruptcy proceeding on this issue, neither Claro nor Southland has disputed the receiver's position.

[4] Although the parties' briefing is not clear on the matter, we presume the receiver's motion excluded defendant Village Inn because of its pending bankruptcy proceeding.

that had been incurred through August 31, 2014. The requested amount included $153,513 for attorneys' fees incurred in the federal action ($130,816 for legal work Jeanne Irving had performed, and $22,697 for legal work Mark Adams and Andrew Adams had performed). The remaining $97,552 pertained to receivership costs that were unrelated to the federal action, which included general receivership costs and legal work performed in the pending appeals and the bankruptcy proceeding. In support of the motion, the receiver provided declarations from Andrew Adams and Jeanne Irving summarizing the work they had performed on behalf of the receivership in the federal action, billing statements and a survey of the average billing rates of partners at large law firms in Los Angeles, California.[5]

Defendants' opposition, which was filed 10 days after the court-issued deadline, argued that the amount of attorneys' fees the receiver had incurred in the federal action was "unreasonable, excessive and unnecessary." Specifically, defendants asserted that the amount of time Irving and Andrew Adams had collectively billed to prepare a motion to dismiss the federal action (93 hours) was "manifestly outrageous." Defendants also asserted the billings statements showed the receiver had incurred over $71,000 in fees to prepare a motion for attorneys' fees in the federal action, which the federal court had denied. Defendants contended the federal motion for fees was entirely unnecessary because trial court had already ordered that defendants would be liable for any fees receiver incurred in the federal action. Defendants also alleged the billing statements the receiver had offered in support of the motion were insufficiently detailed, and that receiver had "failed to provide any credible evidence justifying Jeanne Irving's $820 and [sic] hour rate."

At the October 17, 2014 hearing on the motion for attorneys' fees, defendants argued that their appeal of the court's January 21st order, which stated that defendants would be liable for any fees the receiver incurred in the federal action, precluded the trial court from ruling on the current motion for attorneys' fees. Defendants also reiterated the

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**5** In our analysis below, we provide additional details regarding the specific evidence the receiver provided in support of its motion for fees.

arguments set forth in their opposition, asserting that the amount of fees the receiver had requested was "outrageous," and that there was no reason for the receiver to pursue a motion for attorneys' fees in the federal court.

In assessing the receiver's motion, the court noted that it was permitted to rely "on its own judgment" when determining a reasonable hourly rate. The court explained that it had substantial experience deciding attorneys' fees awards, and had previously considered requests "far in excess of $820 per hour." The court concluded that although Irving's hourly rate was high, it nonetheless fell within the range of what was reasonable for an attorney with her level of experience. The court also explained that it had reviewed all of the billing statements and other materials offered in support of the fee award. On November 3, 2014, the court entered an order requiring defendants Claro and Southland Display to pay the receiver $225,000, which was approximately $26,000 less than the receiver had requested. Defendants appealed the order.

***D. Our Decision in Whittier I***

On February 15, 2015, we issued *Whittier I* (Case No. B250819), which affirmed the trial court's order authorizing the receiver to sell the property, and affirmed in part the court's payment orders declaring Claro, Village Inn and Southland Display jointly and severally liable for the amount due on the receiver certificates and various other receiver costs. Although we concluded the trial court's order authorizing the sale of the property was "proper at the time it was made," we remanded the matter to allow the court to determine whether the sale of the property was still appropriate given the substantial amount of time that had passed since it issued the sale order.

On the trial court's orders directing defendants to pay the receiver the outstanding costs of the receivership (including the amounts due on the receivership certificates), we affirmed the orders as to defendants Steven Claro and Village Inn. We found, however, that the City of Whittier and the receiver had presented no evidence that Southland Display was an owner the property at any time during the receivership proceedings. We therefore reversed the payment orders as to defendant Southland Display only.

## DISCUSSION

This decision addresses appeals from three trial court orders that were issued while *Whittier I* was pending before us: (1) the order dated May 20, 2014 denying defendants' application for a preliminary injunction (Case No. B257744); (2) the order dated January 21, 2014 permitting the receiver to retain counsel in the federal action, and declaring Steven Claro, Village Inn and Southland Display jointly and severally liable for any reasonable attorneys' fees incurred in that action; (Case No. B255573 ) and (3) the order dated November 3, 2014 requiring defendants Steven Claro and Southland Display to pay $225,000 for attorneys' fees incurred in the federal action and other receivership costs (Case No. B260292).[6]

### *A. Case No. B257744 Is Dismissed as Moot*

In Case No. B257744, defendants contend the trial court erred in denying their application for a preliminary injunction, which sought an order directing the receiver to "rescind the Notice of Default [Orchard Investments] filed on the [receivership] property, or in the alternative, enjoin the [receiver] from taking any action related to the [foreclosure.]"

Approximately one week before oral argument was to be heard in this matter, the City of Whittier filed a supplemental brief asserting that "recently transpired" events had rendered the appeal moot. The supplement brief indicates that on July 17, 2015, "the [receiver] executed a Deed of Reconveyance on the Deed of Trust on the property at issue . . . . This was due to the fact that the [receivership certificates] recorded against the property were paid off by Appellants." In their response to the supplemental brief, the defendants acknowledge that they did in fact pay off the amounts due, and that Orchard no longer holds a deed of trust.

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**6** On March 25, 2015, we denied a motion to consolidate the appeals, but noted that the appeals would be coordinated for the purposes of oral argument and decision. We also entered an order incorporating the record in *Whittier I* (B250819), and related appeal B257744 as part of the record on appeal in B260292.

"A question becomes moot when, pending an appeal from a judgment of a trial court, events transpire that prevent the appellate court from granting any effectual relief." (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 419.) Given that the sole intent of the defendants' application for a preliminary injunction was to preclude the foreclosure proceedings that were predicated on the now re-conveyed deed of trust, the questions presented in Case No. B257744 are moot and require no further consideration. (See *Keefer v. Keefer* (1939) 31 Cal.App.2d 335, 337 ["an appellate court will not review questions which are moot and which are only of academic importance. It will not undertake to determine abstract questions of law at the request of a party who shows that no substantial rights can be affected by the decision either way"].)[7]

Although the parties now acknowledge that the receiver reconveyed the deed of trust to defendants in July of 2015, this court was not informed of that fact until the City of Whittier filed its supplemental brief on January 25, 2016. The defendants, who filed the appeal, and the receiver, who participated in the reconveyance and filed a respondent's brief in the appeal, chose not to inform us of these matters. The City of Whittier waited to do so until one week before oral argument, more than seven months after the reconveyance took place. The failure of the parties to timely notify us of these events is a lapse in their responsibility to this court. (*Cf. Arizonians for Official English v. Arizona* (1997) 520 U.S. 43, 68, fn. 23 ["it is the duty of counsel to bring to the [court's] attention, 'without delay,' facts that may raise a question of mootness"]; *In re Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1301 ["[i]t is the duty of

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[7] In a letter brief submitted at our request, defendants ask that we exercise our discretionary authority to resolve the issues raised in their appeal despite the fact they are now moot. (See generally *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480 [describing "discretionary exceptions to the rules regarding mootness"].) We decline the request. We also deny defendants' request that we take judicial notice of the exhibits filed in support of their recently filed petition for writ of supersedeas (Case No. B269822), concluding those materials are unnecessary because the parties do not dispute any of the facts that establish the appeal is moot. Defendants' letter brief specifically acknowledges that they have paid off the receiver certificates, and that the "foreclosure sale which was the subject of the trial court orders will not occur."

appellants and their counsel promptly to dismiss an appeal once it becomes moot 'and not put…this court to the time and expense of reviewing an appeal that had become moot….' [Citation.]"].)

### *B. Case No. B255573 Is Dismissed for Lack of Jurisdiction Because the Order Dated January 21, 2014 Is Not Appealable*

In Case No. B255573, defendants appeal the trial court's order dated January 21, 2014 authorizing receivers Mark Adams, Andrew Adams and CRG to retain counsel in the federal action. The January order also declared that any reasonable attorneys' fees incurred by the receiver in the federal action would be treated as a "receivership expense, and thus assignable against the receivership property and its owners," and that Steven Claro, Southland Display and Village Inn would be "jointly and severally liable for the incurred costs."

After reviewing the record, we requested that the parties submit supplemental briefing analyzing whether the January order was appealable. The receiver and the City of Whittier each argue that the order does not fall within any of the categories set forth in Code of Civil Procedure section 904.1, subdivision (a), and is therefore nonappealable. (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015 ["section 904.1, subdivision (a) lists appealable judgments and orders"].) Defendants, however, assert the order is appealable under the "collateral order doctrine," which is "an exception to the 'one final judgment' rule codified in Code of Civil Procedure section 904.1." (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368 (*Skelley*).) Our Supreme Court has explained that "[w]hen a court renders an interlocutory order collateral to the main issue, dispositive of the rights of the parties in relation to the collateral matter, and directing payment of money or performance of an act, direct appeal may be taken. [Citations.]. . . . Such a determination is substantially the same as a final judgment in an independent proceeding." (*Ibid*.)

Under the test set forth in *Skelley*, an interlocutory order or judgment is appealable if it: (1) finally determines a collateral issue in the case; and (2) requires "the immediate

payment of money, or the performance forthwith of an act." (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 683; *Skelley, supra*, 18 Cal.3d at p. 368; see also *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119 ["It is not sufficient that the order determine finally for the purposes of further proceedings in the trial court some distinct issue in the case; it must direct the payment of money by appellant or the performance of an act by or against him. [Citations.]"].) To satisfy the first element, "the interlocutory order must be a final determination of a matter that is collateral – i.e., distinct and severable – from the general subject of the litigation. [Citations.] The order is deemed final if further judicial action is not required on the matters dealt with by the order. [Citations.]" (*Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1545 (*Koshak*).) Thus, there must be '"no issue . . . left for future consideration except for the fact of compliance or noncompliance. . . . [W]here anything further in the nature of a judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is [nonappealable]."' (*Meehan v. Hopps* (1955) 45 Cal.2d 213, 217.)

The trial court's January 21st order does not satisfy either element set forth in *Skelley*. While the order may well involve a collateral issue – the defendants' liability for the receiver's attorneys' fees in the federal action – it is not a "final" determination of that matter because the order does not determine the amount of attorneys' fees the defendants are required to pay. In effect, the January order declared that defendants would be liable for any reasonable attorneys' fees the receiver might incur in the federal action, leaving the amount of those fees to be addressed in a future proceeding.[8]

The order fails the second element of the *Skelley* test for the same reason: it does not require "the immediate payment of money or the performance forthwith of an act." (*Horspool, supra*, 223 Cal.App.4th at p. 683.) While the order makes clear the defendants would be held liable for the attorneys' fees in the federal action, the order does not, standing alone, require the defendants to pay any money or perform any act.

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**8** Defendants acknowledged as much during the trial court proceedings, contending that the January 21st order "just said…that the cost of the federal case are chargeable against the receivership property and owner,… it wasn't a money judgment."

Although several decisions have recognized that "orders requiring payment before a judgment in a receivership proceeding [qualify as] appealable [collateral orders]" (*Koshak, supra*, 200 Cal.App.4th at pp. 1545), each of those decisions addressed orders that required the payment of a specified sum.[9] Defendants have cited no authority suggesting that an order or judgment that merely declares a party liable for a category of expenses, without also adjudicating the amount of those expenses, qualifies as an appealable collateral order. Because the trial court order dated January 21, 2014 is not appealable, we dismiss Case No. B255573 for lack of jurisdiction.

### *C. The Trial Court's Award of Attorneys' Fees Is Affirmed as to Defendant Steven Claro, and Reversed as to Defendant Southland Display*

In Case No. 260292, defendants Steven Claro and Southland Display[10] appeal the trial court's order directing them to pay the receiver approximately $225,000 for attorneys' fees that it incurred in the federal action and various other receivership costs.[11]

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[9] In *Koshak, supra*, 200 Cal.App.4th at pp. 1545-1546, the court provided a survey of such cases, which include: *Fish v. Fish* (1932) 216 Cal. 14, 15-17 (*Fish*)[orders fixing compensation of receiver and attorney as well as directing sale of property]; *Los Angeles v. Los Angeles City Water Co.* (1901) 134 Cal. 121, 122-123 [order fixing receiver's compensation and directing payment of such]; *Steinberg v. Goldstein* (1954) 122 Cal.App.2d 516, 517 [order setting amount of receivers' compensation and requiring appellant to pay the sum and turn over other property]; *Brown v. Memorial Nat'l Home Foundation* (1958) 158 Cal.App.2d 448, 459-460 [order requiring defendant to pay receiver $2,500 a month].)

[10] In this section, our use of the term "defendants" refers only to defendants Steven Claro and Southland Display. As explained above, the trial court's November 3rd order only applied to defendants Claro and Southland Display; Village Inn was not named in the order, presumably because of its pending bankruptcy proceeding.

[11] As explained above, "orders requiring payment before a judgment in a receivership proceeding [are] appealable." (*Koshak, supra*, 200 Cal.App.4th at p. 1545 [citing cases].) Unlike the January 21st order, which relates solely to the question of defendants' liability for any fees the receiver incurred in the federal action, the November 3rd order required the defendants to pay the receiver a specified amount. It is therefore appealable as a collateral order. (See *Fish, supra*, 216 Cal. at p. 14.)

*1. Defendants' pending appeals in Case Nos. B255573 and B250819 did not preclude the trial court from determining the amount of the attorneys' fees award*

Defendants initially argue that under the automatic stay provisions set forth in section 916, their appeal of the January 21st order declaring them liable for the attorneys' fees incurred in the federal action (Case No. B255573), and their then-pending appeal of the payment orders we addressed in *Whittier I* (Case No. B250819), withdrew the trial court's jurisdiction to rule on the receiver's motion for attorneys' fees.

"As a general rule . . . , the perfecting of an appeal automatically stays proceedings in the trial court both upon the judgment or order appealed from, and upon the matters embraced therein or affected thereby, including enforcement of the judgment or order. [Citation.] The automatic stay rule is codified in section 916, subdivision (a), which provides in part:

> 'Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order….'

The purpose of the automatic stay rule is 'to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it. [Citation .]' [Citation.]" (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1427-1428.)

As discussed above, the order dated January 21, 2014 at issue in Case No. B255573 was not appealable. An appeal is not "perfected" within the meaning of section 916 if it is taken from a nonappealable order. (See *People v. Adamson* (1949) 33 Cal.2d 286, 289 ["Inasmuch as the purported appeal is from a nonappealable order, jurisdiction

of the cause remains in the superior court," citing *In re Estate of Kennedy* (1900) 129 Cal. 384, 385]; *Pazderka v. Caballeros Dimas Alang, Inc*. (1998) 62 Cal.App.4th 658, 663 ["filing a notice of appeal from [a nonappealable] order does not divest the trial court of jurisdiction over the issue"]; *Whitacre v. Ed.* (1940) 40 Cal.App.2d 68, 73 [when appeal is taken from "purely an interlocutory order or judgment, the appeal there-from [is] of no effect, [and] the court retain[s] jurisdiction to proceed"].) Thus, defendants' appeal of the January 21st order had no effect on the trial court's jurisdiction to determine the amount of fees the receiver had incurred in the federal action.

The payment orders at issue in *Whittier I*, which was still pending when the court issued its November 3rd attorneys' fees award, required defendants to pay the receiver the amount due on the receivership certificates and various other administrative costs of the receivership. In *Whittier I*, defendants challenged those orders on the basis that: (1) the court had no authority to order any of the defendants to pay the costs of the receivership from funds or property that were not subject to the receivership; and (2) the court had no authority to order defendants Steven Claro or Southland Display to pay the receivership certificates or any other receivership costs because neither party qualified as an owner of the receivership property. Defendants contend that because these same issues were relevant to determining whether the court had authority to order defendants to pay the attorneys' fees the receiver incurred in the federal action (which the trial court categorized as a receivership cost), the trial court had no jurisdiction to address the receiver's request for attorneys' fees until we issued our ruling in Case No. B250819.

Defendants are correct that the issues raised in *Whittier I* were relevant to the receiver's motion for attorneys' fees incurred the federal action. If we had agreed with defendants' assertion that the trial court had no authority to require them to pay the costs of the receivership, this finding would presumably have prohibited the court from ordering defendants to pay the receiver attorneys' fees in the federal action. Under section 916, however, the relevant inquiry is not whether the resolution of the pending appeal might impact the postjudgment (or postorder) proceedings at issue in the trial court. Rather, the pertinent question is whether the "postorder" trial court proceeding

may '"render[] [the pending] appeal futile," or otherwise """effect . . . the 'effectiveness' of the appeal." [Citation.] "If so, the proceedings are stayed; if not, the proceedings are permitted." [Citation.]' [Citation.]" (*Cunningham v. Magidow* (2013) 219 Cal.App.4th 298, 304.) Defendants have not offered any explanation as to how the trial court's ruling on the receiver's attorneys' fees motion could have affected our resolution of the payment orders at issue in *Whittier I*, which involved the payment of costs that had no relation to those attorneys' fees.

*2. Defendants have forfeited their argument that the receiver was not entitled to recover for legal work performed by Mark Adams or Andrew Adams*

Defendants contend the trial court erred in awarding fees for legal work that was performed by Mark Adams and Andrew Adams, who are both licensed attorneys employed by CRG (Mark Adams's corporate entity). In its motion for fees, the receiver sought approximately $23,000 for legal work that Mark and Andrew Adams had performed in the federal action, and additional sums for legal work they had performed in the numerous pending state court appeals and multiple bankruptcy proceedings. According to defendants, the court's January 21st order only permitted the receiver to retain outside counsel in the federal action; it did not authorize the receiver's employees to engage in any form of legal work, nor did it authorize the receiver to bill those charges against the receivership property.

The receiver argues defendants have forfeited this issue by failing to raise it in the trial court. "[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court. . . . This . . . doctrine is applicable to a motion for an award of attorney fees." (*Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal.App.3d 9, 26 [disapproved on other grounds in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896-897]; *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 830.) "The purpose of forfeiture rules generally is to avoid the unfairness that would occur on review if a party were permitted to 'argue the [lower] court erred in failing to conduct an analysis it was not

asked to conduct.' [Citation.]" (*People v. Superior Court* (2007) 151 Cal.App.4th 85, 94.)

Although defendants presented the trial court with numerous arguments why it should deny, or greatly reduce, the receiver's fee request, they never argued the receiver was prohibited from recovering for legal work that Mark or Andrew Adams performed on behalf of the receivership. The hearing transcript shows that the trial court repeatedly asked defendants' counsel to set forth every "objection [they had] to the fees," and to "indicate what [the objections] are and why." After counsel finished presenting defendants' arguments, the court asked whether there was "anything else"; counsel replied he had no further objections. At no point in the proceeding did defendants' counsel suggest the court should deny the portion of the fee request that was predicated on legal work that Mark or Andrew Adams performed on behalf of the receivership.

Defendants, however, contend there are three reasons why the normal rule of forfeiture does not apply here. First, they argue that a trial court's determination whether a party is entitled to attorneys' fees (as opposed to the amount of those fees) is subject to "de novo" review. Defendants appear to assert the ordinary rules of forfeiture do not apply to any issue that is subject to the "de novo" standard of review. They are mistaken. "De novo" review simply means that we "exercise[] our independent judgment [in assessing the issue on appeal] without giving any deference to the trial court's ruling." (*Campbell v. Scripps Bank* (2000) 78 Cal.App.4th 1328, 1336.) Thus, "de novo" review relates to the level of deference we give the trial court's ruling; it does not create an automatic exception to the ordinary rule of forfeiture.

Defendants next contend that forfeiture is inapplicable because the question at issue – whether the receiver was authorized to recover fees for legal work performed by Mark and Andrew Adams – is a "question[] of law . . . based solely on facts already in the record." A reviewing court may consider an issue not raised in the trial court that involves "a pure question of law presented on undisputed facts." (*People v. Brown* (1996) 42 Cal.App.4th 461, 475.) Whether that exception to the general rule of forfeiture should be exercised, however, is "'a question of the appellate court's discretion.'

[Citations.]" (*Resolution Trust Corp. v. Winslow* (1992) 9 Cal.App.4th 1799, 1810 (*Resolution Trust*).) Our Supreme Court has admonished that "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Even if we were to assume the trial court's decision to award attorneys' fees for legal work performed by the receiver's employees involved a question of law presented on undisputed facts, we would decline to exercise our discretionary authority to review the matter. Defendants have never attempted to explain why they failed to raise the issue in the trial court. "Moreover, the resolution of the issue does not involve an important question of public policy or public concern, but simply determines whether in this particular case a trial court . . . [erred] in deciding how much one party should pay another." (See *Peterson v. John Crane, Inc.* (2007) 154 Cal.App.4th 498, 515 [declining to review question of law for first time on appeal where issue could have been raised in trial court and did not involve important public question]; see also *Resolution Trust, supra,* 9 Cal.App.4th at p. 1810 ["'Appellate courts are more inclined to consider such tardily raised legal issues where the public interest or public policy is involved'"].)

Finally, defendants assert forfeiture is inapplicable because they raised a similar argument in opposing accountings the receiver filed in July and August of 2013, which occurred almost a year before the receiver's current motion for attorneys' fees was litigated. On October 8, 2013, the defendants filed objections to the receiver's July and August accountings arguing, in part, that the receiver's statements included charges for what appeared to be legal work that Andrew Adams had performed on behalf of the receivership. Defendants contended the receiver was not permitted to charge for any form of legal work, including legal work performed by the receiver's own employees, without prior approval of the court. On October 9, 2013, the trial court ordered defendants to pay the full amount sought in the receiver's July and August accounting statements, thereby implicitly rejecting their argument regarding the receiver's unpermitted legal work. Defendants appealed the October 9th order, which we reviewed (and affirmed) in *Whittier I*. The defendants' appellate briefs in *Whittier I* did not argue

that the court had erred in approving the portion of the receiver's July and August accountings that were predicated on Andrew Adams's legal work, thereby abandoning the issue. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 ["Issues not raised in an appellant's brief are deemed waived or abandoned"].)[12]

Defendants' prior objection to legal work that was included in the receiver's July and August 2013 accounting statements was not sufficient to preserve their present objection to the inclusion of legal work performed by the receiver's employees in the motion for attorneys' fees filed in September of 2014. The rule of forfeiture is predicated on the principle that it is "unfair to the trial court and the adverse party to give appellate consideration to an alleged procedural defect which could have been presented to, and may well have been cured by, the trial court." (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810-811.) The defendants never informed the court or the receiver that the objections they raised a year earlier in relation to the receiver's July and August accountings also applied to the receiver's September motion for attorneys' fees. Moreover, in *Whittier I*, the defendants had an opportunity to seek this court's review of whether the receiver could recover costs for legal work performed by its employees, but chose not to raise the issue on appeal. We find no basis to conclude that arguments the defendants raised unsuccessfully in opposition to a prior payment request, and then

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**12** The defendants' appellate brief in *Whittier I* did allege the receiver had improperly charged for legal services in relation to their appeal of the trial court's August 19, 2013 order denying their motion to remove or replace the receiver. We concluded, however, that the August 19th order was not appealable and dismissed their appeal of that order for lack of jurisdiction. The portion of the defendants' appellate brief that addressed the October 9, 2013 orders directing them to pay the receiver's costs did not reference the issue of Adam's legal fees. Instead, they argued solely that the payment orders were "erroneous as a matter of law" because: (1) the trial court had no statutory authority to enter them, and (2) Steven Claro and Southland Display were not owners of the property.

abandoned on appeal, were sufficient to preserve the issue for purposes of the current appeal.[13]

*3. Defendants have forfeited their argument that the receiver was not entitled to recover for legal fees that Mark Adams or Andrew Adams incurred in the federal action*

Defendants also argue that even if the trial court had authority to order them to pay the attorneys' fees that the receiver incurred in the federal action, it had no authority to order them to pay the fees that were incurred defending Mark Adams and Andrew Adams in that action because the federal complaint named the Adams's "in their individual capacities for acts exceeding the scope of their authority." According to defendants, "since a receiver may be liable for acts outside the scope of his duties, the order rendering appellants personally liable for Adams' defense was improper to the extent the costs related to actions outside the scope of Adams' authority." Defendants have not identified any specific fees incurred in the federal action that pertained solely to the defense of the Adams defendants in their individual capacities, nor have they offered any method for determining what percentage of the overall fees incurred in the federal matter related to the Adamses, rather than to the receiver generally.

The receiver contends defendants have forfeited this argument by failing to raise it in the trial court. Defendants do not dispute they failed to raise the argument, but contend that forfeiture is inapplicable because the issue involves a "question of law" and the "relevant fact are not disputed." For the same reasons set forth in the prior section, even if we were to assume this issue involves a question of law on undisputed facts, we would decline to exercise our discretion to review the issue for the first time on appeal.

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**13** We likewise deem forfeited defendants' argument that the receiver could not recover "for legal fees billed by [Mark Adams] or Andrew Adams because an attorney litigating in pro per cannot recover for attorneys fees." This issue was never raised in the trial court proceedings.

*4. The trial court did not abuse its discretion in calculating the amount of the attorneys' fee award*

The defendants also raise various arguments related to the amount the trial court awarded the receiver for fees incurred in the federal action. "The determination of what constitutes the actual and reasonable attorney fees are committed to the sound discretion of the trial court." (*Fed-Mart Corp. v. Pell Enterprises, Inc*. (1980) 111 Cal.App.3d 215, 228; *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095 [trial court has "broad authority to determine the amount of a reasonable fee"].) "The 'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court.'" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) "The trial court's decision will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence." (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545, fns. omitted.)

Defendants raise three claims regarding the court's calculation of the amount of the fee award: (1) the total amount of time billed in the federal action was unreasonable; (2) the hourly rate for the receiver's outside counsel Jeanne Irving was unreasonable, and unsupported by substantial evidence; and (3) there was insufficient evidence to support the amount of fees the receiver requested for work Irving performed in August of 2014.

*a. Summary of evidence the receiver provided in support of its fee request*

Before addressing defendants' claims, we summarize the evidence that the receiver provided in support of its motion for fees. Andrew Adams, the general counsel for CRG, provided a declaration explaining that the receiver was seeking a total payment of $251,065, which included $153,513 in attorneys' fees incurred in the federal action, and an additional $97,552 for fees and costs the receiver had incurred in matters unrelated to the federal action.

In regard to attorneys' fees incurred in the federal action, Adams explained that the receiver was seeking $130,816 for legal work performed by Jeanne Irving, and $22,697 for legal work performed by CRG employees Mark and Andrew Adams. Adams explained that these amounts were calculated using a billing rate of $200 an hour for his services, $350 an hour for the services of Mark Adams and $820 an hour for the services of Jeanne Irving, who was a principal at the law firm of McKool Smith Hennigan (MSH).

The declaration divided the fees incurred in the federal action into two time periods: fees incurred prior to May 23, 2014, and fees incurred from May 23, 2014 to August 31, 2014. For the period prior to May 23, 2014, the receiver incurred $82,402 in fees, which included $61,476 for work Irving had performed and $20,925 for work CRG had performed. Adams provided billing statements from CRG and MSH that documented all of these charges.

For the period between May 23rd and August 31st, the receiver incurred an additional $71,109 in fees, which included $69,339 for work Irving had performed and $1,770 for work that CRG had performed. Adams provided billing statements documenting CRG's expenditures for this period. For Irving's expenditures, Adams provided billing statements from MSH showing that Irving had billed $16,646 in fees between May 23, 2014 and July 31, 2014. However, at the time the declaration was filed on September 5, 2014, Irving's August billing statement was not yet available. Thus, Adams's declaration directed the court to a section of Irving's declaration describing the work she had performed in August to support the additional $52,693 in fees that were not reflected in Irving's May and July billing statements.

Adams's declaration also described the legal work he had personally performed in the federal action, explaining that he had conducted substantial amounts of research and drafted early versions of various motions filed in the federal court. Adams also explained that as a result of defendants' conduct in the federal action, he had been forced to prepare multiple ex parte applications seeking extensions to file certain documents. Adams asserted that shortly after CRG was served with the federal complaint, he had requested that the defendants stipulate to an extension of time to file an answer so that CRG could

obtain the trial court's permission to retain outside counsel. The defendants refused, requiring Adams to prepare an ex parte application for an extension. Adams was forced to prepare a similar ex parte application after defendants declined to stipulate to an extension to file a SLAPP motion.

Adams's declaration also addressed Jeanne Irving's billing rate, asserting that he was familiar with the local market and believed her "rate of $820/hour [wa]s appropriate for a member of the bar with her legal training, expertise and experiences." Adams also provided the court a copy of the "2013 National Law Journal Billing Survey" showing the average billing rates of partners at seven Los Angeles law firms. The survey showed that billing rates for "high rate" partners ranged from $440 to $975 an hour, with an average hourly rate of approximately $800.

Jeanne Irving provided a declaration in support of the fee motion stating that she had been licensed to practice in California since 1978, had over 35 years litigating in state and federal court and was a graduate of Harvard Law School. Irving confirmed that her standard billing rate at MSH was $820 an hour, and that her "professional time was fully employed at this hourly rate before [she] undertook receivers' representation in this matter." Irving also asserted her rate was "well within the norm for senior partners in law firms with offices in Los Angeles, and reflects the market value of the type of legal service and experience sought by clients in major metropolitan areas . . . who face serious legal challenges."

Irving's declaration also described the legal work she had performed in the federal action. Immediately after being retained by the receiver, Irving had reviewed the original federal complaint and the responsive pleadings that other co-defendants had filed in the matter. While Irving was formulating a response to the complaint, the defendants filed an ex parte motion for leave to file a first amended complaint, which the district court granted. After reviewing and analyzing the amended pleading, Irving, "together with Mark and Andrew Adams…, prepared a motion to dismiss the First Amended Complaint." Irving explained that the motion "required substantial preparation and research, as it involved [the]…application" of several complex legal doctrines, including

"the *Barton* Doctrine," "the *Noerr-Pennington* doctrine" and "the *Rooker-Feldman* doctrine." In addition to the time spent researching and writing the motion, Irving also expended "substantial time" preparing a request for judicial notice.

Shortly before the defendants' opposition to the receiver's motion to dismiss was due, defendants "served a broad array of burdensome discovery on the receiver . . . despite the fact that such discovery was prohibited as premature under Rule 26(d) of the Federal Rules of Civil Procedure." The defendants also filed an "ex parte application for an open-ended extension of time to file their opposition to the motion[] to dismiss until after the discovery had been provided." After meeting and conferring with defendants' counsel on these matters, Irving prepared a motion to quash the discovery requests and an opposition to the ex parte application. The trial court denied the defendants' discovery requests and their ex parte application, warning that "further ex parte applications that utterly fail to meet the standard for emergency ex parte relief may result in sanctions." On the day the defendants' opposition to the receiver's motion to dismiss was due, they voluntarily dismissed the receiver from the federal action.

Following the dismissal, Irving prepared a motion for sanctions in the federal court seeking an order compelling defendants to pay the receiver's attorneys' fees. Irving's declaration explained that although the trial court had previously ordered defendants to pay for any fees the receiver incurred in the federal matter, defendants had appealed that order, contending the court had no authority to impose those fees against Claro or any other defendant in the receivership proceedings. Irving further explained that if the Court of Appeal were to agree with Claro's position, "the federal court would be the only court empowered to order Claro to pay those defense costs."

Irving also explained that the defendants' opposition to the attorneys' fees motion, filed on July 25, 2014, took "a scatter-shot approach, throwing up a vast number of issues requiring a response in [r]eceivers' reply brief. In addition to contesting the legal issues relating to the propriety of a fee award to [r]ecievers, . . . [defendants] inserted a plethora of arguments purporting to defend the filing of the federal claims against [re]ceivers – arguments [they] had chosen not [to] make when the time had come for them to respond

to [r]ecievers' [m]otion to [d]smiss the [first amended complaint]." Irving asserted that although she did not believe any of the defendants' arguments were valid, they "each required analysis, legal research and the preparation of a specific response. . . . As a result, the reply was 25 pages long and very detailed."

*b. The defendants have failed to demonstrate that the number of hours Irving billed in the federal action was unreasonable*

Defendants argue that the amount of time Irving billed in the federal action, which amounted to approximately 160 hours, was "manifestly unreasonable."

Defendants initially contend the number of hours Irving billed to prepare the motion to dismiss, 33.6 hours, was unreasonable because Adams's declaration indicates he performed a substantial portion of the preliminary research and drafting related to the motion. The mere fact Adams aided in the preparation of the motion to dismiss is not sufficient to show the trial court abused its discretion in crediting Irving's statements regarding the complexity of the motion, and the time it took her to prepare it. (*Steiny & Co. Inc. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293 ["[a]n attorney's testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees. . . . The trial court did not err in crediting the attorney declaration here, which included detailed evidence of hours spent, tasks concluded, and billing rates"].) The billing statements that Irving provided, in addition to her description of the work she performed in preparing the motion to dismiss, constitute substantial evidence supporting the court's findings.

Defendants next assert that the amount of time Irving billed after having filed the motion to dismiss (approximately 117 hours) was "unreasonable on its face." Defendants assert these additional hours were not reasonable because they were incurred for the sole purpose of preparing a motion for attorneys' fees that was both unnecessary and unsuccessful.

Although defendants indicate that all of the time Irving billed after filing the motion to dismiss related to the preparation of a motion for attorneys' fees, her

declaration and billing statements demonstrate she performed several legal tasks that were unrelated to the motion for fees. Specifically, the receiver's evidence shows Irving billed time for, among other things, attending meet and confers with opposing counsel, drafting a motion to quash defendants' untimely discovery requests and drafting an opposition to defendants' ex parte application to delay the receiver's motion to dismiss until discovery was completed. Defendants' appellate brief ignores these additional legal tasks.

The record also demonstrates that, contrary to the defendants' assertions, the federal attorneys' fees motion was neither "unnecessary" nor "unsuccessful." As Irving explained in her declaration, the receiver brought the federal motion for attorneys' fees because the defendants had appealed the trial court's order requiring that Claro, Southland Display and Village Inn pay those fees as a cost of the receivership. In that appeal, and various other appeals that were pending when the receiver filed the federal motion for fees, defendants had taken the position that the court had no authority to order Steven Claro or the other defendants to pay any of the receivership costs. According to Irving, the receiver was concerned that if this argument succeeded in the appellate court, the receiver would have no recourse to obtain its fees in the federal action. The federal motion for fees was necessary to protect against that contingency.

The defendants' assertion that the federal motion for fees was "unsuccessful" is likewise misleading. The receiver's federal motion only sought a determination of whether Claro was liable for the receiver's attorneys' fees; the motion did not request the court to determine the amount of the fees that were due. In denying the motion, the district court explained that although "Federal Rule of Civil Procedure 54(d)(2)(C) g[ave] the [c]ourt discretion to bifurcate the motion in this manner, . . . [the rule] 'is permissive; the court "may" decide liability for fees first, but need not.'" The court further explained that prior authority indicated bifurcation was appropriate "'in actions in which the liability issue is doubtful and the valuation issues are numerous and complex.'" The court found that the receiver's request for fees "[was] not such a motion and that bifurcation [was] therefore not warranted." The court specifically invited the receiver to

re-file a motion that addressed "both [its] entitlement to attorneys' fees and the amount of attorneys fees requested." The court's order makes clear it did not find the receiver had failed to demonstrate it was entitled to attorneys' fees; it simply deferred determination of that issue until the receiver submitted additional briefing regarding the amount of fees it had incurred.

Defendants have also presented no evidence showing that that the amount of time Irving billed to complete the tasks she performed after filing the motion to dismiss was actually unreasonable. Generally, an appellant asserting that a trial court awarded fees for unnecessary or duplicative work is required to provide evidence in support of such assertions. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 560 [affirming attorneys' fees award where "appellants failed to file any declarations in support of their opposition to the fee motions" or any "evidence to contradict [prevailing party's] description of [the legal work performed]"]; *Braun v. Chronicle Publishing Co*. (1997) 52 Cal.App.4th 1036, 1052-1053 [absent evidence that fee award was based on unnecessary or duplicative work, the award will be affirmed]; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659 [fee award affirmed where plaintiff failed to present any evidence that the award was based upon unnecessary or duplicative work or any other improper basis] [disapproved of on other grounds in *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.) In this case, defendants merely provide conclusory statements that the amount of time Irving expended on the tasks she performed (which included the preparation of a complex, 25-reply brief in support of the motion for fees) was unreasonable.

Finally, defendants fail to discuss the fact that the trial court did reduce the receiver's requested fee award by $26,065, equivalent to almost 20 percent of the amount the receiver sought for Irving's services. Although the record does not reflect the specific reasons for the reduction, the court's actions indicate that it independently assessed the receiver's request for fees, and awarded an amount it believed appropriate.

Given each of the factors discussed above, defendants have presented no grounds that would permit us to conclude the trial court abused its discretion in calculating the reasonable number of hours incurred in defending the federal action.

*c. The trial court did not abuse its discretion in approving Irving's hourly rate*

Defendants next contend that the court abused its discretion in approving Irving's billable rate of $820 per hour. According to defendants, we must reverse the attorney fee award "with directions the trial court reconsider the issue" because: (1) Irving's hourly rate was "unreasonable on its face"; and (2) "there was no substantial evidence supporting an $820 hourly rate." Neither argument has merit.

While defendants contend the rate was "unreasonable on its face," presumably meaning the rate is unreasonable as a matter of law, they cite no legal authority in support of this assertion. As the appellants, defendants had the burden to affirmatively demonstrate error. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["A judgment or order of the lower court are presumed correct. . . ., [and] error must be affirmatively shown"].) Simply stating that an hourly rate is unreasonable on its face, without identifying any supporting legal authority, is not sufficient to demonstrate error.

Defendants' contention the receiver provided no evidence to support the $820 rate is equally unavailing. In her declaration, Irving stated that her standard hourly at MSH was $820 per hour, and that she was fully employed at this rate prior to taking the receiver's case. Irving also stated that her rate was "well within the norm for senior partners in law firms with offices in Los Angeles." In addition to this declaration, the receiver submitted a national survey showing that Irving's hourly rate fell within the range of experienced partners at Los Angeles law firms. Defendants provide no argument explaining why the court could not rely on these materials in assessing the reasonableness of Irving's hourly rate.[14]

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[14] Defendants' reply brief in Case No B260292 repeatedly asserts that they "objected to" various pieces of evidence the receiver submitted in support of its motion for fees,

Moreover, the trial court's statements at the motion hearing make clear that its determination of the of reasonable value of Irving's services was based, at least in part, on the court's own expertise. (See generally *Niederer v. Ferreira* (1985) 189 Cal.App.3d 1485, 1507 ["When apprised of the pertinent facts, the trial court may rely on its own experience and knowledge in determining the reasonable value of the attorney's services"]; see also *In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 300.) The trial court informed the parties it had extensive experience with attorneys' fees motions, that it was permitted to rely on "its own judgment as to what is reasonable" and that it had previously considered "requests for approval of attorneys' fees far in excess of $820 per hour." The court also explained that, based on these prior experiences, it found Irving's rate fell within the range of what was acceptable for an attorney of her stature and experience.

The evidence the receiver submitted in support of its motion for attorneys' fees, combined with the court's own expertise, provided a sufficient basis to support Irving's hourly rate of $820.

*d. Substantial evidence supports the court's award of fees for work Irving performed between May 23, 2014 and August 31, 2014*

For the first time on appeal, defendants also argue there was insufficient evidence to support a portion of the trial court's attorney fee award for work that Irving purportedly performed between May 23, 2014 and August 31, 2014. The receiver's motion requested $69,339 for work that Irving performed during that period, which

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including the national survey. To the extent defendants are suggesting we may not (or should not) consider this evidence merely because they objected to it below, they are incorrect. The hearing transcript shows that the trial court overruled all of the defendants' evidentiary objections. Defendants have not challenged those rulings on appeal. They have therefore waived "any issues concerning the correctness of the trial court's evidentiary rulings…."' [Citations.]" (*Roe v. McDonald's Corp*. (2005) 129 Cal.App.4th 1107, 1114; see also *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074 [appellant's failure to properly challenge the trial court's many evidentiary rulings forfeits the issue on appeal]; *Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1492, fn. 14 [same].)

equals approximately 85 hours at her billing rate. In support, the receiver provided billing statements showing that Irving had billed $16,646 from May 23rd through July 31st (approximately 20 hours). The receiver further explained that because Irving's August billing statement was not available at the time the motion for fees was filed, the work she had completed in August was addressed in her declaration. Irving's declaration, in turn, stated that after receiving defendants' opposition to the federal motion for attorneys' fees on July 25th, she had prepared a "detailed" 25-page reply brief addressing the numerous arguments defendants had raised in their opposition.

Defendants now argue there was insufficient evidence to support the trial court's "implied finding" that Irving billed $69,339 between May 23rd and August 31st because the receiver's billing statements showed Irving only billed $16,646 during that period. Defendants appear to contend that in the absence of a billing statement showing the amount of time Irving billed in August of 2013, the court was not permitted to award any further fees for that time period. Under this theory, the court should have reduced the attorneys' fee award by $52,693 (approximately 64 hours of Irving's time), which is the difference between the amount Irving's billing statements showed she billed during that period, and the amount the receiver requested for that period.

The receiver argues that defendants have forfeited this issue by failing to raise it in the proceedings below. Defendants, however, contend that "the forfeiture rule does not apply to substantial evidence arguments." (See *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17 ["Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule"].) Although couched in terms of "substantial evidence," the defendants' appellate brief demonstrates they are instead challenging the type of evidence that must be produced to support an attorneys' fee award. The brief states: "Irving's [billing statements] through July 31, 2014 was for $16,646, not $69,336. Thus, any finding Irving had billed Adams $69,339 after May 23, as opposed to only $16,646, was unsupported by substantial evidence." The clear implication of this argument is that the receiver may only be compensated for attorneys'

fees that are supported by a billing statement. Had the defendants raised this argument in their opposition to the motion for fees or at the motion hearing, the receiver would have had an opportunity to either produce Irving's August billing statement, or otherwise explain why the statement was unnecessary.[15]

For the purposes of this appeal, however, we need not decide the question of forfeiture because defendants' argument fails on the merits. "[T]here is no legal requirement that an attorney supply billing statements to support a claim for attorney fees…. 'An attorney's testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.' [Citations.] Of course, the attorney's testimony must be based on the attorney's personal knowledge of the time spent and fees incurred. [Citation.] Still, precise calculations are not required; fair approximations based on personal knowledge will suffice…." (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.)

Adams's declaration set forth the amount that Irving reportedly billed CRG from May 23rd to August 31rd. Irving, in turn, explained the work she performed after receiving the defendants' opposition to the federal motion for attorneys' fees in late July. She also explained the complexity of the task, noting that the "vast number of issues" defendants raised in the opposition required her to prepare a "detailed" reply brief totaling 25 pages. Moreover, as discussed above, the trial court reduced receiver's attorneys' fees request by over $26,000, which equals approximately 32 hours of Irving's

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**15** Although Irving's August billing statement was not available at the time the receiver filed its motion for fees on September 5, 2014, the receiver alleges in its respondent's brief that Irving sent defendants' counsel a copy of the August billing statement on September 19, 2014, almost a full month before the motion was heard. Defendants' reply brief does not dispute they received the August billing statement, but contends that fact is not relevant because such evidence was not before the trial court when it decided the motion for fees. To the extent Irving did provide defendants a copy of the August billing statement, and the billing statement accurately reflects the amounts sought in the fees motion, it is troubling that defendants would nonetheless choose to pursue this argument on appeal without having raised it below, which would have allowed the receiver to introduce the relevant evidence into the record.

time. We find no abuse of discretion in the trial court's determination of the amount of the fee award.

*5. We will not consider arguments that were considered and rejected in Whittier I*

Defendant Steven Claro also raises multiple arguments regarding the trial court's attorneys' fees award that we considered and rejected in *Whittier I* (Case No. B250819). Specifically, Claro argues that: (1) the trial court had no authority to order the owners of the receivership property to pay the costs of the receivership (including the attorneys' fees incurred in the federal action) because Health and Safety Code section 17980.7, subdivision (c)(15) did not take effect until after the receivership was initiated; and (2) the trial court had no authority to order Claro to pay the attorneys' fees because he is not an owner of the receivership property. We decline to address these issues under the law of the case doctrine, which is intended to deter parties from engaging in the very type of wasteful and unnecessary relitigation tactics that defendant Claro has pursued here. (See *Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 309 ["Under the law of the case doctrine, '"the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case."' [Citation.] . . . The doctrine promotes finality by preventing relitigation of issues previously decided"].)

Although Claro asserts that he elected to "reiterate" these previously rejected arguments to "preserve them for further review," he also acknowledges that the California Supreme Court has already denied defendants' petition for review in *Whittier I*. The issues we addressed in that case are therefore final, negating any possible basis for Claro to relitigate them again in this subsequent appeal. The parties are admonished that engaging in similar conduct in any future proceedings before this court may result in sanctions.

*6. The trial court's attorneys' fees award is reversed as to defendant Southland Display Company*

In *Whittier I*, we held that the trial court had no authority to order Southland Display to pay the costs of the receivership because there was no evidence Southland owned the receivership property at any time during the receivership proceedings. In the orders at issue in this case, the trial court ruled that the receiver's attorneys' fees in the federal action qualified as a "receivership expense, and [were] thus assignable against the receivership property and its owners." The court subsequently ordered defendants Claro and Southland Display jointly and severally liable for $225,000 in attorneys' fees and other receivership costs. Given our prior holding in *Whittier I*, we must reverse this order of payment as defendant Southland Display.

## DISPOSITION

Defendants' appeal of the trial court order dated January 21, 2014 (Case No. B255573) is dismissed for lack of jurisdiction because the order is not appealable; defendants' appeal of the trial court order dated May 20, 2014 denying their application for preliminary injunction (Case No. B257744) is dismissed as moot; the trial court's order dated November 3, 2014 is reversed as to defendant Southland Display Company and affirmed as to defendant Steven Claro. Respondents shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J. SEGAL, J.