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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

MEHRDAD KOHANIM et al., Plaintiffs and Appellants, v. EILEL NAMVAR et al., Defendants and Respondents.	B242091 (Los Angeles County Super. Ct. No. BC425817)

APPEAL from order of the Superior Court of Los Angeles County, Steven J. Kleifield, Judge. Affirmed.

Krane & Smith, Marc Smith, Douglas L. Day and Cynthia Hodes for Plaintiffs and Appellants.

Ervin Cohen & Jessup, Geoffrey M. Gold and Mathew J. Eandi for Defendant and Respondent Mousa Namvar.

Epport, Richman & Robbins, Steven C. Huskey for Defendant and Respondent Eilel Namvar.

INTRODUCTION

Plaintiffs and Appellants Mehrdad Kohanim (Kohanim) and Morad Mottahedeh and Manijeh Mottahedeh (the Mottahedeh Plaintiffs) (collectively Plaintiffs) jointly sued Defendants Mousa Namvar (Mousa) and Eilel Namvar (Eilel)[1] under two separate personal guaranties for the payment of two loans made to non-party Namco Capital, Inc. (Namco). After Plaintiffs failed to comply with the trial court's order to post a bond pursuant to Code of Civil Procedure section 1030, the court dismissed the action and entered judgment for Defendants. Defendants jointly moved for an award of $159,850 in attorney fees pursuant to Civil Code section 1717 based on attorney fee clauses in one of the guaranties and both of the underlying promissory notes. The trial court awarded Defendants attorney fees against Plaintiffs, jointly and severally, in the reduced amount of $129,850. Plaintiffs challenge the fee award on the grounds that (1) the Mottahedeh Plaintiffs cannot be liable for attorney fees because the guaranty upon which they sued does not contain an attorney fee clause; (2) Plaintiffs cannot be held jointly and severally liable for the entire fee award because the Mottahedeh Plaintiffs were not parties to the causes of action asserted by Plaintiff Kohanim, and vice versa; and (3) the evidence did not support the amount of the fee award. We find no error in the trial court's award of attorney fees and, therefore, affirm.

FACTUAL BACKGROUND

1. *The Kohanim Promissory Note and Guaranty*

Plaintiffs' operative complaint alleges that, on May 27, 1997, Namco executed a written promissory note in favor of Rahmatollah Kohanim in the sum of $435,000 (the Kohanim Note). In connection with the Kohanim Note, Defendants, together with non-party Ezri Namvar, executed a "Guaranty of Payment of Promissory Note" guaranteeing payment on demand of all principal and interest due and owing under the Kohanim Note in the event of default by Namco (the Kohanim Guaranty).

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[1] Because Defendants share the same last name, we use their first names when referring to them individually.

Both the Kohanim Note and Kohanim Guaranty contain attorney fee clauses requiring payment of all costs and expenses, including attorney fees, incurred by the holder of the Kohanim Note in connection with collection of the debt or enforcement of the holder's rights under the Kohanim Note and Kohanim Guaranty.

On June 18, 1998, Rahmatollah Kohanim assigned the Kohanim Note and Kohanim Guaranty to Plaintiff Kohanim.

On or about August 1, 2008, Namco defaulted on the Kohanim Note. At the time, the balance due on the Kohanim Note was $250,000, together with accrued interest.

Plaintiff Kohanim demanded Defendants pay the outstanding balance pursuant to the Kohanim Guaranty. Defendants refused.

2. *The Mottahedeh Promissory Note and Guaranty*

On June 4, 2003, Namco executed a written promissory note in favor of the Mottahedeh Plaintiffs in the sum of $240,312.49 (the Mottahedeh Note). The same day, Defendant Eilel executed and delivered an undated check in the amount of $240,000, payable to the Mottahedeh Plaintiffs, which Defendant Eilel allegedly represented was his personal guaranty of the Mottahedeh Note (the Mottahedeh Guaranty).

The Mottahedeh Note contains an attorney fee clause requiring the borrower to pay "all costs and expenses incurred or payable by Holder in connection with any litigation brought for the enforcement or collection of this Note, including court costs and attorneys' fees and costs actually incurred." The Mottahedeh Guaranty contains no attorney fee clause.

On or about August 1, 2008, Namco defaulted on the Mottahedeh Note. Because Namco allegedly had been making interest-only payments, the Mottahedeh Plaintiffs claimed the entire principal balance of 240,312.49 was due on the Mottahedeh Note, together with accrued interest.

The Mottahedeh Plaintiffs demanded Defendant Eilel pay the outstanding balance pursuant to the Mottahedeh Guaranty. Defendant Eilel refused.

PROCEDURAL HISTORY

1. *Plaintiffs File a Joint Action Against Defendants Seeking Damages and Attorney Fees Pursuant to the Promissory Notes and Guaranties*

On November 12, 2009, Plaintiffs jointly filed their initial complaint against Defendants asserting separate causes of action for breach of the Kohanim Guaranty and breach of the Mottahedeh Guaranty. Plaintiffs were jointly represented by the same counsel, Krane & Smith. After multiple amendments to the pleadings in response to a series of demurrers by Defendants, Plaintiffs filed their operative Third Amended Complaint on November 24, 2010.

In each iteration of their complaint, Plaintiffs asserted the same four causes of action: (1) breach of the Kohanim Guaranty by Plaintiff Kohanim against both Defendants; (2) money due by Plaintiff Kohanim against both Defendants; (3) breach of the Mottahedeh Guaranty by the Mottahedeh Plaintiffs against Defendant Eilel; and (4) money due by the Mottahedeh Plaintiffs against Defendant Eilel. The first and second causes of action were asserted by Plaintiff Kohanim only. The third and fourth causes of action were asserted by the Mottahedeh Plaintiffs only.

With respect to the first cause of action for breach of the Kohanim Guaranty, in addition to compensatory damages, Plaintiff Kohanim sought an award of attorney fees pursuant to the fee clauses contained in the Kohanim Note and Kohanim Guaranty.

Likewise, with respect to the third cause of action for breach of the Mottahedeh Guaranty, in addition to compensatory damages, the Mottahedeh Plaintiffs sought an award of attorney fees pursuant to the attorney fee clause contained in the Mottahedeh Note, which the Mottahedeh Plaintiffs sought to enforce through the Mottahedeh Guaranty.

2. *The Parties Engage In Extensive Discovery And Motion Practice; Defendant Mousa Retains Separate Trial Counsel*

In preparing the case for trial, the parties agree there was considerable discovery and motion practice, including depositions in New York and California, extensive written

discovery, document demands and third party record subpoenas, cross motions for summary judgment and numerous court appearances for hearings on contested matters.

A few weeks prior to the original May 18, 2011 trial date, Defendant Mousa retained the law firm of Rutter Hobbs & Davidoff, Inc. (Rutter Hobbs) to serve as his separate trial counsel. Prior to Rutter Hobbs' retention, both Defendants were represented by Reeder Lu, LLP (Reeder Lu) and later by Salisian|Lee LLP (Salisian|Lee) after Defendants' attorney, Richard H. Lee, left Reeder Lu. After the original trial date was continued to October 5, 2011, Rutter Hobbs and Salisian|Lee continued as co-counsel, with the intention that Defendant Mousa would be represented by only Rutter Hobbs during trial.

3. *Plaintiffs Fail to Post a Bond As Security for Defendants' Attorney Fees and Costs; The Trial Court Dismisses the Action and Enters Judgment for Defendants*

On July 19, 2011, Defendants each filed separate motions to require Plaintiffs to post a bond as security for Defendants' attorneys fees and costs in the amount of $110,000 pursuant to Code of Civil Procedure section 1030.[2] Each motion was made on the grounds that Plaintiffs were out of state residents residing in New York, Defendants had incurred and expected to incur significant attorney fees and costs in defending the action through trial, and there existed a reasonable possibility that Defendants would

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[2] Code of Civil Procedure section 1030 provides, in pertinent part: "(a) When the plaintiff in an action or special proceeding resides out of the state . . . the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action . . . . [¶] (b) The motion shall be made on the grounds that the plaintiff resides out of the state . . . and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding. . . . [¶] (c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees. [¶] (d) . . . If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made."

prevail in the action. Plaintiffs filed a combined opposition to both of Defendants' motions.

On August 10, 2011, after full briefing and a hearing on Defendants' motions, the trial court granted the motions and ordered Plaintiffs to furnish security in the amount of $110,000 within 30 days.

Plaintiffs failed to post a bond by the September 9, 2011 deadline specified in the court's order. On September 22, 2011, Defendants brought an *ex parte* application for mandatory dismissal of the action pursuant to Code of Civil Procedure section 1030, subdivision (d). On October 13, 2011, following two hearings and briefing by the parties on the application for dismissal, the trial court dismissed the action and entered judgment for Defendants.

On November 14, 2011, Plaintiffs jointly moved for relief from the order of dismissal and judgment pursuant to Code of Civil Procedure section 473, subdivision (b) on the ground that the Plaintiffs' failure to post a bond was solely the result of the mistake, inadvertence, surprise, or neglect of Plaintiffs' counsel. Defendants filed a joint opposition to Plaintiffs' motion. On January 6, 2012, the trial court denied Plaintiffs' motion.

4. *The Trial Court Awards Defendants Attorney Fees in a Reduced Amount, Jointly and Severally Against Plaintiffs*

On December 16, 2011, Defendants filed a joint motion for attorney fees and costs in the amount of $159,850 to be awarded jointly and severally against Plaintiffs.[3] Defendants asserted the Kohanim Note and Mottahedeh Note each authorized an award of fees. As prevailing parties on an action to enforce those Notes and the corresponding Guaranties, Defendants claimed entitlement to their reasonable attorney fees pursuant to Civil Code section 1717 and Code of Civil Procedure section 1033.5. Defendants

[3] Defendants' motion originally sought a total award of $146,041.03 in attorney fees and costs. After incurring an additional $13,809 in fees opposing Plaintiffs' motion for relief from dismissal, Defendants filed supplemental declarations seeking these additional sums.

supported their motion with attorney declarations attaching billing statements and itemized billing entries by the three law firms that had served as counsel for Defendants during the litigation.

Plaintiffs jointly opposed the motion on three grounds. First, Plaintiffs argued that Defendants were not entitled to fees from the Mottahedeh Plaintiffs because the Mottahedeh Guaranty did not contain an attorney fee clause and the Mottahedeh Plaintiffs were not parties to the first and second causes of action to enforce the Kohanim Guaranty. Second, Plaintiffs claimed there was considerable duplication of work, particularly with respect to Defendant Mousa, who had employed two law firms as co-counsel. Third, Plaintiffs argued that Defendants' evidence was insufficient to support the amount of fees requested because the billing records contained block billing and the billing record submitted by Salisian|Lee was only a compilation of time entries as opposed to a copy of the firm's actual monthly bills.

On January 19, 2012, the trial court heard Defendants' attorney fee motion. The hearing mainly focused on Plaintiffs' contention that there had been significant duplication in the work performed for Defendants, particularly during the period in which Defendant Mousa was represented by both the Salisian|Lee and Rutter Hobbs firms. Defendants explained that it was necessary to keep Salisian|Lee as co-counsel for continuity, given that the firm had been Defendant Mousa's counsel for over a year, but the intention was that Rutter Hobbs would be sole counsel at trial, and the bulk of Rutter Hobbs' time was therefore spent on trial preparation. Defendants maintained that the itemized billing records would show that the division of work was appropriate and reasonable. Plaintiffs argued that purported deficiencies in defense counsels' time records made it difficult to discern the true extent of duplication. And, even setting duplication aside, Plaintiffs argued deficiencies in defense counsels' billing records required a substantial reduction to the fees requested. The trial court took the matter under submission.

On January 23, 2012, the trial court issued its ruling granting Defendants' motion for attorney fees. The court awarded Defendants attorney fees and costs against all Plaintiffs, jointly and severally, in the sum of $129,850. This constituted a $30,000 reduction to the amount requested by Defendants. On June 11, 2012, the trial court amended the judgment to reflect the award of attorney fees and costs. Plaintiffs' appeal followed.

CONTENTIONS AND STANDARD OF REVIEW

Plaintiffs make the following three contentions on appeal: (1) the Mottahedeh Plaintiffs cannot be liable for attorney fees because the guaranty under which they sued does not contain an attorney fee clause; (2) Plaintiffs cannot be held jointly and severally liable for the entire fee award because the Mottahedeh Plaintiffs were not parties to the first and second causes of action to enforce the Kohanim Guaranty and Plaintiff Kohanim was not party to the third and fourth causes of action to enforce the Mottahedeh Guaranty; and (3) the evidence did not support the amount of the fee award.

"On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs . . . have been satisfied amounts to statutory construction and a question of law. [Citations.] Stated another way, to determine whether an award of attorney fees is warranted under a contractual attorney fees provision, the reviewing court will examine the applicable statutes and provisions of the contract. Where extrinsic evidence has not been offered to interpret the [contract], and the facts are not in dispute, such review is conducted de novo. [Citation.] Thus, it is a discretionary trial court decision on the propriety or amount of statutory attorney fees to be awarded, but a determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo. [Citations.]" (*Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142.)

Consistent with these principles, we review de novo Plaintiffs' first two contentions regarding the contractual and statutory bases for the attorney fee award. We review Plaintiffs' third contention regarding the amount of the attorney fee award for abuse of discretion. Finding no error in the bases for the award or the amount of attorney fees awarded, we affirm.

DISCUSSION

1. *The Attorney Fee Clause in the Mottahedeh Note Authorized the Award of Attorney Fees Against the Mottahedeh Plaintiffs*

Plaintiffs contend there was no contractual basis for the award of attorney fees against the Mottahedeh Plaintiffs because the Mottahedeh Guaranty did not contain an attorney fee clause and the Mottahedeh Plaintiffs were not parties to any claim based on the Kohanim Guaranty. However, as Defendants point out, although the Mottahedeh Guaranty did not contain an attorney fee clause, the Mottahedeh Note did. Defendants contend that because the Mottahedeh Plaintiffs sought to enforce the debtor's obligations under the Mottahedeh Note against Defendant Eilel by suing upon the Mottahedeh Guaranty, the documents must be construed as one instrument, and Defendant Eilel is therefore entitled to an award of fees to the same extent that fees would have been available to the Mottahedeh Plaintiffs had they prevailed on their contract claim. We agree.

Our Supreme Court has long recognized that where a guaranty represents an independent undertaking to pay a debt owed by the maker of a promissory note, "the note and the guaranty must be construed to be but one instrument, constituting a single contract, upon which the liability of the guarantor, to the extent of its obligation, [is] commensurate with that of the maker of the note." (*Anglo-California T. Co. v. Oakland Rys*. (1924) 193 Cal. 451, 466 (*Anglo-California Trust*); *Bagley v. Cohen* (1898) 121 Cal. 604, 606 ["Their guaranty that [debtor] would perform his contract was an original undertaking by them, and their liability as guarantors is commensurate with that of [debtor]"].) This principle has been applied in the specific context of contractual attorney fees to hold a guarantor liable for fees incurred in a suit to enforce a guaranty where the

underlying promissory note required the payment of attorney fees, though the guaranty did not. (*Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1505 (*Niederer*), citing *Anglo-California Trust,* at p. 466; see also *Torrey Pines Bank v. Hoffman* (1991) 231 Cal.App.3d 308, 325-326 (*Torrey Pines Bank*) [affirming attorney fee award to guarantors based upon attorney fee clauses in related promissory note and deed of trust even though guarantors were successful in proving the guaranties were void and unenforceable].)

Plaintiffs contend these authorities do not apply in the instant case because Defendants were not parties to the underlying Mottahedeh Note and the Mottahedeh Guaranty makes no reference to the underlying note. Plaintiffs cite no authority for the proposition that a guaranty must have either of these characteristics for the guarantor's obligations to be held commensurate with those of the debtor on the underlying promissory note, and we have found nothing to suggest this is the law. (Cf. *Flojo Internat., Inc. v. Lassleben* (1992) 4 Cal.App.4th 713, 722 ["We have difficulty in accepting the premise that the rights of one who signs as guarantor on the note itself are different from the rights of one who executes the guaranty on a separate piece of paper"].)

On the contrary, as a general principle, "[i]n this state, the intention of the parties as expressed in the contract is the source of contractual rights and duties." (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 38 [rejecting the view that "contractual obligations flow, not from the intention of the parties but from the fact that they used certain magic words"].) Here, the Mottahedeh Plaintiffs alleged that the parties intended for the Mottahedeh Guaranty—an undated check making no reference to the underlying promissory note—to serve as Defendant Eilel's "personal guaranty [of] the Mottahedeh Note." Based on this allegation, the Mottahedeh Plaintiffs sought to hold Defendant Eilel liable for fees pursuant to the attorney fee clause in the Mottahedeh Note. Had the Mottahedeh Plaintiffs proven this allegation, it would have been necessary to conclude that Defendant Eilel's obligation was "commensurate with that of the maker of the note" [*Anglo-California Trust, supra*, 193 Cal. at p. 466], thereby entitling the

Mottahedeh Plaintiffs to an award of attorney fees under the Mottahedeh Note's attorney fee clause.[4] (*Niederer*, *supra*, 189 Cal.App.3d at p. 1505.)

Under the reciprocity principle codified in Civil Code section 1717, Defendant Eilel is entitled to his attorney fees as the prevailing party on the Mottahedeh Plaintiffs' contract claim to the same extent that the Mottahedeh Plaintiffs would have been entitled to a fee award had they prevailed. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 870-871 (*Hsu*) [to achieve section 1717's goal of establishing mutuality where a contractual provision makes recovery of attorney's fees available for only one party, "the statute generally must apply in favor of the party prevailing on a contract claim whenever that party would have been liable under the contract for attorney fees had the other party prevailed"]; *Torrey Pines Bank*, *supra*, 231 Cal.App.3d at pp. 325-326.) Accordingly, the trial court did not err in awarding attorney fees against the Mottahedeh Plaintiffs.

2. *The Trial Court Was Not Required to Allocate the Attorney Fee and Cost Award Among the Causes of Action on the Separate Guaranties*

Plaintiffs also contend that the trial court erred by awarding attorney fees jointly and severally against Plaintiff Kohanim and the Mottahedeh Plaintiffs. Because Plaintiff Kohanim was party to only the first and second causes of action based on the Kohanim Guaranty and the Mottahedeh Plaintiffs were party to only the third and fourth causes of action based on the Mottahedeh Guaranty, Plaintiffs argue the trial court was required to

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[4] For this reason, Plaintiffs' reliance on *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858 is misplaced. In *Blickman*, the subject attorney fee clause "allowed fees in 'any litigation *between the parties hereto* to enforce any provision of this Agreement . . . .' " (*Id.* at p. 896.) Because no part of the proceeding at issue in *Blickman* constituted "litigation between the parties hereto," the court held that "*neither* party could assert a right to fees under section 1717(a)." (*Ibid.*, italics added.) In contrast, here, had the Mottahedeh Plaintiffs established, as they alleged, that the parties intended for Defendant Eilel's obligations under the Mottahedeh Guaranty to be commensurate with Namco's obligations under the Mottahedeh Note, the Mottahedeh Plaintiffs would have been entitled to fees pursuant to the attorney fee provision in the Mottahedeh Note. As such, Civil Code section 1717 entitles Defendant Eilel to attorney fees to the same extent.

allocate the fee award according to the work performed with respect to each guaranty. We disagree.

A similar contention was rejected in *Acosta v. SI Corp*. (2005) 129 Cal.App.4th 1370 (*Acosta*). In *Acosta*, a group of homeowners jointly sued SI Corporation on a single theory—product liability for an allegedly faulty mesh used in the construction of their homes—and lost. SI Corporation submitted a single costs bill for all plaintiffs, and plaintiffs moved to tax costs on the ground that the company failed to apportion costs among each individual plaintiff. Plaintiffs argued that their claims were separate, not joint, because 101 different homes were involved in the litigation, and each plaintiff had an interest in only the home that he or she owned. Citing the mandatory provision of Code of Civil Procedure section 1032, subdivision (b), which provides that a "prevailing party is entitled as a matter of right to recover costs," the appellate court held that a prevailing party defendant is not required to apportion costs among plaintiffs "where the plaintiffs were represented by the same law firm and pursued a single cause of action in a joint trial." (*Acosta*, at p. 1376.) The court explained that "in most cases where a defendant is entitled to costs as of right because plaintiffs took nothing in their joint action, there will be nothing to apportion. The costs are joint and several because the plaintiffs joined together (represented by the same attorney) in a single theory of liability against a defendant who prevailed. It is up to the plaintiffs in a motion to tax costs to point out that some costs are not related to the joint theory of liability, but are specific to a particular plaintiff, and it is therefore not fair to include these in a joint award." (*Ibid.*) Because plaintiffs failed to meet this obligation, the *Acosta* court held there was no error in awarding costs jointly and severally against the group of plaintiffs, who, after satisfying the cost award, would be entitled to seek contribution from each other.

We agree with the reasoning of *Acosta* and hold that the trial court was not required, as a matter of law, to allocate attorney fees between the causes of action asserted by Plaintiff Kohanim and those asserted by the Mottahedeh Plaintiffs.[5] As in *Acosta*, Plaintiffs elected to join together in a lawsuit, represented by the same attorney, to assert essentially the same theory of liability—that Defendants were liable for Namco's debt as guarantors. While that decision presumably resulted in efficiencies for all parties, the joint prosecution of Plaintiffs' claims and the identical arguments made by their shared counsel necessarily resulted in substantial commingling of the work defense counsel performed for both Defendants on the various causes of action. Also as in *Acosta*, Defendants secured a total victory, they were the prevailing parties on every contract claim, and the award of attorney fees on each claim was mandatory. (See *Hsu*, *supra*, 9 Cal.4th at pp. 875–876 ["when the results of the litigation on the contract claims are *not* mixed—that is, when the decision on the litigated contract claims is purely good news for one party and bad news for the other . . . a trial court has no discretion to deny attorney fees to the successful litigant"].) Thus, insofar as Plaintiff Kohanim believed he should not be liable for certain fees because the subject work related entirely to the Mottahedeh Plaintiffs' claims, it was Plaintiff Kohanim's obligation to identify those fees that should have been charged to only the Mottahedeh Plaintiffs, and vice versa. Plaintiffs failed to do so in their opposition to Defendants' attorney fee motion, and they have not done so in their briefs on appeal. Accordingly, we find no error in the trial court awarding fees jointly and severally against Plaintiffs.

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[5] This is not to say that an allocation of attorney fees and costs is not permitted in suitable circumstances. Indeed, as the defendant in *Acosta* acknowledged, "the trial court has discretion to apportion costs under Code of Civil Procedure section 1032." (*Acosta*, *supra*, 129 Cal.App.4th at p. 1374.) We agree that in the appropriate case there may be "adequate justification for the trial court's exercise of discretion in allocating attorney fees among the plaintiffs, rather than imposing joint and several liability." (*Walker v. Ticor Title Co. of California* (2012) 204 Cal.App.4th 363, 375.) Consistent with *Acosta*, we hold only that the trial court was not required to allocate fees and costs in this case.

3. *The Trial Court Did Not Abuse Its Discretion with Respect to the Amount of the Attorney Fee Award*

Plaintiffs challenge the amount of attorney fees awarded by the trial court on various grounds. First, Plaintiffs contend that the trial court should not have awarded any of the fees requested by the Reeder Lu and Salisian|Lee firms because these firms submitted only their itemized time entries without copies of the actual invoices sent to Defendants. Second, Plaintiffs contend the trial court should have reduced the amount of the award further due to defense counsels' use of block-billing. Third, Plaintiffs contend a further reduction was required to account for purported duplication of efforts by the firms representing Defendants. Finally, Plaintiffs make a blanket challenge to the reasonableness of the fee award and the trial court's application of the lodestar method. After carefully considering the parties' briefs, the evidence submitted therewith, and counsels' arguments at the hearing on the fee motion, the trial court awarded Defendants $129,850 in attorney fees—$30,000 less than Defendants requested. Examining the record in the light most favorable to the trial court's ruling, we find no abuse of discretion in the amount of attorney fees awarded.

"The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' [Citations.]" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) "In reviewing a challenged award of attorney fees and costs, we presume that the trial court considered all appropriate factors in selecting a multiplier and applying it to the lodestar figure. [Citation.]" (*Ramos v. Countrywide Home Loans, Inc*. (2000) 82 Cal.App.4th 615, 621.)

"In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn*. (2008) 163 Cal.App.4th 550, 564.) " 'It is the burden of the party challenging the fee award on appeal to provide

an adequate record to assess error.' " (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) With these principles in mind, we address Plaintiffs' arguments in turn.

Plaintiffs contend that none of the fees requested by the Reeder Lu and Salisian|Lee firms should have been awarded because copies of the actual invoices these firms sent to Defendants were not included with the attorney fee motion. In Plaintiffs' view, it was not enough that these firms submitted detailed time records showing the number of hours billed and each billing attorney's hourly rate, because, without the invoices sent to Defendants, Plaintiffs claim "there was no evidence of attorneys' fees from the law firms of Reeder Lu and (Reeder Lu) and Salisian|Lee having been actually billed to or incurred by the Defendants.". Plaintiffs' argument is contrary to the law.

As our Supreme Court has observed, " '[i]t is well-settled that an award of attorney fees is not necessarily contingent upon an obligation to pay counsel. . . .' More specifically, courts have awarded attorney fees under fee-shifting statutes that apply when fees are 'incurred' when the party seeking fees was represented by a legal services organization or counsel appearing pro bono publico; 'attorney fees are incurred by a litigant "if they are incurred in his behalf, even though he does not pay them." ' [Citation.]" (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 373.) Thus, contrary to Plaintiffs' premise, it was not necessary for Defendants to establish that they were personally obligated to pay the fees incurred by Reeder Lu and Salisian|Lee—all that was required was evidence that such fees had been incurred in Defendants' behalf.[6]

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[6] *Trope v. Katz* (1995) 11 Cal.4th 274, 280, which was decided before *Lolley* and upon which Plaintiffs rely, is inapposite. There, the issue was whether an attorney litigating in propria persona could be said to have "incurred," as the term is used in Civil Code section 1717, "compensation for his time and his lost business opportunities." *Trope*, at p. 280.) Recognizing that to " 'incur' a fee . . . is to become obligated to *pay* it," the Supreme Court held that the attorney was not entitled to fees for the time he spent litigating his own case because one cannot incur an obligation to pay oneself. (*Ibid.*) That is not the case here. Here, regardless of whether Defendants incurred a personal obligation to pay the fees, the evidence is sufficient to show that attorney fees for the Reeder Lu and Salisian|Lee firms were incurred in Defendants' behalf.

That evidence was present here. The declaration of Defendants' attorney, Richard Lee, attested to the specific amount of fees incurred by the Reeder Lu and Salisian|Lee firms on behalf of Defendants in the litigation. Those amounts were supported by billing records submitted by both firms listing the work performed, the hours spent on the work listed, and the hourly rates charged for the work. The omission of actual invoices might "perhaps [be] relevant to the credibility of [Mr. Lee's] declaration; however, the lack of [invoices] does not automatically establish that there was insufficient evidence for the trial court to render a decision." (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 786.) The trial court did not err in awarding the fees incurred by the Reeder Lu and Salisian|Lee firms in Defendants' behalf.[7]

Plaintiffs next argue that the trial court should have further reduced the amount of fees awarded because "the entirety of the time entries" submitted by defense counsel were "in block-billed format." We are not persuaded.

"[B]lock billing is not objectionable 'per se,' " though it may "increase the risk that the trial court, in a reasonable exercise of its discretion, will discount a fee request." (*Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 830.) Plaintiffs make several sweeping criticisms against the general practice of block billing, but they fail to identify a single entry in defense counsels' billing records that, they contend, is so vague as to make it impossible to audit the reasonableness of the fees requested. This is not surprising, as our independent review of the billing records submitted in support of the fee motion confirms that the entries are quite detailed, and the task descriptions, though organized in daily blocks, appear to reasonably relate to the total number of hours billed

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[7] We also note that while Plaintiffs are technically correct that the reason for the omission of actual invoices was "never explained *in the Motion for Attorney Fees*" (italic added), an explanation was offered at the hearing on the motion. There, Mr. Lee explained that, in addition to fees billed for the instant litigation, the actual invoices sent to Defendants also included amounts billed for other matters in which Salisian|Lee represented Defendants. In order for the court to review a record of only the time entries related to this matter, Mr. Lee stated he had "the time entries for this case that were sent to the client" compiled from the firm's billing system.

for the block of tasks. As we have noted, " '[i]t is the burden of the party challenging the fee award on appeal to provide an adequate record to assess error.' " (*Ketchum v. Moses*, *supra*, 24 Cal.4th at pp. 1140-1141.) Without identifying specific entries that Plaintiffs claim are so vague and ambiguous as to mask the excessiveness of the fees billed, Plaintiffs have failed to meet this burden.

For the same reason, we are not persuaded by Plaintiffs' argument that the trial court erred by not further reducing the fee award based on, what Plaintiffs contend was, "considerable duplication of effort" by defense counsel, especially after Rutter Hobbs was retained as co-counsel for Defendant Mousa. The record reflects that the trial court gave significant consideration to the matter of duplicative work, particularly with respect to the period during which Defendant Mousa was represented by both Salisian|Lee and Rutter Hobbs. Indeed, the hearing on the attorney fee motion focused almost entirely upon this issue, with the trial court making numerous inquiries about whether the billing records reflected duplication and counsel for all parties offering extensive argument on the issue. As Defendants' counsel explained in their briefing and at the hearing, Rutter Hobbs was retained to serve as Defendant Mousa's separate trial counsel and the bulk of the firm's efforts focused on trial preparation. It was within the trial court's discretion to accept this explanation based on the evidence presented. Moreover, given the $30,000 reduction, which appears to have been largely based on the trial court's concern over duplication, we cannot say that the court abused its discretion by not reducing the award further.

As for Plaintiffs' final blanket attack on the reasonableness of the fee award and the trial court's application of the lodestar analysis, there is little more to say that we have not already said. We reiterate that "[t]he 'experienced trial judge is the best judge of the value of professional services rendered in his court, and . . . his judgment . . . will not be disturbed unless the appellate court is convinced that it is clearly wrong.' [Citations.]" (*Serrano v. Priest*, *supra*, 20 Cal.3d at p. 49.) Apart from Plaintiffs' assertion that "this case was not complex," and their flawed contention that attorney fees were not available under the Mottahedeh Note and Guaranty, Plaintiffs cite nothing in the record to

overcome the presumption that the trial court considered all appropriate factors in applying the lodestar method. (See *Ramos v. Countrywide Home Loans, Inc*., *supra*, 82 Cal.App.4th at p. 621.) Without such evidence, we find nothing in Plaintiffs' argument that compels us to "drastically reduce the lodestar amount" as they request. The trial court did not abuse its discretion with respect to the amount of fees awarded.

DISPOSITION

The order for attorney fees is affirmed. Defendants are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.