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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

KEVIN KEENAN et al., Plaintiffs and Appellants, v. ANTHONY P. SOUZA et al., Defendants and Respondents.	B276437 consol. with B278644 (Los Angeles County Super. Ct. No. BC543936)

APPEAL from an order of the Superior Court of Los Angeles County, Lia Martin, Judge. Affirmed.

Mahoney & Soll, Paul M. Mahoney, Richard A. Soll and Ryan P. Mahoney for Plaintiffs and Appellants.

Newmeyer & Dillion, Charles S. Krolikowski and Lily N. Razai for Defendants and Respondents SkyBM, SkyM, Simpson Estates, and Generation Development.

Stubbs Alderton & Markiles, Daniel A. Rozansky for Defendants and Respondents Anthony P. Souza, Diana Souza, and Reel Sense.

INTRODUCTION

Plaintiff Kevin Keenan and defendant Anthony Souza were longtime friends and investment partners who had a falling-out. Issues became contentious, and Keenan, his wife, and their limited liability company sued Souza, his wife, and the limited liability companies in which the parties shared membership interests. Souza and his wife filed a cross-complaint. The case went to trial, and the Souza defendants and the limited liability defendants prevailed.

On appeal, plaintiffs assert three grounds of error. First, with respect to the limited liability defendants, plaintiffs asserted causes of action for accounting and inspection of records; the court held that plaintiffs failed to prove that the companies denied plaintiffs access to the records or that an accounting was warranted. Plaintiffs assert that this holding was erroneous. We find that the court's finding is supported by substantial evidence.

Second, plaintiffs sought a finding as to ownership of three rental residences that Keenan managed. Keenan asserted that all three residences were jointly owned; the court found that Keenan owned one and the Souza defendants owned the other two. Again plaintiffs assert that his holding was erroneous. We find that the court's order is supported by substantial evidence.

Third, plaintiffs assert that the trial court erred in awarding attorney fees to the Souza defendants and the limited liability companies, because only some of the claims related to companies with attorney fee provisions in their operating

agreements. The trial court held that the claims involving attorney fee provisions and those not including attorney fee provisions were inextricably intertwined, and therefore no apportionment was required. We find that the court's order was not an abuse of discretion. We therefore affirm the judgment and post-trial attorney fee order.

FACTUAL AND PROCEDURAL BACKGROUND

A. The parties

Plaintiffs Kevin Keenan and Thanh Thuy Ho are married. They are the sole members and owners of Keenan-Ho LLC, which is also a plaintiff. Collectively, we refer to them as plaintiffs.

Defendants Anthony Souza (Souza) and Diana Souza (Diana) are married.[1] Souza and Diana are the sole members and owners of Reel Sense LLC. Collectively, we refer to Souza, Diana, and Reel Sense LLC as the Souza defendants.

There are four limited liability companies in which plaintiffs and Souza have shared ownership interests, which plaintiff named as defendants in this action: SkyBM, LLC; SkyM, LLC; Simpson Estates, LLC; and Generation Development, LLC. Collectively, we refer to them as the LLCs or LLC defendants.

B. Plaintiffs' complaint

Plaintiffs filed their original complaint on April 29, 2014. The operative complaint at the time of trial was the first

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[1]Because there are multiple individuals with the last name Souza in this case, we follow the parties' lead by referring to Anthony Souza as Souza, and other members of the Souza family by first name.

amended complaint, and therefore we focus on the allegations in that version of the complaint.[2]

In the first amended complaint, plaintiffs alleged seven causes of action. The first three causes of action named the Souza defendants only, and related to three single-family rental residences: the Gazebo Lane property, the Peaceful Lane property, and the Tennyson Street property. In the first cause of action for "breach of joint venture agreement," plaintiffs alleged that there was an oral joint venture agreement between Keenan, Ho, and the Souzas relating to management of the residences; Keenan was to manage the properties. The Souza defendants breached the joint venture agreement by ousting Keenan from his management role, diverting assets to themselves, failing to properly account for joint venture money, and otherwise interfering with plaintiffs' rights to receive the benefits of the joint venture. Plaintiffs alleged they were damaged in excess of $400,000.

In their second cause of action, titled "breach of joint venture fiduciary duty," plaintiffs repeated their allegations about the joint venture agreement from the first cause of action, and asserted that the Souza defendants owed plaintiffs a fiduciary duty not to engage in any self-dealing or conflicts of interest. Plaintiffs alleged that by their actions, the Souza defendants breached their fiduciary duties to plaintiffs and caused harm in excess of $400,000.

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[2]The original complaint did not include Keenan-Ho LLC as a plaintiff. The first amended complaint added Keenan-Ho and clarified the parties for certain causes of action, but the substantive allegations were not amended.

In their third cause of action, titled "dissolution and accounting of joint venture," plaintiffs alleged that the economic purpose of the joint venture had been frustrated and therefore the joint venture should be dissolved. Plaintiffs alleged that the Souza defendants were indebted to the joint venture, and requested an accounting of all joint venture profits, losses, and assets.

The fourth through seventh causes of action in the first amended complaint involved the LLCs. The fourth cause of action, "breach of manager fiduciary duty," named Souza as the sole defendant. It alleged that plaintiffs were owners of portions of the LLCs, Souza was the manager of the LLCs, and Souza owed a fiduciary duty in that regard. It alleged that Souza diverted LLC assets to his own use, failed to distribute profits to plaintiffs, refused to provide plaintiffs with access to the books and records of the LLCs, and otherwise denied plaintiffs their rights as members of the LLCs. Plaintiffs alleged they were damaged in excess of $1,000,000 as a result.

In the fifth cause of action for "limited liability accounting," plaintiffs named Souza and the LLC defendants. They alleged that Souza had the books and accounts of the LLC defendants, but he "failed to account for the receipt, use, and disposition of funds that he has received, or was entitled to receive." Plaintiffs requested an accounting.

In the sixth cause of action for "inspection of records" against the LLC defendants, plaintiffs alleged that Civil Code sections 17701.13 and 17704.10 required a limited liability company to provide information to a member upon request. Information required to be provided included contact information of members, contributions and shares of members, copies of tax

returns and reports, and copies of the operating agreements. Plaintiffs alleged that they "have made demands for copies of the records of the [LLC defendants]. Those demands have been refused, and Plaintiffs were not allowed to access those records." Plaintiffs stated that "[b]y the filing and service of this Complaint," they "hereby demand" that the LLC defendants' documents be made available to them.

In the seventh cause of action for "tenancy in common accounting" against Souza, plaintiffs alleged that Keenan, Ho, and Souza were tenants in common of a property in Riverside County called Emerald Crossing. Plaintiffs alleged that Souza leased the property to a third party and collected rent, without accounting for the rents received. Plaintiffs alleged that they were damaged as a result, and requested an accounting to determine the amount of damages.

C. The Souza defendants' cross-complaint

All defendants filed an answer. The Souza defendants also filed a cross-complaint against Keenan and Ho. They alleged that the Souza defendants owned the Peaceful Lane and Tennyson Street residences, and Keenan was employed as the property manager for those residences. Keenan violated the terms of his employment by failing to provide copies of tenant lease agreements, refusing to provide an accounting, providing inaccurate accountings, commingling business and personal funds, taking unauthorized management fees, and leasing the properties for inappropriate amounts. The Souza defendants alleged three causes of action: breach of fiduciary duty against Keenan for his alleged actions while managing the properties, accounting against Keenan relating to the property accounts, and

conversion against Keenan and Ho for allegedly converting funds to their personal use.

The case proceeded to a bench trial. The issues on appeal relate to three areas. First, after plaintiffs rested, defendants moved for judgment under Code of Civil Procedure section 631.8 (section 631.8) on the fourth through seventh causes of action, and the court granted the motion. Plaintiffs assert that the court's ruling was erroneous. Second, after the remainder of the trial, the court found in favor of the Souza defendants on the first three causes of action and Souza's cross-claim for conversion against Keenan and Ho. Plaintiffs assert that the court's factual findings were erroneous. Third, the court awarded defendants attorney fees, and plaintiffs also challenge that order on appeal. Because these issues are discrete, we discuss the evidence presented and legal analysis for each issue in separate sections below.[3]

JUDGMENT UNDER SECTION 631.8

A. Plaintiffs' case

At trial, Keenan testified that he and Ho had been married for eleven years. Keenan had an M.B.A. and was a licensed real estate broker. Keenan said that he and Souza first met in high school, and they had been good friends for many years. On cross-examination, Keenan testified that he briefly rented a room in Souza's house while they were in college. Souza hired Keenan at a company called Telacu, and later hired Keenan at a company called Motor Car Parts. Souza lent money to Keenan so he could

[3]Plaintiffs appealed from the judgment, and later appealed from the award of attorney fees. We ordered the appeals consolidated.

buy his first house, and later rented a room to Keenan when he no longer had that house.

Keenan and Souza began investing together. Their first investment was in defendant Simpson Estates, LLC for the purpose of buying land to be developed with single-family residences. At the time of the trial, the Simpson Estates land had not yet been developed. Keenan said that he and Ho are still investors in Simpson Estates.

Keenan testified that he received financial documents for Simpson Estates around the time he invested in that company in 2005. In a June 30, 2005 prospectus,[4] there was a balance sheet entry of $390,000 for prepaid development costs, which Keenan said he saw in 2005. Keenan did not recall anyone discussing the $390,000 at the time. The same prospectus also showed that KBS Development, LLC had an equity interest of $1,950,000. Souza was the managing member of KBS Development. Keenan said he did not know the purpose of the $1,950,000 figure at the time, but he found out during Souza's deposition that it was

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[4]The Simpson Estates prospectus and many other exhibits were admitted at trial, but not all of them are included in the record on appeal. In a footnote in their reply brief, plaintiffs state that the trial exhibits "are in the care, custody, and control" of the superior court, and suggest that "[t]he Court of Appeal should order that the Clerk [of the superior court] transmit all of the original exhibits to the Court of Appeal." However, California Rules of Court, rule 8.224(a)(1) states that "a party wanting the reviewing court to consider any original exhibits that were admitted in evidence . . . must serve and file a notice in superior court designating such exhibits." It appears that no such designation was filed. We decline plaintiffs' invitation to independently acquire the records of the trial court. (See *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498-499.)

intended for "the development of the property known as Simpson Estates." Keenan testified that a later balance sheet showed that KBS Development's interest in Simpson Estates had been reduced to $1,560,000. Keenan said Souza explained that "[t]hey made an adjustment for the $390,000 prepaid expenses that were previously included in [KBS's] equity." Keenan did not know when the adjustment had been made. Keenan also testified that during the litigation he learned that "one of the properties that were [*sic*] involved with Simpson Estates" had a grant deed from Souza to Jordan Circle, LLC, which was owned by another partner in Simpson Estates who was not a party to the litigation.

Keenan testified that in 2005, he and Ho invested in Generation Development, LLC to purchase nine acres of land in Hemet, California. Keenan and Ho invested $39,000 and together owned a 14.5 percent interest in Generation Development. Souza told Keenan that he was the manager of Generation Development.

Keenan testified that he and Ho are members of Keenan-Ho, LLC, and he is the managing member. Keenan-Ho was a member of SkyBM, LLC, which was created in December 2008. Souza told Keenan that SkyBM was created for the purpose of investing in five duplex properties in south Los Angeles to purchase and manage as rental properties. Keenan also testified that Keenan-Ho invested in SkyM, LLC, a similar company, in May 2009.

Keenan testified that an investment called Emerald Crossing consisted of 35 acres of undeveloped land in Hemet, California. Title to the land was held as tenants in common among seven investors, including Keenan, Ho, and a company

called Sey Corporation, for which Souza signed as C.E.O. At the time of trial, the land was still undeveloped.

Keenan testified that he and Souza had an argument during a meeting in 2009 in which Souza "got very upset and he stood up and slammed his fist on the table and called me a liar." Keenan said Souza was upset because Keenan and Ho were buying a property in Los Angeles that "had nothing to do with" Souza, but Souza felt that Keenan was not being forthcoming with him. Keenan walked out of the meeting. After the argument, Keenan and Souza remained partners in the various entities, but they did not communicate regularly.

After Souza and Keenan's falling-out, the Souzas' son, Matthew Souza, became Keenan's main contact for issues involving the parties' investments. Keenan testified that he asked for Generation Development records "at different times" but he was not sure whether he asked Souza or Matthew for the records. He said that Matthew "sometimes" provided him with information, and at times he did not provide information. Keenan could not recall whether Souza ever provided him with information from Generation Development, other than information at the initial stage of investment.

Keenan testified that after Keenan-Ho invested in SkyM and SkyBM, it received $1,000 per month from each entity for the first several months. Then the monthly payments began to drop to $800, then to $600, and eventually ceased. Keenan asked Souza about the payments by email, but Souza told Keenan to contact Matthew. Souza sent a letter to all SkyM and SkyBM members stating that distributions were going to cease because plaintiffs had sued SkyM and SkyBM, and distributions were being diverted to cover attorney fees.

Keenan testified that he asked for the records of SkyM and SkyBM "at various time[s]" after his falling-out with Souza and before the lawsuit was filed. Keenan also testified that as of 2012, his relationship with Souza was "strained and not very good." Keenan and Ho decided they wanted to terminate their investment relationship with Souza. Keenan testified that in May 2012 he sent an email to Souza seeking information regarding SkyM and SkyBM's lease agreements and escrow information. Keenan said, "I don't remember his exact response, but I didn't get any of the information. It wasn't until the lawsuit was filed and I was able to get all this information." Keenan said he had received the leases for these properties by the time of Souza's deposition in 2015.

Keenan said he got financial information regarding Simpson Estates after Souza was deposed in 2015. Keenan testified that he received federal, state, and local tax information from "all of the investment entities, the four plus Emerald Crossing," after Souza was deposed in this case in May 2015. Keenan also testified that he received "more documentation" relating to the investment companies in May 2015. Keenan testified that he "had everything that I needed" in May 2015, when Souza was deposed.

On cross-examination, Keenan testified that he received Schedule K-1 tax forms from SkyM, SkyBM, Generation Development, and Simpson Estates for each year he was a member. He also testified that he received either a financial statement or K-1 for Emerald Crossing each year. Keenan testified at trial and at his deposition, which was read during cross-examination, that he had never asked to inspect the books and records of SkyM, SkyBM, Generation Development, or

Simpson Estates before filing the lawsuit. He could not recall whether he made any verbal requests for financial documents to Souza after 2009. Keenan testified that Matthew gave him financial information upon request for SkyM and SkyBM in 2011 and SkyM in 2013. Keenan also testified that when he asked Souza for information, Souza provided it. He could not recall an instance in which Souza failed to provide information Keenan requested. The court later asked Keenan to clarify an answer, asking, "Was there ever a time when something was outright refused, like no, we're not giving this to you?" Keenan responded, "No, not to my recollection."

Keenan also testified in his deposition that he did not request books and records from Generation Development or Simpson Estates before filing the lawsuit. Keenan testified that he requested information from Matthew in 2012, but he did not know whether Matthew ever sent him the information requested. Keenan acknowledged that he received an email that appeared to include attachments for the documents he requested, but he said he did not know what was actually in the attachments. Defense counsel asked, "So Mr. Matthew Souza might have provided you with the information you requested. You just don't know, correct?" Keenan responded, "Correct." Keenan also could not think of any documents that had not yet been produced by the LLCs.

Keenan also testified that he did not know of any income or assets that had been inappropriately diverted from SkyM or SkyBM. When asked if he had any facts to support the claim that Souza failed to properly account for the receipts and expenses of SkyM or SkyBM, Keenan responded, "I don't know." When asked, "You're not aware of any information that money is

owed to Keenan-Ho from SkyBM and SkyM?" Keenan responded, "I don't know." Defense counsel asked, "You don't know whether or not there's any additional accounting that you need to ascertain what's owed with respect to Keenan-Ho, true?" Keenan responded, "I don't know."

Keenan said he had no evidence indicating that the books and records of either Generation Development or Simpson Estates were improperly maintained. However, Keenan testified that he thought Souza made a profit on Generation Development because Souza bought a property for $250,000 and later sold it to Generation Development for $285,000. When asked if he had any damages relating to Simpson Estates, Keenan responded, "Again, you're getting into an area where some transactions from that balance sheet that you referred to were taken out. So that property had a certain valuation at a particular point in time and then it didn't. It was reduced by that amount of money." As to Emerald Crossing, Keenan testified that he was not aware of any years in which his accountant was not provided with an accounting for that investment.

Keenan also testified in his deposition that he did not have any damages as a result of not receiving information he claimed he was entitled to. Counsel for the LLCs pointed to the allegation in the complaint that SkyM and SkyBM owed money to Keenan-Ho, LLC, and asked Keenan, "What information do you have that money is indebted to you or owed to Keenan-Ho, LLC from SkyM and SkyBM?" Keenan responded, "I'm not sure." However, Keenan said he disapproved of the use of funds by SkyM and SkyBM to counter-sue him, because "it's like . . . paying to sue myself." He said he was requesting an accounting as to the amount of attorney fees paid by SkyM and SkyBM.

Plaintiffs called forensic accountant John Altstadt to testify; he made clear that his testimony was limited to opinions regarding Simpson Estates. Altstadt testified that he reviewed documents relating to Simpson Estates, including tax records, QuickBooks information, and investor materials, as well as deposition transcripts from the case. He found that there were "material misstatements" in investor materials from 2005, a 2005 balance sheet, and an unsigned draft operating agreement. Altstadt also found that two claimed assets were not supported: "carrying costs in the amount of $160,000," and "predevelopment costs in the amount of $390,000." The material misstatements involved a statement in June 2005 that Simpson Estates owned a 18.96 acre parcel of property, which Simpson did not actually own until November 2005. Altstadt said that the $160,000 was attributed to property taxes, weed abatement, and interest, but "there hasn't been any supporting documentation provided for those costs." The $390,000 in predevelopment costs did not seem to relate to any typical predevelopment actions such as architectural plans or permits, and that amount was reversed and taken off the books in 2010. The effect of all of these irregularities diminished the value of Simpson Estates.

On cross-examination, Altstadt agreed that Keenan owned less than 3 percent of Simpson Estates. The Simpson Estates investor packet said that escrow had closed on the 18.96-acre parcel, and Altstadt agreed that the close of escrow was not the same thing as a deed being recorded. By December 2005, after the deed had been recorded, it would have been appropriate to have the parcel listed in Simpson's balance sheets. Altstadt testified that no matter when the deed was recorded, Keenan's capital in Simpson Estates remained unchanged. Altstadt also

said that the $390,000 in predevelopment assets had been removed from the balance sheets by 2005, and this change did not affect Keenan's equity. Altstadt testified that he had not quantified any damages in this case relating to Simpson Estates. He was not offering any opinions on whether anyone breached a professional standard of care or fiduciary duty, and he did not offer opinions on what documents should have been produced to Keenan.

Plaintiffs rested.

B. Defense motions for judgment

Following the close of plaintiffs' case, Souza filed a motion for partial judgment under section 631.8 on plaintiffs' fourth cause of action against Souza for breach of manager fiduciary duty regarding the LLCs, and seventh cause of action against Souza for "tenancy in common accounting" for Emerald Crossing.[5]

Regarding the fourth cause of action for breach of manager fiduciary duty, Souza argued that even though plaintiffs alleged in their complaint that they were denied access to books and records, Keenan's testimony made clear that when he requested access to information, he received it. Souza also argued that plaintiffs failed to present any evidence that they had suffered damages as a result of Souza's actions. Souza noted that "Plaintiffs do not seek nominal damages in their First Amended Complaint for this or any other cause of action." Souza argued that plaintiffs presented no evidence that the distributions paid

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[5]The motion stated that it was brought by Souza, Diana, and Reel Sense, but Souza was the only named defendant in the fourth and seventh causes of action. The motion also noted that the Souza defendants joined the LLCs' motions for judgment on the fifth and sixth causes of action.

by SkyM or SkyBM were inappropriate or incorrect. Souza also pointed out that KBS Development—not Souza—was the managing member of Generation Development and Simpson Estates, and therefore plaintiffs had failed to establish that Souza personally had any duties to plaintiffs with respect to Generation Development or Simpson Estates. Moreover, to the extent that plaintiffs asserted that Souza made an improper profit through the sale of land to Simpson Estates in 2005 or made improper disclosures to investors, the four-year statute of limitations on any such claim had already expired.

Regarding the seventh cause of action for tenancy in common accounting for Emerald Crossing, Souza argued that Keenan testified that he had received all the documents he requested. Souza said the documents showed that investors had been apprised of relevant information, and any claims of impropriety that occurred more than four years before the case was filed were time-barred.

The LLC defendants filed a motion for judgment on plaintiffs' fifth cause of action for accounting, and a separate motion for judgment on plaintiffs' sixth cause of action for inspection of records. Regarding the fifth cause of action, the LLCs argued that an action for accounting is an equitable proceeding to determine amounts due, but plaintiffs did not present any evidence to show that any amount was due to plaintiffs. The LLCs argued that because plaintiffs had already received all the documents they had requested, plaintiffs could simply seek damages if they had suffered any, and an accounting was unnecessary.

Regarding the sixth cause of action for inspection of records, the LLCs argued that Keenan's request for an order for

the inspection of records was moot because Keenan had testified that all the documents he requested had been produced. The LLCs also noted that Keenan testified that his requests for records were never refused. The LLCs asserted that as a result, the court could not offer plaintiffs any effective relief.

Plaintiffs opposed the motions. Regarding the fourth cause of action for breach of fiduciary duty, plaintiffs asserted that Keenan asked Souza to inspect the records of the LLCs in 2012, and "[m]ore importantly, Plaintiffs made the request when they filed their complaint." Plaintiffs continued, "There is no case law or statute that prohibits a party from making a request for documents in the complaint. Nor is there any requirement in the Corporations Code that states that the request must be made as a condition precedent to filing a lawsuit." Plaintiffs cited Corporations Code section 17704.10, subdivision (a), which states that upon a request by a member, the manager of a limited liability company must produce a copy of certain documents required to be kept by the company. Plaintiffs argued that because the request in the complaint was made in 2014 and Souza did not produce documents until May 2015, plaintiffs had established this cause of action. Plaintiffs also argued that it did not matter that KBS Development was the managing member of Generation Development and Simpson Estates, since Souza was the managing member of KBS Development.

Plaintiffs also asserted that "there is no merit to the argument that Plaintiff cannot show any damages" because "the evidence establishes that Souza . . . made a $150,000 secret profit at the time Keenan and Ho invested money to purchase their interest in Simpson Estates and that KBS also made a $390,000 secret profit. . . . Keenan and Ho did not learn of this until 2015

when the deposition of Souza was taken." Plaintiffs also argued that even if the evidence of damages was insufficient, "nevertheless they are entitled to nominal damages for the failure to allow an inspection of the books and records" of the LLCs.

As to the fifth cause of action for accounting as to the LLCs, plaintiffs argued that "it is clear that Plaintiffs are entitled to an accounting because they were denied access to the books and records of the companies." Plaintiffs also said that SkyM and SkyBM stopped paying any return on investments because they were "diverting the income to pay for Souza's defense of this lawsuit," which was "an egregious conflict of interest which entitles Plaintiffs to an accounting." In addition, they contended that Generation Development and Simpson Estates were making "secret profits," and therefore an accounting was warranted.

As for the sixth cause of action regarding inspection of records for the LLCs, plaintiffs asserted that they had a right to inspect the LLCs records, and "[i]t was not until the deposition of Souza was taken in May of 2015 that all of the requested documents were finally produced."

Regarding the seventh cause of action for tenancy in common accounting against Souza, plaintiffs asserted that with respect to Emerald Crossing, "Souza was leasing the property to a third party tenant, Today's Homes, LLC. He never accounted to Keenan about the rent he was collecting." Plaintiffs continued, "Compliance with a discovery request does not render a cause of action moot. The only question is whether there is a relationship that warrants an accounting."

The court granted the defendants' motions pursuant to section 631.8. The judge stated the bases for the decision from

the bench, and later included the court's reasoning in a written statement of decision following the trial. With respect to the fourth cause of action against Souza for breach of fiduciary duty, the court said that plaintiffs failed to establish a duty, breach, or damages. For the fifth cause of action for accounting against Souza and the LLCs, the court held that "plaintiffs failed to prove that a remedy at law is inadequate," and did not prove they were owed any money by Souza or the LLCs. The court also said there is "no evidence that there's anything complicated," referencing testimony that the LLCs use QuickBooks, and therefore balance sheets and profit-and-loss statements can be generated easily. As to the sixth cause of action for inspection of records against the LLCs, the court held that "there was no evidence Plaintiffs requested to inspect and/or copy records of the LLC Defendants, Plaintiff Kevin Keenan testified that the informal requests for records had not been refused, and there was no relief to be granted." The court also noted that "at this point, all the records have been produced. There really is nothing left for the court to order." Regarding the seventh cause of action for tenancy in common accounting, the court stated, "[W]ith respect to the Emerald Crossing property, plaintiffs failed to make any showing that the accounts are so complicated they cannot be determined through an action at law. This action is also likely barred by the statute of limitations."

On appeal, plaintiffs assert that the trial court erred in granting the motions.

C. Discussion

1. *Standard of review*

"'The purpose of Code of Civil Procedure section 631.8 is to enable a trial court which, after weighing the evidence at the

close of the plaintiff's case, is persuaded that the plaintiff has failed to sustain his burden of proof, to dispense with the need for the defendant to produce evidence. [Citations.]'" (*National Farm Workers Service Center, Inc. v. M. Caratan, Inc.* (1983) 146 Cal.App.3d 796, 807.) In deciding a motion for judgment under section 631.8, "the trial court may disbelieve the plaintiff's evidence, draw adverse (rather than favorable) inferences therefrom, and credit contrary evidence introduced through cross-examination or otherwise." (*Orange County Water District v. MAG Aerospace Industries, Inc.* (2017) 12 Cal.App.5th 229, 239.)

Both parties agree that we should review the court's order on these causes of action for substantial evidence. "The substantial evidence standard of review applies to judgment given under Code of Civil Procedure section 631.8; the trial court's grant of the motion will not be reversed if its findings are supported by substantial evidence. [Citation.] Because section 631.8 authorizes the trial court to weigh evidence and make findings, the court may refuse to believe witnesses and draw conclusions at odds with expert opinion." (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549-550.)

Under the substantial evidence standard of review, '"'"the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.'" (*Thompson v. Tracor Flight Systems, Inc.* (2001) 86 Cal.App.4th 1156, 1166.) '"'"Substantial evidence" is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid

value.' [Citation.] We do not reweigh evidence or reassess the credibility of witnesses. [Citation.] We are 'not a second trier of fact.' [Citation.] A party 'raising a claim of insufficiency of the evidence assumes a "daunting burden."'" (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1246.)

Here, the trial court found that plaintiffs failed to present sufficient evidence to make a prima facie case for each of these causes of action. We therefore consider whether these findings were supported by substantial evidence.[6]

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[6]It is something of a misnomer to say that a ruling based on a finding of insufficient evidence may be reviewed for "substantial evidence." "When the trier of fact has expressly or implicitly concluded that the party with the burden of proof failed to carry that burden and that party appeals, the substantial evidence test does not apply. Instead, 'the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.' [Citation.] '"Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citations.]"'" (*Petitpas v. Ford Motor Company* (2017) 13 Cal.App.5th 261, 302-303.) "The standard of review of a judgment and its underlying findings entered pursuant to section 631.8 is the same as a judgment granted after a trial in which evidence was produced by both sides." (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.) Nonetheless, the parties agree that the substantial evidence standard of review applies, and authority discussing section 631.8 generally applies that standard. Therefore we apply that standard here.

2. *Causes of action relating to inspection of the LLCs' records*

Plaintiffs assert that the trial court erred in entering judgment in defendants' favor on the fourth cause of action for breach of manager fiduciary duty against Souza, the fifth cause of action for accounting against the LLC defendants, and the sixth cause of action for inspection of records against the LLC defendants. Plaintiffs cite Corporations Code, section 17704.10, which states that "[u]pon the request of a member or transferee," a limited liability company "shall promptly deliver . . . a copy of" certain information required to be maintained by the company, including the operating agreement and financial statements. (Corp. Code, § 17704.10, subd. (a).) Plaintiffs assert that under this statute, Souza as custodian of records for the LLCs, and the LLCs themselves, had a duty to allow Keenan to inspect the records.

At trial, Keenan testified that to the extent he requested any records from defendants, none of his requests was ever denied. On appeal, plaintiffs state that "[t]here was a big dispute at trial as to what Keenan did or did not ask for prior to filing the complaint," but argue that this is "irrelevant" because the complaint itself "served as a demand for the records." They point to paragraph 48 in the original complaint, part of the sixth cause of action for inspection of records against the LLC defendants, which stated, "By the filing and service of this Complaint, Plaintiffs hereby demand that the Limited Liability Company Defendants produce and make available for inspection and photocopying all of the documents set forth above."

Thus, plaintiffs assert that even if they never requested access to any documents before the lawsuit was filed, they

nonetheless established a viable cause of action because "many documents from all four of the investments were produced almost one year after the lawsuit was filed. It took that long to get all of the records to know what was going on with regard to these entities." Plaintiffs also conclude that they were "the prevailing part[ies] because it took them a year to get the records."

The Souza defendants assert that there is "no authority to support [plaintiffs'] novel theory that a member of a limited liability company who fails to request any records before filing suit, then obtains records he requested for the first time in discovery, can prevail on a claim for breach of fiduciary duty for failure to provide those records." Indeed, plaintiffs have not cited any authority that supports their theory, and we have found none.

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) "A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. [Citation.] [¶] An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." (*Teselle v. McLoughli*n (2009) 173 Cal.App.4th 156, 179.) Plaintiffs' sixth cause of action for inspection of records is based on Corporations Code section 17704.10, discussed above.

None of these parameters fit plaintiffs' assertion that these causes of action may be created by filing a complaint. To the

extent plaintiffs assert that their causes of action can be deemed a legitimate request for documents under Corporations Code section 17704.10, thus creating a duty that defendants *later* breached by producing the requested documents in discovery (but apparently not quickly enough to satisfy plaintiffs), such a claim would not be actionable. "Generally speaking, to be actionable, harm must constitute something more than ""nominal damages, speculative harm, or the threat of future harm—not yet realized. . . ."" (*Buttram v. Owens-Corning Fiberglas Corp*. (1997) 16 Cal.4th 520, 531 fn. 4.) Plaintiffs suggest that they can create a cause of action based on the assumption that defendants might later refuse to produce documents, and therefore breach their duties at some point in the future; but this cannot constitute a viable cause of action. A cause of action accrues at "'the time when the cause of action is complete with all of its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.)

To the extent that plaintiffs suggest that their complaint stated a viable cause of action based on future discovery violations, we also reject that assertion. The Civil Discovery Act, Code of Civil Procedure sections 2016.010 et seq., provides remedies for discovery violations in litigation. If defendants failed to comply with plaintiffs' discovery requests, or failed to timely comply, the appropriate means by which to address such a violation is to file a motion with the court and request one of the many remedies available in the Discovery Act. (See, e.g., Code Civ. Proc., §§ 2023.010, 2030.290, 2031.300, 2033.280.) Plaintiffs cite no authority, and we have found none, supporting the position that discovery violations may be retrospectively deemed to establish a cause of action that was alleged in the complaint that initiated the litigation.

Moreover, adopting plaintiffs' position would mean that plaintiffs' complaint was frivolous, because it alleged that requests had been made and duties had been breached, when in fact those things had not happened at the time the complaint was filed. "A claim is factually frivolous if it is 'not well grounded in fact' and is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.'" (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.) Here, if plaintiffs had not requested documents before filing their complaint, and defendants never denied any such requests before the complaint was filed, plaintiffs' allegations that defendants had breached their fiduciary duties would be frivolous. We doubt this is the result plaintiffs intend.

We therefore reject plaintiffs' contention that their complaint served as a request for documents under Corporations Code section 17704.10. Because the evidence made clear that Keenan either did not request records before the lawsuit or was not denied access to records when he requested them, substantial evidence supports the court's finding that plaintiffs failed to meet their burden to establish liability based on failure to allow plaintiffs to access the LLCs' records.

3. *Breach of fiduciary duty regarding Simpson Estates*

Plaintiffs argue that aside from the issue regarding inspection of LLC documents, plaintiffs nonetheless should have prevailed on their fourth cause of action for breach of fiduciary duty against Souza because "Souza and Jordan Circle made a $150,000 secret profit at the time Keenan and Ho invested money to purchase their interest in Simpson Estates and . . . KBS also made a $390,000 secret profit." Plaintiffs assert that they did not

know about the adjustments in Simpson's books until engaging in discovery for this lawsuit, and "[t]he fact that [plaintiffs'] lawsuit prompted [defendants] to change the books and records to reflect the investors['] true equity in Simpson Estates does not let [defendants] off the hook."

As noted above, a cause of action for breach of fiduciary duty includes an element of damages, but there was no evidence of damages presented at trial. When asked about damages, Keenan said that the "property had a certain valuation at a particular point in time and then it didn't," but he did not testify that this caused plaintiffs any damages. Plaintiffs assert that Altstadt testified about "financial irregularities and discrepancies" in the records of Simpson Estates, but Altstadt also testified that the date of the deed and the changed predevelopment costs did not affect plaintiffs' equity in Simpson Estates. Moreover, there was no evidence that the defendants made a "secret profit" at the expense of the plaintiffs. When asked if Souza made a profit "in connection with Simpson," Keenan responded, "I'm not sure." When asked if the Simpson Estates property was purchased at a fair market value, Keenan said, "I don't know." Because plaintiffs failed to present evidence of damages, judgment was appropriate on this cause of action because plaintiffs failed to establish a critical element to this cause of action.

Plaintiffs argue that even if they did not prove *actual* damages, they were nonetheless entitled to nominal damages because "there was a breach of the contractual provisions of the operating agreements to allow inspections, as well as a breach of the Corporations Code statutes that allows for access to the records of a limited liability company and a breach of fiduciary

duty re the books." This statement is not supported by any citations to the record. "A party on appeal has the duty to support the arguments in the briefs by appropriate reference to the record, which includes providing exact page citations." (*Air Couriers Internat. v. Employment Development Dept*. (2007) 150 Cal.App.4th 923, 928.) Furthermore, as discussed above, plaintiffs did not prove that Simpson Estates breached any duty relating to the inspection of records.

Finally, plaintiffs assert that they are entitled to prevail because "[t]hrough [plaintiffs'] efforts in finding this information after discovering the records, [defendants] corrected the books so that everyone's interest is now straight. . . . Therefore, [plaintiffs] were the prevailing parties with regard to the breach of fiduciary duty count." However, this argument is not supported by the record. Keenan testified that he did not know when the adjustment of $390,000 was made. Altstadt testified that the $390,000 in predevelopment assets was removed from the balance sheets by the end of 2005—nine years before the lawsuit was filed. Altstadt also testified that $160,000 lacked adequate documentation, but there was no testimony about when that amount was changed. Thus, the evidence does not support plaintiffs' assertion that Simpson Estates' records were corrected as a result of the lawsuit. In short, plaintiffs did not prove this cause of action, and substantial evidence supports the court's order in favor of defendants.

4. *Fifth cause of action for accounting against Souza and the LLC defendants*

Plaintiffs assert that the trial court erred in granting the LLCs' motion on the fifth cause of action because "[t]he evidence established that [plaintiffs] were receiving a $1,000 return on

their investment from SkyM and SkyBM respectively, and that this was reduced, and later cut off completely to fund the defense of this lawsuit." They also argue that "the evidence established that there were secret paper profits made in connection with Simpson Estates." Because we addressed the evidence relating to the alleged Simpson Estates profits above, we address only the SkyM and SkyBM assertions here.[7]

Keenan testified that Keenan-Ho invested in SkyM and SkyBM, and initially received $1,000 per month from each of those LLCs. The monthly payments from both SkyM and SkyBM diminished over time and then ceased. A letter was sent to members stating that distributions would be withheld while the two LLCs were paying legal fees to defend the lawsuit. When asked if there was "any additional accounting that you need to ascertain what's owed with respect to Keenan-Ho" from SkyM and SkyBM, Keenan responded, "I don't know."

"'An action for an accounting is equitable in nature. It may be brought to compel the defendant to account to the plaintiff for money or property, (1) where a fiduciary relationship exists between the parties, or (2) where, even though no fiduciary relationship exists, the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable. [Citations].'" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 401.) Here, the trial court stated that it granted defendants' motion as to the accounting cause of action because

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[7] Although the fifth cause of action in the first amended complaint also named Generation Development, in their briefs on appeal plaintiffs argue only that the court erred with respect to its ruling regarding SkyM, SkyBM, and Simpson. We therefore do not address any accounting issues relating to Generation Development.

"plaintiffs failed to prove that a remedy at law is inadequate" and "plaintiffs did not prove they were owed any moneys from" Souza or the LLC defendants.

Plaintiffs disagree with this finding, contending that plaintiffs "needed an accounting because [they] did not have access to the books and records of the LLCs," and therefore could not ascertain what the LLCs owed them. While an action for an accounting is appropriate where the determination of damages is unclear, there must nevertheless be some indication that the defendant has wronged the plaintiff, and the plaintiff is entitled to an equitable remedy. "An accounting is an equitable proceeding which is proper where there is an unliquidated and unascertained amount owing that cannot be determined without an examination of the debits and credits on the books to determine what is due and owing. [Citations.] Equitable principles govern, and the plaintiff must show the legal remedy is inadequate. . . . Some underlying misconduct on the part of the defendant must be shown to invoke the right to this equitable remedy." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1136-1137.)

Here, even though Keenan testified that he received financial documents from SkyM and SkyBM, he provided no information suggesting that SkyM or SkyBM owed Keenan-Ho any money. Keenan testified that he initially received $1,000 per month from both LLCs, but he did not present any evidence suggesting that he was still entitled to receive that amount or any other amount from SkyM or SkyBM. Presumably, by the time discovery was complete and the case proceeded to trial, plaintiffs would have had an idea of what information was lacking from SkyM and SkyBM that required a further

accounting, or what documents failed to provide needed information to ascertain damages. Plaintiffs did not present any such evidence.

In short, Keenan's testimony that Keenan-Ho once received a certain monthly payment from SkyM and SkyBM but no longer received the same amount, standing alone, was insufficient to establish that plaintiffs were entitled to an accounting from SkyM or SkyBM. The trial court's ruling granting judgment in favor of defendants for this cause of action was therefore not erroneous.

5. *Seventh cause of action for accounting regarding Emerald Crossing*

Plaintiffs' seventh cause of action was for an accounting relating to Emerald Crossing. The court granted Souza's motion for judgment regarding this cause of action because "plaintiffs failed to make any showing that the accounts are so complicated they cannot be determined through an action at law." Plaintiffs assert this holding was erroneous because Souza "was leasing the property and therefore, had a duty to account to his co-tenants."

As with the cause of action for accounting against the LLC defendants, plaintiffs provided no evidence to support a claim that defendants owed plaintiffs any money or property, and that plaintiffs were entitled to an equitable remedy as a result. To the contrary, Keenan testified that he received either a financial statement or K-1 for Emerald Crossing each year, and that he was not aware of any period in which his accountant was not provided with the required accounting documents for Emerald Crossing. No evidence suggested that plaintiffs were owed money relating to Emerald Crossing, or that an accounting was required to determine the amount. The court's finding was

therefore supported by substantial evidence and plaintiffs have not demonstrated on appeal that the court's findings were erroneous.

JUDGMENT FOLLOWING TRIAL

With the granting of the motion for judgment on the fourth, fifth, sixth, and seventh causes of action, the LLC defendants were released from the case. The trial proceeded on plaintiffs' first, second, and third causes of action against the Souza defendants and the claims in the Souza cross-complaint. In the first amended complaint, plaintiffs asserted three causes of action regarding the residences: breach of joint venture agreement, breach of joint venture fiduciary duty, and dissolution and accounting of joint venture. As the trial court noted in its statement of decision, "At trial, plaintiffs have changed course somewhat, and now argue that the issue the court must decide is whether [the residences] are jointly owned on a 50/50 basis because of a joint venture agreement between plaintiffs and defendants." The following evidence was presented at trial. The plaintiffs' evidence was presented before the motion for judgment under section 631.8 was granted, but for purposes of addressing the issues on appeal in a more cohesive manner, we include plaintiffs' evidence on this issue below.

A. Plaintiffs' case

Keenan testified that he and Souza agreed in 2009 that they would attempt to purchase four single-family residences, each with at least three bedrooms, which would be good rental properties. They orally agreed that all profits and losses on the properties would be split evenly between them. Keenan was to manage the properties.

Together they participated in an online auction, and were the successful bidders on the Gazebo Lane property and another property on Chatham Way. The Chatham Way transaction ultimately was not completed, but Keenan completed the sale for the Gazebo Lane property. Keenan and Ho obtained financing for the purchase, and the title to the Gazebo Lane property was placed in their names.

Plaintiffs' counsel asked if Keenan and Souza had "reached an agreement as to . . . the ownership in Gazebo." Keenan replied, "We were going to be 50/50 partners." But Keenan also testified that he intended to purchase the Gazebo Lane property, pursuant to his agreement with Souza; they did not purchase the property together. The parties planned that Souza would then buy two rental properties, and Keenan would buy a fourth property.

Keenan, Ho, Souza, and Diana attended another auction, at which the Peaceful Lane and Tennyson Street properties were purchased. The purchase price for Peaceful Lane was approximately $126,525, and Tennyson Street was approximately $126,000. Souza told Keenan that he was going to get financing for the two properties, but the financing did not materialize. Souza, Diana, and/or Souza's company, Reel Sense LLC, therefore paid cash for the properties. The title to the Peaceful Lane property was placed in the name of Souza and Diana, and the title to the Tennyson Street property was placed in the name of Reel Sense.

We note that one item of contention at trial was an oral agreement by which Souza charged interest relating to the Peaceful Lane and Tennyson Street properties. The nature of and purposes for this interest are not entirely clear in the record,

and the parties' views on it differ. The interest does not appear to be related to any loan or debt. The interest apparently was paid from the joint bank account in which the rents on the residences were deposited, and it was paid to Souza and/or Reel Sense.

The interest issue was introduced at trial when plaintiffs' counsel asked Keenan, "When [Souza, Diana, and Reel Sense] . . . were going to pay cash for the property and not get financing, did you and he have any discussions about what interest rate they would charge you?" Keenan said that Souza, Diana, or Reel Sense "would hold the promissory notes,"[8] and "from the proceeds, obviously from renting the property, payment would be made to either Anthony and Diana Souza or Reel Sense." The interest rate was "5.5 percent, and it was interest only." There were separate notes for each property. The interest was not charged before a tenant was living in the property. This agreement was not in writing.

Keenan said he began paying the 5.5 percent interest-only payments as soon as tenants began renting the Peaceful Lane and Tennyson Street properties, as the parties agreed. Keenan testified that Souza improperly increased this interest rate; in April 2013, Matthew emailed Keenan to say that the interest rate on the Tennyson Street and Peaceful Lane properties had changed from 5.5 percent to seven percent. Initially, Keenan refused to pay the additional amount. However, he later relented because he needed proof of insurance on the Tennyson Street and

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[8]The parties testified that the agreement was oral, there is no discussion as to the amount or purpose of any promissory notes, and there are no signed promissory notes in the record on appeal.

Peaceful Lane properties for an unrelated transaction, and Souza refused to provide proof of insurance until Keenan paid the amount owed. Once Keenan had paid the shortfall, Souza sent him proof of insurance.

Keenan testified that because the parties intended that Keenan would buy a fourth property, he researched additional properties in the area but did not find any that fit their criteria. Keenan also testified that he "personally paid for the rehabbing of Gazebo, Peaceful, and Tennyson, and I also paid for certain other expenses related to those three properties." Keenan managed the three properties and kept records about the income and expenses, including managing tenants and paying a gardener to do work on all three properties. Banking for all three properties was done through a single account for which Keenan, Ho, and Souza were named account holders. Souza or Matthew paid the property taxes and insurance on the Tennyson Street and Peaceful Lane properties, and sent Keenan the bill for his share of those costs. Keenan kept track of income and expenses for the properties every month, and at the end of the year, he sent this information to Souza, who then prepared a year-end statement. Once, when there were sufficient funds in the account shared for all three properties, Keenan distributed profits equally to himself and Souza.

Keenan testified that at some point—the date is not clear in the record—the joint account for the houses was "basically cleaned out." The account had been "really low," so Keenan had deposited $500 of his own money. An additional $7,000 was deposited into the account from a class action settlement relating to construction defects on one of the houses. Souza then "swept the account," leaving it with a balance of approximately $23.

Keenan then opened a new account that he continued to use at the time of trial for depositing rent checks and paying expenses. Souza did not have access to this new account.

Keenan testified that after his falling-out with Souza in 2009, he began communicating with Matthew instead of Souza. Because Keenan bought one property and the Souza defendants bought two, at some point after the falling-out Keenan got together with Matthew to assess the percentages of the parties' stakes in the venture. Keenan testified, "Matt Souza and I actually got together at his home, and he said that we would get together to "true up," was the term that he used, the accounts so that . . . we would see where we were, and it ended up being that I had paid X number of dollars, they had paid Y, and we were equal partners at that point because of monies outlaid." (The court sustained a hearsay objection to this statement, and said the statement was admitted for the fact that Keenan and Matthew got together to settle accounts, not for the truth of what they decided.)

After the tenant moved out of the Tennyson Street property, apparently in late 2013, a management company Keenan had hired attempted to show the house to a prospective tenant. However, the company discovered that the locks had been changed, and contacted Keenan. Keenan verified that the locks had been changed, and discovered that the utilities had been put "into the name of Mr. Souza." Keenan contacted Matthew to inquire, and Matthew told Keenan that he was no longer the manager of the Tennyson Street property, and the property was going to be sold. Keenan testified that there was a period in which the Tennyson Street house did not have a tenant for approximately "10 to 16 months." During that time, Keenan

did not show the property to any potential tenants. Keenan was aware of two potential sales of the Tennyson Street property that did not go through. In late 2014 or early 2015, Keenan went by the Tennyson Street house and discovered that it was occupied.

This lawsuit was filed in April 2014. In September 2014, Souza sent Keenan an email noting that Keenan had not paid the property taxes on the Peaceful Lane and Tennyson Street properties.[9] Keenan confirmed that this was correct—he had not paid the taxes because there was no money in the account. The email also stated that Keenan was continuing to withdraw management fees for the Peaceful Lane and Tennyson Street properties. When asked if Souza asked him to stop withdrawing management fees, Keenan answered, "He may have." Keenan testified that at the time of trial, he was still managing the Peaceful Lane and Gazebo Lane properties, and paying the gardener at the Tennyson Street property.

Keenan testified that he "set up a separate account" for money related to the properties. Keenan said that he no longer provided Souza with any accounting as to the Gazebo Lane property. For "quite some time" Keenan had refused to provide Souza with the names of the tenants of the Peaceful Lane house.

On cross-examination, Keenan testified that he received an email in 2010 from Matthew regarding the residences, which stated, "[Souza] bought 2 properties and you only bought 1. All of

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[9] Because Keenan had testified that Souza or Reel Sense paid the property taxes on the Peaceful Lane and Tennyson Street properties, the nature of this email is unclear. It is possible that Keenan, as manager of the properties, was expected to use joint account rental proceeds to reimburse Souza and/or Reel Sense for the property taxes they had paid, and he had not done so.

them were for about the same price. As such, in order for you to have a 50% interest, you must contribute additional capital." Keenan testified that the purchase price of the Gazebo Lane property was $120,000. The purchase price of Tennyson Street was approximately $126,000, and the purchase price for Peaceful Lane was around $125,550. Keenan agreed that he did not hold the title to Peaceful Lane or Tennyson Street, and that "holding title means ownership." Keenan said he had not contributed any funding for the purchase of the Peaceful Lane or Tennyson Street properties.

Keenan testified that there was no written note for the agreement with Souza regarding the payment of 5.5 percent interest. Keenan said these payments were intended to continue "until at least June 2014." Keenan did not recall ever talking to Souza about whether the rate was fixed or adjustable. Keenan testified that he gets paid for his management of the two properties, and he was not sure if he was collecting a management fee for the Tennyson Street property. However, Keenan later testified that he had not collected any management fees for the Peaceful Lane or Gazebo Lane properties for "quite some time," since "before this dispute."

B. Defense case

Souza testified about participating in the online auction for the Gazebo Lane property with Keenan. Souza testified that he was the successful bidder on the Gazebo Lane property, but Keenan and Ho really liked the house and were considering moving there, so they asked if they could buy it. Souza agreed. Souza and Keenan then reached an agreement that Keenan would buy one property, Souza would buy two, and then Keenan and Souza would alternate buying houses. Keenan, a licensed

real estate broker, was the broker for the purchases of the Tennyson Street and Peaceful Lane properties.

Souza said he paid cash for the Tennyson Street and Peaceful Lane properties. Souza then clarified that he and Diana bought one property, and Reel Sense bought the other[10]; he said Keenan did not own either the Tennyson Street or Peaceful Lane property. Souza paid about $252,000 for the two homes, and Keenan paid around $115,000 for Gazebo Lane, part of which was financed. Keenan was not on the deeds for Tennyson Street or Peaceful Lane, and Keenan did not contribute any funds to the purchase of those two residences. Souza and Diana paid the property taxes on the Peaceful Lane house.

Souza explained the interest on the Peaceful Lane and Tennyson Street properties by stating that it constituted "preferred equity" that he essentially paid to himself. He charged a rate of 5.5 percent, until Keenan stopped paying it. Souza testified that the preferred equity rate on the properties was later changed from 5.5 percent to seven percent due to the "cost of funds" and opportunity costs.

Keenan never bought a fourth property as agreed. Souza testified that there was "an agreement that if we bought four properties that we would be 50/50 owners. Before that, we would participate in the income but not ownership." Souza testified that Keenan was currently managing the Gazebo Lane and Peaceful Lane properties. Keenan received $100 per month as a

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[10]Grant deeds admitted as exhibits at trial showed that the Peaceful Lane property was owned by Anthony and Diana Souza, and the Tennyson Street property was owned by Reel Sense. Souza testified that Reel Sense "is a financial and management consulting company, along with real estate development, and we also manage a number of our properties."

management fee for each house he managed. In an email to Keenan in September 2012, Souza wrote, "I would like to start terminating our relationship. Please put Gazebo up for sale, and I will put Peaceful Lane and Tennyson up for sale. Please send me leases and contact information so I can list it properly." Keenan never sent Souza the information. In October 2012, as part of an email exchange regarding winding down the relationship as to the properties, Souza sent another email to Keenan, stating, "Based on your numbers, you can give me $290,000 for all three or you can give me $200,000 and Gazebo for [Peaceful Lane and Tennyson Street], or you can take Gazebo and I will pay you [$]10,000." Keenan did not accept any of these proposals.

At one point, Keenan transferred $4,000 to himself out of the joint account for the residences, leaving insufficient funds to pay property taxes. After the lawsuit was filed, Keenan began depositing rent for the Peaceful Lane property into a new account. Keenan refused to provide contact information about the Peaceful Lane tenant to Souza; when Souza finally contacted the tenant, she told him that Keenan told her there was a lawsuit about the property and she should not pay rent to Souza. Keenan also failed to timely pay some bills on the Tennyson Street property, and Souza was concerned that his credit would be affected by those delinquencies.[11] Keenan never paid property taxes on the Tennyson Street house.

In September 2014, Souza received a check for $7,440 for a construction defect class action settlement involving the Peaceful Lane property. Part of that money was to go to an employee who completed the paperwork for the claim, and Souza suggested to

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[11]The timing of this is unclear; the testimony references an exhibit that is not in the record on appeal.

Keenan that the remainder be used to pay past-due property taxes on Peaceful Lane, which totaled more than $8,000. Keenan did not make these payments, so Souza withdrew money to pay the employee and the taxes.

Souza also testified that Keenan continued to manage the Tennyson Street property, "even though I repeatedly told him not to manage it. He has taken a hundred percent of the rents and is not paying" interest or insurance, and is "taking all my money." Souza said the Tennyson Street property had been vacant for 12 to 16 months, and when Souza tried to sell it because it was not making money, Keenan filed a lis pendens action.

On cross-examination, Souza that he and Keenan never agreed to "equalize" their inputs to the properties by having Keenan pay Souza. The 5.5 percent interest on Souza's properties was intended to equalize the interest being paid on the financing of Keenan and Ho's Gazebo Lane property, because they had agreed to split the profits on the houses 50/50. Souza testified that the interest was paid on "approximately $95,000 on each property" Souza had purchased, and that amount was determined by a "management agreement." Souza said Keenan had no equity in Souza's properties, because although they talked about placing their shared equity into an LLC once Keenan bought a fourth house, Keenan never bought the fourth house. Souza said, "I owned the two homes, and he owned the one home. If he wanted to get into a joint venture, he would have went out and bought that fourth home, and we would have created a joint venture. We did have a management agreement that we would split profits on these 50/50." Regarding the equity invested in the three houses, Souza testified, "My investment was $250,000. His investment was [$]30,000," and therefore there was no agreement

to split equity, although there was an agreement to split profits. Also, Keenan had received $4,000 a year in management fees every year since 2000.

Keenan's counsel asked again if the 5.5 percent interest rate was intended to equalize what Keenan and Souza contributed to the venture. Souza said no. Keenan's counsel asked if $1,500 in rent was paid in a month, would half be Keenan's and half be Souza's? Souza said no, because the interest factor needed to be paid from that amount first, and that's what the parties agreed to do. The 5.5 percent was "paid out of the operating profits shared by all three properties."

Souza testified that he did not have any problems with the way Keenan was managing the properties before Keenan took $4,000 out of the joint account without explanation. Keenan later sent Souza a check for $4,000 from the joint account, so they each received equal payments. Souza said he started managing the Tennyson Street property in the last quarter of 2013 or the first quarter of 2014. Property tax bills on Tennyson Street and Peaceful Lane were sent to Souza, Diana, or Reel Sense.

The Souza defendants called forensic accountant Henry Kahrs, who testified that he performed a financial analysis regarding the residences. Kahrs said he reviewed financial data for the residences, and formed an opinion as to the amount required to equalize the capital as to the residences. Because Keenan contributed about $36,000 to buy the Gazebo Lane property and financed the rest, and Souza contributed $267,169 to purchase Peaceful Lane and Tennyson Street, in order to equalize the capital Keenan would have to either contribute approximately $230,000 to the joint venture, or directly pay Souza $115,156. Alternately, Souza could remove all but $36,000

in equity in the three residences. However, "[i]f they're not 50/50 owners . . . Mr. Keenan would take his property and move on; and Mr. Souza would take the other and move on, and you're done." Kahrs was not aware of any effort by the parties to equalize the capital in the residences.

Kahrs said that as he understood it, the joint venture was for "splitting income, not ownership." Kahrs testified that he assumed the loan on Gazebo Lane had not been paid by Keenan personally, but rather was paid from the joint account. Kahrs also noted that $8,357 was paid from the joint account for repairs and maintenance on the Gazebo Lane property. (Keenan's counsel disputed this in questioning Kahrs.) Kahrs also said, "Mr. Keenan never made a 5.5 percent interest payment. The interest money came from the properties. . . . Mr. Keenan never paid a dime to Mr. Souza for the interest, the alleged joint venture did."

The Souza defendants also called Matthew Souza as a witness. Matthew disagreed with Keenan's testimony that he met with Keenan to "true up" the equity in the residences. Matthew testified that he asked to meet with Keenan because the spreadsheets Keenan had provided to Matthew were not clear about where rents were being deposited or how much money had been paid for repairs on the residences, and the spreadsheets did not reconcile with the bank accounts. Matthew said he met with Keenan several times in an effort to clear up these discrepancies. During these meetings, they did not discuss any issues regarding the ownership of the properties.

On cross-examination, Matthew testified that the property taxes on Tennyson Street and Peaceful Lane were paid by the Souzas or Reel Sense, which then sent Keenan invoices for

reimbursement from the joint account. Keenan was not responsible for paying property taxes for these properties directly to the taxing authority. The defense rested.

C. Statement of decision

The trial court issued a tentative statement of decision. Plaintiffs asserted a number of objections regarding the court's findings as to each cause of action in the complaint. The court adopted the statement of decision, substantially unchanged, as its final decision.

The court found in favor of the Souza defendants on plaintiffs' first, second, and third causes of action. It noted that plaintiffs' first amended complaint alleged that there was a joint venture agreement to manage the three residences and share the associated profits, but "[a]t trial, plaintiffs have changed course somewhat, and now argue that the issue the court must decide is whether [the residences] are 'jointly owned on a 50/50 basis' because of a joint venture agreement between plaintiffs and defendants." The court stated, "In this case no joint venture was ever created because although plaintiffs and defendants did come to some understanding regarding the sharing of operating income and expenses in the management of the [residences], there was neither a joint interest in a common business nor a right to joint control. It is undisputed that plaintiff Kevin Keenan was the title owner of the Gazebo Lane property, Anthony and Diana Souza were the title owners of the Peaceful Lane property, and Reel Sense, LLC was the title owner of the Tennyson Street property."

The court continued, "Since all three of plaintiffs' causes of action rely on the existence of a joint venture . . . and this court has determined that no joint venture has been created, each of

plaintiffs' causes of action fails on that ground. Each of plaintiffs' causes of action fail on other grounds as well." The first cause of action for breach of a joint venture agreement failed because "even if a joint venture agreement had been proven, plaintiffs have failed to prove that [defendants] breached any such agreement. Additionally, plaintiffs failed to prove damages." The second cause of action for breach of joint venture fiduciary duty failed because plaintiffs had not proven the existence of a fiduciary duty between themselves and Souza, Diana, or Reel Sense; they had not demonstrated a breach of any such duty; and "plaintiffs have failed to prove damages, a necessary element."

The court noted that the third cause of action for dissolution and accounting "is a request for equitable relief." The court said there is no joint venture to dissolve. The court also noted that a cause of action for accounting requires a showing "'that some balance is due the plaintiff that can only be ascertained by an accounting.'" "Plaintiffs failed to demonstrate that there is anything so complicated about the manner in which the account for the [residences] was kept that it could not be determined in an ordinary action at law. Further[more], plaintiffs failed to show that some balance was due to them."

The court also found in favor of the Souza defendants on their cross-claim for conversion, finding that Keenan had collected rents on the Peaceful Lane property but had not given any of those profits to the Souza defendants. The court held that the Souza defendants had been harmed in the amount of $24,950.00. The court found in favor of plaintiffs on the Souza defendants' cross-claims for breach of fiduciary duty and accounting.

D. Discussion

1. *Ownership*

Plaintiffs include in their opening brief on appeal an "argument re the court's holding that respondents solely owned two of the single family residences and appellant Keenan owned one." They assert that "the evidence establishing that the parties jointly owned Gazebo Lane, Peaceful Lane, and Tennyson Street was overwhelming." Plaintiffs do not tie this argument to any particular causes of action, nor do they cite any court ruling relating to this factual finding. They do not assert that the judgment was entered in error, or that the court's finding was prejudicial. They do not cite any legal authority or guidelines as to the standards for demonstrating ownership of real property. The Souza defendants assert that the court's holding was supported by the evidence presented at trial.

We assume plaintiffs intended to assert that the trial court erred by finding in favor of defendants on plaintiffs' first three causes of action. As plaintiffs suggest that the court's factual finding was not supported by the evidence, we review the court's ruling for substantial evidence.

Substantial evidence supports the court's finding that the residences were not jointly owned. Regarding the Gazebo Lane property, Keenan testified that he and Ho financed that property, and the title of the property is in their names. Keenan and Souza both testified that they agreed Keenan would buy Gazebo Lane, then Souza would buy two properties, then Keenan would buy a fourth property; neither of them testified that they agreed to purchase properties jointly or as co-owners. Keenan and Souza both testified that Souza, Diana, and/or Reel Sense purchased Peaceful Lane and Tennyson Street with cash; Souza testified

that plaintiffs did not contribute to these purchases. Evidence admitted at trial showed that the title to the Peaceful Lane property was in the name of Souza and Diana, and the title to the Tennyson Street property was in the name of Reel Sense. This evidence is sufficient to support the court's findings as to ownership.

Plaintiffs assert that Souza admitted that the properties were jointly owned. They point to an October 2012 email from Souza to Keenan, admitted as part of an exhibit at trial, in which Souza said, "Since there is $90,000 in equity in Hemet and $110,000.00 in San Jacinto. I propose I give you $10,000.00 and you keep Gazebo and I keep Peaceful and Tennyson. The vesting is already recorded this way and can be accomplished with an email accepting this proposal." Plaintiffs assert that "[t]hese words by Souza establish without question that there is joint ownership of the properties." However, at trial Souza testified that they were *not* co-owners of the properties, because although they had agreed to share income from the properties, they only agreed to share ownership once Keenan purchased a fourth house, which Keenan never did. Under the substantial evidence standard of review, we view the evidence in the light most favorable to the prevailing parties and resolve all conflicts in their favor. (*Hernandez v. Rancho Santiago Community College District* (2018) 22 Cal.App.5th 1187, 1193.) Souza's testimony that they were not joint owners of the residences was sufficient to support the judgment. "A single witness's testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

Plaintiffs also contend that the interest Souza charged must have been to "equalize the equity" in the properties, reasoning, "Why would Keenan pay money to equalize the equity if he had no ownership" in the properties? Plaintiffs also assert that "Kahrs testified that to equalize the equity on all three properties, the oral notes were set at $94,500 on Tennyson and at $94,894 on Peaceful Lane." In support of this assertion, plaintiffs cite 35 pages of transcript spanning direct testimony and cross-examination.

The evidence does not support plaintiffs' assertion. When plaintiffs' counsel asked Kahrs, "Did anyone ever tell you that there were notes on each property for $95,000?" Kahrs responded, "I don't recall if anyone told me that." When plaintiffs' counsel asked Kahrs about Keenan paying Souza interest to equalize equity, Kahrs clarified that the interest was being paid from the joint account, not by plaintiffs: "Mr. Keenan is not paying the notes to Mr. Souza. The properties are paying the notes to Mr. Souza. Those are two very different things." Moreover, the payments on Keenan and Ho's loan on the Gazebo Lane property were also being taken from the joint account. Souza testified that the interest he charged was intended to equalize interest payments among properties, not to equalize ownership in the properties.

Furthermore, Kahrs testified that Keenan contributed about $36,000 to buy the Gazebo Lane property and financed the remainder, while Souza contributed $267,169 in cash to purchase the Peaceful Lane and Tennyson Street properties. Thus, in order to equalize the capital invested in the three properties, Keenan would have had to contribute approximately $230,000 to the joint venture, or directly pay Souza $115,156. Plaintiffs did

not present any evidence to suggest that their contributions in the form of interest payments approached this amount. To the contrary, in their opening brief plaintiffs state, "The total of the payments at 5.5% made by Keenan to Souza and/or Reel Sense was $39,931.22. . . . The total of the payments at 7% was [$]21,402.85." And as noted above, the testimony indicated that this amount was paid from the joint account, not by Keenan and Ho, which further diminishes the purported contribution from plaintiffs. Thus, substantial evidence supports the court's implied finding that the interest payments to Souza or Reel Sense did not establish joint ownership of the residences.

Plaintiffs also assert that equity in the properties was equalized because Keenan "paid . . . approximately $20,000 to rehabilitate the various properties pre-rental." In support of their argument, plaintiffs include a single citation to more than 700 pages of evidence spanning three volumes of the appellate record, which consists of title documents, emails, and other miscellaneous documents. It is not this court's role to sift through hundreds of pages of evidence in an effort to find evidence supporting a party's contentions. Moreover, the evidence does not support this assertion. Souza testified that he never saw information about the cash Keenan said he paid to improve the properties: "We asked him for that information. He gave us numbers on a piece of paper, but he never showed us what he actually paid." Kahrs testified that the joint account—not Keenan—paid $8,357 in repairs and maintenance on the properties.

Plaintiffs also point to a letter Keenan wrote to "the water authorities" stating that he was half-owner of Tennyson Street and Peaceful Lane. However, Souza testified that he did not

authorize Keenan to sign his name on these letters. Keenan's unauthorized attribution of ownership to himself in these 2009 letters does not establish ownership of the properties. Plaintiffs also assert that their tax returns demonstrate joint ownership, because plaintiffs and defendants "took depreciation on their tax returns for all three properties. That can only be done by an owner." They refer to trial exhibits consisting of federal tax return "supplemental income and loss" forms for Keenan and Ho from 2012, 2013, and 2014, which list all three residences and other addresses. Plaintiffs cite no authority supporting their assertion that claiming profits and losses relating to real property on this federal tax form necessarily demonstrates actual ownership of the property. Instead, these documents could simply reflect the parties' agreement to share in the profits and losses associated with the rental of the three residences.

In short, although plaintiffs point to evidence they assert conflicts with the court's finding as to ownership of the residences, the court's finding is supported by substantial evidence.

2. *Accounting*

Plaintiffs also argue that "there was a need for an accounting and a dissolution as to all three properties." They assert that "the Court should order an accounting and vacate the $24,950 judgment against Keenan since it was based on the assumption that Souza owned Peaceful Lane and Tennyson Street and no accounting on Tennyson was provided."[12]

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[12]The judgment for $24,950 against Keenan was entered because he collected rent on the Tennyson Street property but failed to pay any of it to the Souzas. Plaintiffs challenge only the court's factual finding as to ownership of the residences; they

This argument appears to relate to plaintiffs' third cause of action for "dissolution and accounting of joint venture," and the Souza defendants' claim for conversion. In addition to the court's holding discussed above that co-ownership as a result of a joint venture had not been proved, the court also held that with respect to the third cause of action specifically, "Plaintiffs failed to demonstrate that there is anything so complicated about the manner in which the account for the [residences] was kept that it could not be determined in an ordinary action at law. Further, plaintiffs failed to show that some balance was due to them."

We have found that the court's ruling on ownership of the residences was not erroneous, thus substantial evidence supports the court's finding that there was no joint venture as to the residences. Therefore, plaintiffs have not demonstrated that the court erred by holding that no accounting was required with respect to the residences. In addition, plaintiffs do not point to any evidence suggesting that defendants owed plaintiffs any sum with respect to the residences. Plaintiffs therefore have not demonstrated any error in the court's holding that an accounting was not warranted.

Because we find no error as to the court's judgment under section 631.8 or the finding regarding ownership of the residences, we affirm the judgment.

ATTORNEY FEES

A. Factual background

After trial, plaintiffs moved to vacate the judgment and moved for a new trial, asserting generally the same arguments

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have not challenged the court's ruling with respect to conversion, and therefore we do not examine that issue.

they have advanced on appeal. The defendants opposed these motions, and the trial court denied them.

Souza and the LLC defendants separately filed memoranda of costs, and each included a request for attorney fees "TBD per motion." Souza filed a motion for attorney fees under Civil Code section 1717 seeking $524,102.40 in attorney fees and $43,447.95 in costs. Souza asserted that plaintiffs sued him as the managing member of SkyM, SkyBM, Simpson Estates, and Generation Development. Souza contended that the Simpson Estates and Generation Development operating agreements included attorney fee provisions providing that in any litigation "among the members" of those LLCs, the prevailing party would be entitled to recover all attorney fees and expenses. Souza noted that the SkyM and SkyBM operating agreements did not include attorney fee provisions, but "[b]ecause Plaintiffs' claims with respect to each of the LLC Defendants were inextricably intertwined, Mr. Souza is not required to apportion his fees among the claims."

Souza and his attorney stated that Souza was seeking attorney fees relating only to the fourth, fifth, and sixth causes of action, which involved allegations relating to Generation Development and Simpson Estates. The motion added that if apportionment were required to limit the fee award to fees associated only with the claims against Simpson Estates and Generation Development and not the other LLCs, then Souza requested $343,293.98. Souza asserted that the attorney fees requested were reasonable. Souza's counsel included a declaration stating the attorneys' billing rates, and attached exhibits including bills and a comparison of attorney billing rates from a National Law Journal billing survey.

Generation Development and Simpson Estates also filed a motion for attorney fees under Civil Code section 1717. They sought $257,482.50 in attorney fees, and stated that "the majority of the work was spent in the defense of claims against Simpson Estates," and "[n]o apportionment of fees is necessary for counsel's representation of additional defendants (SkyBM and SkyM) because Plaintiffs asserted the same claims against all [LLC] defendants." Generation Development and Simpson Estates argued that the requested attorney fees were reasonable.

Plaintiffs opposed both motions for attorney fees. In opposition to Souza's motion for attorney fees, plaintiffs asserted that Souza's motion was "outrageous and unconscionable" because Souza was a member of only Generation Development and "[t]hat entity has paid zero in attorneys' fees." Plaintiffs argued that the relevant member of Simpson Estates was one of Souza's companies, KBS Development, not Souza himself. Plaintiffs also argued that the claims against the LLC defendants were not intertwined, as the duty to produce documents was unique to each particular partnership. In addition, plaintiffs asserted that the amount of attorney fees requested was unreasonable.

In opposition to Generation Development and Simpson Estates' motion for attorney fees, plaintiffs asserted that the "fees requested are excessive, unreasonable, unwarranted, and contrary to what the two LLCs . . . actually paid for the legal services." They argued that the SkyM and SkyBM claims were not inextricably intertwined with the issues involving the other LLCs, and that the fees requested were excessive.

Plaintiffs also filed a motion requesting an award of $130,256.00 in attorney fees from the LLC defendants. Plaintiffs

asserted that "Keenan made a request in 2012 to Souza to inspect all of the books and records of the four limited liability companies, and Souza refused to allow inspection of the records." Thus, "Keenan had to file a lawsuit to obtain access to the records." And because "Defendants did not produce all of the 2015 documents" during Keenan's May 2015 deposition, "Plaintiffs had to go to trial to obtain the documents." Corporations Code section 17704.10, subdivision (g) states that failure to comply with that section without justification may warrant an award of attorney fees.[13] Plaintiffs asserted that "[t]here is no requirement under this statute that Keenan be a prevailing party." The motion reasoned, "Keenan is therefore entitled to an award of attorneys fees under the statute because he had to file a lawsuit and go to trial to get the documents Souza refused to produce under the Corporations Code."

The LLC defendants opposed plaintiffs' motion. They argued that the court expressly held that plaintiffs failed to prove that they had been denied access to the LLCs books and records, and the court did not find that defendants acted without justification. Thus, plaintiffs were not entitled to attorney fees under the statute. The LLCs also asserted that the amount of attorney fees plaintiffs requested was unreasonable.

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[13]This subdivision states, "In any action under this section or under Section 17713.07, if the court finds the failure of the limited liability company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorney's fees, in connection with the action or proceeding." (Corp. Code, § 17704.10, subd. (g).)

The court granted Souza's motion for attorney fees. It held that plaintiffs' fourth, fifth, and sixth causes of action sought to enforce the operating agreements of the LLCs, and the operating agreements of Simpson Estates and Generation Development provided for attorney fees to prevailing parties in litigation among members. The court held that Souza was a prevailing party, because he had successfully defended against plaintiffs' accusations of "self-dealing, and of refusing to provide Plaintiffs with access to . . . LLC documents." The court held that apportionment was not required, because "the claims in the fourth, fifth, and sixth causes of action alleged in the FAC have no clear demarcation," and "[t]he claims at issue were inextricably intertwined." The court awarded Souza the full amount he requested, which included additional fees related to preparation of documents related to the attorney fees motions: $545,066.55. The court also awarded Souza his requested costs of $43,447.95.

The court also granted Generation Development and Simpson Estates' motion. The court noted that these entities' operating agreements included attorney fees provisions, and that each of them prevailed in the claims plaintiffs asserted against them. The court held that apportionment among the LLC defendants was not required because the claims for SkyM and SkyBM were inextricably intertwined with those against Generation Development and Simpson Estates. The court awarded approximately the amount of fees requested: $257,482.26.

The court denied plaintiffs' motion for attorney fees. It stated, "Clearly, a prerequisite to the court deciding whether to award reasonable attorney's fees is a finding that the limited

liability company has failed to comply with the requirements of Section 17704.10(g)." The court said "no such finding was made during the trial on this matter," and therefore it would not consider whether attorney fees were warranted for such a failure.

B. Discussion

On appeal, plaintiffs assert that the court's attorney fee rulings were erroneous. We review attorney fee awards for abuse of discretion. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 882.) Trial judges are trusted with this discretionary determination because they are in the best position to assess the value of the professional services rendered in their courts, and a court's fee award "'will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

First, plaintiffs assert that the court erred by denying their motion for attorney fees under Corporations Code section 17704.10, subdivision (g). They argue that "Keenan is entitled to an award of attorneys fees against all four LLCs because they are all liable for violations of Corporations Code Section 17704.10(g)." Because we have affirmed the judgment in favor of defendants on plaintiffs' causes of action under section 17704.10, we reject plaintiffs' argument.

Second, plaintiffs do not dispute that the operating agreements for Generation Development and Simpson Estates include attorney fees provisions. Plaintiffs assert, however, that an award of attorney fees was not warranted here because "[b]asically, [defendants] were billing [plaintiffs] to produce records they were required by law to produce." However, plaintiffs initiated the litigation and defendants were the prevailing parties, and pursuant to the operating agreements the

prevailing parties are entitled to attorney fees. Moreover, engaging in litigation entails much more than simply "produc[ing] records," and in this case the defendants completed written discovery, took and defended depositions, engaged in motion practice, went to trial, and filed and defended post-trial motions. There is no merit to plaintiffs' argument that the LLCs' counsel did nothing more than produce documents the LLCs were already required to produce.

Third, plaintiffs assert that even if the attorney fee awards are affirmed, they should nonetheless be reduced by apportioning fees by defendant and cause of action. Civil Code section 1717 allows attorney fees to be awarded to the prevailing party on a contract-based cause of action where provided for by the contract. (Civ. Code, § 1717, subd. (a).) "A litigant may not increase his recovery of attorney's fees by joining a cause of action in which attorney's fees are not recoverable to one in which an award is proper," but "[a]ttorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.) "Apportionment of a fee award between fees incurred on a contract cause of action and those incurred on other causes of action is within the trial court's discretion." (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.)

Plaintiffs assert that "there were eight investments which were litigated," but "[o]nly two of those investments" involved relevant attorney fee provisions. However, the nature of the investments was irrelevant to the defense of the plaintiffs' claims. In the fifth and sixth causes of action, plaintiffs asserted that each of the LLCs (representing four different investments) failed

to provide plaintiffs with required records and documents. The fifth cause of action also named Souza as a defendant. The allegations in these causes of action were not separated by investment or defendant. Plaintiffs do not point to any way in which the defense to these causes of action was different among these investments or defendants, and therefore nothing supports plaintiffs' assertion that apportionment would be appropriate.

The fourth cause of action was asserted against Souza as managing member of Generation Development and Simpson Estates, and therefore falls directly under the attorney fee provision in those operating agreements.[14] Plaintiffs' argument that the investments differed therefore does not support apportionment. Plaintiffs assert, without citation to the record, that Souza is "seeking attorneys' fees for time litigating claims that do not involve an attorney fees clause." However, Souza and his attorney stated in the attorney fees motion and accompanying declaration that they sought attorney fees relating only to the fourth, fifth, and sixth causes of action, which included allegations regarding Generation Development and Simpson Estates. Thus, the record does not support plaintiffs' contention.

Plaintiffs also assert that the attorney fee award to Souza was too high. They argue that Souza's lead counsel's hourly fee of $742.50 to $787.50 per hour was excessive, and that the case was overstaffed with multiple partners, associates, and paralegals. "[T]he fee setting inquiry in California ordinarily

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[14]Nonparty KBS Development was the managing member of Generation Development and Simpson Estates, and apparently Souza was the managing member of KBS Development. On appeal, the parties do not assert that this has any effect on Souza's entitlement to attorney fees.

begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "The reasonable hourly rate" for attorney work "is that prevailing in the community for similar work." (*Ibid.*) Souza submitted a rate comparison chart indicating that his lead counsel's hourly rate was on the high end of attorney billing rates in California, but nonetheless within the range included in the survey. Plaintiffs argue that the amounts billed were "obscene" and "patently excessive," but they have not supplied any authority or evidence to support their contentions. Plaintiffs also assert, "[W]hen closely examined, it is apparent that Souza is seeking fees for legal services unrelated to Generation Development and Simpson Estates which are not recoverable. . . ." However, plaintiffs have not pointed us to any specific work done by any of Souza's attorneys that was unrelated to these entities or should have been excluded from the fee award. As a result, plaintiffs have not demonstrated that the trial court abused its discretion by awarding Souza his requested attorney fees.

DISPOSITION

The judgment and post-trial orders are affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J. WILLHITE, J.