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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

HAI HUANG et al., Plaintiffs and Appellants, v. STATE FARM GENERAL INSURANCE COMPANY, Defendant and Respondent.	B276878 (Los Angeles County Super. Ct. No. KC065667)

APPEAL from orders of the Superior Court of Los Angeles County. Dan Thomas Oki, Judge. Affirmed.

Abir Cohen Treyzon Salo LLP, Boris Treyzon and Cynthia Ann Goodman for Plaintiffs and Appellants.

Pacific Law Partners, LLP, Matthew F. Batezel and Dominique M.W. Tomaino for Defendant and Respondent.

In 2012, appellants Hai and Jen Huang made a claim under their homeowners insurance policy with defendant State Farm General Insurance Company (State Farm) related to physical damage to their home. Although the Huangs had made similar claims in both 2008 and 2010, they asserted the damage at issue in their 2012 claim was caused by demolition work at a neighbor's home. In particular, the Huangs stated the demolition caused intense vibrations that in turn damaged their home. After investigating their claim, State Farm concluded the damage was preexisting and not caused by the demolition vibrations. Instead, as it had concluded in investigating earlier claims, State Farm believed the damage was caused by long-term settlement of the soil and earth beneath the home, which type of damage was excluded under the Huangs' insurance policy.

Following State Farm's denial of their claim, the Huangs filed suit, alleging State Farm breached both the insurance policy and the implied covenant of good faith and fair dealing. The trial court granted summary adjudication as to the good faith and fair dealing cause of action, and a jury found in favor of State Farm on the breach of contract cause of action. Following trial, State Farm moved for attorney fees based on the Huangs' earlier denials of State Farm's requests for admission. (Code Civ. Proc., § 2033.420.) State Farm also sought to recover its expert witness fees based on the Huangs' rejection of State Farm's section 998 offer to compromise made before trial. (Code Civ. Proc., § 998.)

The trial court awarded State Farm both its attorney fees and its expert witness fees. On appeal, the Huangs challenge the trial court's orders awarding attorney fees and expert witness fees. As discussed below, we find no abuse of discretion and affirm.

BACKGROUND[1]

1. The State Farm Insurance Policy

During the relevant time, the Huangs insured their home in Diamond Bar (property) with a State Farm homeowners insurance policy (policy). The policy excluded coverage for loss due to "earth movement." Specifically, the policy stated: "We do not insure under any coverage for any loss which is caused by one or more of the items below, regardless of whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these: . . . [¶] b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to . . . subsidence, erosion or movement resulting from improper compaction, site selection or any other external forces."

2. The Huangs' 2008 Claim

In 2008, the Huangs made a property damage claim under a California Earthquake Authority policy (CEA policy), for which

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[1] The following facts are primarily taken from evidence submitted in connection with summary judgment and posttrial motions. Although this case was heard by a jury over the course of six days, the reporter's transcript from trial is not included in the appellate record. " 'A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*), italics omitted.) It is appellant's burden to provide an adequate record on appeal that will assist in overcoming the presumption of correctness. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*).)

State Farm was the servicing carrier (2008 claim). The Huangs alleged an earthquake caused structural damage to the property. State Farm investigated the 2008 claim and confirmed there had been an earthquake on July 29, 2008, with an epicenter close to the property.

As part of the investigation, a State Farm representative conducted a physical inspection of the property. In his notes from the property inspection, the representative stated the property was "built in [a] slight hillside." He found visible damage both inside and outside the property. In particular, the representative saw damage to block retaining walls, cracks in the exterior stucco, and damage to interior drywall. The representative also noted that the damage was "heavier on the front elevation and left side of the home." The representative saw "vis[i]ble signs of prior earthmovement [*sic*] conditions on the left elevation." He reported a "[p]ossible issue with damage to structure" and reiterated the "potential structure issues due to the location . . . and the slope of the hillside." Both in person and by letter, the representative reviewed with the Huangs what their policy covered and what it did not cover.

State Farm hired Exponent Failure Analysis Associates (Exponent) to perform "a damage assessment to determine the nature and extent of earthquake damage" to the property. Exponent concluded that, although the earthquake caused cosmetic damage to the property, it did not cause any structural damage to the property. Exponent prepared a report with its conclusions, stating "[d]amage to wall and ceiling finishes (bedrooms) preexisted the earthquake and appear to be caused by long-term differential settlement, however, the earthquake might have affected these areas. Although the earthquake might have

affected preexisting damage, the nature and scope of repairs was not changed, and therefore, the effect of the earthquake is trivial and not considered to be damage. In addition, there is no structural damage to the framing, based on site observations and the level of ground shaking at the site. [¶] All cracking to the bedrooms and kitchen is cosmetic in nature. . . . [¶] In summary, based on our observations and a review of available data for the . . . earthquake, we conclude that the residence did not suffer structural damage, but had some cosmetic damage as a result of the earthquake." State Farm sent a copy of Exponent's report to the Huangs.

In a November 2008 letter addressed to the Huangs, State Farm explained that, based on its site inspection, investigation, and discussions with the Huangs, it determined "that the northwest elevation stucco damage was old and not consistent with earthquake damages. In addition, many other damaged stucco areas along the front elevation are related to long term deterioration, moisture intrusion and shrinkage. Please refer to the Exponent engineering report for additional details. [¶] Damage resulting from this cause of loss is not covered by your policy." Thus, State Farm concluded the earthquake did not cause the noted structural damage and, although the earthquake did cause cosmetic damages that were covered by the Huangs' insurance, the cost to repair those damages was less than the policy deductible. As a result, State Farm denied the 2008 claim.

3. The Huangs' 2010 Claim/Inquiry

In 2010, the Huangs made another claim under a CEA policy (2010 claim). The Huangs again alleged an earthquake damaged the property. State Farm confirmed there had been an earthquake on July 7, 2010, but noted the property was

approximately 70 miles from the epicenter. State Farm believed it was unlikely the earthquake caused the damage discussed, but nonetheless investigated the claim.

In a telephone conversation with a State Farm claims representative, Mrs. Huang stated she believed the house was shifting and she was worried it would collapse. She said there were cracks along the walls and ceilings in some of the rooms. She told the representative she first noticed the damage after the 2008 earthquake, but things had worsened over the years and most noticeably after the 2010 earthquake. In discussing the matter with the representative, Mrs. Huang said she had not made any repairs to the property since the 2008 claim. When the representative came to the property to review the damage with the Huangs, Mrs. Huang indicated they no longer wanted to make a claim, but instead wanted to make an inquiry only. Thus, State Farm closed the file as an inquiry only.

4. Property Repairs Prior to 2012

The Huangs bought the property in 1999 or 2000. According to their deposition testimony and discovery responses, the Huangs had some work done to the property prior to 2012. In total, that work consisted of remodeling and painting the master bedroom and bathroom in approximately 2001, painting the exterior of the property in approximately 2010, and painting their daughter's bedroom purple in 2011. The Huangs denied making any repairs to the stucco, foundation, or drywall prior to 2012.

5. The Huangs' 2012 Claim

In January 2012, the Huangs made a claim under the policy for damages to the property due to vibrations from demolition at a neighboring home (2012 claim). According to the State Farm 2012 claim file, the Huangs claimed the demolition

lasted for days, felt like a war zone, and caused cracks to appear both on the interior and exterior of the property, including on the foundation. Also according to the 2012 claim file, Mrs. Huang was out of the country when the demolition began. At the time, however, her brother, Jerry Chu, was staying at the property. According to Mrs. Huang, her brother called her to tell her large cracks had appeared on the front of the home and dust was everywhere. And, at trial, Chu testified that, during the demolition, he felt the property shaking, saw dust in the air, and sometimes items would fall from cabinets.[2] He also testified he noticed cracks forming around the house sometime after the demolition had ended. The Huangs indicated to State Farm they had never seen the cracks before.

A State Farm representative inspected the interior and exterior of the property. The representative noted "[s]evere cracking" at the front elevation of the property to stucco walls and eaves, and "minor cracking" in concrete and bricks. Inside the property, the representative saw, among other things, cabinets, tiles, and molding "pulling away from" the ceiling and

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[2] In connection with their posttrial motion to strike or tax costs (discussed below), the Huangs presented uncertified excerpts of Chu's trial testimony. Although the parties do not appear to dispute the accuracy of the cited testimony, we note not only that the excerpts of course do not represent Chu's complete testimony but that they also bear the reporter's advisement that the transcript "is an uncertified draft transcript . . . please do not quote from this draft in pleadings or elsewhere. The certified transcript is the only official record which may be relied upon for verbatim citations of testimony." As previously noted, the official, certified trial transcript was not included in the record on appeal.

walls; cracked tiles and drywall; countertops shifting; and cracks in the basement "blockwall" and concrete floor.

a. 2012 Ninyo & Moore Report

State Farm hired Ninyo & Moore to conduct a "limited geotechnical evaluation" of the property in order "to evaluate the cause(s) of reported distress from a geotechnical perspective, in particular with regard to the reported neighboring demolition." In February 2012, Ninyo & Moore prepared a report summarizing its findings and conclusions (2012 Ninyo & Moore report). Ninyo & Moore opined that the recent demolition next door was not the predominant cause of the damage noted at the property. Rather, Ninyo & Moore concluded the damage was caused over a long period of time predominantly by settlement of soils and earth materials under the property foundation and deterioration and shrinkage of construction materials. It was Ninyo & Moore's opinion that the property "was developed by cut-and-fill grading that involved placement of fill soil in the north part of the property." Based on that, Ninyo & Moore stated "it is our opinion that the tilt of the residence floor toward the northwest and the observed distress in the residence is predominantly due to differential settlement of fill soil underlying the north/northwest part of the property." This conclusion was supported by, among other things, the fact that cracks both inside and outside the home previously had been patched or painted over, with evidence of peeling paint or chipped plaster along the cracks. In other words, the cracks were not new.

In February 2012, and based on Ninyo & Moore's opinion that the damage was caused by earth movement over a long period of time, State Farm denied the 2012 claim as not covered

by the policy. State Farm sent a copy of the 2012 Ninyo & Moore report to the Huangs.

b. Laines Report

The Huangs disagreed with State Farm's decision. As a result, they hired Charles Laines, an engineer, to inspect the property and give his opinions as to the cause of the damage. In December 2012, almost one year after State Farm denied the 2012 claim, Laines prepared a three-page "preliminary engineering report" offering his observations and assessment of the property, as well as a critique of the 2012 Ninyo & Moore report (Laines report). As an initial matter, Laines noted that, before he visited the property, the exterior walls had been patched and painted (which was not the case when Ninyo & Moore performed its inspection in early 2012).

Laines criticized the 2012 Ninyo & Moore report as being based on "thin and speculative" evidence and offering only "generalities and suppositions" as to the soil filling under the property. In his opinion, the 2012 Ninyo and Moore report was "a very limited 'study' and from a geotechnical perspective with very weak evidence while ignoring other possible interpretations of the evidence," such as damage caused by demolition vibrations.

Nonetheless, Laines agreed with Ninyo & Moore's assessment that some damage to the property was caused by earth movement. His opinion differed, however, in that he believed vibrations from the nearby demolition caused at least some of the damage noted at the property. For example, Laines stated that, as to cracks that had previously been patched, "violent shaking [of the house] could very likely have opened the cracks anew." He also reported that "[s]ome damage has no evidence of being pre-existing, and it is difficult to believe that all

of the current extensive damage has existed over a long period of time and the homeowner simply ignored it. There is damage of a recent origin and it is not inconsistent with nearby heavy construction activities."

Based on the evidence cited in the 2012 Ninyo & Moore report and his own observations, Laines concluded, "some relatively minor settlement of this building has occurred and [been] patched, and that the violent shaking of the demolition and construction across the street has caused new damage to the exterior stucco shear walls and interior wallboard walls and ceiling, and reopened previous damage. The doors, cabinets and kitchen counters have also been affected by the building shaking."

On February 15, 2013, the Huangs gave a copy of the Laines report to State Farm.

c. 2013 Ninyo & Moore Report

State Farm forwarded the Laines report to Ninyo & Moore. In May 2013, Ninyo & Moore performed an "updated geotechnical evaluation of the distress conditions" at the property.[3] As part of its 2013 evaluation, Ninyo & Moore reviewed its 2012 notes, revisited the property, spoke with Mrs. Huang, reviewed the Laines report, reviewed geotechnical documents from the City of Diamond Bar pertaining to the property development (including soils reports and grading plans), and further evaluated the reported vibrations from the nearby demolition. However, Ninyo & Moore did not conduct a subsurface evaluation, which would have involved test pits or shallow borings around the property.

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[3] Ninyo & Moore's 2013 evaluation was conducted after the Huangs filed the instant lawsuit in February 2013.

In May 2013, Ninyo & Moore submitted its "updated geotechnical evaluation" to State Farm (2013 Ninyo & Moore report).

According to the 2013 Ninyo & Moore report, much of the same damage observed in 2012 remained in 2013. Mrs. Huang also pointed out some additional damage not noted in the 2012 Ninyo & Moore report. According to the 2013 Ninyo & Moore report, Mrs. Huang also said "she noticed cracks in the stucco, interior wall cracks, separations in the walls, and misaligned doors and cabinets in her residence after feeling the vibrations from the heavy construction equipment activities on the neighboring property." Following Ninyo & Moore's 2012 evaluation, the property had been repainted, the exterior cracks in the stucco had been repaired or patched, and a new exterior stucco crack had appeared.

The 2013 Ninyo & Moore report addressed the property's floor level as well as the strength and potential destructiveness of the 2012 demolition vibrations. Although in some areas of the property the floor was level or almost level, the report stated that the floor tilted beyond the generally acceptable gradient in the northern part of the home. And the areas of the home with the most distress (including wall cracks and separations in the bedrooms and hallways) were in the area with the pronounced floor tilt. With respect to the demolition vibrations, the 2013 Ninyo & Moore report calculated an estimated vibration level from the nearby demolition. In conducting its calculation, Ninyo & Moore employed guidelines from the California Department of Transportation and not only considered the demolition equipment used (based on photographs submitted by Mrs. Huang), but also added to the equation a more powerful—and therefore heavier vibration-inducing—machine. Ninyo & Moore determined that,

although humans easily would have perceived the estimated vibrations, the vibrations were not strong enough to cause even cosmetic damage to the property. The 2013 Ninyo & Moore report stated, "the vibrations perceived from the demolition on the neighboring property may have been disturbing to the occupants of the Huang residence, but were well below the level considered to cause cosmetic damage to residential construction."

As it had in 2012, Ninyo & Moore concluded again in 2013 that the damage at the property was "predominantly due to long-term earth movement underlying the residence foundation, shrinkage/deterioration of construction materials, and construction methodology." The 2013 Ninyo & Moore report stated, "Based on the observation of previous patching of cracks in the residence, it is our opinion that much of the differential earth movement and consequent distress and tilt of the residence occurred in the past. Based on the observation of peeling paint, and chipped and dislodged pieces of plaster/paint along separations/cracks observed in the kitchen and bedroom areas, it is our opinion that this distress has occurred over an extended period of time and is exacerbated by long-term deterioration of the paint and plaster materials."

Following receipt of the 2013 Ninyo & Moore report, State Farm mailed a copy of the report to the Huangs and reiterated State Farm's denial of the 2012 claim.

6. The Instant Lawsuit

In February 2013, a few days after giving State Farm a copy of the Laines report, the Huangs filed the instant lawsuit against State Farm and others, who are not parties to this appeal. The operative complaint is the second amended complaint, which was filed more than one year later in May 2014

and alleged the following three causes of action against State Farm: breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief.

a. November 2013: The Huangs deny State Farm's requests for admission without objection.

In August 2013, State Farm served the Huangs with requests for admission. The Huangs denied without any objections the following requests for admission: (i) admit that the predominant cause of loss to the property for the damage that was the subject of the 2012 claim was not due to vibrations from construction equipment on a neighboring property, (ii) admit that State Farm did not breach the policy when it denied the 2012 claim, (iii) admit that State Farm did not act unreasonably when it denied the 2012 claim, and (iv) admit that State Farm did not act in a willful, malicious, oppressive, or fraudulent manner when it denied the 2012 claim.

b. March 10, 2015: The trial court grants summary adjudication in favor of State Farm.

In January 2015, State Farm filed a motion for summary judgment or in the alternative summary adjudication, which the Huangs opposed. On March 10, 2015, the court denied summary judgment, but granted summary adjudication in favor of State Farm on both the Huangs' second cause of action for breach of the implied covenant of good faith and fair dealing, and their claim for punitive damages. The trial court held the Huangs failed to demonstrate "a triable issue of material fact regarding whether State Farm acted in bad faith or engaged in conduct that was fraudulent, malicious or oppressive." The order does not address the trial court's reasoning for denying summary adjudication on the first cause of action for breach of contract. And the reporter's

transcript from the hearing on the motion is not in the record on appeal.

c. March 16, 2015: State Farm designates its expert witnesses.

A few days after the order granting summary adjudication, State Farm served its expert witness designation on counsel for the Huangs. The designation, notified the Huangs that State Farm would call as an expert witness at trial, among others, Jon Wren, an engineer with Exponent. In a supporting declaration, counsel for State Farm noted the topics on which Wren would testify included the "physical conditions, including soil conditions, observed at the property during discovery, and the process, manner, and means used by Exponent to investigate, explore, and evaluate those conditions for damage and causation assessment."

d. April 2015: Exponent inspects and conducts soil testing at the property.

On two occasions in early April 2015, State Farm advised counsel for the Huangs that, at an upcoming property inspection, State Farm's expert would be digging test pits and conducting shallow boring at the property. State Farm stated Wren would attend the testing and inspection, which took place in April 2015.

e. December 4, 2015: State Farm again designates its expert witnesses.

On December 4, 2015, nine months after serving its first expert witness designation, State Farm again served its expert witness designation on counsel for the Huangs. State Farm's December designation was the same as its March designation, listing not only Wren as an expert witness who would testify at trial, but also the subjects on which he would testify.

f. December 4, 2015: State Farm makes a Code of Civil Procedure section 998 offer to compromise.

Also on December 4, 2015, State Farm served a Code of Civil Procedure section 998 offer to compromise (section 998 offer). State Farm offered to settle the lawsuit with the Huangs before trial by paying the Huangs $5,000 and by both parties paying their respective attorney fees and costs. The Huangs did not accept the section 998 offer.

g. January 2016: Wren is deposed.

The Huangs deposed Wren in January 2016, at which time State Farm provided Exponent's report from its April 2015 inspection and testing. At his deposition, Wren stated the April 2015 inspection and soil testing revealed that the property was built on bedrock. It was Wren's opinion that the primary cause of the damage to the property was "long-term settlement" "as a result of expansive soil or expansive ground movement." He also testified earth vibrations caused no damage at the property.

h. February–March 2016: Trial, Verdict, and Judgment

After a few continuances, trial was held over the course of six days in February 2016. As previously noted, the reporter's transcript for the trial is not in the appellate record.

On February 25, 2016, the jury returned its verdict. The first question posed to the jury on the special verdict form was: "Did [the Huangs] establish that they suffered a direct physical loss to property that was not otherwise already in need of repair?" The jury answered, "No." Because the jury answered "no" to that first question, the jury was not instructed to answer and did not answer any of the remaining questions on the special verdict form.

On March 15, 2016, and based on the jury's verdict, the trial court entered judgment in favor of State Farm and against the Huangs. The judgment awarded costs and other recoverable amounts to State Farm, which were to be determined upon State Farm's memorandum of costs.

i. Award of Attorney Fees Under Code of Civil Procedure Section 2033.420

Following trial, State Farm filed a motion for attorney fees under Code of Civil Procedure section 2033.420 (section 2033.420). Section 2033.420 permits an award of attorney fees in certain circumstances when, after a party denies a request for admission, the truth of the requested admission is later proved. State Farm sought over $160,000 in attorney fees and over $6,000 in paralegal fees. In support of its motion, State Farm submitted invoices showing the number of hours worked, who performed the work, and what hourly rate was charged for the work. However, citing the attorney-client privilege, State Farm redacted all information related to the specifics of what work was actually done. State Farm also submitted a declaration from one of its lead attorneys detailing the work done in the case, the attorneys who worked on the case, the hourly rate for each attorney, and the total number of hours worked.

The Huangs opposed the motion for attorney fees. The Huangs argued that, when they denied State Farm's requests for admission, the Huangs held a reasonable good faith belief that they would prevail on their complaint. They also argued the requested attorney fees were unreasonable and unsubstantiated.

The trial court granted State Farm's motion for attorney fees and ordered the Huangs to pay State Farm its requested attorney fees and paralegal fees, which totaled $167,861.50. The

court found that, at the time they denied the requests for admission, the Huangs could not have had a reasonable good faith belief that they would prevail on their complaint. The court noted that, when they denied the requests for admission, the Huangs had both the 2012 and 2013 Ninyo & Moore reports, which stated the property was likely built on cut-and-fill grading and that the damage at the property was caused predominantly by long-term settlement of soils and earth materials underlying the foundation. The trial court noted that, contrary to the Huangs' position, "[n]either report stated that cut-and-fill grading under the property meant that any soil settlement/movement would have ended long before the damage manifested in 2012." Similarly, the court noted that, when they denied the requests for admission, the Huangs were aware of Exponent's 2008 report, which also concluded the damage at the property was caused by long-term differential settlement. As the jury earlier had found, the trial court stated, "The damage based upon which [the Huangs] made their claim to [State Farm] in 2012 long pre-existed the neighboring construction activities."

The trial court also rejected the Huangs' position that, at the least because their breach of contract cause of action survived summary adjudication, they had reasonable good faith belief that they would prevail on their contract cause of action. The trial court held, "The existence of a triable issue of fact for a jury to resolve does not necessarily translate into the plaintiff having a reasonable belief in his or her chance of success at trial." Finally, the trial court also concluded the requested attorney fees were both reasonable and, despite redacted invoices, based on sufficient evidence.

j. Award of Costs, Including Expert Witness Fees Under Section 998

Following trial, State Farm also submitted a memorandum of costs, which included almost $80,000 (later reduced to $50,664.44) in expert witness fees. State Farm argued it was entitled to its expert witness fees based on the Huangs' rejection of the section 998 offer.

The Huangs filed a motion to strike or tax costs. As to State Farm's requested expert witness fees, the Huangs argued the section 998 offer was a token offer made in bad faith. The Huangs claimed that, when the section 998 offer was made and rejected, State Farm knew the Huangs were not in possession of the results of Exponent's April 2015 property inspection and testing.

The trial court granted in part and denied in part the Huangs' motion to strike or tax costs, specifically, denying their motion to tax State Farm's expert witness fees. In granting State Farm's post-section 998 offer expert witness fees of $50,664.44, the trial court concluded State Farm's section 998 offer was reasonable and made in good faith.

The court rejected the Huangs' argument that, because at the time they rejected the section 998 offer they did not have Exponent's findings and opinions related to the April 2015 soil testing and property inspection, the offer could not have been made in good faith. The trial court noted, "the jury determined that the [Huangs] failed to establish that they suffered a direct physical loss to property that was not otherwise already in need of repair. The jury never determined whether [the] property was damaged by long-term settlement. Throughout the litigation, moreover, [State Farm] argued that the property was already

damaged as of [January 2012], as evidenced by two prior State Farm claims." And, in any event, the court concluded that the 2015 Exponent information that State Farm possessed "was not exclusive" to State Farm. Instead, not only were the Huangs repeatedly told the damage at the property was due to long-term settlement, they owned the property and at any time could have conducted their own soil testing if they desired. The trial court also noted that, despite knowing since March and April 2015 that Wren was a designated expert witness and would be performing soil tests at the property, the Huangs never sought to learn of or analyze Wren's findings until the eve of trial.

k. Appeal

The Huangs did not appeal the trial court's order granting summary adjudication or the judgment following the jury's verdict. The Huangs appealed the trial court's postjudgment orders denying the Huangs' motion to strike or tax costs and granting State Farm's motion for attorney fees.

DISCUSSION

1. Standard of Review

We apply the abuse of discretion standard of review to both orders at issue in this appeal. The trial court's decision to award costs, including attorney fees, under section 2033.420 is reviewed for an abuse of discretion. (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 753 (*Bloxham*).) " 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong" '—meaning that it abused its discretion." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*).) Similarly, we review the trial court's decision to award

expert witness fees under section 998 for an abuse of discretion. (*Bates v. Presbyterian Intercommunity Hospital, Inc.* (2012) 204 Cal.App.4th 210, 221 (*Bates*).)

" 'An abuse of discretion occurs only where it is shown that the trial court exceeded the bounds of reason. [Citation.] It is a deferential standard of review that requires us to uphold the trial court's determination, even if we disagree with it, so long as it is reasonable.' " (*Bloxham*, *supra*, 228 Cal.App.4th at p. 753.) "We will reverse the trial court's determination only if we find that 'in light of all the evidence viewed most favorably in support of the trial court, no judge could have reasonably reached a similar result.' " (*Bates*, *supra*, 204 Cal.App.4th at p. 221.)

2. Attorney Fees

a. Applicable Law

Requests for admission are designed to expedite trial. They "are not restricted to facts or documents, but apply to conclusions, opinions, and even legal questions. [Citations.] Thus, requests for admission serve to narrow discovery, eliminate undisputed issues, and shift the cost of proving certain matters. As such, the requests for admission mechanism is not a means by which a party obtains additional information, but rather a dispute resolution device that eliminates the time and expense of formal proof at trial." (*City of Glendale v. Marcus Cable Associates, LLC* (2015) 235 Cal.App.4th 344, 353–354 (*City of Glendale*).)

Thus, when a party denies a requested admission that later is proven to be true, the trial court may order that party to reimburse the requesting party its reasonable expenses incurred to prove the matter. (*City of Glendale*, *supra*, 235 Cal.App.4th at p. 353.) Such reimbursement is governed by section 2033.420,

which states in relevant part: "If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." (§ 2033.420, subd. (a).) That section requires the trial court to make such an order unless it finds either that (1) an objection to the request was sustained or a response to it was waived under section 2033.290, (2) the admission sought was not of substantial importance, (3) the party failing to make the admission had reasonable ground to believe that that party would prevail on the matter, or (4) there was another good reason for the failure to admit. (§ 2033.420, subd. (b).) Accordingly, "an award of costs of proof for a denial of a request for admission involves the weighing of a number of factors, such as whether the matter denied was of 'substantial importance'; whether there was a 'reasonable basis' for the denial; whether the party making the denial knew or should have known at the time that the requested matter was of 'substantial importance' and was true; whether there were 'other good reasons for the denial'; and whether and to what extent the responding party made a good faith effort otherwise to resolve the matter." (*City of Glendale*, *supra*, 235 Cal.App.4th at p. 354.)

b. The trial court did not abuse its discretion in awarding State Farm attorney fees.

The Huangs do not dispute either that they failed to object to the requested admissions or that the requested admissions

were of substantial importance. Rather, the Huangs argue only that, at the time they denied State Farm's requests for admission, the Huangs held a reasonable belief that they would prevail on the matters State Farm sought to have admitted.

The Huangs make much of the fact that, at the time they denied the requests for admission, they had in their possession not only the 2012 and 2013 Ninyo & Moore reports (both of which concluded long-term earth movement caused the damage to the property), but also the Laines report, which criticized the 2012 Ninyo & Moore report and stated the demolition vibrations could have caused some damage to the property. Although the Laines report might appear to have given the Huangs a reasonable belief that they would prevail on the requested admissions, the Laines report was fundamentally flawed and the Huangs either knew or should have known it was not reasonable to rely on it.

The Laines report included suppositions that simply were not true. For example, the Laines report stated, "it is difficult to believe that all of the current extensive damage has existed over a long period of time and the homeowner simply ignored it." But, based on the Huangs' 2008 and 2010 claims, it could not reasonably be disputed that the damage had existed over a long period of time. In addition, the Laines report reflected a belief that the Huangs had repaired prior damage, which repairs were then reopened by the demolition vibrations. However, as the Huangs testified in deposition, they had not done any repairs to the property since they bought it other than remodeling the master suite and some painting. Thus, it appears Laines was unaware of the preexisting claims and damage. Of course, however, the Huangs were well aware of their earlier claims and the preexisting damage. We conclude the Huangs cannot use an

expert report that they know to be incomplete or inaccurate as support for an asserted reasonable and good faith belief that they would prevail on State Farm's requested admissions. Similarly, the Huangs cannot rely on Chu's description of events when the Huangs themselves knew of the preexisting damage and when the record does not address whether Chu knew of any preexisting damage at the property.

The Huangs also claim the reasonableness of their denial of State Farm's requests for admission is supported by the fact that their breach of contract cause of action survived summary adjudication. However, as the trial court stated, simply because the Huangs raised an issue of fact that a jury, as opposed to the court, must determine did "not somehow infer that plaintiffs had a reasonable belief that they could succeed on that cause of action during the time of trial. The existence of a triable issue of fact for a jury to resolve does not necessarily translate into the plaintiff having a reasonable belief in his or her chance of success at trial." We agree with the trial court's assessment. The Huangs had personal knowledge of preexisting damage at the property and could not reasonably rely on either the Laines report or Chu's description of events. Those facts do not change simply because the Huangs' breach of contract cause of action survived summary adjudication.

In addition, because the trial transcript is not in the record on appeal, we presume the trial testimony supports the trial court's ultimate decision that, at the time they denied State Farm's requests for admission, the Huangs did not have a reasonable good faith basis for doing so. (*Denham, supra,* 2 Cal.3d at p. 564.) As previously stated, it is the appellant's burden to provide an adequate record on appeal that will assist in

overcoming the presumption of correctness. (*Maria P., supra,* 43 Cal.3d at p. 1295.)

The Huangs also argue State Farm did not prove two of the matters it sought to be admitted and, therefore, should not have been reimbursed for work related to those two requests. In order to award reimbursement under section 2033.420, the trial court must find that the requesting party eventually proved the matter denied. (§ 2033.420, subd. (a).) Here, the Huangs claim State Farm never proved the following two requests for admission: (i) that the predominant cause of loss to the property for the damage that was the subject of the 2012 claim was not due to vibrations from construction equipment on neighboring property, and (ii) that State Farm did not breach the policy when it denied the 2012 claim.[4] Although the Huangs acknowledge "the jury found that the property was already damaged" when they made their 2012 claim, they contend the jury's conclusion does not encompass the two noted requests for admission. We disagree.

As noted, the jury found that, in 2012 when the Huangs insisted vibrations from nearby demolition damaged the property, the property did not sustain damage "that was not otherwise already in need of repair." In other words, the jury determined that the property was already damaged and in need of repair when the Huangs made their 2012 claim. This finding necessarily subsumes both requests for admission on the issue of breach of contract. If, as the jury found, the property was already damaged and in need of repair at the time the neighboring

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[4] The Huangs concede State Farm proved the other two requests for admission (related to bad faith and punitive damages) at the summary adjudication stage of the proceedings.

demolition took place, then the predominant cause of the loss could not have been vibrations from the demolition. Similarly, if at the time the Huangs made their 2012 claim the property had suffered no new damage from the demolition, State Farm properly denied the claim and did not breach the policy by refusing coverage for preexisting damage. Thus, although the jury was not asked to make definitive or verbatim findings on the two requests for admission related to breach of contract, the one finding the jury did make encompasses both of those requests. As such, State Farm proved those matters for purposes of section 2033.420, subdivision (a).

c. The trial court did not abuse its discretion in determining the amount of attorney fees awarded.

Finally, the Huangs argue that the trial court abused its discretion in awarding attorney fees based on heavily redacted invoices. The law is clear, however, that a prevailing party seeking attorney fees need not provide invoices at all. (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375 ["an award of attorney fees may be based on counsel's declarations, without production of detailed time records"].) Here, despite being redacted, State Farm's invoices revealed who performed the work, how much time was spent, and what hourly rate was charged. In addition, one of State Farm's lead attorneys provided a declaration detailing the work done on the case as well as the names and hourly rates of the attorneys who worked on the case. We conclude State Farm submitted sufficient evidence supporting its requested attorney fees.

Moreover, given that the same superior court judge presided over this case in its entirety, the trial court was in the

best position to determine the reasonableness of the requested fees. " 'The "experienced trial judge is the best judge of the value of professional services rendered in his court." ' " (*PLCM*, *supra*, 22 Cal.4th at p. 1095.) Indeed, the trial court stated, "I do know that this went through a fairly lengthy jury trial, that the jury trial was preceded by a successful prosecution of a motion for summary adjudication. The hourly rates charged by [counsel for State Farm] certainly appear reasonable given the nature of the litigation and the fact that it had significant law and motion and proceeded all the way through a jury trial."

In light of the evidence submitted in support of the requested fees and the trial court's intimate knowledge of the case and the work that went into it, we find no abuse of discretion in the amount of fees awarded.

3. Costs

a. Applicable Law

Section 998, subdivision (c)(1) provides: "If an offer [to settle the action] made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant."

There is no dispute that a section 998 offer must be made in good faith. (*Bates*, *supra*, 204 Cal.App.4th at p. 220.) " 'Good

faith . . . requires that the settlement offer be "realistically reasonable under the circumstances of the particular case." ' [Citation.] 'The offer must therefore, "carry with it some reasonable prospect of acceptance." ' " (*Ibid.*) " 'Even a modest or "token" offer may be reasonable if an action is completely lacking in merit.' [Citation.] 'When a defendant perceives himself to be fault free and has concluded that he has a very significant likelihood of prevailing at trial, it is consistent with the legislative purpose of section 998 for the defendant to make a modest settlement offer. If the offer is refused, it is also consistent with the legislative intent for the defendant to engage the services of experts to assist him in establishing that he is not liable to the plaintiff. It is also consistent with the legislative purpose under such circumstances to require the plaintiff to reimburse the defendant for the costs thus incurred.' " (*Ibid.*) "Where the defendant obtains a judgment more favorable than its offer, ' "the judgment constitutes prima facie evidence showing the offer was reasonable . . . ." ' [Citation.] It is the plaintiff's burden to show otherwise. [Citation.] 'The reasonableness of a defendant's section 998 settlement offer is evaluated in light of "what the offeree knows or does not know at the time the offer is made." ' " (*Id.* at p. 221.)

"However, we emphasize the reasonableness of defendant's offer does not depend on information actually known to plaintiff but rather on information that was *known or reasonably should have been known*. The latter standard is an objective one: would a reasonable person have discovered the information? A contrary conclusion would make defendant's good faith incongruously depend on plaintiff's subjective knowledge and would reward plaintiffs who are dilatory in pursuing discovery. Thus, if a

defendant makes a low offer shortly before trial based upon potent evidence likely to insulate defendant from liability, and if the evidence was reasonably available to plaintiff, defendant's offer may qualify as a valid section 998 offer even though plaintiff did not in fact know of the information because he failed to investigate or pursue discovery." (*Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692, 700.)

b. The trial court did not abuse its discretion in awarding State Farm expert witness fees.

The Huangs do not dispute that, following their rejection of the section 998 offer, they failed "to obtain a more favorable judgment or award." Rather, the Huangs argue that, because at the time State Farm made the section 998 offer only State Farm knew of the results of Exponent's April 2015 soil testing, the section 998 offer was unreasonable and not made in good faith. As a result, the Huangs contend the trial court abused its discretion in awarding State Farm expert witness fees. We disagree.

The Huangs are correct that, at the time State Farm made the section 998 offer, the Huangs were not aware of Exponent's 2015 finding that the property was built on bedrock as opposed to the previously reported cut-and-fill. However, contrary to the Huangs' position, that information was not within State Farm's exclusive control or possession. The Huangs not only knew that, in April 2015, Exponent took soil samples and inspected the property, they were twice advised, including once months before State Farm extended the section 998 offer, that Exponent's engineer, Wren, would be testifying as an expert witness. Despite having this information for approximately 10 months before trial and approximately seven months before the section

998 offer, the Huangs did not depose Wren until the eve of trial. Moreover, the Huangs could have, at any time, conducted their own soil samples at their own property.

Finally, even if Exponent's 2015 finding that the property was built on bedrock was within State Farm's exclusive control and, therefore, unavailable to the Huangs when considering the section 998 offer, that information did not change the fundamental basis of State Farm's position throughout this litigation. From the start of this case (indeed, since the 2008 claim), State Farm consistently asserted the damage at the property was preexisting and caused by long-term settlement—i.e., earth movement—which is excluded under the policy. Similarly, State Farm consistently has refuted the Huangs' position that demolition vibrations (and in earlier claims, earthquakes) caused the damage. Whether the property is built on bedrock or cut-and-fill, State Farm's ultimate position remained the same: the damage preexisted the claim and was caused by long-term settlement. Exponent's April 2015 findings did not change State Farm's basic position.

Thus, we conclude the trial court did not abuse its discretion either in finding the section 998 offer was reasonable and made in good faith or in awarding expert witness fees to State Farm.

DISPOSITION

The orders are affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.