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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

SOLOMON T. HARRIS,

Plaintiff and Appellant,

v.

VII PIER POINTE OWNER, LLC,

Defendant and Respondent.

B280729
(Los Angeles County
Super. Ct. No. BC578567)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Judge. Affirmed.

Solomon T. Harris, in pro. per., for Plaintiff and Appellant.

Jackson Tidus, M. Alim Malik and Kathryn M. Casey for Defendant and Respondent.

INTRODUCTION

Appellant Solomon T. Harris purchased an affordable-housing condominium, reserved for very low-income households, in a residential development project in Marina Del Rey, in the coastal zone of the City of Los Angeles. The seller, respondent VII Pier Pointe Owner, LLC, acquired the fully constructed and permitted project in a bankruptcy sale from the original developer. Appellant, a practicing attorney, brought this action against respondent in propria persona, complaining his unit was not comparable to market-rate units in the project. Based on respondent's failure to tender a comparable unit, appellant asserted causes of action for violation of the Mello Act (the Act; Gov. Code, §§ 65590, 65590.1), breach of contract, breach of a covenant running with the land, breach of the duty of good faith and fair dealing, and violation of the unfair competition law (Bus. & Prof. Code, § 17200 et seq.).

The trial court granted summary judgment for respondent after concluding any breach or violation was attributable to the original developer alone. Appellant challenges this conclusion on appeal, asserting that respondent had an independent obligation to tender a comparable unit. He also claims the court erred in imposing monetary discovery sanctions on him and in awarding certain costs to respondent. Finding no error, we affirm.

BACKGROUND

A. *The Mello Act and the City's Mello Procedures*

"The Legislature enacted Government Code section 65590, part of the Mello Act, in 1981." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 736.) "[I]ts purpose is to preserve residential housing units occupied by low or moderate income persons or families in the coastal zone." (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1552-1553.) As relevant here, Government Code section 65590, subdivision (d) provides: "New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income . . . ."

In 2000, the City of Los Angeles adopted the "Interim Mello Act Administrative Procedures" (Mello Procedures or Procedures) to direct relevant city departments in "administer[ing], enforce[ing], and monitor[ing] the provisions of the Mello Act" as part of the planning and entitlement process. These Procedures provide that "all city staff and employees shall follow these Procedures . . . ." (Capitalization omitted.) As to new housing developments, they require that "Applicants" -- persons or entities applying for permits or other entitlements -- provide a certain proportion of "Inclusionary . . . Units" -- units with prescribed maximum costs. Section 7.3.3 of the Mello Procedures instructs that in providing Inclusionary Units, applicants must comply with certain performance standards

in the city's Affordable Housing Incentives Guidelines.[1] Those guidelines provide: "Affordable dwelling units shall be generally comparable to market rate dwelling units, including total square footage, bedroom size, closet space[,] amenities, number of bathrooms, etc., ..." The guidelines further instruct that affordable units "must be reasonably interspersed among market-rate dwelling units within the same building." We refer to these performance standards as the Mello Procedures' comparability requirements.

B. *Respondent's Predecessor Obtains Conditional Approval for the Project and Enters the Covenant Agreement with the City*

In 2005, the Los Angeles City's Planning Commission approved an application by LNR-Lennar Washington Square LLC (Lennar) for permits and other entitlements related to a proposed new 122-unit residential development within the coastal zone, which was to include 12 Inclusionary Units. The commission's approval was subject to certain "Conditions of Approval." (Full capitalization omitted.) Among other requirements, section 25(b) of the Conditions of Approval provided: "Prior to issuance of any building permit, the applicant shall provide the Department of City

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[1] Although the Mello Procedures reference the original 1995 version of the Affordable Housing Incentives Guidelines, the parties agreed below that an amended version, adopted in 2005, provides the applicable performance standards.

Planning proof of recordation of a Covenant and Agreement, satisfactory to the Housing Department, assuring compliance with the Mello Act inclusionary housing requirements including: relevant performance standards and criteria . . . ." Relatedly, section 25(c) of the Conditions of Approval stated: "The mix and size of the [Inclusionary Units] shall be in proportion to the mix and size of the market rate dwelling units . . . , and suitable for occupancy by family households, as determined by the Housing Department."

In March 2009, Lennar and the city entered into a "Covenant . . . Agreement" and recorded it as a covenant running with the land.[2] The Covenant Agreement's recitals affirmed Lennar's obligation to provide the requisite number of Inclusionary Units as part of the requirements for entitlement. For instance, the agreement's recitals stated: "Owner [Lennar] intends to develop, demolish or convert one or more residential units on the Property . . . . Because the Property is located in the Coastal Zone, Owner is required to comply with [the Mello Act] in accordance with the [Mello Procedures] . . . ." The parties to the Covenant Agreement further recited: "Pursuant to the Mello Act and the . . . Mello Procedures, as a condition of the discretionary

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[2] The Covenant Agreement stated it replaced a "First Amended and Restated Interim Covenant and Agreement" executed in October 2006. This interim agreement was not included in the record on appeal, and neither party references it in its briefs.

approvals, Owner must provide on the Property twelve (12) [Inclusionary Units] . . . , as defined in the . . . Mello Procedures . . . ."[3] Finally, another recital stated: "the parties agree that the Owner is required to provide the specified number of [Inclusionary] Units on-site under . . . the Mello Act and the . . . Mello Procedures and Owner will receive from the City all discretionary and ministerial approvals for the development of the Project."

The Covenant Agreement's terms imposed various restrictions on the sale of Inclusionary Units. For example, section 5(b) of the agreement provided in relevant part: "Except as expressly provided for [in the agreement], Owner agrees to sell the [Inclusionary] Units only to Eligible Households." Under the agreement, the same restrictions would apply to subsequent re-sales of Inclusionary Units. The Covenant Agreement also expressly provided for certain third-party beneficiary rights. Section 20 of the agreement provided, in relevant part: "Persons who are . . . purchasers and prospective purchasers of [Inclusionary] Units shall have the right to enforce the affordability criteria provided for in this Agreement and be entitled to claim that he, she or they are entitled to . . . purchase [an Inclusionary] Unit

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[3] The Covenant Agreement used the terms "Inclusionary Units," "Inclusionary Residential Units," and "Restricted Units" interchangeably. For clarity, we use the term Inclusionary Units throughout this opinion.

under the terms of this Agreement."[4] Finally, an exhibit to the Covenant Agreement listed the designated Inclusionary Units and provided each unit's size and maximum purchase price.

C. *The City Issues a Certificate of Occupancy and Certifies Lennar's Compliance with the Covenant Agreement*

In January 2009, an internal memo by the city's housing department identified certain concerns relating to the size, location, and amenities of the project's Inclusionary Units. Nonetheless, in April, the city issued a certificate of occupancy for the project. In June 2009, the department conducted a final inspection of the units and notified Lennar by letter, signed by the department's general manager, that the units had "met the standards and requirements specified in the [Covenant Agreement]."

D. *Respondent Purchases the Project in a Bankruptcy Sale and Enters a First Amendment to the Covenant Agreement*

Before any of the project's residential units were sold, Lennar filed a Chapter 11 bankruptcy petition. Respondent

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[4] The Covenant Agreement does not define the term "affordability criteria," but the 1995 version of the Affordable Housing Incentives Guidelines used that term to refer to affordable units' maximum rent and sale prices.

subsequently agreed to purchase the project from Lennar, subject to the bankruptcy court's approval. In July 2009, the bankruptcy court approved the sale of the project to respondent "free and clear" of any lien, claim, or interest existing on or before the date of the court's order (Bankruptcy Order).

One year later, in July 2010, respondent and the city entered into and recorded a "First Amendment" to the Covenant Agreement (First Amendment). The First Amendment identified respondent as the successor owner of the project. In its recitals, respondent agreed to "assume, undertake and perform all affordable housing obligations, covenants and agreements as required by [the Mello Act], the Covenant Agreement, and the Conditions of Approval for the project . . . ." Among other non-substantive changes, the First Amendment amended the Covenant Agreement to substitute respondent for Lennar and update the project's street address. The following month, respondent obtained a new certificate of occupancy for the project, correcting the project's street address.

E. *Appellant Purchases an Inclusionary Unit and Subsequently Files this Action*

In April 2011, appellant purchased an Inclusionary Unit in the project after the city's housing department certified him as an eligible very low-income purchaser. Appellant subsequently learned of the Mello Procedures' comparability requirements and in April 2015, brought this

action against respondent, seeking damages and specific performance. He complained his Inclusionary Unit was inferior to market-rate units in virtually every respect, including its size, location, and amenities. Based on these allegations, appellant asserted causes of action for breach of the Covenant Agreement (as a third-party beneficiary), violation of the Mello Act, breach of a covenant running with the land, breach of the implied covenant of good faith and fair dealing, and violation of the unfair competition law.

Respondent demurred. It argued, inter alia, that appellant lacked standing to enforce the Covenant Agreement, that the statute of limitations barred the claim for violation of the Mello Act, and that the remaining causes of action were duplicative of the claim for breach of the Covenant Agreement and similarly failed. The trial court overruled the demurrer.

F. *The Trial Court Grants Summary Judgment for Respondent and Awards Costs*

Following discovery, respondent moved for summary judgment, reasserting the arguments in its demurrer and adding new contentions. Respondent argued that the Bankruptcy Order barred appellant's claims, and that it could not be liable for any breach or violation by Lennar. Appellant opposed the motion, urging, inter alia, that the Bankruptcy Order did not bar his claims, and that he had standing to enforce the Covenant Agreement as a third-party

beneficiary. He also contended the statute of limitations did not bar his Mello Act claim because of the "discovery rule."[5]

The trial court granted respondent's motion for summary judgment. First, the court concluded the Bankruptcy Order barred all of appellant's claims by providing that respondent would acquire the project free from preexisting liabilities. It then explained: "[Appellant] doesn't dispute . . . that the design, development and construction of the Project, including [appellant]'s [u]nit, was completed by Lennar and approved for occupancy by the City before [respondent] acquired the Project; nor does [appellant] dispute that [respondent] 'had no involvement in any aspect of the Project's design, construction or approval by the City.' The actions and events giving rise to [appellant's] specific claims accrued before [respondent] purchased the Project; therefore, [respondent] cannot be held liable on any of those claims."

The trial court further concluded appellant's claims would fail even if the Bankruptcy Order did not bar them. The court determined that appellant lacked standing to enforce the Covenant Agreement, that the statute of limitations barred his claim for violation of the Mello Act,

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[5] "The discovery rule 'postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' [Citation.]" (*NBCUniversal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1232.)

and that the remaining causes of action were duplicative of the claim for breach of the Covenant Agreement.

After the court entered judgment against appellant, respondent sought an award of over $5,000 in costs. Appellant moved to strike or tax costs, challenging each of respondent's asserted claims for costs. He maintained that because respondent prevailed on legal grounds, it was entitled only to the cost of filing a demurrer or motion for judgment on the pleadings. The trial court reduced the cost award to $3,514.32, striking various claims for costs to which respondent was not entitled, but impliedly rejected appellant's principal contention by including in its award costs relating to respondent's motion for summary judgment, costs incurred during discovery, and respondent's jury fee. This appeal followed.

DISCUSSION

A. *Summary Judgment*

Appellant challenges the trial court's grant of summary judgment for respondent. "We review the ruling on a motion for summary judgment de novo, applying the same standard as the trial court." (*Manibog v. MediaOne of Los Angeles, Inc.* (2000) 81 Cal.App.4th 1366, 1369.) "Summary judgment is appropriate only 'where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.'" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.) We view the evidence in the light most favorable to the nonmoving party

and draw all reasonable inferences in its favor. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "'As a corollary of the de novo review standard, the appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court. [Citation.]' [Citation.]" (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22.)

1. *Breach of Contract*

Relying on the Covenant Agreement, executed by the city and Lennar, and the First Amendment, executed by the city and respondent, appellant claims respondent breached a contractual obligation to sell him a unit that satisfied the Mello Procedures' comparability requirements. He contests the trial court's conclusion that the Bankruptcy Order precluded his claims, asserting he seeks to redress only respondent's breach of its own contractual obligations following the bankruptcy sale, independent of any breach or obligation by Lennar.

Generally, "contract interpretation is an issue of law, which we review de novo . . . ." (*DFS Group, L.P. v. County of San Mateo* (2019) 31 Cal.App.5th 1059, 1079.) "'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.' [Citations.] 'Such intent is to be inferred, if possible, solely from the written provisions of the contract.' [Citations.] 'If contractual language is clear and explicit, it governs.'

[Citation.]" (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.)

As the primary source of respondent's contractual obligation to sell him a unit comparable to market-rate units, appellant points to the recitals of the Covenant Agreement, as amended by the First Amendment. Although appellant was not a party to the Covenant Agreement, he argues he has standing to enforce its terms as a third-party beneficiary. He also asserts that the purchase agreement and grant deed for his unit incorporated the Covenant Agreement's provisions, and thus that they allow him to enforce its comparability requirements directly.

We need not decide whether appellant has standing to enforce the Covenant Agreement's provisions because we conclude they did not require compliance with the Mello Procedures' comparability requirements at the time of sale.[6]

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[6] In his reply brief, appellant asserts the trial court's ruling did not rely on the inapplicability of the Mello Procedures' comparability requirements to respondent, and he claims we must allow supplemental briefing before accepting respondent's arguments on the issue. Under Code of Civil Procedure section 437c, subdivision (m)(2), before we can affirm an order granting summary judgment on a ground the trial court did not rely on, we must afford the parties "an opportunity to present their views on the issue by submitting supplemental briefs." However, supplemental briefing is unnecessary where, as here, the parties
(Fn. is continued on the next page.)

As noted, the Mello Procedures govern the city's planning and permitting process. More specifically, the Procedures' comparability requirements apply only to "Applicants" -- those seeking certain permits or other entitlements. Thus, the Covenant Agreement's incorporation of the Mello Procedures' comparability requirements established the developer's contractual duty to present compliant Inclusionary Units for the city's approval as part of the entitlement process. Indeed, the Covenant Agreement generally referenced the Mello Procedures in the context of the entitlement process. For example, that agreement recited: "the parties agree that the Owner is required to provide the specified number of [Inclusionary] Units on-site under . . . the Mello Act and the . . . Mello Procedures and Owner will receive from the City all discretionary and ministerial approvals for the development of the Project." The terms of the Covenant Agreement thus made clear that compliance with the Mello Procedures' comparability requirements was to be determined by the city as a prerequisite to the "approval[] for the development" of any project.

Appellant fails to identify a provision in the Covenant Agreement requiring Lennar or any successor-in-interest to

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have directly addressed the relevant issue in their briefs. (See *Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 359 [supplemental briefing unnecessary where parties have already briefed issue].)

modify or re-designate fully constructed and already entitled units to comply with the Procedures' comparability requirements at the time of sale.[7] Indeed, it would have been redundant to require successive owners to comply with requirements the city had previously determined to have been satisfied. The June 2009 letter from the Housing Department's General Manager to Lennar confirmed that the project's Inclusionary Units "met the standards and requirements specified in the [Covenant Agreement]." In contrast, the Covenant Agreement did require continuing compliance with other obligations through and beyond the time of sale. For instance, under section 5(b) of the agreement, "Owner agree[d] to sell the [Inclusionary] Units

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[7] In the fact section of his opening brief, appellant claims the project was not fully constructed until at least 2010, after the bankruptcy sale, and he notes respondent obtained a certificate of occupancy in 2010. However, appellant neither relies on these contentions in the argument section of his brief nor expressly challenges the trial court's determination that the project was fully constructed and entitled before the Bankruptcy Order. Appellant has therefore forfeited any contention in this regard. (See *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 726 [failure to raise contention in argument section of opening brief constitutes forfeiture].) Regardless, the record shows that by June 2009, before the Bankruptcy Order, Lennar had constructed all 12 Inclusionary Units, and the city had issued a certificate of occupancy and certified that Lennar's Inclusionary Units complied with the Covenant Agreement. The certificate of occupancy respondent obtained in 2010 merely made a technical correction to the prior certificate and did not reflect any additional construction or substantive changes.

only to Eligible Households." Similarly, section 20 expressly entitled "purchasers" of Inclusionary Units to enforce the agreement's "affordability criteria." No similar provision extended the Mello Procedures' comparability requirements to the time of sale.[8]

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[8] Relying on the general rule that "'all applicable laws in existence when an agreement is made necessarily enter into it and form a part of it . . . ,'" (*Wing v. Forest Lawn Cemetery Assn.* (1940) 15 Cal.2d 472, 476) appellant also argues the Mello Procedures' comparability requirements were impliedly incorporated in the Covenant Agreement. However, as discussed, those comparability requirements themselves applied only to the entitlement process, rather than the sale of Inclusionary Units. Thus, it is irrelevant whether the comparability requirements constituted implied terms of the agreement.

In his briefs, appellant intersperses quotations of several sections of the city's municipal code, without accompanying argument about their implications. He has thus forfeited any contention in this regard. (See *Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 521 [contentions unsupported by reasoned argument and citation to authority are forfeited].) Moreover, the ordinances he cites govern the entitlement and development process, and do not apply by their terms to the sale of a project's units. (See, e.g., L.A. Mun. Code §§ 11.5.7(C)(4)(d) ["Once a Project Permit Compliance is utilized, the applicant shall comply with the terms and conditions of the Project Permit Compliance that affect the construction and/or operational phases of the project"], 12.29 ["any conditional approval . . . shall become effective upon utilization of any portion of the privilege, and the owner and applicant shall immediately comply with its conditions"].) Thus, any suggestion by appellant that these ordinances created respondent's contractual obligation to comply with the Procedures' comparability requirements would fail.

Nor did the First Amendment independently operate to extend those requirements. The terms of that instrument confirm the parties intended a non-substantive amendment through which respondent would adopt Lennar's continuing obligations rather than agree to cure breaches of obligations that were no longer operative.[9] Appellant argues the First Amendment's adoption of the Conditions of Approval imposed a continuing duty on respondent to comply with the Mello Procedures' comparability requirements. He points to sections 25(b) and 25(c) of the Conditions of Approval as creating this continuing duty. Neither provision supports his argument.

Section 25(b) of the Conditions of Approval stated: "Prior to issuance of any building permit, the applicant shall provide the Department of City Planning proof of recordation of a Covenant and Agreement, satisfactory to the Housing Department, assuring compliance with the Mello Act inclusionary housing requirements including: relevant performance standards and criteria . . . ." Given that this provision required the developer's compliance "[p]rior to issuance of any building permit," it too concerned only the entitlement process rather than the sale of Inclusionary Units. Moreover, this section imposed no independent substantive obligation. Instead, it required only that the

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[9] As noted, the First Amendment identified respondent as the successor owner of the project and, among other minor changes, updated the project's street address.

developer record a covenant agreement satisfactory to the housing department.

As for section 25(c) of the Conditions of Approval, it provided: "The mix and size of the [Inclusionary Units] shall be in proportion to the mix and size of the market rate dwelling units . . . , and suitable for occupancy by family households, as determined by the Housing Department." As respondent notes, this provision left the determination whether the developer complied with the "in proportion" requirement to the housing department.[10] And as the department's June 2009 letter to Lennar shows, it had found Lennar's Inclusionary Units satisfactory before respondent assumed responsibility for the project. The Conditions of Approval therefore did not obligate respondent to comply

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[10] In his reply brief, appellant suggests the phrase "as determined by the Housing Department" modified only the immediately preceding clause -- "suitable for occupancy by family households" -- not the first antecedent clause -- "in proportion to the mix and size of the market rate dwelling units." However, he fails to support this proposition with a reasoned argument and has therefore forfeited the issue. (See *Sviridov v. City of San Diego*, *supra*, 14 Cal.App.5th at p. 521.) Moreover, forfeiture aside, because the modifying clause is separated from the preceding clauses by a comma, the most natural reading is that it modifies both. (See *County of Kern v. Workers' Comp. Appeals Bd.* (2011) 200 Cal.App.4th 509, 521 [""[e]vidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma""], quoting *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 207.)

with the Mello Procedures' comparability requirements at the time of sale.

In sum, appellant fails to identify a source of respondent's alleged obligation to sell him a unit that complied with the Mello Procedures' comparability requirements. Regardless of Lennar's duty to comply with those requirements during the entitlement process, neither the Covenant Agreement nor the First Amendment required respondent to recertify the project's Inclusionary Units as compliant. Appellant has not sued Lennar, and he disclaims any reliance on Lennar's conduct or obligations in asserting his claims against respondent. Accordingly, the trial court did not err in granting summary judgment for respondent on appellant's breach of contract claim.[11]

2. *Violation of the Mello Act*

In his cause of action for violation of the Mello Act, appellant claimed respondent's failure to provide an Inclusionary Unit comparable to market-rate units violated

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[11] In his opening brief, appellant asserts in conclusory fashion that the trial court improperly relied on "manifestly incompetent evidence" and considered parole evidence to construe contractual terms. However, he fails to identify any particular improperly considered evidence. Appellant has therefore forfeited his evidentiary challenge. (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 90 ["to the extent Cristler has a valid claim that specific evidence was improperly admitted, that claim is forfeited by Cristler's failure to properly present it on appeal"].)

the Act. The trial court granted summary judgment on this cause of action based on its conclusion that both the Bankruptcy Order and the statute of limitations barred the claim. Appellant challenges this conclusion on appeal.

We need not decide whether the Bankruptcy Order or the statute of limitations barred appellant's Mello Act claim. As respondent correctly notes, the Mello Act itself contains no comparability requirement. And the Mello Procedures, which set forth the comparability requirements appellant seeks to apply, are guidelines directing the work of city departments. As noted, they provide that "all city staff and employees shall follow these procedures . . . ." (Capitalization omitted.) Appellant makes no showing that the Procedures independently impose legal obligations on developers. Because appellant cannot establish that respondent violated an applicable provision of the Mello Act, the trial court did not err in granting summary judgment for respondent on this cause of action.

3. *Remaining Causes of Action*

As noted, appellant's complaint included causes of action for breach of a covenant running with the land, breach of the implied covenant of good faith, and violation of the unfair competition law. On appeal, appellant makes no argument specific to these causes of action. To the extent they rely on respondent's alleged obligations under the Mello Act, the Covenant Agreement, and the First Amendment, they fail for the reasons discussed above.

B. *The Monetary Sanction*

1. *Background*

During discovery, respondent noticed appellant's deposition for July 15, 2016. The deposition notice required appellant to produce certain documents at his deposition, including all communications between him and city departments relating to his complaint, his unit, the development project, the Conditions of Approval, the Covenant Agreement, and the Mello Act. Appellant served written objections to the production of these communications, asserting they were protected by the attorney work product privilege. He also asked respondent's counsel to continue the deposition to July 29. Respondent's counsel agreed to reschedule the deposition to appellant's requested date, but did not serve appellant with a new deposition notice.

On July 29, appellant attended his deposition as scheduled but did not produce responsive communications with the city. After a failed attempt to resolve the discovery dispute, respondent moved to compel the production. Respondent argued the attorney work product privilege was inapplicable. It also claimed good cause existed for the requested production, arguing the communications were relevant to the subject matter of appellant's action and noting appellant had referenced responsive communications in his complaint. Respondent pointed to specific paragraphs in the complaint in which appellant alleged: he had filed an inquiry with the city about his claims of Mello Act violations;

the city had denied knowingly permitting deviation from Mello Act requirements; and a city employee had told him respondent's violations "posed a 'complicated situation,'" which the housing department intended to refer to the City Attorney's office.

Appellant opposed respondent's motion to compel, again asserting the requested communications were privileged and claiming respondent had failed to show good cause for their production. The trial court granted respondent's motion. It concluded appellant's objections to the requested production were meritless, holding the requested documents were not privileged and, regardless, that appellant had waived any privilege by sharing them with the city. The court also found good cause existed for the production because it was reasonably calculated to lead to the discovery of admissible evidence. Finally, the trial court imposed a monetary sanction of $750 against appellant, payable to respondent's counsel.

2. *Analysis*

On appeal, appellant challenges the trial court's monetary sanction against him. "We review an order imposing discovery sanctions under the abuse of discretion standard. [Citation.] An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.]"

(*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.)

If a party deponent fails to produce for inspection a document described in the deposition notice, the noticing party may move to compel the production. (Code Civ. Proc., § 2025.450, subd. (a).) A motion to compel must "set forth specific facts showing good cause justifying the production . . . ." (*Id.*, subd. (b)(1).) If the trial court grants such a motion, it must impose monetary sanctions against the offending party "unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (*Id.*, subd. (g)(1).) Appellant makes three basic arguments in support of his contention the court's sanction was improper.

First, appellant contends respondent failed to serve him with a proper deposition notice. Citing Code of Civil Procedure section 2025.220, which requires that the notice state the date of the deposition, appellant argues he did not receive adequate notice because respondent's notice stated his deposition would take place on July 15, 2016, when, in fact, the deposition was continued to July 29.

Appellant fails to show he received inadequate notice of his deposition. Respondent's notice informed appellant of the documents he was to produce. He was also well aware of the date of the deposition, given that he had requested that date, and he actually attended the deposition at the agreed upon time. Under these circumstances, appellant cannot

complain of inadequate notice. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 ["'one who has been notified to attend a certain proceeding and does do so, cannot be heard to complain of alleged insufficiency of the notice; it has in such instance served its purpose'"].)

Second, appellant argues respondent's motion to compel failed to establish good cause for production of the requested documents. Generally, to demonstrate good cause, the party seeking to compel production need only make a "fact-specific showing of relevance." (*Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117 (*Glenfed*).) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement." (*Ibid.*) "[D]oubts as to relevance should generally be resolved in favor of permitting discovery [citation.] Given this very liberal and flexible standard of relevancy, a party attempting to show that a court abused its discretion in finding material relevant . . . bears an extremely heavy burden." (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 173, (*Pacific*).)

As noted, in asserting good cause existed for the production, respondent referenced appellant's allegations in his complaint that he had filed an inquiry with the city about his claims, that the city had denied permitting respondent to deviate from Mello Act requirements, and that he had been told the housing department intended to refer the matter to the City Attorney's office. These alleged

communications between appellant and the city were all potentially pertinent to respondent's defense. For instance, appellant's inquiry might have disclosed information about the extent of his claimed injuries, as relevant to his claim for damages. This communication also might have disclosed additional information about the timing of appellant's discovery of the alleged violations. Given appellant's invocation of the "discovery rule," such information would have been potentially relevant to the application of the statute of limitations. Similarly, whether the city permitted respondent to deviate from the Mello Act's requirements might have been relevant to respondent's argument that it had no contractual duty to comply with those requirements. Thus, the trial court did not abuse its discretion in finding good cause for the production. (See *Glenfed*, *supra*, 53 Cal.App.4th at p. 1117; *Pacific*, *supra*, 2 Cal.3d at p. 173.)

Finally, appellant claims the trial court erred in concluding his objections to production lacked substantial justification. "Substantial justification means clearly reasonable justification that is well grounded in both law and fact." (*Padron v. Watchtower Bible & Tract Society of New York, Inc.* (2017) 16 Cal.App.5th 1246, 1269 (*Padron*).) Appellant asserted below, and continues to assert on appeal, that his communications with the city were protected by the attorney work product privilege. Under this privilege, "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances." (Code Civ. Proc., § 2018.030,

subd. (a).) Nevertheless, the privilege's protections "may be waived by disclosure of privileged . . . work product to a party outside the attorney-client relationship if the disclosure is inconsistent with goals of maintaining confidentiality or safeguarding the attorney's work product." (*City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1033 (*Petaluma*).)

Appellant's assertion of the attorney work product privilege was meritless. By disclosing any work product to the city, with which he had neither an attorney-client relationship nor an expectation of confidentiality, appellant waived any protection to which the disclosed materials would otherwise have been entitled. (See *Petaluma*, *supra*, 248 Cal.App.4th at p. 1033.)

Appellant insists his disclosures to the city did not waive the work product privilege because of the "'common interest'" doctrine. Under that doctrine, disclosure of attorney work product to a third party may not constitute waiver of the privilege if the disclosing party has "a reasonable expectation that information disclosed will remain confidential" and the disclosure is "reasonably necessary for the accomplishment of the purpose for which the lawyer was consulted." (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891.) However, nothing in the record suggests appellant had a reasonable expectation of confidentiality in his communications with the city. Thus, he had no basis to invoke the common-interest doctrine. (See *ibid.*)

Appellant also claims his communications were protected under Evidence Code section 912, subdivision (c), which provides that "[a] disclosure that is itself privileged is not a waiver of any privilege." He argues his communications with the city were protected by the litigation privilege in Civil Code section 47, subdivision (b) and therefore "privileged." The litigation privilege, however, is only "a limitation on liability, precluding use of the protected communications and statements as the basis for a tort action . . . ." (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 638, fn. 1, italics omitted.) It "does not create an evidentiary privilege that protects a communication from compelled disclosure." (*Ibid.*) Thus, neither the litigation privilege nor Evidence Code section 912 supported appellant's position. His objections to the production therefore lacked substantial justification. (See *Padron*, *supra*, 16 Cal.App.5th at p. 1269.) Accordingly, the trial court's sanction order did not constitute an abuse of discretion.

C. *The Costs Award*

Appellant claims the trial court's award of costs for respondent was excessive. He contends the court erred in including the filing fee for respondent's motion for summary judgment, the jury fee, and costs incurred during discovery, because they were not reasonably necessary to the litigation.

"[A] prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) As relevant here, a prevailing party may

recover only those costs that are "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (*Id.*, subd. (c)(2).) "Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court . . . ." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) The court's ruling "'will not be disturbed if substantial evidence supports its decision.'" (*Chaaban v. Wet Seal, Inc.* (2012) 203 Cal.App.4th 49, 52.)

Appellant maintains the challenged costs were not reasonably necessary to the litigation because respondent could have avoided them by raising its argument that the Bankruptcy Order barred his claims in its demurrer to the complaint. He cites no authority, however, for the proposition that to recover costs, a party must raise its ultimately winning argument at the earliest opportunity. Code of Civil Procedure section 1033.5 does not require absolute necessity or optimal efficiency -- the prevailing party's costs need only be "reasonably necessary." (*Id.*, sub. (c)(2).) There are various valid reasons a defendant may wish to avoid demurring (or raising certain arguments in a demurrer). (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2018) ¶ 7:4.2 [among other potential disadvantages, demurring may allow plaintiff to develop stronger cause of action or legal theory or lead to appeal at which complaint will be presumed true, potentially resulting in unfavorable law for defendant].)

Thus, appellant fails to establish error in the trial court's costs award.[12]

[12] Appellant asserts respondent incurred much of its costs due to its own dilatory practices, such as refusing to respond to appellant's discovery requests. However, he fails to explain how these alleged practices corresponded to any aspect of the trial court's costs award. Any contention in this respect is therefore forfeited. (See *Sviridov v. City of San Diego*, *supra*, 14 Cal.App.5th at p. 521.)

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.