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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MK GREENTEA LIMITED, INC.,  
et al.,

Plaintiffs and Appellants,

v.

RASKIN RITTER LLP, et al.,

Defendants and Respondents.

B271801

(c/w B275273)

(Los Angeles County  
Super. Ct. No. SC108805)

APPEALS from a judgment and order of the Superior Court of Los Angeles County. Mitchell L. Beckloff, Judge. Affirmed in part and dismissed in part.

Law Office of Anthony D. Zinnanti and Anthony D. Zinnanti for Plaintiffs and Appellants.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer, Lucy H. Mekhael; Raskin Gorham Anderson Law and Gary Gorham for Defendants and Respondents.

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MK Greentea Limited, Inc. (MK Greentea) appeals the portion of an August 28, 2015, judgment in favor of Peter Rubin & Simon LLP (Peter Rubin & Simon) awarding it damages on its cross-complaint seeking to recover fees for legal representation involving disputes over the motion picture “Material Girls.” In addition, MK Greentea and Milton Kim (Kim) challenge a February 26, 2016, order<sup>1</sup> awarding \$227,213.50 in cost of proof expenses to Peter Rubin & Simon, Gary Raskin (Raskin), and Raskin Ritter LLP (Raskin Ritter) (collectively Respondents) pertaining to allegations in MK Greentea and Kim’s complaint that they were misadvised by Respondents to enter a settlement with Maverick Films, LLC (Maverick Films) and its affiliates (Maverick Settlement), and that Respondents then interfered with that settlement.

MK Greentea’s appeal of the August 28, 2015, judgment is untimely, and is dismissed on that basis. Regarding the February 26, 2016, award of cost of proof expenses, we find no error and affirm.

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<sup>1</sup> As to MK Greentea, it is an appealable postjudgment order. As to Kim, it is an interim order that is reviewable on appeal from the later judgment against him.

## FACTS<sup>2</sup>

### *Background*

MK Greentea and Kim hired Raskin in 2005 for legal services concerning (1) MK Greentea's ownership interest in Maverick Films, and (2) a loan made by MK Greentea to Maverick Films.

In January 2006, Raskin became a member of a firm called Raskin Peter Rubin & Simon, LLP (the RPRS Firm).<sup>3</sup> The RPRS Firm represented MK Greentea and Kim in connection with the Maverick Settlement.

Raskin left the RPRS Firm in 2009 and formed his own firm, which was called Raskin Ritter. At that point, Peter Rubin & Simon came into being.

### *MK Greentea and Kim's Complaint and First Amended Complaint (FAC) Against Respondents*

On July 15, 2010, MK Greentea and Kim sued Peter Rubin & Simon, Raskin and Raskin Ritter for negligence and breach of fiduciary duty, alleging they negligently advised MK Greentea and Kim to enter the Maverick Settlement and then interfered with the performance of it.<sup>4</sup>

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<sup>2</sup> To provide context, we have relied upon pleadings, motions and inference as well as evidence to formulate a cohesive statement of facts.

<sup>3</sup> The RPRS Firm is not a party to this appeal.

<sup>4</sup> MK Greentea and Kim demanded arbitration against Maverick Films and its affiliates arising out of disputes over performance of the Maverick Settlement. The result was a net arbitration award in favor of Maverick Films and its affiliates. That arbitration award is not a subject matter of this appeal.

Subsequently, MK Greentea and Kim filed the FAC and alleged the same claims contained in the complaint.

*Peter Rubin & Simon's Cross-Complaint Against MK Greentea and Kim*

Peter Rubin & Simon filed a cross-complaint against MK Greentea and Kim. It alleged they failed to pay fees for legal representation regarding disputes over the motion picture "Material Girls," and it asserted causes of action for breach of contract, work and services performed, account stated, open book account, quantum meruit/promissory estoppel, and unjust enrichment.<sup>5</sup>

*Various Trial Court Rulings; Judgments Against Kim and MK Greentea*

On May 6, 2014, the trial court granted summary judgment in favor of Respondents on the FAC. On August 28, 2015, the trial court granted summary adjudication against MK Greentea and in favor of Peter Rubin & Simon on the breach of contract claim alleged in the cross-complaint. At the same time, as to MK Greentea, the trial court denied Peter Rubin & Simon's motion

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<sup>5</sup> The cross-complaint does not specify the nature of the representation. A motion for summary judgment filed by Peter Rubin & Simon regarding the cross-complaint fills in the gap. It avers that Peter Rubin & Simon represented MK Greentea and Kim in two matters. The motion stated: "The first matter involved the production, financing, distribution and delivery of the motion picture project 'Material Girls'. . . . The second matter involved the defense of the lawsuit entitled *La Due, et al. v. Material Girls Productions, LLC, et al.*, LASC Case No. BC346618, which involved claims by producers[] Eva La Due and David Faigenblum[] for producer fees relating to [the 'Material Girls' project]."

for summary adjudication as to the remaining causes of action in the cross-complaint for work and services performed, account stated, open book account, quantum meruit/promissory estoppel, and unjust enrichment on the theory that they had been rendered moot. Also, as to MK Greentea, the trial court denied summary judgment. With respect to Kim, the trial court denied both summary judgment and adjudication on the cross-complaint, concluding that Peter Rubin & Simon failed to establish that Kim was personally liable for the attorney fees at issue.

On August 28, 2015, the trial court entered judgment for Raskin and Raskin Ritter against both MK Greentea and Kim on the FAC.

On the same date, the trial court entered judgment for Peter Rubin & Simon against MK Greentea only on both the FAC and cross-complaint. The cross-complaint remained pending against Kim.

*Cost of Proof Expenses*

Respondents sought \$227,213.50 in cost of proof expenses pursuant to Code of Civil Procedure section 2033.420<sup>6</sup> regarding requests for admissions (RFAs) pertaining to the allegations and claims in the FAC.

At the February 26, 2016 hearing, the trial court stated: “I don’t think there is really a defense to the motion.”

Counsel for MK Greentea and Kim expressed incredulity at the notion that the cost of proof regarding the RFAs at issue could amount to \$227,213.50. He complained that “it was

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<sup>6</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

impossible for me to connect which unreasonably denied RFA resulted in which costs. And to tell you the truth . . . [,] it really is a fundamental due process issue . . . at that point. [¶] That aside, the fact of the matter is that I don't have any . . . substantiation for which costs were incurred as a result of which RFAs. . . . [¶] The fatality in the motion is that very large paragraph where [Respondents' counsel] . . . goes on about how . . . this resulted in having to bring a summary judgment and all things attendant with the summary judgment." In that vein, counsel argued that if Kim "admitted these RFAs that were purportedly unreasonably denied, they would . . . still [have needed] to bring a summary judgment."

After hearing additional argument, the trial court stated: "I think when I went through the bills, . . . it appeared to me that a lot of it related to discovery and . . . [Respondents] having to prove their case and that was required because of the denial[s]. [¶] You know, I spent a lot of time on this and I am not sure that I saw anything in the bills, all whatever—400 pages, 500 pages of them[—]that caused me concern other than maybe not having the essential information about [what a] conversation was about. So some kind of attorney/client privilege." At one point, the trial court stated that it was surprised "that the fees for the firm are as low as they are—well, they're much lower than what I think you would often see in this courtroom or downtown with regard to, you know, this firm has a reputation. . . . [¶] I don't think the amount of hours that were spent was unreasonable. So when I look at the [lodestar], I think all of that is appropriate. . . . There is no evidence . . . of an exception that applies. And given that the statute is clear that costs of proof shall be ordered, I am going

to grant the motion. So the motion is granted and I will sign the order.”

*Stipulated Judgment Against Kim in Favor of Peter Rubin & Simon*

On April 12, 2016, Kim stipulated to entry of judgment against him on Peter Rubin & Simon’s cross-complaint. On April 13, 2016, the trial court signed an amended judgment reflecting entry of judgment against Kim and in favor of Peter Rubin & Simon.<sup>7</sup>

*The Appeals*

On April 26, 2016, MK Greentea and Kim noticed an appeal from the final judgment on the complaint and cross-complaint.

On June 1, 2016, Kim noticed an appeal from the April 13, 2016, amended judgment.

The appeals were consolidated.

## **DISCUSSION**

### **I. Motion to Dismiss.**

Peter Rubin & Simon moves to dismiss the portion of MK Greentea’s appeal challenging the August 28, 2015, judgment’s award to Peter Rubin & Simon of damages on its cross-complaint, i.e., unpaid legal fees regarding disputes over “Material Girls.” According to the motion, this portion of the appeal is untimely. As we discuss, the motion has merit, so that portion of the appeal must be dismissed.

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<sup>7</sup> The judgment pertained to both the FAC and cross-complaint. Peter Rubin & Simon had obtained summary judgment on the FAC on May 6, 2014.

A party must file a notice of appeal within 60 days after it is served with a notice of entry of judgment or a file-endorsed copy of the judgment, or within 180 days after entry of judgment, whichever is earlier. (Cal. Rules of Court, rule 8.104(a)(1).) If a party's notice of appeal is not filed within the earlier of these dates, the reviewing court must dismiss the appeal. (Cal. Rules of Court, rule 8.104(b).)

In a multi-party case, a judgment disposing of all the issues as to one party is appealable even if issues remain as to other parties. (*Justus v. Atchison* (1977) 19 Cal.3d 564, 568 (*Justus*), disapproved on other grounds in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 168; *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9 (*Ram*) [the one final judgment rule generally requires all claims to be resolved prior to appeal, but this rule does not apply ““when the case involves multiple parties and a judgment is entered which leaves no issue to be determined as to one party. [Citations.]””]; *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 437 (*Nguyen*) [appellate jurisdiction proper because “even if plaintiff's action is still pending against Statewide and Harbor, and even if Harbor's cross-action is still pending against Financial Title, the judgment is final as between plaintiffs and defendants Calhoun and Valdivia”].)

Judgment for Peter Rubin & Simon on the FAC and cross-complaint was entered against MK Greentea on August 28, 2015, thereby disposing of all issues between those parties posed by the pleadings. Notice of entry of judgment was served on September 14, 2015. The August 28, 2015, judgment was an appealable final judgment as to MK Greentea even though issues remained to be litigated as to Kim. As a result, MK Greentea was required to file its notice of appeal of the judgment in



November 2015. Consequently, the appeal was untimely when it was filed on April 26, 2016.

## **II. Cost of Proof Expenses.**

Section 2033.420, subdivision (a) provides: “If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so . . . , 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.” A trial court shall make this order unless (1) an objection to the request was sustained or a response to the request was waived under section 2033.290; (2) the admission sought was of no substantial importance; (3) the party failing to make the admission had reasonable ground to believe that the party would prevail on the matter; or (4) there was other good reason for failure to admit. (§ 2033.420, subd. (b).)

We review an award of cost of proof expenses for an abuse of discretion. (*Miller v. American Greetings Corp.* (2008) 161 Cal.App.4th 1055, 1066.)

MK Greentea and Kim argue that the award was excessive and unrelated to any cost of proof. However, they fail to assess specific costs and show that they are unrelated to RFAs targeted by Respondents’ motion. Because it “is not our responsibility to develop an appellant’s argument” (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11), we need not consider this argument. They fail to appreciate that an appellate court presumes that an order appealed from is correct. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It

adopts all intendments and inferences to affirm an order unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

Next, MK Greentea and Kim suggest that Respondents should not have been awarded costs associated with their summary judgment motion because the RFAs were unrelated to that motion. They pin this argument on the following statement: “The [trial] court . . . err[ed] in its logic [allowing fees related to the summary judgment motion] because the summary judgment sought to prove the existence of a contract, where the subject [RFAs] sought admission that there was never an attorney-client relationship.” It appears that MK Greentea and Kim believe the trial court awarded cost of proof expenses pertaining to Peter Rubin & Simon’s motion for summary judgment on the cross-complaint (which required it to present evidence of a contract, etc., and which *was* unrelated to the RFAs) instead of Respondents’ motion for summary judgment on the FAC (which implicated the RFAs). But MK Greentea and Kim did not provide record citations to support their theory, and thus did not carry their burden on appeal.

All other issues are moot.

### **DISPOSITION**

The portion of the appeal pertaining to the August 28, 2015, judgment in favor of Peter Rubin & Simon LLP (Peter Rubin & Simon) awarding it damages on its cross-complaint is dismissed. The cost of proof order is affirmed. Respondents shall recover their costs on appeal.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT