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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

DAVID BERGSTEIN et al., Plaintiffs and Respondents, v. SUSAN H. TREGUB, Defendant and Appellant.	B245576 (Los Angeles County Super. Ct. No. BC434558)

APPEAL from a judgment of the Superior Court of Los Angeles County, J. Stephen Czuleger, Judge. Reversed.

Susan H. Tregub, in pro. per., for Defendant and Appellant.

Bienert, Miller & Katzman, Steven Jay Katzman and Anthony Bisconti for Plaintiffs and Respondents.

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INTRODUCTION

Plaintiffs David Bergstein (Bergstein), TFC Library, LLC (TFC), and Library Rights Company Ltd. (LRC) (collectively plaintiffs) brought this action for breach of fiduciary duty and legal malpractice against their former attorney, defendant Susan H. Tregub (Tregub).[1] Following a jury trial and special verdict, judgment was entered in favor of plaintiffs in an amount in excess of $50 million.

On appeal, while acknowledging that she breached her fiduciary duty to plaintiffs, Tregub raises two main claims of error. First, she claims the trial court lacked subject matter jurisdiction over the action, in that the bankruptcy court had sole jurisdiction over the matters at issue. Second, she challenges the award of damages, both its components and its amount. While we reject Tregub's argument that the trial court lacked jurisdiction, we agree that the involuntary bankruptcy actions, on which most of the damages were based, constitute a superseding cause of plaintiffs' injuries as a matter of law, requiring reversal of the damages award. Further, there was insufficient evidence

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[1] There were other parties to the action below, but they are not parties to this appeal. For the sake of clarity, we refer only to those parties who are currently before us on appeal. We also do not address plaintiffs' cause of action for specific recovery of personal property, as the court found in favor of Tregub on that equitable cause of action.

We take judicial notice (Evid. Code, §§ 452, subd. (h), 459, subd. (a)) of the fact that Tregub was suspended from the practice of law in 2015. (<http://members.calbar.ca.gov/fal/Member/Detail/165362> (as of April 27, 2017).)

to support the damages award independent of those damages resulting from the bankruptcy, requiring reversal of the entire award.

BURDEN OF PROOF ON APPEAL

Tregub's opening brief contains an extensive factual discussion devoid of any citations to the record on appeal. Plaintiffs have requested that we strike and/or decline to consider the portions of the opening brief not supported by record citations. Plaintiffs also challenge arguments in the opening brief unsupported by any citation to authority.

Rule 8.204(a)(1)(C) of the California Rules of Court requires that a party's briefs support any reference to a matter in the record by a citation to the record. (*American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 284; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) To the extent Tregub has made reference to factual or procedural matters without record references, we will disregard such matters. (*In re Marriage of E.U. and J.E.* (2012) 212 Cal.App.4th 1377, 1379, fn. 2; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.)

These rules apply as well to plaintiffs. Not all factual statements in their brief are supported by citations to the record, and some of their citations do not support the factual statements made. Where their factual statements are unsupported, we disregard those as well. (*In re Marriage of E.U. and J.E.*, *supra*, 212 Cal.App.4th at p. 1379, fn. 2; *Gotschall v. Daley*, *supra*, 96 Cal.App.4th at p. 481, fn. 1.)

In addition, it is well established "'that the judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.' [Citation.]" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3; see also Cal. Rules of Court, rule 8.204(a)(1).) To the extent Tregub's claims of error are unsupported by citation to authority or any meaningful legal analysis, we may reject them.

With these principles in mind, we turn to our statement of facts.

FACTUAL BACKGROUND

A. *Bergstein's Business and His Relationship with Tregub*

Bergstein's business includes financing, producing, and distributing motion pictures, and acquiring film libraries for distribution. As is customary in the industry, these operations are conducted through an enterprise of related corporate entities with separate and distinct purposes, including production and holding film rights. Bergstein also purchased loans for film production and acquired film rights through foreclosure on these loans.

For over 10 years, Tregub represented Bergstein and many of his affiliated entities, including TFC and LRC. Tregub essentially served as in-house counsel for plaintiffs. Tregub performed corporate organizational work, drafted sales and financing agreements, and handled litigation. She also did work for Bergstein personally. She had access to the companies' business and financial records. In Bergstein's words, "She had completely unfettered access to everything."

Bergstein's relationship with Tregub began to sour early in 2009. Bergstein felt the quality of her work had deteriorated, and brought in another attorney to assist in the transactional work, which angered Tregub. She stopped coming to the office every day. Toward the end of 2009, she told Bergstein, "I'm going to get you. I know where the bodies are buried." Tregub nonetheless "was still actively involved in many cases and directing work from home that she had been doing for awhile." She continued to work on ongoing litigation in which she was counsel of record through early March 2010.

B. *Aramid and Its Relationship with Bergstein*

Aramid Entertainment Fund Ltd. (Aramid) is a Cayman Island hedge fund formed and operated by David Molner (Molner). Aramid had made a number of film production or film acquisition loans to Bergstein's businesses and/or affiliated entities.

In 2008 and 2009, Aramid was experiencing financial problems and unrest from its investors. Molner demanded that Bergstein pay back his loans at higher interest rates than those they had previously agreed upon—at what amounted to 100 percent interest. Bergstein acceded to these demands because Molner threatened to foreclose on the films for which the loans were made if he did not do so. Molner also demanded that Bergstein accept a "global settlement" for the outstanding debt owed by any Bergstein-affiliated entity, which included taking on liability for additional amounts owed by other Aramid borrowers.[2] Bergstein refused, and the relationship between the two "deteriorated completely." Molner tried to foreclose on the films, and Bergstein filed litigation to stop the foreclosure. Tregub was one of the attorneys involved in the litigation on Bergstein's behalf.

C. *Tregub Assists Aramid in Filing Involuntary Bankruptcy Petitions Against Bergstein Affiliates*

On March 17, 2010, a group of alleged creditors led by Aramid filed petitions for involuntary bankruptcy against five entities related to plaintiffs (Bankruptcy Cases). The debtor entities included several holding companies owned in whole or in part by Bergstein: R2D2, LLC; CT-1, LLC; CapCo Group, LLC; ThinkFilm, LLC; and Capitol Films Development, LLC (collectively Debtors). Tregub participated in organizing, coordinating, and overseeing the preparation for commencement of the Bankruptcy Cases against these entities. Tregub concedes on appeal that she "participated in events which eventually led to

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[2] At plaintiffs' request, we take judicial notice of the fact that Aramid ultimately filed voluntary bankruptcy proceedings. (Evid. Code, §§ 452, subd. (d), 459; *In re Aramid Entertainment Fund Ltd.* (Bankr. S.D.N.Y.) No. 14-11802-shl.)

the filing of involuntary Chapter 11 Bankruptcy petitions against [five] entities" owned or controlled by plaintiffs.

The evidence at trial of Tregub's efforts to orchestrate the bankruptcy actions against her former client was extensive. On December 8, 2009, Tregub met with Molner and Aramid's bankruptcy counsel, David Neale (Neale) of Levene, Neale, Bender, Yoo & Brill LLP (Levene Neale) to discuss orchestrating the involuntary bankruptcy filings. The next day, Tregub wrote to Aramid's in-house counsel, Sanjay Sharma (Sharma): "With the foreclosure complete . . . , Aramid now has substantial unsecured claims. So I think it is important to think about some of the BK scenarios we discussed yesterday." Tregub recommended "forcing an involuntary [banktrupcy] and making a motion for appointment of an interim trustee to get [Bergstein] out of there."

In mid-December, Tregub told Molner that a friend who "works at Capitol" told her "unsolicited" about Bergstein's plans for two films for which Aramid had loaned money—"namely to foreclose and 'wipe you out to force you to the table.'" Tregub sent Molner a five-page "Attorney-Client Priviledged [*sic*] Confidential Memorandum" regarding "Bankruptcy Outline for Capitol Entities," laying out a strategy for pushing Bergstein-affiliated entities into bankruptcy. In the memorandum, Tregub revealed confidential information that she could have only known through her work for plaintiffs. Based on this confidential information, Tregub recommended a plan of action which included filing involuntary bankruptcy petitions, suing under personal guarantees signed by Bergstein, forming and controlling a creditors committee, and having an interim trustee—"possibly one with which Aramid has a relationship"—appointed.

On January 11 and 13, 2010, Tregub emailed Neale regarding the plan for the Bankruptcy Cases. Five days later, she wrote to Molner and Neale: "I think the first thing we need to figure out is who will be filing the petitions and which entities. Let's figure out a time to discuss."

Based on her knowledge regarding the Debtors and their creditors, Tregub compiled lists of potential creditors and solicited them to be petitioning creditors in the Bankruptcy Cases. Tregub provided a corporate structure chart that outlined the top tier entities of the enterprise, and detailed which of those entities had an interest in certain film libraries. She provided a "Creditors Matrix" to Aramid, listing potential creditors, the kind of debt each held, the debtor company, and the approximate amount of the debt. On January 29, 2010, Tregub sent Molner, Neale, and Sharma a list of possible petitioning creditors "that I think can be approached." On February 5, 2010, Tregub wrote to Neale, stating, "I think you and I should go over the creditor list and decide who is the best target to call . . . ."

In working with Molner, Tregub used plaintiffs' confidential and privileged information. For example, Tregub forwarded privileged emails containing information regarding the film libraries held by Bergstein's businesses and affiliated entities. When doing so, she told Molner, "I cannot emphasize strongly enough it is for your eyes only."

Throughout January and February, Tregub worked to solicit creditors and organize the filings, sending emails and making numerous phone calls to potential creditors. For example, Tregub approached Michael Ernst, for whom she had done legal work in November 2009. She told him she was no longer working for Bergstein but was working for parties "at war" with Bergstein, including Aramid. She told Ernst "she was going to take Mr. Bergstein down. She was going to put him out of business, put him in bankruptcy, and [Aramid was] helping her do it." Tregub suggested that Ernst make a claim against Bergstein. When Ernst told Tregub that no Debtor entity owed him any money, Tregub encouraged him to make a claim anyway.

Ted Peters was an attorney who had assisted Tregub in previous litigation. In December 2009 or January 2010, Tregub approached Peters and asked him if he would join a group of unsecured creditors trying to force Bergstein and one or more of his companies into involuntary bankruptcy. Peters had been hired by Tregub and had no claim against Bergstein. He declined her request.

Tregub also attempted to gain support from opposing counsel in a case in which she was at that time representing Bergstein. Hartford Brown is an attorney who represented an entity named Solar Filmworks in a matter against ThinkFilm, which Tregub was representing. Tregub suggested that Solar Filmworks be a petitioning creditor in the Bankruptcy Cases and provided Brown with Neale's contact information.

Tregub had identified the Salter Group as an entity that had claims against one or more Debtors, and then drafted an assignment agreement for the planned purchase by Aramid of Salter Group claims. After being informed by Neale that the purchase of claims for the purpose of commencing a bankruptcy was improper, Molner, Tregub, and others decided to circumvent this rule by pretending instead to create an alternative arrangement that would skirt bankruptcy law. Tregub drafted a new document euphemistically retitled "Collection Agreement," which accomplished the same purpose of purchasing Salter Group's claims.

D. *Tregub Attempts To Have Bergstein Removed From Control of His Businesses*

In addition to attempting to force Bergstein's affiliated companies into involuntary bankruptcy, Tregub also sought to have Bergstein removed from control of his companies. Toward this end, she recommended to the creditors that they seek appointment of an interim bankruptcy trustee, so as to "oust him from being able to do anything."

Thus, on March 17, 2010 in the Bankruptcy Cases, Aramid filed an emergency motion for appointment of an interim trustee. This motion sought immediate removal of Bergstein from any control of the Debtors. The interim trustee motion was supported by and relied upon the declarations of certain former employees of the Debtors. Tregub used her knowledge of the Debtors to solicit Roger Gertz, Jefferey Gaul, and Hans Turner to become those declarants in support of the interim trustee motion and assisted in drafting their declarations.

The motion was granted, and an interim trustee appointed. The same interim trustee was ultimately appointed the trustee in the bankruptcy action. The trustee controlled assets owned by the Debtors, and, in addition, prevented the exploitation (sale and distribution) of film rights owned by the plaintiff film libraries, TFC and LRC, causing considerable financial loss.

E. *Tregub Assists in Preparing the Aramid Loan Litigation*

In addition to her work on the Bankruptcy Cases, in late 2009 Tregub helped draft a master complaint asserting claims against Bergstein, his former business partner Ronald Tutor (Tutor), and certain other affiliated entities (the Aramid Loan Litigation). Tregub (1) participated in the strategy and planning of the filing of the Aramid Loan Litigation; (2) redrafted the master complaint multiple times; (3) articulated specific claims to be asserted against her former clients; and (4) identified and marshalled evidence to be relied upon by Aramid and its counsel. In so doing, Tregub used privileged and confidential information about her Bergstein-affiliated clients to analyze loan documents, and provided privileged information and assistance to Aramid and its attorneys at Stroock & Stroock & Lavan LLP (Stroock).[3] Certain information in the master complaint could not have been known to Aramid or its attorneys but for Tregub's divulging confidential and privileged information. Molner and Sharma worked with Tregub on the master complaint from at least November 2009 to early March 2010, shortly before the litigation was filed. She repeatedly passed privileged information relating to Bergstein to Molner or Aramid's counsel. The master complaint was then broken up into two lawsuits filed in March 2010 by Aramid and Stroock, comprising the Aramid Loan Litigation. These cases alleged millions of dollars in damages related to purported breaches and torts relating to the loans at issue.

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[3] We take judicial notice of the fact that Bergstein also filed suit against Stroock based on the law firm's use of confidential information received from Tregub. (Evid. Code, §§ 452, subd. (d), 459.) That lawsuit was dismissed as a SLAPP suit by the trial court under Code of Civil Procedure section 425.16, a ruling affirmed on appeal. (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 797-798.)

F. *Plaintiffs Claim Tregub's Actions Caused Millions of Dollars in Damages*

Plaintiffs presented evidence at trial that Tregub's breaches of her fiduciary duties and legal malpractice caused millions of dollars in damages to plaintiffs. For example, Bergstein presented evidence that he incurred millions of dollars in legal fees defending against the Bankruptcy Cases and the Aramid Loan Litigation. Bergstein also testified he lost the value of at least two notes owed to him by certain of the Debtors and/or entities affected by the Bankruptcy Cases, which totaled $19 million.

In addition, in 2010 Bergstein was involved in a transaction involving the purchase of the Miramax film studio and library. Bergstein was to be heavily involved in the transaction and to receive significant value from an equity position in the entity created as a result of the acquisition. He presented evidence that as a result of the filing of the Bankruptcy Cases and the resulting negative publicity, Bergstein's involvement in the transaction was marginalized and his equity position was significantly reduced, causing him to lose millions of dollars and a previously promised management position with Miramax.

TFC owns or controls the distribution rights to three film libraries: the ThinkFilm library, the Franchise library, and the Comerica library, which combined held distribution rights to hundreds of titles. As a result of actions of the trustee in the Bankruptcy Cases—in which TFC was not a debtor—revenues plummeted and eventually ceased, as the film rights went unexploited for years, causing millions of dollars in damages.

LRC owns the Intermedia library and was damaged in the same ways that TFC was damaged by the diminution in the value of the TFC libraries due to actions of the bankruptcy trustee.

PROCEDURAL BACKGROUND

At trial, plaintiffs presented 12 witnesses, including two experts. One of these experts submitted a detailed written report on damages and testified at length about the report. Tregub testified in her own behalf but called no other witnesses.

The jury rendered a special verdict. As to Bergstein, the jury found Tregub breached her fiduciary duty to him; her breach of fiduciary duty was a substantial factor in causing him harm; her actions involved malice, oppression or fraud; and his damages caused by the breach of fiduciary duty were $13.5 million. The jury found Tregub failed to use the skill and care that a reasonable attorney would have used under the circumstances, Bergstein would have obtained a better result absent such failure, and his damages caused by the failure were $3,073,000. The jury also awarded Bergstein $500,000 in punitive damages.

As to TFC, the jury found Tregub breached her fiduciary duty, causing $20 million in damages. It also found she was guilty of legal malpractice towards that defendant, causing $9 million in damages.

Similarly, as to LRC, the jury found a breach of fiduciary duty resulting in $2.5 million in damages. The jury also found Tregub had committed legal malpractice resulting in $1.5 million in damages.

As to several other plaintiffs, including Tenderloin Holdings LLC, Bontempo Holdings LLC, and Lavender

Productions LLC, the jury found that, while Tregub had breached her fiduciary duty to these companies, they had not established any damages as a result of the breach.

On September 7, 2012, the trial court entered judgment in the case. It awarded Bergstein, TFC and LRC $224,719.35 in costs. It also awarded Tregub $25,065.52 in costs as to those plaintiffs against whom the jury found in favor of Tregub.

Tregub filed motions for a new trial and for judgment notwithstanding the verdict. Both were denied.

DISCUSSION

A. *Subject Matter Jurisdiction*

Tregub argues that the trial court lacked subject matter jurisdiction entirely over any of the plaintiffs' claims because the claims are preempted by federal bankruptcy law. She contends that the damages awarded by the jury were based entirely on the filing of the involuntary bankruptcy petitions, the subsequent actions of the interim bankruptcy trustee or the negative publicity flowing from the bankruptcy proceedings. Because "the sole basis for [her] liability for these damages was [her] participation in the filing of the involuntary petitions and . . . the preparation of declarations to support the immediate appointment of an interim bankruptcy trustee," Tregub contends plaintiffs were required to litigate their claims in bankruptcy court.[4]

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[4] Tregub raised this argument in a pretrial motion and an ex parte application for leave to file a motion to dismiss. The trial court denied the motion on grounds it was not raised at the time of the other motions in limine and a hearing date had not

To the extent there is no conflict in the evidence, the question of jurisdiction is purely one of law, which we review de novo. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449; *VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 243-244.) Where there is conflicting evidence, the trial court's factual determinations are subject to review under the substantial evidence standard. (*Vons Companies, Inc.*, *supra*, at p. 449.) Challenges to a court's jurisdiction to hear a case may be raised at any time, even after formal deadlines have passed for motions in limine or other pretrial motions. (*Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 331 [lack of jurisdiction may be raised for the first time on appeal]; *Hartenstine v. Superior Court* (1987) 196 Cal.App.3d 206, 214.)

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separately been reserved to handle it. Tregub apparently raised this issue again in her motion for judgment notwithstanding the verdict, which is not included in the record on appeal. In opposition, plaintiffs submitted an order by the bankruptcy court granting plaintiffs' motion for an order remanding the action to state court, indicating that the bankruptcy trustee had removed the action to the bankruptcy court and the bankruptcy judge remanded the action "in its entirety" and ordered counsel for the trustee to pay plaintiffs' costs and attorney's fees. In a subsequent order denying the trustee's motion for reconsideration, the bankruptcy court pointed to the trustee's argument "that the fate of this bankruptcy case 'hinged' on the outcome of the Tregub Action, which has been pending in the state court for over *16 months*. (It should be noted that the Tregub Action was previously removed to this Court and that I promptly remanded it to the state court.) [The trustee] conceded during oral argument that under no circumstances would I ever try the Tregub Action."

Tregub relies on two cases in support of her contention, *Choy v. Redland Ins. Co.* (2002) 103 Cal.App.4th 789 and *In re Miles* (9th Cir. 2005) 430 F.3d 1083. As we discuss below, neither case directly controls the factual situation before us.

In *Choy*, the plaintiff sued the defendant's insured for damages resulting from an accident. The defendant had rejected the plaintiff's policy limit settlement demand. (*Choy v. Redland Ins. Co.*, *supra*, 103 Cal.App.4th at pp. 792-793.) While that litigation was pending, the insured filed a voluntary bankruptcy petition. The plaintiff sued the insurance company for intentional infliction of emotional distress and abuse of process, alleging that the bankruptcy filing was initiated in bad faith at the instigation of the company, in order to prevent the plaintiff from collecting a judgment in excess of the policy limits. (*Id*. at pp. 793-795.) The trial court dismissed the action on the ground the determination whether the bankruptcy petition was filed in bad faith was within the exclusive jurisdiction of the bankruptcy court. (*Id*. at p. 795.)

The court of appeal agreed, explaining "[t]he viability of [the plaintiff's] claims, from the perspective of the jurisdictional issue, depends upon his right to litigate, *in state court*, the question of [the insured's] alleged 'bad faith' bankruptcy petition." (*Choy v. Redland Ins. Co.*, *supra*, 103 Cal.App.4th at p. 796.) After reviewing the principles governing the doctrine of federal preemption, the court observed, "'State courts are not authorized to determine whether a person's claim for relief under a federal law, in a federal court, and within that court's exclusive jurisdiction, is an appropriate one. Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts *to create their own* *standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating*. [Citation.] . . . That Congress' grant to the federal courts of exclusive jurisdiction over bankruptcy petitions precludes collateral attacks on such petitions in state courts is supported by the fact that remedies have been made available in the federal courts to creditors who believe that a filing is frivolous. . . . *Congress' authorization of certain sanctions for the filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the kind of substantial damage awards that might be available in state court tort suits*. . . . .' [Citation.]" (*Id*. at pp. 798-799.)

California case law has "'ma[d]e it clear that *no authorized bankruptcy proceeding can properly support a state-law claim for malicious prosecution or abuse of process*. Such state-law tort claims impermissibly intrude upon exclusive federal authority over bankruptcy proceedings and threaten the uniformity of federal bankruptcy law regardless of the nature of the underlying proceeding.' [Citation.]" (*Choy v. Redland Ins. Co.*, *supra*, 103 Cal.App.4th at p. 800.) Because resolution of the plaintiff's claims would require the trial court to determine whether the insured's bankruptcy filing was made in good faith within the meaning of the Bankruptcy Code, the court held the plaintiff could not pursue state claims based on the filing. (*Id*. at pp. 801-802.)

In re Miles, *supra*, 430 F.3d 1083, also relied upon by Tregub, further considered a party's ability to pursue state tort remedies for damages resulting from a bad faith bankruptcy filing. There, after several involuntary bankruptcy petitions against a family were found to have been brought in bad faith and dismissed by the bankruptcy court, the family members initiated state actions for damages under various state tort theories, including abuse of process and defamation. While the Ninth Circuit held that such tort claims were barred by federal preemption, the court clarified that not "all state actions related to bankruptcy proceedings are subject to the complete preemption doctrine." (*Id*. at 1092.) The court explained that only claims that are "predicated upon the filing of an involuntary bankruptcy petition" are preempted under federal bankruptcy law. (*Ibid*.)

This distinction was recognized by *Davis v. Yageo Corp.* (9th Cir. 2007) 481 F.3d 661 (*Davis*), a case relied upon by plaintiffs. *Davis* involved a corporate dispute between minority shareholders, the plaintiffs, and majority shareholders, the defendants. The defendants filed a bankruptcy petition to prevent the plaintiffs from participating in governance of the corporation. The plaintiffs lost their equity in the corporation as a result of the bankruptcy proceedings. The plaintiffs sued and recovered damages based on breach of fiduciary duty. (*Id*. at pp. 665-666.)

On appeal, the defendants asserted that the breach of fiduciary duty claims were preempted by federal bankruptcy law. (*Davis*, *supra*, 481 F.3d at p. 666.) The court disagreed, finding that the "breach of fiduciary duty claims are not preempted by federal bankruptcy law because these claims concern conduct that occurred *prior to* bankruptcy." (*Id*. at p. 678.) It explained that the plaintiffs "did not allege that [the defendants'] bankruptcy petition was filed in bad faith, and their claim does not require the adjudication of rights and duties of creditors and debtors under the Bankruptcy Code. The complaint alleged that the directors and majority shareholder engaged in self-dealing to the detriment of the corporation through their decision to pursue bankruptcy and sought damages for breach of fiduciary duty under California state law." (*Id*. at p. 679.) The plaintiffs' "complaint was not 'self-consciously and entirely one which seeks damages for a claim filed and pursued in the bankruptcy court,'" but was one which sought damages for breach of fiduciary duty connected to the bankruptcy filing. (*Ibid*.)

So too here, plaintiffs' claims for breach of fiduciary duty and legal malpractice against Tregub are not dependent upon a determination as to whether the involuntary bankruptcy petitions were filed in bad faith. As they point out, "the conduct in which Tregub undisputedly engaged—i.e., working with her clients' adversaries to plan a multi-front litigation assault on her own clients—caused damage and injury and gave rise to causes of action . . . *irrespective of whether the Bankruptcy Cases were ever filed*." For this reason, *Choy* and *In re Miles* are not applicable; liability is not based upon abuse of process or bad faith in the filing of the bankruptcy petitions. As in *Davis*, it is based upon breach of fiduciary duty that occurred prior to the filing of the petitions. (Accord, *FDIC v. Barton* (E.D. La. April 8, 1998) 1998 U.S. Dist. LEXIS 5203, **13-14.)

Moreover, since plaintiffs and Tregub were not parties to the bankruptcy proceedings, the bankruptcy court lacked jurisdiction over them; that court could not apply any of the safeguards and penalties under federal bankruptcy law even if the court were to conclude the petitions were instigated by Tregub in breach of her fiduciary duties to her former clients. Efforts by the trustee to have this action removed to bankruptcy court were denied, and the trustee's counsel sanctioned for its efforts in that regard, underscoring the refusal of that court to provide redress to *any party* for the injuries alleged to have been caused by Tregub. One of the central reasons underlying federal preemption in this area—Congress's establishment of a panoply of remedies and sanctions for improper behavior and filings in bankruptcy court—could not be invoked against Tregub nor supply any redress for Bergstein and the Debtor entities, at least as to Tregub. (See, e.g., *Choy v. Redland Ins. Co.*, *supra*, 103 Cal.App.4th at p. 798-799; *Gene R. Smith Corp. v. Terry's Tractor, Inc.* (1989) 209 Cal.App.3d 951, 954-955 [federal preemption proper because bankruptcy court could award damages against a petitioner who brings a bankruptcy action in bad faith].)

Accordingly, the trial court had subject matter jurisdiction over the action. (*Davis*, *supra*, 481 F.3d at pp. 678-679.) As we explain below, however, the existence of the bankruptcy action was not without legal effect on the viability of plaintiffs' damages claims.

B. *The Damages Award Was Not Supported by Substantial Evidence*

There is no question that the jury's verdict that Tregub breached her fiduciary duty and committed legal malpractice is supported by substantial evidence. We need not recite the many emails or the testimony from multiple witnesses that detailed Tregub's egregious violation of her duties as an attorney to these clients. Nothing in our analysis of damages should be construed as condoning in any way the repeated acts of misconduct committed by Tregub and her inexcusable abuse of the confidences entrusted to her by the plaintiffs. But breaches of fiduciary duty, no matter how flagrant, must still be tied to actual damages in order to support a verdict. (Cf. *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 286.)

"'Whether a plaintiff "is entitled to a particular measure of damages is a question of law subject to de novo review. . . ."' [Citation.]" (*Burmudez v. Ciolek* (2015) 237 Cal.App.4th 1311, 1324; accord, *Rony v. Costa* (2012) 210 Cal.App.4th 746, 753).

"The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial. They see and hear the witnesses and frequently, as in this case, see the injury and the impairment that has resulted therefrom. As a result, all presumptions are in favor of the decision of the trial court [citation]. The power of the appellate court differs materially from that of the trial court in passing on this question. An appellate court can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury." (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506-507 (*Seffert*).) "'The question is not what this court would have awarded as the trier of the fact, but whether this court can say that the award is so high as to suggest passion or prejudice.'" (*Id.* at p. 507.) A damage award may not be "'"'speculative, remote, imaginary, contingent, or merely possible . . . .'"'" (*Estate of Kampen* (2011) 201 Cal.App.4th 971, 991.)

"To determine whether a damages award is supported by substantial evidence, we are guided by well-established rules. '[T]he reviewing court must start with the presumption that the record contains evidence sufficient to support the judgment; it is the appellant's burden to demonstrate otherwise.' [Citation.] 'Under that standard, we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment.' [Citation.]" (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1322, fn. 18; accord, *Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1278-1279.) In general, "'[t]he evidence is insufficient to support a damage award only when no reasonable interpretation of the record supports the figure.' [Citation.]" (*Rony v. Costa*, *supra*, 210 Cal.App.4th at p. 754.)

1. *Damages Caused by the Initiation and Conduct of the Bankruptcy Actions*

"For the breach of an obligation not arising from contract, the measure of damages . . . is the amount which will compensate for all the detriment *proximately caused* thereby, whether it could have been anticipated or not." (Civ. Code, § 3333, italics added.) "'Proximate cause involves *two* elements.' [Citation.] 'One is *cause in fact*. An act is a cause in fact if it is a necessary antecedent of an event.' (*Ibid.*) 'Whether defendant's negligence was a cause in fact of plaintiff's damage . . . is a factual question for the jury to resolve.' [Citation.] [¶] By contrast, the second element focuses on public policy considerations. Because the purported causes of an event may be traced back to the dawn of humanity, the law has imposed additional 'limitations on liability other than simple causality.' [Citation]. 'These additional limitations are related not only to the degree of connection between the conduct and the injury, but also with public policy.' [Citation]." (*Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1045 [as a matter of law attorneys in an action for breach of fiduciary duty and legal malpractice could not be liable to class clients for alleged malpractice which foreclosed class's ability to obtain punitive damages].)

In some circumstances a subsequent act or event may constitute a superseding cause as a matter of law, foreclosing an award of damages. (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 381.)[5] "Whether a defendant's conduct is an actual cause of a plaintiff's harm is a question of fact, but the existence and extent of a defendant's liability is a question of law

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[5] The rules relating to intervening and supervening causes set out in the Restatement Second of Torts have been accepted as law in California. (*Stewart* v. *Cox* (1961) 55 Cal.2d 857, 864.) The Restatement explains: "An intervening force is one which actively operates in producing harm to another after the actor's negligent act or omission has been committed." (Rest.2d Torts, § 441, subd. (1); all undesignated section references are to the Restatement Second of Torts.) "Whether it prevents an actor's antecedent negligence from being a legal cause of harm to another is determined by other rules (§ 441, subd. (2)), chiefly those governing the related concept of superseding cause." (*Brewer v. Teano* (1995) 40 Cal.App.4th 1024, 1031 (*Brewer*).) "A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." (§ 440.) If the cause is superseding, it relieves the actor from liability whether or not that person's negligence was a substantial factor in bringing about the harm. (§ 440, com. b.) Section 442 sets out six considerations that are important in determining whether an intervening force is superseding, one of which is particularly significant to our analysis: "(c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation . . . ."

and social policy." (*Maupin v. Widling* (1987) 192 Cal.App.3d 568, 573.)

Case law was traditionally divided as to whether the doctrine of superseding cause should apply to intentional torts. (*Ash v. North American Title Co.* (2014) 223 Cal.App.4th 1258; see also *Tate* v. *Canonica* (1960) 180 Cal.App.2d 898, 906; *Lopez* v. *Surchia* (1952) 112 Cal.App.2d 314.) "It would be idle to pretend that all [of these] cases are easily reconcilable . . . ." (*Ewart* v. *Southern Cal. Gas. Co.* (1965) 237 Cal.App.2d 163, 170.) Nonetheless, evolving case law accepts that even the "'but for' consequences of . . . intentional tort[s] are not without limitation" and a superseding cause may limit the plaintiff's liability even for intentional acts. (*Brewer, supra*, 40 Cal.App.4th at p. 1036.) Citing Prosser and Keaton's treatise on Torts, the court in *Brewer* observed: "'On its face, the problem is one of whether the defendant is to be held liable for an injury to which the defendant has in fact made a substantial contribution, when it is brought about by a later cause of independent origin, for which the defendant is not responsible. In its essence, however, it becomes again a question of the extent of the defendant's original obligation; and once more the problem is not primarily one of causation at all, since it does not arise until cause in fact is established. It is rather one of the policy as to imposing legal responsibility.' [Citation.]" (*Brewer,* at p. 1032, citing Prosser & Keeton, Torts (5th ed. 1984) § 44, p. 301.)

The instant case poses the question whether the actions of the five creditors in filing involuntary bankruptcy petitions, the ensuing law and motion practice in the bankruptcy court, including the appointment of an interim trustee, and then the actions of the trustee itself, together constitute a superseding cause of plaintiffs' injuries. Tregub raised the bankruptcy proceedings as a bar to the damages claims brought against her by plaintiffs in pretrial and posttrial motions, framing the issue as one of preemption under federal bankruptcy law. While Tregub apparently did not raise a proximate cause argument in those motions, her argument that plaintiffs were precluded as a matter of law from pursuing tort claims against her based on damages caused by the bankruptcy actions was sufficient to raise a proximate cause challenge to the plaintiffs' primary theory of damages. We requested supplemental briefing from the parties to address the question whether the actions of the bankruptcy court and trustee should be viewed as superseding causes that relieve Tregub of liability even though her conduct was a substantial factor in bringing about the harm.

The analysis and holding in *Brewer*, cited by Tregub, is instructive on this question. There the plaintiff sought to hold the defendant liable for damages flowing from a collision between their two cars, including the plaintiff's criminal prosecution for leaving the scene of the accident. The plaintiff alleged that the defendant had repeatedly rammed his car and the plaintiff left the scene of the accident because he was fearful the defendant would physically attack him. Subsequently, the plaintiff was formally indicted for felony hit and run, held to answer, tried and acquitted. He brought a damages action against the defendant, seeking to recover, along with other damages, for the expenses he incurred as a result of his arrest and prosecution. The court held that such damages were not recoverable as a matter of law because the intervening prosecution operated independently and could not be said to have been proximately caused by the defendant's conduct.

The court explained: “The criminal prosecution in this case was not an immediate reaction to an on-the-scene situation, but the product of what, we must assume, was the considered and careful judgment of a number of persons. First, a prosecutor had to review the information presented and available and decide to file a formal criminal complaint. After that, the prosecution had to present enough evidence to convince a magistrate, or a grand jury, that the crime of felony hit-and-run had been committed by plaintiff. (See Pen. Code, § 858-872, 939-945.) The resulting indictment or information then had to be filed in superior court. (Pen. Code, § 948 et seq.) It was subject to testing by a motion to dismiss for insufficiency of evidence (Pen. Code, § 995) and, most important, by the trial itself. . . . [T]hat plaintiff was acquitted . . . tell[s] us only that a jury or judge was not convinced beyond a reasonable doubt that he was guilty; it does not tell us that he was innocent.” (*Brewer*, *supra*, 40 Cal.App.4th at p. 1036.) “Whether [the defendant’s] conduct was negligent or deliberate, it would be ‘an unwarranted extension of liability’ [citation] to hold that [the defendant] is liable for these remote official acts of independent public officers. We conclude that, as a matter of law, [the] plaintiff is not entitled to recover for the damages he suffered as a result of the filing of criminal charges and the subsequent proceedings in the criminal case.” (*Brewer*, at p. 1037.)

Also closely analogous to our case is *Manta Management Corp. v. City of San Bernardino* (2008) 43 Cal.4th 400 (*Manta Management*), in which the court held that where a court is provided with appropriate facts to adjudicate a motion for preliminary injunction, a court’s intervening exercise of independent judgment breaks the chain of causation for purposes of liability under title 42 United States Code section 1983. In that case a business sought to hold the city liable for damages caused to it when the city obtained a preliminary injunction against its operations, in violation of the business's First Amendment rights. The court determined that the intervening exercise of independent judgment by the courts in issuing the preliminary injunction broke the chain of causation for purposes of liability under title 42 United States Code section 1983 in the absence of evidence that the city materially misled or pressured the judges who were expected to exercise independent judgment. (*Manta Management*, at p. 412.)[6]

Plaintiffs argue that the doctrine of superseding cause is unavailable here because Tregub acted intentionally in masterminding the bankruptcy proceedings and seeking to remove Bergstein from management of his companies. Under these circumstances, plaintiffs point out, the ensuing damages caused by the bankruptcy proceedings were not only foreseeable but also actually intended. Plaintiffs contend that case law does not recognize application of the superseding cause doctrine where the tort is an intentional one and the damages intended, as was the case here, citing *United States Fid. & Guar. Co. v. American*

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6 There is no evidence in the record before us to trigger this exception. No evidence was presented of pressure on the judge or trustee by Tregub, nor was there substantial evidence of misleading facts being presented by Tregub. Bergstein conceded that at least two of the involuntary bankruptcies were properly filed, as two of the debtor entities were insolvent, and he had already decided to "put [them] into bankruptcy." All of the bankruptcy proceedings were ongoing at the time of the trial in this matter, under the active control of the trustee and bankruptcy court.

Employer's Ins. Co. (1984) 159 Cal.App.3d 277, 285, disapproved on another ground in *J. C. Penney Casualty Ins. Co. v. M. K.* (1991) 52 Cal.3d 1009, 1019, footnote 8, and *Tate v. Canonica*, *supra*, 180 Cal.App.2d at p. 907 (*Tate*).

We acknowledge that ordinarily a defendant will be liable for all damages caused by his intentional tort, even if intervening acts aggravate or separately cause injury, as long as the defendant's conduct is a substantial factor in causing injury. These maxims of causation and liability are well developed in the *Tate* decision, relied upon by plaintiffs. But even *Tate* acknowledges that courts occasionally may decide as a matter of policy that certain actions or events should terminate the causal connection between an intentional tort and damages for purposes of legal recovery.

In *Tate*, the court considered whether the victim's suicide should be viewed as a superseding cause where the victim was subjected to intentional infliction of emotional distress by the defendant. While acknowledging that some courts had deemed a victim's suicide to be a superseding cause, the court declined to so hold, explaining that proximate cause ultimately turns on policy considerations; the court saw no policy reason to relieve the abuser from any of the consequence of his actions, including the suicide of his victim. "That the notion of intervening or superseding cause, as commonly applied in negligence cases, is really not a matter of causation, but an attempt to spell out rules of law limiting the liability of a negligent actor, using the *language* of causation, is ably demonstrated by Prosser[7] [who

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[7] Prosser, *Proximate Cause in California* (1950) 38 Cal. L. Rev. 369, 398.

wrote about superseding cause as follows]: . . . 'Essentially it is a question of whether the defendant shall be relieved of responsibility for the result of his fault for the reason that another cause which has contributed to that result is regarded as playing a more important, significant and responsible part.'" (*Tate*, *supra*, 180 Cal.App.2d at p. 908.)

Here, the intervening cause of most if not all of plaintiffs' injuries was the initiation of the bankruptcy proceedings, the conduct of those proceedings (including the actions of the trustee and the court) and the publicity stemming from the filing of those actions. The importance of the bankruptcy laws to our economic system and the societal value of maintaining the independence and integrity of those proceedings cannot be questioned. (See, e.g., *Gonzales v. Parks* (9th Cir. 1987) 830 F.2d 1033, 1035-1036.) Thus, the question whether the involuntary bankruptcy proceedings put into motion by Tregub should be deemed a superseding cause of plaintiffs' injuries cannot be answered by rote invocation of traditional causation analysis in intentional tort cases.

Given the important policies undergirding federal bankruptcy law, we conclude that the initiation of bankruptcy proceedings must be viewed as a superseding cause as a matter of law in this case, even though the bankruptcy petitions were set in motion intentionally by Tregub with the intent to cause financial damages to her former client.

Our conclusion in this regard is bolstered by the policy considerations underlying federal preemption over bankruptcy matters, set forth in the case law in the preceding section. (E.g., *Gonzales v. Parks*, *supra*, 830 F.2d at p.1035 ["The ability collaterally to attack bankruptcy petitions in the state courts would also threaten the uniformity of federal bankruptcy law, a uniformity required by the Constitution"]) Numerous authorities "clearly emphasize . . . the principle that no *authorized proceeding* in bankruptcy can be questioned in a state court . . . against any defendant." (*Choy v. Redland Ins. Co.*, *supra*, 103 Cal.App.4th at p. 801; *In re Miles*, *supra*, 430 F.3d at p. 1091 ["The 'highly complex' nature of the Bankruptcy Code, and 'the unique, historical, and even constitutional need for uniformity in the administration of bankruptcy laws,' undermine the argument that . . . [Congress] . . . intended to allow [third] parties to pursue state court litigation as a form of collateral attack on involuntary bankruptcy proceedings"].)

Under the authority of *Manta Management* and *Brewer*, it would be an "unwarranted extension of liability" to hold Tregub liable for independent decisions made by the bankruptcy court and trustee with relation to the debtor companies and their assets and debts. The decisions made by that court, and by the interim and the permanent trustees, constitute independent superseding causes of the damages suffered by plaintiffs. Thus, while the filing of the bankruptcy petitions was proximately caused by Tregub (and indeed there was substantial evidence she engineered the filings), the ensuing actions taken by the court and trustee were not. Tregub may not be held liable, as a matter of law, for the institution of those proceedings, the various actions taken by the bankruptcy court, including the appointment of the interim trustee, the court's decision to impose terminating sanctions against one or more of the Debtors, and other proceedings and actions of that court. Nor can Tregub be held liable for the conduct of the trustee in failing to exploit the film libraries, or for the attorney fees incurred by plaintiffs as a result of the bankruptcy proceedings.

Our holding is limited to the facts of this case, where Tregub's malfeasance led to the institution of bankruptcy proceedings, none of which had been concluded at the time of trial, two of which were concededly valid, and where the trustee and court were controlling the proceedings and the debtors' assets, causing injury to plaintiffs. Had the involuntary bankruptcy actions been filed and immediately dismissed by Tregub, intending merely to obtain a burst of bad publicity in the midst of the Miramax deal, our conclusion might be different. But here, the evidence is that once those petitions were filed, independent actors took control of those proceedings, specifically the bankruptcy judge and the trustee. As in *Brewer*, we must assume the bankruptcy proceedings were conducted with the considered and careful judgment of those officials and were subject to testing at numerous steps by the Debtors (and Bergstein, as the controlling party).

In the instant case, it is clear that plaintiffs sought damages based on the filing of the bankruptcy petitions, adverse publicity generated as a result of the filings, as well as all of the ensuing conduct of the court and the trustee. That the gravamen of the damages sought was based on the bankruptcy actions is most obvious in the case of the two film library plaintiffs, TFC and LRC. Plaintiffs' witnesses and expert testified that these two plaintiffs suffered millions of dollars in damages because the libraries assets were frozen when the involuntary bankruptcies were filed and the trustee prevented their "exploitation" during the pendency of the bankruptcy actions up until the time of trial. Plaintiffs cannot hold Tregub liable for the independent actions of the trustee relating to TFC and LRC, regardless of whether Tregub set in motion the bankruptcy proceedings in which the trustee made these decisions, given our determination with respect to superseding cause in this case. Because there is no evidence of harm to TFC and LRC other than the evidence tying the injury to the trustee's conduct, the verdicts in favor of those two plaintiffs must be reversed.

2. *Damages for Legal Malpractice*

Tregub contends there is no basis for an award of damages for legal malpractice to any of the plaintiffs. In particular, she claims that there is no basis for distinguishing Bergstein's damages due to breach of fiduciary duty from his damages for legal malpractice, and no basis for awarding TFC or LRC damages due to legal malpractice. The jury found plaintiffs had established Tregub had committed legal malpractice towards Bergstein, causing him damages of $3.073 million, towards TFC, causing it damages of $9 million, and towards LRC, in the amount of $1.5 million.[8]

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[8] In addressing this contention, we are hampered by Tregub's failure to provide citations to the record in support of her factual statements on this issue. We are also hampered by her failure to set forth the evidence on the question of damages. Plaintiffs do nothing to remedy the problem, providing no citations to any evidence in the record which supports a finding of legal malpractice by Tregub as to any of the plaintiffs. The only evidence cited by plaintiffs is Exhibit 827, the report prepared by their damages expert, Philip Fier, of Focus Advisory Services, LLC.

Initially, we note that Tregub presented no evidence other than her own testimony to counter any of the damages evidence presented by plaintiffs. By contrast, plaintiffs presented six witnesses to support their damages claims, as well as an extensive written report by Fier. Based on our review of the record, we nonetheless agree with Tregub that there was insufficient evidence to support the jury's verdict with respect to the damages suffered by each plaintiff as a result of Tregub's legal malpractice.

As to TFC and LRC there was no evidence presented that Tregub was handling a legal matter for these companies which would have obtained a better result if Tregub had acted as a reasonably careful attorney, the instruction given to the jury in this case on legal malpractice to which no objection is raised. Fier did not quantify any amount of damages which was caused to TFC or LRC as a result of legal malpractice by Tregub. Plaintiff's expert Ellen Pansky acknowledged that she could not place any measure of damages based on Tregub's failure to exercise reasonable care as an attorney towards these two companies. More significant, however, is the fact that the only evidence of damages presented with respect to these two film libraries was the evidence, discussed above, that they were effectively "shelved" by the bankruptcy trustee who decided against selling or licensing the libraries' film rights during the pendency of the bankruptcy proceedings. As discussed above, the bankruptcy trustee's actions with respect to the libraries constitute a superseding cause as a matter of law, precluding an

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We nonetheless review the record to ascertain whether there is any merit to Tregub's contentions with respect to damages for legal malpractice.

award of damages to the two companies against Tregub for legal malpractice.

As to Bergstein's own claim of legal malpractice, Tregub contends that the jury verdict of $3.073 million in damages cannot stand because Bergstein presented no evidence of damages caused by legal malpractice, as distinguished from breach of fiduciary duty. Bergstein counters that breaches of fiduciary duty, amply supported by the record and explained by plaintiff's legal malpractice expert Ellen Pansky, also constitute legal malpractice. Moreover, Bergstein contends there was no need to distinguish between damages caused by the two different theories and "the fact that the jury awarded a portion of the damages Tregub caused for one tort and the other portion under the other theory is likely the jury's attempt to split the total amount of damages it found [plaintiffs] to have suffered between the two torts in order to avoid awarding double recovery."

At least one of the acts of alleged malpractice cited by his counsel in closing argument was that Tregub settled litigation brought against one of Bergstein's entities by Allied Irish Banks without his approval. As Tregub correctly points out, however, R2D2, not Bergstein, was the defendant in that litigation. Because R2D2 was still a debtor in the bankruptcy actions, whatever damages R2D2 suffered as a result of a premature or ill-advised settlement could not be recovered by Bergstein in this action. Moreover, any damage was to the corporation and not to Bergstein personally; thus, Bergstein lacks standing to recover for injuries to the corporation itself. (*Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51-52.) Pansky did not provide any evidence to establish damages to Bergstein caused by any of the acts of legal malpractice; indeed, she expressly stated that she was not retained to provide testimony about damages. Moreover, Fier did not offer any analysis as to what damages were separately attributable to Tregub's legal malpractice towards Bergstein.

Nonetheless, there was testimony by several witnesses about acts of legal malpractice by Tregub which stemmed from her legal representation of Bergstein unrelated to the ultimate bankruptcy proceedings. One of Bergstein's former attorneys, Ted Peters, testified that Tregub failed to exercise reasonable care in her representation of Bergstein in the case *Eleven Eleven v. Bergstein*. Because of her failure to file an opposition, a writ of attachment was issued against his property. In addition, she dismissed a cross-complaint by Bergstein without first obtaining his permission, conduct which fell below the standard of care as testified to by Pansky. However, no witness presented any evidence as to the amount of damages suffered by Bergstein as a result of the mishandling of the *Eleven Eleven* litigation.

Given the paucity of evidence supporting damages to Bergstein caused by Tregub's legal malpractice, separate and apart from the bankruptcy proceedings, there is no reasonable basis for the jury to have awarded Bergstein $3.073 million in damages for legal malpractice by Tregub. (*Kruse v. Bank of America*, *supra*, 202 Cal.App.3d at pp. 51-52.)

3. *Attorney's Fees as Damages*

Tregub contends that as a matter of law, plaintiffs could not seek as a component of damages the attorney's fees they incurred in the bankruptcy proceedings or in the Aramid litigation. She argues that Bergstein was not entitled to attorney's fees based on the filing of the involuntary bankruptcy petitions, in that such fees are available exclusively under bankruptcy law. She also argues attorney's fees were not available to him under the "tort of another doctrine," citing *Vacco Industries, Inc. v. Van Den Berg* (1992) 5 Cal.App.4th 34, 57. Additionally, she asserts that "to the extent that plaintiffs sought attorneys' fees as damages for the alleged bad faith filing of the Aramid state court litigation, such attorneys' fees as damages may only be recovered in a malicious prosecution action," citing *Contra Costa County Title Co. v. Waloff* (1960) 184 Cal.App.2d 59, 68.

Because we hold that plaintiffs cannot seek damages for actions taken by the bankruptcy court as those proceedings constitute a superseding cause, Bergstein is also foreclosed here from recovering attorney's fees he incurred in those actions.

With respect to plaintiff Bergstein's attempt to recover attorney's fees stemming from his defense of the Aramid litigation, "'the established rule [is] that attorney fees incurred as a direct result of another's tort are recoverable damages.' [Citation.] In particular, recoverable damages include 'the expense of retaining another attorney' when reasonably necessary to 'attempt to avoid or minimize the consequences of the former attorney's negligence.' (3 Mallen & Smith, Legal Malpractice (2011 ed.) § 21:6, p. 23; see also *id.*, § 21:10, p. 34 ['A client may incur attorneys' fees and litigation expenses in attempting to avoid, minimize, or reduce the damage caused by attorneys' wrongful conduct.'].)" (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 826.) The Supreme Court has rejected the argument that the plaintiff in a legal malpractice or breach of fiduciary duty action against former counsel does not suffer any harm until after the related litigation has concluded.

(*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 758-759.)

Moreover, it has long been settled that "[a] person who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures thereby suffered or incurred. [Citations.]" (*Prentice v. North Amer. Title Guar. Corp.* (1963) 59 Cal.2d 618, 620.) In such a case, "'[t]he attorney's fees are an economic loss—damages—proximately caused by the tort.' [Citation.]" (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 372, quoting *Brandt v. Superior Court* (1985) 37 Cal.3d 813, 817.)

Recovery of attorney's fees as damages is not limited to malicious prosecution actions. (See, e.g., *Nickerson v. Stonebridge Life Ins. Co.*, *supra*, 63 Cal.4th at pp. 372-373 [breach of insurance contract]; *Kumaraperu v. Feldsted* (2015) 237 Cal.App.4th 60, 64 [professional negligence, breach of contract, fraud].) *Contra Costa County Title Co. v. Waloff*, *supra*, 184 Cal.App.2d 59, relied upon by Tregub, does not hold that attorney's fees as damages are recoverable only in a malicious prosecution action. It simply holds that "[i]n suits to recover damages for malicious prosecution, sums expended by plaintiff to defend the original unfounded lawsuit are recoverable. There, attorney's fees paid or incurred in defending the original suit are held to be a proper element of damages. [Citations.]" (*Id.* at p. 68.) Consequently, Tregub's contention that there was no legal basis for an award of attorney's fees to Bergstein as damages he incurred in defending the Aramid litigation is without merit.

In the instant case, the jury returned a verdict in Bergstein's favor for $13.5 million on his claim for breach of fiduciary duty. While Bergstein argues that he offered "clear, convincing, and reliable evidence that he incurred $5,469,761 in attorneys' fees," he provides no citation to this evidence other than to one trial exhibit, Exhibit 826, which commingles fees related to the bankruptcy proceedings, "library assets," "general" attorney's fees and "Bontempo" (referring to Bontempo Holdings, a subsidiary of Capco Group, LLC, which was one of the debtors in the involuntary bankruptcy action). Bergstein's own testimony provided no clarity, attributing most of his claimed legal fees to the bankruptcy defense. There was no way for the jury to separate out non-bankruptcy attorney's fees incurred by Bergstein based on the evidence presented. Although the *fact* that Bergstein had to incur attorney's fees as a result of Tregub's actions was established, the extent of the fees attributable to acts of malpractice or breach of fiduciary duty unrelated to the handling of the bankruptcy proceedings was not. Thus, there is insufficient evidence for the jury to have awarded damages to Bergstein based on the attorney's fees he claims to have incurred. Even drawing all inferences in Bergstein's favor, the evidence was too speculative to lend support to any award of attorney's fees as an element of damages. (See *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 696.)

4. *Damages Based on Negative Publicity*

Tregub contends that "[a]bsent a defamation or invasion of privacy claim, there is no legal basis for damages" resulting from negative publicity. We need not resolve the viability of such a claim because the evidence presented at trial established that the negative publicity was directly caused by a single article reporting on the initial filing of the bankruptcy petitions. Because we hold that the bankruptcy proceedings constitute a superseding cause of plaintiffs' injuries, for which Tregub may not be liable as a matter of law, it follows that she also is not legally responsible for the publicity generated by those filings.

Had the evidence been presented to the jury in such a way that it could segregate negative publicity stemming from Tregub's misconduct other than her orchestration of the bankruptcy proceedings, one might be able to find sufficient evidence in the record to support the jury's award of damages to Bergstein. Bergstein did testify without significant contrary evidence that he was well into a deal with Disney to purchase Miramax (along with a group of investors he had assembled), and that he was promised a 10 percent equity share in the new entity to be created, as well as a principal position with a commensurate salary, and the likelihood of a lucrative consulting agreement. But his testimony about what derailed those plans focused nearly exclusively on the negative publicity from the filing of the five involuntary bankruptcies. He testified that he was told by senior officials at Disney that he could not play a lead role due to the bankruptcy proceedings. He testified that as a result of the negative publicity, other entities refused to do business with him, and various deals fell through. He testified that this negative publicity surrounded the initial filings of the bankruptcy proceedings and was not related to the later actions of the court or trustee.

Bergstein's testimony was corroborated by that of Michael Barnes, one of the attorneys for the buyer's group assembled to purchase Miramax. Barnes testified that executives at Disney told him the company would not move forward with the deal if Bergstein was the "public face" of the deal because of negative publicity in the entertainment press. One of Bergstein's former in-house attorneys, Ray Reyes, also presented testimony that he was not able to collect outstanding money owed to Bergstein, TFC or LRC, because people took advantage of the negative publicity and refused to pay. But neither witness pointed to any article or other publicity that was unrelated to the bankruptcy proceedings.

Plaintiffs' expert Fier testified that as a result of losing the opportunity to participate in the equity from the purchase of the Miramax film studio and library alone, Bergstein suffered losses of $60,584,000. As to "damages associated with [the] Miramax consulting contract," Fier testified it was his "understanding . . . that Mr. Bergstein was offered the opportunity to have a consulting contract with the resulting company." The damages were "[t]he lost income from not receiving that consulting contract," which he calculated to be $10 million, reduced to present value. He further testified that Bergstein suffered an additional $110 million in losses to his consulting business due to the bad publicity. Fier's report, however, does not identify what the negative publicity concerned, nor does he distinguish damages caused by the filing of the bankruptcy petitions and publicity relating to those filings. Indeed, with respect to each type of damages, Fier's report states that the cause was either "adverse publicity surrounding the litigation," "adverse publicity surrounding the involuntary bankruptcy proceedings" or the bankruptcy proceedings themselves. As such, there is insufficient evidence to support the jury's award of damages to Bergstein based on negative publicity, as even those damages are inextricably intertwined with the bankruptcy proceedings, which we find to be a superseding cause of Bergstein's injuries.

DISPOSITION

The judgment in favor of plaintiffs Bergstein, TFC and LRC is reversed; the trial court is directed to enter judgment in favor of defendant Tregub. Each party to bear their own costs on appeal.

KEENY, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.