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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

EZRI NAMVAR et al., Plaintiffs and Appellants, v. DB PRIVATE WEALTH MORTGAGE, LTD. et al., Defendants and Respondents.	B241788 (Los Angeles County Super. Ct. No. BC456813)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Gregory Wilson Alarcon, Judge. Affirmed.

Corporate Legal Services and Mark J. Leonardo for Plaintiffs and Appellants.

Bingham McCutchen, Stacy W. Harrison and Patrick Allen for Defendants and Respondents.

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INTRODUCTION

The defendants in this case filed a motion for summary judgment. In opposition to the motion, the plaintiffs filed some papers on time, some papers late, and some papers very late. We conclude that the trial court did not abuse its discretion by deciding to consider the timely and late opposition papers but not the very late ones. We also conclude that the trial court did not abuse its discretion in calculating the amount of contractual attorneys' fees awarded to the defendants as the prevailing parties. Therefore, we affirm the judgment and the order awarding attorneys' fees.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Namvars and Their Home*

In September 2008 plaintiffs Ezri and Ilana Namvar, through a family trust, bought a house in the Brentwood Park area of Los Angeles by borrowing $7.5 million from defendant DB Private Wealth Mortgage Ltd. (DB), secured by a deed of trust on the property. It was a bad time to borrow that much money, both in the United States generally and for the Namvars personally. The Namvars made only two payments before Ezri Namvar's creditors forced him into involuntary bankruptcy on December 22, 2008.

In September 2009 the Chapter 11 bankruptcy trustee and the Namvars stipulated that the Namvars and their children could continue to live in the residence while the trustee tried to sell it and that, in lieu of paying rent, the Namvars would maintain the property "in a clean and orderly manner and in good upkeep and repair, suitable for showing to prospective purchasers." The Namvars also agreed to pay for insurance and to make "mortgage payments . . . on a going forward basis,"[1] cooperate with court-

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[1] The stipulation uses the term "mortgage payments." In fact, promissory notes in California are secured by deeds of trust, not mortgages, although deeds of trust and mortgages "perform the same basic function, and . . . a deed of trust is 'practically and substantially only a mortgage with power of sale.'" (*Domarad v. Fisher & Burke, Inc.*

appointed real estate brokers working to sell the property, and vacate the property on 30 days notice from the trustee

The trustee was unsuccessful in his efforts to sell the property and decided it was not worth it to keep trying. The trustee gave notice of his intent to abandon the bankruptcy estate's interest in the property as of May 5, 2010. The trustee reported that "[d]espite aggressive marketing efforts by the Trustee and his brokers, the Trustee has been unable to sell the Property at a price that would generate any return to the Debtor's estate," and that "[u]nless abandoned, the sale of the Property will generate substantial capital gains consequences" for the estate.

DB, which had not received any payments from the Namvars since December 2008, then gave notice of default and election to sell the property. The Namvars did not cure. DB substituted Old Republic Title Company as trustee under the deed of trust and assigned the note to defendant Kelsey Street, LLC. On October 7, 2010 Kelsey Street purchased the property at the trustee's sale for $6 million.[2]

The Namvars did not leave voluntarily. On October 8, 2010 Kelsey Street served the Namvars with a three-day notice to quit and on October 15 filed an unlawful detainer action. In their answer, the Namvars asserted that the unlawful detainer action violated the automatic stay of the bankruptcy court and was barred by the terms of the September 2009 stipulation. Kelsey Street then sought and obtained from the bankruptcy court on February 21, 2011 an order retroactively annulling the automatic stay with respect to the foreclosure sale and the unlawful detainer action. The bankruptcy court also ordered that

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(1969) 270 Cal.App.2d 543, 553; see *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 507, fn. 2 ["[t]he deed of trust surpassed the common law mortgage as the 'generally accepted and preferred security device in California' during the 19th and early 20th centuries, before the California Legislature eliminated *most* of the legal and economic distinctions between a mortgage that contains a power of sale and a deed of trust"].)

[2] The trustee's deed upon sale states that the amount of unpaid debt on the property was $8,579,404.29.

the September 2009 stipulation "was and is no longer in force or effect, as of the date of the Property's abandonment on May 5, 2010."[3]

On May 11, 2011 the trial court in the unlawful detainer action granted Kelsey Street's motion for summary judgment, denied the Namvars' request for a stay or continuance, and entered judgment in favor of Kelsey Street. On February 1, 2012 the appellate division of the Superior Court affirmed.

B. *The Namvars File This Action*

Meanwhile, on March 7, 2011 the Namvars filed this action to set aside the foreclosure, to quiet title, and for declaratory relief, an accounting, and damages. The Namvars named DB, Kelsey Street, and Old Republic as defendants.[4] The Namvars alleged that the notice of default was defective and violated the bankruptcy stay, that the substitution of trustee was invalid, and that the foreclosure sale was defective. The Namvars also alleged that "DB's agents . . . falsely told Ezri Namvar that he should not seek to redeem the Property from the foreclosure, but rather that [the Namvars] should cooperate with DB so as to allow the foreclosure to proceed purportedly so that agents for DB could purchase the property from DB for their personal residence and they would pay a substantial sum, to be determined, directly to Ezri Namvar and allow additional time for Ezri Namvar and his family to continue to reside in and peacefully possess the Property if Ezri Namvar would not seek to redeem his property and not seek to stop or challenge the

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[3] On March 14, 2011 the Namvars filed an appeal of this order to the district court but did not pursue it. (*In Re Ezri Namvar* (C.D.Cal. 2012, No. CV11-2150GAF).) On February 21, 2012 the district court dismissed the appeal.

[4] The trial court dismissed Old Republic from the action shortly after entering judgment in favor of DB and Kelsey Street. The Namvars do not appeal this dismissal, and Old Republic is not a party to this appeal.

foreclosure process or the results in any respect." The Namvars also recorded a lis pendens on the property.[5]

C. *The Summary Judgment Motion*

On December 21, 2011 DB and Kelsey Street filed a motion for summary judgment in this action, the procedural chronology of which forms the basis of much of this appeal. Kelsey Street noticed the hearing on the motion for March 5, 2012. Pursuant to Code of Civil Procedure section 437c, subdivision (b)(2),[6] the Namvars' opposition papers were due Friday, February 17, 2012. The Namvars' opposition papers would have been due Monday, February 20, 2012, but that Monday was President's Day, a court holiday. (See § 12a; *Steele v. Bartlett* (1941) 18 Cal.2d 573, 574; *Tran v. Fountain Valley Community Hospital* (1997) 51 Cal.App.4th 1464, 1466.) Kelsey Street's reply papers were due February 29, 2012.

The Namvars, through their attorney, filed some but not all of their opposition papers by the due date of February 17, 2012. On that date the Namvars filed their memorandum of points and authorities in opposition to the motion for summary judgment, a declaration of their counsel of record, James D. White, and a compendium of (essentially unauthenticated) exhibits. Although the face page of the memorandum of points and authorities contained the words "CONTINUANCE REQUESTED [Pursuant to CCP § 437c(h); See Declaration Requesting Continuance Submitted Herewith]," neither the memorandum of points and authorities nor White's supporting declaration contained a request for, or made any mention of, a continuance of the hearing on the

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5 On May 26, 2011 the trial court expunged the lis pendens, finding that the Namvars had "fail[ed] to show by a preponderance of the evidence the probable validity that they will prevail on their real property claims."

6 All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

motion. The memorandum of points and authorities asked only that the court deny the motion.

The Namvars did not file anything on the next court day, Tuesday, February 21, 2012. On Wednesday, February 22, 2012 the Namvars filed a separate statement in opposition to the motion.

On Thursday, February 23, 2012 the Namvars filed another declaration by White, this one stating it was "in support of request for order allowing filing of late opposition or, in the alternative, a short continuance to allow full time for reply." White stated that he was submitting this declaration to request that his "late filed papers be considered as if timely filed and served," and also "under CCP §473 as an 'Attorney Declaration of Fault.'" (Bold omitted.) White explained that DB and Kelsey Street had waited to file their motion for summary judgment until after Ezri Namvar had been convicted of federal crimes and sentenced to prison[7] and that Ezri Namvar's incarceration had made communication more difficult. After counsel for DB and Kelsey Street had concluded a session of Ezri Namvar's deposition on February 16, 2012 at the Taft Correctional Institution near Bakersfield, California, White overheard the court reporter comment that Monday, February 20, 2012 was a court holiday. White stated in his declaration: "I closed my eyes in silent despair as I realized I had made a mistake in my calendaring. I had forgotten that Monday, the 20th was a court holiday. The courthouse would be closed and therefore I could not file my opposition papers on Monday the 20th. With the 20th as a [court] holiday, because of my mistake, the opposition papers would need to be filed the very next day, Friday, the 17th of February!" White described how and when he filed what papers he could when he could, including his efforts over the weekend and during his drive back to Idaho, where White stated he resided. White did not in his declaration request a continuance pursuant to section 437c, subdivision (h), to take

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[7] See *U.S. v. Namvar* (9th Cir. 2012) 498 Fed.Appx. 749.

discovery or obtain further declarations in support of the Namvars' opposition to the motion for summary judgment.[8]

The Namvars did not file any papers on Friday, February 24, Monday, February 27, Tuesday, February 28, or Wednesday, February 29. DB and Kelsey Street timely filed their reply papers on February 29. DB and Kelsey Street also filed an opposition to the Namvars' request to allow the Namvars to file late opposition papers. DB and Kelsey Street argued that the Namvars had not provided any explanation for "why they waited two months before beginning to draft their opposition and supporting papers," nor for why White decided to drive to Idaho rather than staying in California and working with Ezri Namvar on his declaration. DB and Kelsey Street suggested that the Namvars' delay may have been strategic, to allow Ezri Namvar time to finalize his declaration and make sure that it did not conflict with anything he said in his deposition.

On Thursday, March 1, 2012 the Namvars submitted a 13-page, 58-paragraph declaration by Ezri Namvar. The Namvars also filed a third declaration by White, which attached pages from the February 16 session of Ezri Namvar's deposition.[9] The Namvars did not file anything on Friday, March 2.

On Monday, March 5, 2012, the day of the hearing on the motion for summary judgment, the Namvars filed an ex parte application for orders (1) granting relief under

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[8] White stated that he was making the declaration in support of the Namvars' application "for an order of this court, pursuant to [section] 437c, finding that [the Namvars] have good cause to have submitted a portion of their opposition papers late and allowing such late filed papers to be considered as if timely filed and served, or in the alternative, an order providing for a short continuance of the hearing date on the pending motion for summary . . . judgment so as to allow Defendants (the moving parties on the summary judgment motion) additional time for the filing and service of their reply papers." This was a request, at least in the alternative, for a continuance of the hearing, but not a request for a continuance pursuant to section 437c, subdivision (h).

[9] It appears from the record that the Namvars lodged Ezri Namvar's declaration on February 27, but the trial court did not file it until March 1. The Namvars had submitted a notice of lodging the deposition excerpts on Tuesday, February 28, 2012, but had been unable to file the document because White had not complied with court rules.

the attorney fault provision of section 473 for the failure to file timely all opposition papers, (2) "finding 'good cause' for the Court to receive and consider the late submission of papers filed in opposition" to the motion, (3) deeming "the late submitted papers filed in opposition" to the motion "timely filed and served, or in the alternative," for a continuance of the hearing on the motion "so as to allow . . . for a full period of statutory time for [DB and Kelsey Street] to reply thereto," and (4) sealing of confidential deposition testimony of Ezri Namvar, if necessary. (Italics omitted.) In his supporting declaration, White "totally and categorically" denied that the delays were strategic and stated that although his efforts may have been "tardy in several respects . . . they were in no way the product of any manipulative design . . . ." The Namvars again did not request a continuance pursuant to section 437c, subdivision (h).

The trial court, although it denied the Namvars' ex parte application, nevertheless noted that a "motion for summary judgment is not to be decided lightly" and found that there was "good cause . . . to consider the late-filed separate statement and the declaration of counsel" filed February 22, 2012 and February 23, 2012, respectively. The court declined, however, to consider the declaration of Ezri Namvar and the deposition transcript filed a week later on March 1, 2012. The court explained: "The Deposition Transcript was filed a mere day prior to the date on which Defendants' reply was due and the Declaration was filed one day after, preventing Defendants from having a reasonable opportunity to rebut either one." The court also noted that the Namvars' "significant delay with regard to certain papers and erratic filing times meant that Defendants were unable to draft a reply that fully incorporated Plaintiffs' proposed arguments," and that DB and Kelsey Street "were also forced to focus their time and efforts on dealing with Plaintiffs' late filings and this ex parte, rather than their own motion." The court ruled that even if White's "attorney error could excuse the initial delay in filing the separate statement (and it is not clear that it does), it fails to explain the more significant delay in filing the additional supporting documents."

Finally, in a 28-page written order, the trial court granted the motion by DB and Kelsey Street for summary judgment. The court concluded that although the Namvars

"attempted to weave several very tenuous inferences together to create a chain of inferences strong enough to preclude summary judgment," "the fact remains that [they] rely on speculation and conjecture," which "is not sufficient to create a genuine issue of material fact, and not enough to defeat [the] motion."

D. *The Motion for New Trial*

The Namvars moved for a new trial. They argued, among other things, that even though the court did not consider all of their late-filed papers in opposition to the motion for summary judgment, the court did consider the evidence submitted by DB and Kelsey Street in their reply papers. The Namvars claimed that these "reply papers contained many of the very same pages from the deposition of Ezri Namvar which had been offered by Plaintiffs, but rejected by the court."[10] DB and Kelsey Street argued in response that although some excerpts of Ezri Namvar's deposition testimony may have been included in their reply papers, the Namvars did not cite to any of the excerpts in opposition to the motion, and the court "was not obligated to wade through the entirety of the transcript to see if there were any sections relevant to Plaintiffs' claims, when Plaintiffs failed to timely introduce them."

On May 9, 2012 the trial court denied the Namvars' motion for a new trial. The court ruled that the portions of the transcript of Ezri Namvar's deposition, to which the Namvars had not cited, were not properly before the court because they "were 'not referenced'" in the Namvars' opposition papers and "were not 'clearly called to the

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10 In his declaration filed March 1, 2012, and in his deposition testimony relied on by the Namvars in support of their motion for a new trial, Ezri Namvar stated that an attorney from the law firm representing DB and Kelsey Street came to the Namvars' house and proposed a deal whereby if the Namvars allowed the attorney to purchase the house at the foreclosure sale, the attorney would pay the Namvars up to $500,000, depending on the price of the home at the foreclosure sale. Ezri Namvar stated that the attorney's "statements and assurances seemed very reasonable and sincere at the time" and "were the primary reason" he and his wife "took no steps to stop the . . . foreclosure, which eventually took place on October 7, 2010."

attention of court and counsel.'" The court stated that it was "unreasonable for the court and Defendants to scrutinize these [deposition] pages to help Plaintiffs find evidence just because Defendants (not Plaintiffs) mentioned it casually in their counsel's Reply Declaration in regard to a peripheral point . . . ."[11] The trial court also noted that even if "the court was required to consider the evidence now advanced by Plaintiffs," the court would still deny the motion for a new trial because the Namvars had not submitted any evidence of full tender. (See *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112; *Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 877-878; *Gaffney v. Downey Savings & Loan Assn.* (1988) 200 Cal.App.3d 1154, 1165.)

On April 18, 2012 the trial court entered judgment in favor of DB and Kelsey Street. On June 7, 2012 the Namvars filed a timely notice of appeal from the judgment.

E. *The Motion for Attorneys' Fees*

On June 11, 2012 DB and Kelsey Street filed a motion seeking $252,595 in attorneys' fees, pursuant to paragraph 22 of the deed of trust, plus an additional $8,000 for the cost of preparing the motion and reply, for a total of $260,595. Counsel for DB and Kelsey submitted a declaration describing the nature of the representation and the time spent by individual attorneys in the law firm who worked on the case, as well as a spreadsheet detailing the hours spent by each attorney on each date but without providing any description of the nature of the work. On July 3, 2012 the court granted the motion and awarded DB and Kelsey Street attorneys' fees as the prevailing parties. The trial court awarded DB and Kelsey Street reasonable attorneys' fees in the amount of $224,125, reducing the number of reasonable hours from 810.3 to 597.6 and the billing

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[11] The "peripheral point" was that, "[c]ontrary to the assertions of Plaintiffs' counsel . . . , Defendants questioned Plaintiffs extensively regarding the identity of the purported 'agent' in both Mr. Namvar's and Mrs. Namvar's depositions."

rate of one of the attorneys. On August 20, 2012 the Namvars filed a timely notice of appeal from the attorneys' fees order.[12]

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion by Accepting Some but Not All of the Namvars' Late-Filed Papers.*

The Namvars argue that the trial court abused its discretion in denying their ex parte application to allow them to file their opposition papers late. The Namvars argue that their attorney White made a mistake in calendaring the deadline for filing their opposition to the motion for summary judgment because "he believed the deadline was Monday, February 20, 2012, instead of the correct date of Friday, February 17, 2012,"[13] and that the "calendaring error constitutes excusable neglect" under section 473, subdivision (b). We review the trial court's ruling on accepting late-filed papers for abuse of discretion. (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765.)

The trial court's exercise of discretion was entirely reasonable and appropriate. The trial court accepted some of the opposition papers the Namvars filed on February 22 and 23, after the February 17 statutory deadline, but declined to consider those opposition papers the Namvars filed on March 1, significantly after the deadline. The trial court's decision was particularly appropriate in light of the fact that White's calendaring error regarding the court holiday explained and excused why he did not file all of his opposition papers on Friday, February 17. White's calendaring error based on a court holiday is the kind of mistake that justifies accepting late-filed papers, which is

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[12] We subsequently consolidated the Namvars' appeal from the attorneys' fees order with their appeal from the judgment.

[13] Section 437c, subdivision (b)(2), provides: "Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise."

essentially what the trial court did by accepting the opposition papers the Namvars filed on Wednesday, February 22 and Thursday, February 23. (See *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, 33 ["attorney's neglect in untimely filing opposing papers must be evaluated in light of the reasonableness of the attorney's conduct"].) The Namvars, however, did not file the rest of their late opposition papers until a week later, two court days before the hearing and after DB and Kelsey Street had filed their reply papers. The trial court acted reasonably and within its discretion in declining to consider them. (See *Samaniego v. Empire Today, LLC* (2012) 205 Cal.App.4th 1138, 1146 [trial court acted within its discretion by denying leave to file reply declarations on the date of the hearing]; *Shadle v. City of Corona* (1979) 96 Cal.App.3d 173, 178-179 ["requirement that opposing papers be filed a reasonable time in advance of the hearing helps to ensure that the court and the parties will be familiar with the facts and the issues so that meaningful argument can take place and an informed decision rendered at the earliest convenient time"].)

B. *The Namvars Were Not Entitled To a Continuance of the Hearing*

The Namvars state in their opening brief that the trial court "abused its discretion in not granting a continuance under [section] 437c, subd[ivision] (h) . . . ." The Namvars, however, do not elaborate further, nor do they provide any argument, authority, or citation to the record in support of their reference to section 437c, subdivision (h). Therefore, the Namvars have forfeited the issue. (See *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 743 ["[e]very argument presented by an appellant must be supported by both coherent argument and pertinent legal authority," and if "either is not provided, the appellate court may treat the issue as waived"]; *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [appellants' failure "to make a coherent argument or cite any authority to support their contention . . . constitutes a waiver of the issue on appeal"].)

The Namvars also forfeited the issue by not sufficiently raising it in the trial court. We will not review an objection to a trial court ruling on a summary judgment motion

where the objecting party "failed to request a continuance of the hearing on the summary judgment motion for the purpose of conducting additional discovery . . . ." (*Lewinter v. Genmar Industries, Inc.* (1994) 26 Cal.App.4th 1214, 1224; see *Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal.App.4th 150, 182, fn. 32 ["[t]o the extent . . . plaintiffs argue in passing that they should have been permitted to conduct further discovery in connection with the [defendant's] motion [for summary judgment], they waived such argument by failing to request a continuance to conduct discovery in the trial court"]; *Lloyd Design Corp. v. Mercedes-Benz of North America, Inc.* (1998) 66 Cal.App.4th 716, 726 [plaintiff "failed to file a motion for a continuance supported by the necessary declarations and proof and thus waives its right to claim now that it was deprived of the opportunity to oppose the motion for summary judgment"].) The Namvars requested a continuance of the hearing to give DB and Kelsey Street additional time (which DB and Kelsey Street did not ask for and did not want or need) to file reply papers in response to the Namvars' late-filed opposition papers, but the Namvars did not ask for a continuance to conduct additional discovery pursuant to section 437c, subdivision (h).

Finally, even if the Namvars had requested a continuance pursuant to section 437c, subdivision (h), and had briefed the issue on appeal, we would still find no abuse of discretion. (See *Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1038 ["[w]here a party requests a continuance under the statute [section 437c, subdivision (h)] and satisfies its conditions, the determination whether to grant the request is vested in the discretion of the trial court, and will not be disturbed on appeal unless an abuse of discretion appears"]; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254 ["in the absence of an affidavit that requires a continuance under section 437c, subdivision (h), we review the trial court's denial of appellant's request for a continuance for abuse of discretion"].) "A declaration in support of a request for continuance under section 437c, subdivision (h) must show: '(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.]" (*Ibid.*) White never submitted any such declaration.

C. *The Namvars Have Not Preserved Their Appeal on the Merits From the Trial Court's Order Granting the Motion by DB and Kelsey Street for Summary Judgment.*

The Namvars argue that the trial court should have denied the motion for summary judgment because there were triable issues of fact. The Namvars limit their argument to the following three sentences in their opening brief: "As stated above, the evidence before the Trial Court if the testimony of [Ezri Namvar] contained in his deposition [filed March 1, 2012] was considered, triable issues of fact were present that precluded the granting of Respondents' MSJ. The Motion for New Trial succinctly set forth the evidence and how it created material triable issues of fact. . . . If this court considers the MSJ de novo, such evidence compels the denial of the MSJ."

These statements are not enough to preserve the issue for appeal. "It is well settled that the Court of Appeal does not permit incorporation by reference of documents filed in the trial court." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 294, fn. 20; see *McGuan v. Endovascular Technologies, Inc.* (2010) 182 Cal.App.4th 974, 987 [appellants waived issue on appeal by "incorporat[ing] by reference the same authorities and arguments submitted" to the trial court and failing "to submit any other arguments or authorities"]; *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18 ["'[a]n appellant cannot rely on incorporation of trial court papers, but must tender arguments *in the appellate briefs*'"]; *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 290, fn. omitted [practice of alluding to arguments an appellant "made in the trial court and purport[ing] to incorporate these arguments by reference in his appellate brief . . . does not comply with rule 8.204(a)(1)(B) of the California Rules of Court"].) Moreover, the Namvars' argument requires that we consider the opposition papers they filed on March 1, and, as explained above, the trial court properly exercised its discretion in refusing to consider these papers.

D. *The Trial Court Did Not Abuse Its Discretion by Denying the Namvars' Motion for a New Trial*

The Namvars contend that the trial court abused its discretion in denying their motion for a new trial because the court erred by not considering the pages from Ezri Namvar's deposition that DB and Kelsey Street had included in their reply papers. The Namvars appear to argue that the deposition excerpts were "before the court," and that by failing to consider them the court committed an "error of law" by granting DB and Kelsey Street's motion for summary judgment. The Namvars assert: "Although the Trial Court here exercised its discretion and refused to consider the late-filed Declaration of [Ezri Namvar] and his deposition transcript," DB and Kelsey Street's "reply papers contained many of the very same pages of [Ezri Namvar]'s deposition transcript which the Trial Court considered in ruling on the MSJ . . . . Thus, the testimony of [Ezri Namvar] was 'before the tribunal' and the Trial Court abused its discretion in refusing to consider that testimony in favor of [the Namvars'] opposition . . . ."

We generally review an order denying a motion for a new trial for abuse of discretion. (*Sandoval v. Los Angeles County Dept. of Public Social Services* (2008) 169 Cal.App.4th 1167, 1176, fn. 6.) We "determine whether the court abused its discretion by examining the entire record and making an independent assessment of whether there were grounds for granting the motion." (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832; see *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 733.)

We agree with the trial court that the deposition excerpts submitted with the reply papers filed by DB and Kelsey Street were not "before the court" for purposes of satisfying the Namvars' obligation to show the existence of a triable issue of fact. Neither the separate statement filed by the Namvars nor the separate statement filed by DB and Kelsey Street made any reference to the deposition excerpts.[14] "Whether to

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[14] The separate statement field by the Namvars on February 22 made only the following reference with respect to an "Attorney X": "E. Namvar Depo. of Feb. 16, 2012

consider evidence not referenced in [a] moving party's separate statement rests with the sound discretion of the trial court, and we review the decision to consider or not consider this evidence for an abuse of that discretion." (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316; accord, *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 438.) In exercising its discretion, the court "should consider whether the facts are 'relatively simple' and were 'clearly called to the attention of court and counsel'; whether 'evidence is not referenced, is hidden in voluminous papers, and is not called to the attention of the court at all'; and, most importantly, whether, despite the absence of a proper separate statement, the opposing party has sufficient notice of the evidence it must dispute to defeat the motion. [Citations.]" (*Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, 653.) Considering these factors and quoting the *Varshock* opinion, the trial court here found that the Ezri Namvar deposition excerpts were not properly before the court because "such facts were not 'clearly called to the attention of court and counsel,' the specific relevant portions of [the exhibit] were 'not referenced [and] hidden in voluminous papers,' and 'most importantly, . . . [DB and Kelsey Street did not have] sufficient notice of the evidence." The trial court did not abuse its discretion in concluding that the portions of Ezri Namvar's deposition transcript included in the reply papers and relied on by the Namvars in their motion for a new trial were not before the court.

The authorities cited by the Namvars do not support their contention that the trial court committed an error of law by not considering testimony contained in the deposition excerpts submitted by DB and Kelsey Street on reply. For example, the court in *Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666 stated that "the abuse-of-discretion standard measures whether the act of the lower tribunal is within the range of options available under governing legal criteria in light of the evidence

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being transcribed and which will be lodged upon transcription." In their separate statement, DB and Kelsey Street responded, without citing to any deposition testimony, that the Namvars' claims about "Attorney X" were irrelevant.

before the tribunal." (*Id.* at p. 1680.) The court in *Cal-State*, however, made the statement in a very different context: distinguishing the abuse of discretion standard from the substantial evidence standard in appellate review of an order on a forum non conveniens motion. *Tortorella v. Castro* (2006) 140 Cal.App.4th 1, where the Court of Appeal held that the trial court had made an "error in law" by interpreting evidence on the issue of causation too narrowly, did not involve the issue of what evidence was before the court. The plaintiff had submitted the evidence, an expert witness declaration, with a timely opposition. (*Id.* at pp. 10-13.) And the Supreme Court has ordered *San Diego Metropolitan Transit Development Bd. v. RV Communities* (2007) 158 Cal.App.4th 313 not published.

Finally, as explained above, the trial court did not abuse its discretion by considering the opposition papers the Namvars filed on February 22 and February 23 but not the declaration and deposition transcript filed on March 1. Therefore, there was no error of law warranting a new trial, and the trial court properly denied the Namvars' motion for a new trial.

E. *The Trial Court Did Not Abuse Its Discretion by Granting the Motion by DB and Kelsey Street for Attorneys' Fees*

The Namvars ask that, if we affirm the trial court's order granting summary judgment, we remand "the matter" to the trial court "for further determinations" on the amount of reasonable attorneys' fees "with instructions . . . to make a proper determination under the prevailing case law for attorney fee awards . . . ." The Namvars do not challenge DB and Kelsey Street's entitlement to attorneys' fees as the prevailing parties under the deed of trust.

The trial court awarded $224,125 of the $262,595 in attorneys' fees requested by DB and Kelsey Street. The trial court found that "the legal and factual issues in this case should not have taken too much time since they were fairly straightforward" and that "the skill involved and employed in the litigation [was] not so complex as to require extra hours outside what is reasonable in a litigation of this nature." The court acknowledged,

however, that counsel for the Namvars was responsible for making the litigation more complicated than it should have been. The court reduced the amount of recoverable attorney time by 230.2 hours (88.5 hours for the time period between the filing of the answer and the commencement of discovery and 141.7 hours for time covered by previous attorneys' fees orders). The trial court also reduced the hourly rate of one of the attorneys who worked on the case.

We review the trial court's legal basis for awarding attorneys' fees de novo (*Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, 523) but review the trial court's determination of the amount of reasonable attorneys' fees for abuse of discretion (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 820-821). Our review of the trial court's award of attorneys' fees is "severely constrained" (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 418) and "highly deferential to the views of the trial court" (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239). (See *Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270, 1274 ["'[i]n reviewing an award of attorney fees, the amount awarded by the trial court will not be set aside absent an affirmative showing of abuse of discretion in that the award is "manifestly excessive in the circumstances"'"].)

The Namvars argue that the declaration and spreadsheet submitted by counsel for DB and Kelsey Street in support of the motion for attorneys' fees insufficiently described the nature of the services provided by the attorneys working on the case and that the trial court should have reviewed the law firm's billing records in camera. The Namvars assert that rather "than submitting detailed time, and billing records which showed the date of service, the service provider, the billing rate, the description of the service provided, and the amount of time spent," counsel for DB and Kelsey Street "instead summarized the time that they spent in one paragraph, and a spreadsheet that does not in any way describe the services provided or how they related to the case at issue."

Detailed time sheets and billing records, however, though often helpful, are not required. "'Although a fee request ordinarily should be documented in great detail, it cannot be said . . . that the absence of time records and billing statements deprive[s] [a]

trial court of substantial evidence to support an award . . . .' [Citation.] '[T]he verified time statements of [an] attorney[ ], as [an] officer[ ] of the court, are entitled to credence in the absence of a clear indication the records are erroneous.' [Citation.]" (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784-785.) "The law is clear . . . that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; see *Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269 ["there is no legal requirement that an attorney supply billing statements to support a claim for attorney fees"]; *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293 ["there is no legal requirement that [billing] statements be offered in evidence," and an "attorney's testimony as to the number of hours worked is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"].) The trial court did not abuse its discretion by not requiring counsel for DB and Kelsey Street to submit detailed billing records.

Moreover, the declaration of Stacy Harrison, lead counsel for DB and Kelsey Street, explained that she spent 384.4 hours of her time "overseeing the litigation, including conferring with opposing counsel, conferring with Defendants, analyzing and deciding on case strategy, reviewing and revising the pleadings, motions and other submissions to the Court, and managing all aspects of the case described" in her five and one-half page declaration. She also stated that the lead associate working with her on the case spent 391.4 hours and "was responsible for the legal research, the drafting of Defendants' Answer, motions and other submissions, the responses to [the Namvars'] discovery requests, the review and production of documents in responses to [the Namvars'] document requests and the review of the documents produced by" the Namvars. Harrison attached to her declaration a spreadsheet reflecting the hours for which DB and Kelsey Street were seeking recovery "compiled from the contemporaneous time records" of her law firm. The 33-page spreadsheet included columns stating the attorney "timekeeper" performing the work, whether the attorney was a partner or an associate of the firm, the date the attorney performed the work, the amount

of time the attorney spent on that particular date, and the total amount the attorney billed on that date. This kind of evidence is generally sufficient to support an award of reasonable attorneys' fees. (See, e.g., *Raining Data Corp. v. Barrenechea*, *supra*, 175 Cal.App.4th at p. 1375 [rejecting arguments that counsel's declarations were insufficient because they did "'not provide any basis for determining how much time was spent by any one attorney on any particular claims'" but instead gave only "'broad descriptions to the work provided by each attorney'"]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63-64 [counsel's declaration adequately stated the total number of hours spent by the two partners working on the case but "did not provide billing records showing the number of hours the partners spent on particular activities or days"]; *Mardirossian & Associates, Inc. v. Ersoff*, *supra*, 153 Cal.App.4th at p. 269 ["precise calculations are not required; fair approximations based on personal knowledge will suffice"]; *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559 ["[t]estimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"].)

The Namvars argue that, even if charts are generally permissible, the chart submitted by counsel for DB and Kelsey Street was deficient because "there is no description of the work performed." It is true that the spreadsheet submitted by counsel for DB and Kelsey Street contained no information about the specific tasks performed by each lawyer on each day. Counsel for DB and Kelsey Street not only redacted information potentially protected by the attorney-client privilege and the work product doctrine, they unnecessarily redacted everything. Counsel for DB and Kelsey Street did not even provide the descriptions usually found in records and declarations submitted in support of motions for attorneys' fees, such as "legal research regarding ____," "telephone call with client regarding ____," or even "appearance at court hearing on motion for summary judgment."[15] The better and preferred practice is to submit either

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15 The spreadsheet shows that on March 5, 2012, the date of the hearing on the summary judgment motion, Harrison and her lead associate billed 5.8 and 5.5 hours,

billing sheets or more detailed declarations, and to refrain from such extensive (here, complete) redacting. (See *PLCM Group, Inc. v. Drexler*, *supra*, 22 Cal.4th at p. 1096, fn. 4 ["maintaining contemporaneous records . . . would facilitate accurate calculation of the lodestar"]; *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1470 ["contemporaneously recorded time sheets" are preferred but not required].) Nevertheless, the trial court accepted the declaration and the spreadsheet submitted by counsel for DB and Kelsey Street and found that they had presented "sufficient evidence of the fees and costs." We defer to the trial court's determination that this evidence was sufficient. (See *G.R. v. Intelligator* (2010) 185 Cal.App.4th 606, 620 ["the trial court chose to accept the declaration of [the defendant's] attorney as sufficient proof of . . . the time spent," and "'[w]e may not reweigh on appeal a trial court's assessment of an attorney's declaration'"].)

The Namvars also complain that the time spent by counsel for DB and Kelsey Street on the litigation was excessive and that rates charged by counsel were unreasonable. The Namvars challenge the number of attorneys who worked on the case for DB and Kelsey Street (seven), which the Namvars assert "created a massive amount of inefficiency and overbilling", and they accuse counsel of charging "exorbitant hourly rates." The trial court actually agreed with the Namvars in part by finding that some of the time was excessive and that the hourly rate for one of the attorneys was unreasonable and by adjusting the award of attorneys' fees accordingly. The trial court, however, did not abuse its discretion by not reducing the attorneys' fees award more than it did. There were essentially only two attorneys in the firm working on the case for DB and Kelsey Street; the other five attorneys who worked on the case billed 21.4, 5.0, 3.1, 2.8, and 2.2 hours, respectively, for very discrete tasks.[16]

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respectively. The description of the work performed by both attorneys is redacted, even though most of what they did that day is obvious (and non-privileged).

[16] For example, one attorney spent 2.2 hours researching an issue relating to expunging the lis pendens while another attorney, who specialized in banking and financial issues, spent 2.8 hours assisting in obtaining clear title to the property. Two

We find no abuse of discretion by the trial court in awarding DB and Kelsey Street $224,125 in reasonable attorneys' fees. (See *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 889 ["'trial court is in the best position to determine the reasonable value of professional services rendered in a case before it and has broad discretion to determine the reasonable amount of an attorney fee award'"]; *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 ["amount to be awarded as attorney fees is left to the sound discretion of the trial court, which is in the best position to evaluate the services rendered by an attorney in his courtroom"]; *Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1286 ["trial court is in the best position to determine the reasonableness of the hourly rate of an attorney appearing before the court"].) There is no need to remand to the trial court for any further proceedings.

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other attorneys, one of whom was a former Assistant United States Attorney, spent 5.0 and 3.1 hours, respectively, working on obtaining a deposition date for Ezri Namvar at the Taft Correctional Institution. The trial court reduced the hourly rate for one of these two attorneys.

DISPOSITION

The judgment and order are affirmed. DB and Kelsey Street are to recover their costs on appeal.

SEGAL, J.*

We concur:

PERLUSS, P. J.

WOODS, 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.