

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL – SECOND DIST.

DIVISION FOUR

FILED

Sep 15, 2026

EVA McCLINTOCK, Clerk

W. Lopez

Deputy Clerk

MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY, A
LOCAL JOINT EXERCISE OF
POWERS AGENCY,

B348171

(Los Angeles County
Super. Ct. No. 22STCV25817)

Plaintiff and Respondent,

v.

KATYA BAKALINSKAYA et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Peter A. Hernandez, Judge. Affirmed.

Venable, Jeffrey T. Harlan and Elizabeth (“Ellia”) M. Thompson for
Defendants and Appellants.

Richards, Watson & Gershon, Michael F. Yoshiba, Samantha Marconi
and T. Peter Pierce for Plaintiff and Respondent.

INTRODUCTION

Mountains Recreation and Conservation Authority sued defendants Michael Bykov, VMB, LLC, and Katya Bakalinskaya for breach of a conservation easement. A jury found there was a breach of the easement. The trial court awarded specific performance, ordering alterations to Bakalinskaya's property. Defendants now appeal. They argue misconduct by jurors and opposing counsel and errors by the court require a new trial. We disagree and see no error by the trial court. We affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

The property at issue in this dispute, on Willow Glen Road in Laurel Canyon, just off Laurel Canyon Boulevard, was first developed in the 1920s. In the 1950s, a portion of the property burned, leaving a small cabin. That cabin was occupied by a resident owner until 2011. The property was then listed for sale.

I. *Prior Dispute*

The property was purchased by VMB. Bykov is the principal of VMB. Bykov planned to split the lot in two and build a house on each portion. However, he soon discovered there was a 1,300-square-foot strip of land belonging to the City of Los Angeles between the property and the street. Bykov needed to acquire this parcel so his property would have street frontage and he would be permitted to build on it.

In April 2013, the City sent out a letter under the Surplus Land Act (Gov. Code, §§ 54220 et seq.), indicating its plans to sell its parcel to Bykov. This letter reached Paul Edelman, an employee of both the Santa Monica

Mountains Conservancy (Conservancy) and Mountains Recreation.¹

Edelman filed an objection to the sale. Bykov, Edelman (on behalf of the Conservancy and Mountains Recreation), the City, and their respective counsel spent the next two years negotiating the sale. The details of these discussions are not relevant to the present appeal, with the following exception.

In February 2014, the City sent another letter to the Conservancy, saying the original letter of April 2013 was sent in error—the parcel was not in fact subject to the notice requirements and other restrictions imposed by the Surplus Land Act because it was “exempt surplus land.” The February 2014 letter said the City “plans to proceed with the sale to Mr. Bykov.” Nevertheless, the Conservancy maintained it had a right of first refusal over the parcel under a separate statute, Public Resources Code section 33207.

II. *Settlement and Easement*

In May 2015, Edelman and Bykov reached a settlement agreement. Under the terms of the agreement, VMB would donate a separate piece of property to Mountains Recreation, relinquish any reversionary right to a nearby public path, and execute a conservation easement covering a portion of VMB’s property. In return, the Conservancy would waive its claim to right of first refusal over the disputed parcel and withdraw all opposition to Bykov’s development plans. The settlement agreement was signed. The conservation easement in favor of Mountains Recreation was subsequently recorded.

¹ As Edelman explained at trial, the Conservancy and Mountains Recreation are sister agencies with complementary missions.

The easement covers an eight-foot strip along the border of the property. Within that strip, the property owner is specifically prohibited from:

- “(a) the erection of fences, barriers, hardscape, or any other structures;
- (b) hunting and/or trapping of any wildlife;
- (c) dumping and/ or discharge of any type ...;
- (d) driving or parking of any vehicle ... other than temporary use of fire trucks to put out fires or emergency vehicles to evacuate injured persons;
- (e) storage of any materials;
- (f) removal of any native plant species;
- (g) erection of any signs ...;
- (h) paving, grading, bulldozing, burning, excavation of materials, or construction of any structures or utilities;
- (i) [placement of] satellite dishes;
- (j) irrigation, unless otherwise permitted in writing ...;
- (k) use of herbicides, pesticides or other chemicals;
- (i) grazing or construction of any livestock containment structures or corrals, including beehives; and
- (m) any artificial lighting.”

The easement also prohibits any other activity “inconsistent with the terms of this [easement].”

III. *Current Dispute*

After signing the settlement and executing the easement, Bykov proceeded with his development plan, splitting the lot and building two

houses. He gave one lot and house to his daughter, Bakalinskaya. The other lot and house are not involved in the present litigation.

In January 2022, Mountains Recreation sent a letter to Bakalinskaya, saying she was in violation of the conservation easement. Bakalinskaya responded, asking for more time to address the issue. In August 2022, Mountains Recreation sued. The complaint asserted five causes of action: trespass, nuisance, negligence, breach of contract, and ejectment.

The case went to trial in November 2024. Mountains Recreation abandoned all claims other than breach of contract, and sought specific performance as its sole remedy. Edelman testified that the property was part of a “habitat linkage,” a corridor that allows wildlife to move freely between larger areas. The purpose of the easement was to protect that corridor. Edelman said defendants violated the easement by building walls, parking vehicles, adding artificial lighting, and storing things in the easement area.

Bykov admitted to building in the easement area. Specifically, he admitted building a driveway extension and wall into that area, as well as installing artificial turf. Bakalinskaya likewise admitted to performing construction work in the easement area. She suggested some of the construction, including the artificial turf, was necessary to protect the property from land- and mudslides.

IV. Verdict and Judgment

The jury found Bykov, VMB, and Bakalinskaya had breached the easement. The jury rejected the theory that the construction was an emergency measure required to prevent injury to the property. However, the jury made additional findings that Mountains Recreation could have avoided

harm with reasonable effort and failed to do so. The jury also concluded VMB was mistaken about what exhibits were to be included with the easement.

In December 2024, the parties submitted post-trial briefs on the issue of specific performance. Defendants argued specific performance was unavailable, and no changes to the property should be ordered. Mountains Recreation argued defendants should be ordered to remove all artificial materials from the easement area, re-grade it to restore its previous slope, and replace all retaining wall systems with wooden planks.

In January 2025, the trial court directed the parties to meet and confer and attempt to negotiate a compromise. In March 2025, the parties and their experts met at the property to discuss what measures were appropriate. After that conference the parties submitted competing proposed judgments, differing in the scope of work proposed but each suggesting the removal of certain walls, the reconstruction of others, and further grading and drainage work. Mountains Recreation's proposed judgment also identified it as the prevailing party entitled to costs and fees under Civil Code section 1717. In May 2025, the court entered a judgment that conformed to Mountains Recreation's proposal.

Defendants moved for new trial, arguing that there was jury misconduct, that the court made improper evidentiary rulings, that counsel for Mountains Recreation conducted himself improperly during arguments, that the evidence was insufficient to support the verdict, and that the trial court failed to properly instruct the jury. Mountains Recreation opposed. On July 21, 2025, the court denied the motion.

Defendants timely appealed.

DISCUSSION

Defendants argue the trial court should have granted the motion for new trial because of jury misconduct, errant rulings by the court, and misconduct by counsel for Mountains Recreation. They also contend there was no evidence to show Mountains Recreation was harmed by their conduct. Finally, they claim the court erred in awarding specific performance and in finding Mountains Recreation was the prevailing party entitled to costs and fees. We are not persuaded by any of these arguments.

I. *New Trial*

We review the denial of a new trial motion for abuse of discretion. (*Argueta v. Worldwide Flight Services, Inc.* (2023) 97 Cal.App.5th 822, 832 (*Argueta*)). We review any determination underlying the order using the test applicable to that determination. (*Id.* at p. 833.) We employ all presumptions in favor of the trial court's ruling. (*Ibid.*)

A. *Alleged Misconduct by the Jury*

Defendants claim there was jury misconduct, relying on a declaration from Maribel Garibay, who was Juror No. 7. Garibay testified that the other jurors considered defendants' alleged wealth during deliberations, commenting on the presumed fees charged by defendants' counsel, the size of Bakalinskaya's home, the number of cars in her driveway, and the design of her pool. Defendants argue this was directly contrary to the court's instructions and raises a presumption of prejudice.

But as Mountains Recreation points out, this argument assumes the trial court found Garibay's testimony credible. That is an assumption we are not permitted to make. Rather, because the standard of review requires us to

make all presumptions in favor of the trial court’s ruling (*Argueta, supra*, 97 Cal.App.5th at p. 833), we must assume the trial judge found Garibay’s testimony *not* credible. In *Jie v. Liang Tai Knitwear Co.* (2001) 89 Cal.App.4th 654 (*Jie*), Juror No. 3 submitted a declaration that the jury improperly considered the opinion of Juror No. 7, a clinical therapist, on the plaintiff’s need for therapy or medication, and the cost of such therapy. The trial court denied the motion for new trial without making any findings. (*Id.* at p. 666.) Because orders of the trial court are presumed correct, *Jie* concluded that “[i]mplicit in the order denying the motion for a new trial is a finding that the declarant was not credible.” (*Id.* at pp. 666–667.)

Jie is on point here. Defendants present no compelling reason to depart from it. They argue that a trial court is required to believe uncontroverted testimony. But even when testimony is uncontroverted, the court must still assess credibility, since uncontroverted testimony may nevertheless be inaccurate. (*Election Integrity Project California, Inc. v. Lunn* (2025) 108 Cal.App.5th 443, 449.) The trial court was entitled to make credibility determinations, and we do not second-guess those determinations. (*Stokes v. Muschinske* (2019) 34 Cal.App.5th 45, 54 (*Stokes*).) Defendants rely on a statement from *Lankster v. Alpha Beta Co.* (1993) 15 Cal.App.4th 678 (*Lankster*) that where an “error established by the appellant gives rise to a presumption of prejudice, the burden shifts to the respondent to overcome the presumption.”² But in citing *Lankster*, defendants assume the point to be

² The opinion in *Lankster* was based on the court of appeal’s holding that the record before it was inadequate. (*Id.* at p. 684.) The panel was provided no information about the trial itself; no trial transcript and no minute orders marking the days or identifying witnesses or exhibits. (*Id.* at p. 683.) The court of appeal concluded that in a scenario where the burden on appeal could shift, the respondent bore some responsibility for providing the record: “[f]aced with the inadequate record designated by [appellant], all

proven—the presence of an error.³ We cannot make that assumption; error must be established before the burden shifts. (See *Stokes, supra*, 34 Cal.App.5th at p. 54.)

Because we are required to apply every presumption in favor of the trial court’s ruling, we infer that the trial court found Garibay’s declaration not credible. (*Jie, supra*, 89 Cal.App.4th at pp. 666–667.) And, again, we may not supplant the trial court’s credibility findings with our own. (*Stokes, supra*, 34 Cal.App.5th at p. 54.) Therefore, we see no error in the trial court’s decision to deny the motion for new trial on this ground.

B. *Alleged Errors by the Court*

The trial court granted motions in limine that defendants claim should have resulted in the exclusion of exhibits 72, 73, and 76, which are photographs of the property. Defendants complain that the court subsequently admitted these photographs into evidence, despite its previous rulings. We note that when exhibits 72, 73, and 76 were moved into evidence, defendants did not object on the basis of any motion in limine. Nor do defendants now provide any developed discussion of how the court’s ruling constituted a legal error. Therefore, this argument is forfeited. (*Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 276–277, 279 (*Hernandez*).)

Defendants also argue that the consideration provided in exchange for

[respondent] had to do was file a counterdesignation.” (*Id.* at p. 684.) That is not the situation here.

³ In a separate section of their reply brief, defendants argue Mountains Recreation was required to submit “counter-declarations” to rebut the presumption of prejudice arising from jury misconduct, citing *Lankster and Tapia v. Barker* (1984) 160 Cal.App.3d 761. Because defendants have failed to establish misconduct, we need not discuss prejudice.

the easement (i.e., the release of the Conservancy's claim of a right to first refusal over the parcel between the property and the road) was illusory. Defendants contend neither the Conservancy nor Mountains Recreation had any right to relinquish, because they never had any valid claim to first refusal over the parcel. This argument is not compelling because it employs the wrong legal standard.

To show the consideration for a settlement agreement was illusory, it is not sufficient merely to argue the settled claim would have been adjudicated against the claimant. (See *Property California SCJLW One Corp. v. Leamy* (2018) 25 Cal.App.5th 1155, 1165–1169.) Defendants must show the settled claim was asserted in bad faith. (*Ibid.*) Defendants have not done so.

Mountains Recreation and the Conservancy asserted a claim under the Santa Monica Mountains Conservancy Act. That Act defines the Santa Monica Mountains Zone and affords the Conservancy a right of first refusal over any property within the Zone that is owned by a public agency and “scheduled for disposal as excess lands.” (Pub. Resources Code, §§ 33105, 33207.) Defendants claim the City's parcel was more properly governed by the Surplus Land Act, and point to the City's determination that the parcel was exempt surplus land under that Act. (Gov. Code, §§ 54220 et seq.)

Defendants cite no case, and we have found none, discussing the issue of which Act controls where both facially apply. And the only obvious clue we see in the statutory text cuts against defendants and in favor of the Conservancy. Government Code section 54222 specifies the notice procedure a local agency must use to dispose of property under the Surplus Land Act, but contains an express exception for actions taken “as provided in Division 23 ... of the Public Resources Code.” Division 23 of the Public Resources Code is the statutory location of the Santa Monica Mountains Conservancy Act.

We need not and do not decide the question of which Act applied to the City's parcel. The novelty of that question, the absence of on-point case authority, and the presence of a textual provision supporting the Conservancy's position, are sufficient to show the Conservancy's claim had a good faith basis. Therefore, the decision to relinquish that claim in a settlement agreement provided adequate consideration for the agreement.

C. *Alleged Misconduct by Counsel*

Defendants suggest counsel for Mountains Recreation engaged in misconduct during opening and closing statements by mentioning evidence that had been excluded and making assertions that were unsupported by the record. They identify seven statements made by counsel, two in opening and five in closing.

However, defendants only objected to two of those statements at the time they were made. Therefore, any claim of error based on the other statements has been forfeited. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 794–795.)

The two statements to which defendants objected concerned the configuration of the pool. Counsel for Mountains Recreation argued that “the reason for [a change in the pool design] is to open up the back yard ... to take advantage of the house that's not on his property.” After an objection based on a motion in limine was overruled, counsel continued, arguing that the placement of improvements in the easement area was intentional and repeating, “the changes that he made, moving the pool in that configuration, is consistent with somebody that intended upon using that back structure and using the property that they did not own.” Defendants' counsel objected again, and the objection was again overruled.

We do not believe counsel's comments rose to the level of misconduct. But even if they did, defendants have failed to demonstrate prejudice. (*Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559 (*Martinez*)). Defendants argue that by making these statements in violation of a motion in limine, counsel signaled to the jury that ignoring the court's rulings was permissible. Defendants compare this case to *Martinez*. The comparison is inapt.

The court of appeal in *Martinez* was faced with a situation it described thus: "Defendant's attorney ... would ask a question in clear violation of the trial court's in limine orders. The question would usually have the effect of gratuitously besmirching the character of plaintiff.... An objection from [plaintiff's] counsel would follow. The trial court would sustain the objection. [Defense counsel] would then ask the same question again. The trial court would sustain the objection again. And the same thing would happen again. And again. And again. And again." (*Martinez, supra*, 238 Cal.App.4th at p. 561.) Concluding the misconduct was prejudicial, the panel noted that the trial judge's failure to take any corrective action "made it inevitable" that the jury would conclude the court's admonitions and instructions need not be taken seriously. (*Id.* at p. 569.)

Here, there were only two objections, both of which were overruled. The jury was not present for the court's rulings on the motions in limine. The jury could have had no idea whether defendants' objections were meritorious or not. All they could know is that an objection had been made and was overruled. The jury could not receive the impression court orders can be ignored when, to their eyes, court orders were being followed. Defendants have not met their burden of showing prejudice.

II. *Sufficiency of the Evidence*

Defendants argue the jury's verdict was unsupported by the evidence because Mountains Recreation was not harmed by the breach of the easement.⁴ They reason that because the purpose of the easement was to protect a wildlife corridor, Mountains Recreation could only prove harm by showing "that the construction impaired the easement's ecological function." But defendants cite no authority in support of that proposition, relying only on the general rule that damages are an element of a breach of contract claim. Therefore, this argument has been forfeited. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287.)

III. *Specific Performance*

Defendants complain the trial court should not have required specific performance. Primarily, they suggest there was insufficient evidence to support the judgment "as entered."⁵ It is not clear what this means. Defendants do not identify any specific element of the judgment with which they disagree. Nor do they explain what standard the court should have employed, or cite any authority on that point in their opening brief, beyond a general reference to the requirement of Civil Code section 3391, subdivision

⁴ The easement appears to waive the necessity of proving harm in an enforcement action: "[Mountains Recreation] shall be entitled to all legal and equitable remedies, including specific performance of the terms, conditions, covenants and provisions of this [g]rant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies." Defendants do not discuss this provision.

⁵ At the end of this section of their opening brief, defendants flatly assert that the jury's findings should bar any judgment for specific performance. Because this argument is not properly developed, it is forfeited. (*Hernandez, supra*, 37 Cal.App.5th at pp. 276–277, 279.)

(2), that a specific performance order be “just and reasonable.” Therefore, this argument has been forfeited. (*Hernandez, supra*, 37 Cal.App.5th at pp. 276–277, 279.)

IV. *Prevailing Party*

Finally, defendants object to the portion of the judgment finding Mountains Recreation is the prevailing party under Civil Code section 1717 and therefore entitled to recover costs and fees. Procedurally, they complain that the trial court told them it would not resolve the prevailing party question until after judgment was entered. Substantively, they argue Mountains Recreation cannot be considered a prevailing party when it abandoned four of its five causes of action and its claims for money damages.

Because defendants’ challenges do not present pure questions of law, we review the trial court’s prevailing party determination for abuse of discretion. (*United Grand Corp. v. Stollof* (2022) 74 Cal.App.5th 62, 67.) We see none here.

Although the trial court did tell defense counsel in November 2024 that “I’m not going to deal with [the prevailing party issue] until we get this judgment done,” defendants were not ultimately deprived of a chance to present their position. Mountains Recreation sought a prevailing party determination by including such a determination in their proposed judgment, filed on April 10, 2025. Defendants filed an objection brief, in which they argued the prevailing party issue. The court accepted the brief and took the matter under submission. Defendants cite no authority preventing the court from deciding the question in that manner.

Likewise, although defendants raise arguments that might have supported a determination that Mountains Recreation was not the prevailing

party, they cite no authority that compels such a determination. We must determine whether the trial court erred in the finding it made, not whether it would have erred had it made a different finding. (See *LAOSD Asbestos Cases* (2026) 118 Cal.App.5th 1041, 1068–1069.) As Mountains Recreation points out, it obtained a favorable verdict and a judgment for specific performance. The trial court did not abuse its discretion in finding that sufficient to render Mountains Recreation a prevailing party.

V. *Conclusion*

This case is about the breach of an easement. At trial, on the witness stand, defendants admitted the breach. The jury then found a breach. The trial court awarded specific performance and found Mountains Recreation to be the prevailing party. Defendants bear the burden on appeal of establishing error in that process. (*Decloedt v. Radnet Management, Inc.* (2026) 121 Cal.App.5th 732, 740.) They have not done so.

DISPOSITION

The judgment of the trial court is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS



DAUM, J.

We concur:



MORI, Acting P. J.



TAMZARIAN, J.