Court of Appeal, Fourth Appellate District, Division Three
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EGUMBALL, INC., et al., Plaintiffs and Respondents, v. CALL & JENSEN et al., Defendants and Appellants.	G056650 (Super. Ct. No. 30-2016-00835991) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Sheila Fell, Judge. Affirmed.

Lanza & Smith, Anthony L. Lanza, Brodie H. Smith; Greines, Martin, Stein & Richland, Mark J. Poster and Carolyn Oill for Plaintiffs and Respondents.

Call & Jensen and Wayne W. Call for Defendants and Appellants.

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INTRODUCTION

As discussed in our prior opinion, *eGumball, Inc. v. Call & Jensen* (May 17, 2019, G055852) (nonpub. opn.) (*eGumball I*), the dispute between eGumball, Inc. and John Bauer (the eGumball parties) on the one hand, and Call & Jensen and John Egley (the Call & Jensen parties) on the other hand, was submitted to binding arbitration pursuant to the parties' agreement. The arbitrator issued a final arbitration award which found in favor of the Call & Jensen parties. The arbitrator interpreted the prevailing party attorney fees provision in the parties' agreement to award the Call & Jensen parties their attorney fees in the arbitration except those attorney fees incurred internally by attorneys at Call & Jensen by application of the rule against recovering fees for self-representation. The arbitrator concluded the parties' dispute was a malpractice action and interpreted the parties' agreement to limit the recovery of internally incurred attorney fees awards to the context of billing disputes.

The trial court denied the Call & Jensen parties' request to "correct" the final arbitration award to include its internally incurred attorney fees and entered judgment on the final arbitration award. We affirmed, holding that even if the arbitrator had erred in denying such fees, any such error would constitute legal error in interpreting the parties' agreement and applying relevant law that was not in excess of the arbitrator's authority. (*eGumball I, supra,* G055852.)

After the trial court had entered judgment on the final arbitration award, but before we issued our opinion in *eGumball I, supra,* G055852, Call & Jensen filed a motion requesting that the trial court amend the judgment to award attorney fees it incurred internally after the final arbitration award was issued. In other words, it sought attorney fees incurred in its efforts to have the final arbitration award corrected and ultimately confirmed, to oppose the eGumball parties' efforts to have the award vacated, and to appeal from the judgment and oppose the eGumball parties' appeal from the judgment. The trial court denied the attorney fees motion.

We affirm. In the final arbitration award, the arbitrator concluded that this dispute is a malpractice dispute in which the Call & Jensen parties cannot recover internally incurred attorney fees; the trial court entered judgment based on that award and this court affirmed. The characterization of the dispute as one of malpractice and the interpretation of the parties' agreement, by virtue of our affirmance, is the law of the case. Call & Jensen cannot relitigate the same contractual interpretation issues already resolved in arbitration and affirmed on appeal. Call & Jensen's claim that it may avoid the general prohibition against recovery of attorney fees for self-representation through its representation of John Egley is without merit.

BACKGROUND

I.

eGUMBALL'S COMPLAINT AND CALL & JENSEN'S ARBITRATION DEMAND

eGumball filed a complaint alleging legal malpractice against the Call & Jensen parties and breach of contract against Call & Jensen in relation to the Call & Jensen parties' representation of the eGumball parties in litigation involving one of eGumball's employees, Kimberly Perry (the Perry litigation). Call & Jensen submitted to JAMS, and served on the eGumball parties, a "Demand for Arbitration Before JAMS" pursuant to the arbitration provision contained in one of the two engagement letters retaining Call & Jensen as defense counsel in the Perry litigation. Call & Jensen demanded arbitration with respect to its claim the eGumball parties had not paid $489,613.11 in attorney fees and costs it incurred in the Perry litigation and sought a judicial declaration that the Call & Jensen parties had not committed malpractice.

II.

THE PETITION TO COMPEL THE ARBITRATION of eGUMBALL'S CLAIMS IS GRANTED.

The Call & Jensen parties filed a petition to compel arbitration of eGumball's claims. The petition was supported by the declaration of shareholder Call, which stated that Call & Jensen entered into an engagement agreement with the eGumball parties for legal representation in the Perry litigation consisting "of two 'sister' engagement letters, each dated January 30, 2014, and each signed, simultaneously, by John Bauer, for eGumball and for himself, on January 31, 2014." One of the "two 'sister' engagement letters" contained a provision requiring mandatory arbitration before an arbitrator employed by JAMS. The trial court granted the petition to compel arbitration.

III.

THE ARBITRATOR'S FINAL AWARD

After a seven-day arbitration, the arbitrator issued a detailed 25-page final arbitration award. The arbitrator ultimately ruled against eGumball on its claims. The arbitrator concluded Call & Jensen was entitled to recover $425,967.12 in attorney fees the eGumball parties incurred in the Perry litigation, plus 10 percent simple interest from December 31, 2015. The arbitrator concluded that, notwithstanding the prevailing party attorney fees provision contained in the engagement agreement, Call & Jensen was not entitled to recover prevailing party attorney fees that were incurred internally by its own attorneys in prosecuting and defending claims in the arbitration, noting such internally

incurred fees "comprise[d] the bulk of attorney's fees sought."[1] The arbitrator awarded Call & Jensen prevailing party attorney fees incurred by outside counsel Martin Deniston. The arbitrator awarded Call & Jensen its costs under Code of Civil Procedure sections 1032 and 1033.5, but denied its request for expert witness fees.

The arbitrator denied Call & Jensen's request for correction of the final arbitration award to award its internally incurred fees, stating: "[S]elf-represented attorneys are generally not entitled to reasonable attorney's fees for their in-house time. As acknowledged in the Final Award, *Lockton v. O'Rourke* (2[0]10) 184 Cal.App.4th 1051, provides an exception thereto. The present matter however, does not fall under *Lockton*. In the present case, the contract provided in-house fees could be awarded in any dispute regarding billings. As has been found, the present matter was not about billings, rather it dealt with affirmative allegations of legal malpractice."

IV.

THE TRIAL COURT GRANTS THE CALL & JENSEN PARTIES' PETITION TO CONFIRM THE ARBITRATION AWARD BUT DENIES THEIR REQUEST TO FIRST "CORRECT" THE AWARD TO ADD INTERNALLY INCURRED ATTORNEY FEES.

The Call & Jensen parties filed a petition requesting the trial court to correct the final arbitration award by adding an award of Call & Jensen's internally incurred attorney fees and then confirm the arbitration award as so corrected. The trial court did not grant the request that the arbitrator's final award be corrected, but granted

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[1] Each of the "two 'sister' engagement letters" which make up the parties' engagement agreement contains a different prevailing party attorney fees provision. The arbitration provision contained in one of the engagement letters simply states that the prevailing party in arbitration is "entitled to recover its attorneys' fees and costs." The other engagement letter contains the following provision regarding prevailing party attorney fees: "It is agreed and understood that any *disputes regarding our billing* shall be litigated in California under California law, with the prevailing party entitled to recover costs and attorneys' fees *in connection with such dispute*, including the enforcement and/or appeal of any judgment, and including the standard hourly rate for time spent by C&J attorneys working on such matter." (Italics added.)

the request that the final arbitration award be confirmed. In its minute order, the trial court stated: "The Arbitrator carefully considered each issue presented; The underlying agreement was not illegal; The arbitrator did not exceed his powers; Deny Plaintiff[s]' request to vacate the award—Grant Defendants' request to confirm the award; Defendants to submit a proposed judgment."

V.

JUDGMENT IS ENTERED AND THE eGUMBALL PARTIES AND THE CALL & JENSEN PARTIES EACH APPEAL.

Judgment Upon Confirmation of Arbitration Award was entered, which stated: "This matter having been ordered to binding contractual arbitration; such arbitration having been conducted; the Arbitrator's Final Award having been confirmed by this Court; and good cause appearing therefore; it is hereby ordered adjudged and decreed as follows:

"1. The Arbitrator's Final Award is hereby confirmed pursuant to Code of Civil Procedure Sections 1286 and 1287.4.

"2. eGumball, Inc. shall take nothing upon any of its claims against Call & Jensen and John Egley.

"3. Call & Jensen is hereby awarded Judgment against eGumball, Inc. and John Bauer, [j]ointly and severally, as follows:

"A. Damages—$505,089.12 [which included interest for the relevant time period].

"B. Costs (including attorneys' fees)—$89,169.00 computed as follows:

$51,709.00	(Attorneys' fees paid to Martin Deniston)
$0.00	(The value of the time of attorney Wayne Call and paralegal Kathy Casford at Call & Jensen)

$0.00	(Expert witness fees paid by Call & Jensen)
$37,460.00	(Other costs paid by Call & Jensen, including JAMS fees, deposition costs, etc.)

"4. Call & Jensen is awarded its costs (including recoverable attorneys' fees) incurred in these judicial proceedings, exclusive of fees and costs incurred in arbitration.

"The Court finds the Arbitrator did not exceed his powers."

The Call & Jensen parties, on the one hand, and the eGumball parties, on the other hand, appealed from the judgment. On our own motion, we ordered the two appeals consolidated for all purposes.

VI.

THE TRIAL COURT DENIES CALL & JENSEN'S MOTION FOR ATTORNEY FEES INTERNALLY INCURRED FOLLOWING THE ARBITRATOR'S FINAL AWARD.

While the parties' appeals were pending, in January 2018, Call & Jensen filed a motion in the trial court requesting an award in its favor of $1,452.84 in costs and $186,620 in attorney fees it incurred internally subsequent to June 22, 2017 (the date of the arbitrator's final arbitration award). In its motion, Call & Jensen argued the engagement letters, when read together, permit Call & Jensen to recover internally incurred fees. It further argued that, even if Call & Jensen could not recover its own internally incurred attorney fees, it could recover fees it incurred in its concurrent representation of Egley by Call. Call & Jensen requested that the judgment be amended to include the requested attorney fees and costs.

Call & Jensen's motion was supported by the declaration of Call who stated he is the "in-house General Counsel at Call & Jensen"[2] and, as such, he has personally handled this case with the assistance of a paralegal. He stated: "When this dispute with eGumball and John Bauer arose, to record time and costs necessitated by this dispute, I

[2] The trial court record also shows Call is also a shareholder of Call & Jensen.

proceeded to open a 'billing account'—with Call & Jensen itself being the 'client' (which account was given the number CCJ01-39). I, as General Counsel, representing Call & Jensen and John Egley, as well as my paralegal, Kathy Casford, then used this account (CCJ01-39) to bill Call & Jensen (at my standard hourly rate and at Ms. Casford's standard hourly rate) for all our time necessarily spent in representing Call & Jensen and John Egley in this dispute. Such account (CCJ01-39) was also used to record all out-of-pocket 'disbursements' incurred by Call & Jensen in such dispute."

Call attached to his declaration "the billing statement for account number CCJ01-39, reflecting all of [his] time in representing Call & Jensen and John Egley in this dispute (including in this Action)—subsequent to June 22, 2017 (which was the date of the arbitrator's 'Final Award'). This billing statement also reflects all of Kathy Casford's time in assisting me in the representation of Call & Jensen and John Egley subsequent to June 22, 2017." The attached exhibit is a billing statement showing fees incurred for work related to, inter alia, the Call & Jensen parties' motion to correct and confirm the final arbitration award, their opposition to the eGumball parties' motion to vacate the award, efforts to enforce the judgment, and the parties' appeals.[3]

The eGumball parties filed an opposition to the motion, arguing that the arbitration award showed the arbitrator determined that internally incurred attorney fees were not recoverable because the case was not about billings, and the trial court had confirmed the award.[4] The eGumball parties also argued that the trial court lacked jurisdiction to amend the judgment due to the pending appeals from that judgment.

In reply, Call & Jensen produced a "Confirmation of Assignment" signed by Egley stating that he had "previously assigned to Call & Jensen all of [his] rights to

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[3] The billing statement does not purport to segregate fees incurred in relation to the malpractice claim from those incurred in connection with Call & Jensen's claim to recover unpaid fees.

[4] In their opposition, the eGumball parties stated they did not oppose Call & Jensen's request for $1,453 in costs because the arbitrator had granted recovery of costs.

seek reimbursement from eGumball, Inc. and /or John Bauer for all of [his] costs and attorneys fees (including for 'internal time' at Call & Jensen), previous and future" in connection with the superior court action initiated by the eGumball parties and with the arbitration itself. Call & Jensen argued the trial court was not bound by the arbitrator's interpretation of the attorney fees provisions in the parties' engagement agreement as Call & Jensen had challenged that interpretation in its then pending appeal rendering it not final. It argued the trial court, therefore, was free to independently interpret the contractual language in deciding whether to award Call & Jensen the internally incurred attorney fees sought by the motion.

The trial court denied Call & Jensen's motion, stating in its minute order: "The pending appeal from the judgment confirming [the] arbitration award does not deprive the Court of jurisdiction to decide a motion for attorney fees; The fees provision relied on by Defendant to recover fees for time spent by its own attorneys, by its terms, applies to fee disputes only and not malpractice actions such as this one; Deny attorney fees and grant costs in the amount of $1,285.50."

The Call & Jensen parties appealed from the order denying the motion for postarbitration, internally incurred attorney fees.

VII.

eGumball I

During the pendency of the instant appeal from the order denying postarbitration, internally incurred attorney fees, we issued our opinion in the parties' consolidated appeals from the judgment in this case. (*eGumball I, supra,* G055852.) With regard to the eGumball parties' appeal, we held that the trial court did not err by granting the petition to compel arbitration of eGumball's claims.

As to the Call & Jensen parties' appeal, we rejected their challenge to the arbitrator's decision to deny an award of internally incurred attorney fees and expert witness fees. (*eGumball I, supra,* G055852.) We held that the arbitrator's alleged errors

would constitute legal error in interpreting the engagement agreement and that the arbitrator did not exceed his authority. (*Ibid.*)

STANDARD OF REVIEW

Generally, an order denying an award of attorney fees is reviewed under the abuse of discretion standard of review. (*Soni v. Wellmike Enterprise Co. Ltd.* (2014) 224 Cal.App.4th 1477, 1481 (*Soni*).) However, when such a determination involves a question of law, our review is de novo and any factual findings by the court are reviewed for substantial evidence. (*Ibid.*)

DISCUSSION

Call & Jensen argues the trial court erred by denying its motion to recover fees it incurred internally in this matter after the final arbitration award was issued because the trial court should have (1) independently interpreted the attorney fees provisions in the engagement letters to conclude they authorized Call & Jensen's recovery of the fees requested in its motion; and (2) concluded that the bar against recovering attorney fees for self-representation did not apply to Egley who never represented himself in propria persona. We begin our analysis by considering the effect of our holding in *eGumball I* on this appeal before addressing and rejecting Call & Jensen's challenges to the order denying its motion.

I.

LAW OF THE CASE

"'The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.' (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 459, p. 515; see *People v. Superior Court* (*Plascencia*) (2002) 103 Cal.App.4th 409, 432 ['The law of the case doctrine holds

that when an appellate opinion states a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to through its subsequent progress in the lower court and upon subsequent appeal']].)" (*Newport Harbor Offices & Marina, LLC v. Morris Cerullo World Evangelism* (2018) 23 Cal.App.5th 28, 40.)

II.

THE ARBITRATOR'S RULING REGARDING PREVAILING PARTY ATTORNEY FEES.

In the final arbitration award, the arbitrator ruled on the prevailing party attorney fees issue as follows: "The present matter was one for legal malpractice; it was not based on contract. While Call & Jensen pursued a claim to recover attorney's fees pursuant to the retainer agreement, fully five minutes was spent on the claim. The remainder of the arbitration and all of the evidence focused on eGumball's affirmative claim for legal malpractice relative to John Egley's alleged negligence and breach of fiduciary duty. To characterize this action as anything other than one for legal malpractice would indeed be a misnomer. [Citation.]

"Even though the present litigation is a tort action about legal malpractice, the agreement entered into between the parties provides for an award of attorney's fees to the prevailing party. The agreement specifically provides that the prevailing party is entitled to attorney's fees, *in 'any dispute regarding [Call & Jensen's] services.'* (Emphasis added.)

"With this said, I find that Call & Jensen is not entitled to their in-house fees, which comprise the bulk of the attorney's fees sought. In *Ellis Law Group v. Nevada City Sugar Loaf Properties* (2014) 230 Cal.App.4th 244, the Court, citing a long line of authority, held that a self-represented defendant after prevailing on a SLAPP motion, was not entitled to attorney's fees. In so finding the court relied on numerous cases dealing with Civil Code section 1717. I find the discussion at pages 253-256 persuasive and applicable to the present matter.

"In support of its argument for in-house attorney's fees, Call and Jensen relies on *Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051. The case is inapposite. There, the contract between the client and the attorney specifically provided that the '"prevailing party in any action or proceeding to enforce any provision of this agreement will be awarded attorney's fees and costs incurred in that action or proceeding, including, without limitation, the value of the time spent by QEUO&H attorneys to prosecute or defend such an action (calculated at the hourly rate(s) then normally charged by QEUO&H to clients which it represents on an hourly basis.)"' [Citation.] Such a provision is not present in the contract at issue.

"As a comparable provision to that found in *Lockton*, Call and Jensen points to the following provision of its January 30 agreement: 'It is agreed and understood that *any disputes regarding our billings* shall be litigated in California under California law, with the prevailing party entitled to recover costs and attorneys' fees in connection with such dispute, including the enforcement and/or appeal of any judgment, and including the standard hourly rate for time spent by C&J attorneys working on such matter[s].' [Citation.] As indicated earlier, the present action is not about 'billings,' it is about the alleged negligence and breach of fiduciary duty of John Egley and Call and Jensen. The provision is therefore not applicable and under *Ellis Law Group, supra,* Call and Jensen is not entitled to reimbursement for the value of its attorney fees."

In a footnote, the arbitrator added: "At the Arbitration hearing Call and Jensen spent approximately 5 minutes laying foundation for the underlying bills. The bills and amounts thereof were not contested. While in name Call and Jensen may have been the claimant, the facts and issues relative to Call and Jensen's alleged negligence was not raised as a defense to the claim; from the outset, eGumball was seeking affirmative relief for legal malpractice with Call and Jensen defending its position."

Call & Jensen requested that the arbitrator correct the final arbitration award regarding internally incurred attorney fees and award recovery of expert witness

fees. The arbitrator denied the request, stating: "As for in house attorney's fees, the arbitrator fully realizes that in *Ellis Law Group v. Nevada Sugar Loaf Properties* (2014) 230 Cal.App.4th 244, there was no agreement that the law firm seeking to recover the value of internal time, could do so. The case does however, at pages 253-256 set forth the law that self-represented attorneys are generally not entitled to reasonable attorney's fees for their in-house time. As acknowledged in the Final Award, *Lockton v. O'Rourke* (2[0]10) 184 Cal.App.4th 1051, provides an exception thereto. The present matter however, does not fall under *Lockton*. In the present case, the contract provided in-house fees could be awarded in any dispute regarding billings. As has been found, the present matter was not about billings, rather it dealt with affirmative allegations of legal malpractice."

III.

IN *EGUMBALL I*, WE HELD THE ARBITRATOR DID NOT EXCEED HIS POWERS.

In *eGumball I, supra,* G055852, we rejected Call & Jensen's argument that the arbitrator exceeded his powers by denying its request for internally incurred attorney fees based on the arbitrator's interpretation of the parties' engagement agreement and applicable law. We analyzed this issue in our prior opinion as follows:

"'When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that *the arbitrator will have the power to decide any question of contract interpretation*, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. [Citations.] Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error, for "'[t]he arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement.'"' (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1184 (*Gueyffier*), italics added; see

Moshonov v. Walsh (2000) 22 Cal.4th 771, 775 [it is settled that arbitrators do not exceed their powers 'merely by rendering an erroneous decision on a legal or factual issue, so long as the issue was within the scope of the controversy submitted to the arbitrators'].)

"An exception to the general rule assigning broad powers to the arbitrators arises when the parties have, in either the contract or an agreed submission to arbitration, explicitly and unambiguously limited those powers. [Citation.] 'The powers of an arbitrator derive from, and are limited by, the agreement to arbitrate. [Citation.] Awards in excess of those powers may, under [Code of Civil Procedure] sections 1286.2 and 1286.6, be corrected or vacated by the court.' [Citation.] The scope of an arbitrator's authority is not so broad as to include an award of remedies 'expressly forbidden by the arbitration agreement or submission.'" (*Gueyffier, supra,* 43 Cal.4th at p. 1185.)

"In *Gueyffier, supra,* 43 Cal.4th at page 1185, the Supreme Court concluded: 'The arbitrator was empowered to interpret and apply the parties' agreement to the facts he found to exist; included therein was the power to decide when particular clauses of the contract applied.' In that case, the court stated: 'In concluding the notice-and-cure provision was inapplicable on the facts as he found them, the arbitrator did no more than exercise this power. [Citations.] The no-modification clause could perhaps be *interpreted* as also precluding equitable excusal of a condition, but the arbitrator evidently did not adopt such an interpretation. As construction of the contract was for the arbitrator, not the courts, we cannot say he exceeded his powers, within the meaning of [Code of Civil Procedure] section 1286.2, subdivision (a)(4), by failing to adopt a particular interpretation of the agreement.' (*Id.* at pp. 1185-1186.)

"The *Gueyffier* court distinguished *DiMarco v. Chaney* (1995) 31 Cal.App.4th 1809, a case the Call & Jensen parties relied on in their appellate briefs and at oral argument, stating: '[I]n *DiMarco v. Chaney, supra,* 31 Cal.App.4th at page 1815, the appellate court held the arbitrator had exceeded his powers by refusing to make an award of attorney fees to the litigant he expressly found to be the prevailing party despite

the contract's provision that "'the prevailing party shall be entitled to reasonable attorney's fees and costs.'" The court in *DiMarco v. Chaney* found a direct, explicit contradiction between the contractual command and the arbitrator's refusal to award the prevailing party fees, whereas no such inescapable contradiction exists in this case. The franchise agreement did not unambiguously forbid the arbitrator's application of an equitable defense to Gueyffier's performance of the notice-and-cure condition.' (*Gueyffier, supra,* 43 Cal.4th at p. 1188.) The Supreme Court concluded the appellate court had erred 'in holding the arbitrator exceeded his powers by declining, on equitable grounds, to enforce the notice-and-cure condition against Gueyffier. It follows the award should not be vacated under [Code of Civil Procedure] section 1286.2, subdivision (a)(4).' (*Ibid.*)

"Here, the parties submitted the issues of determining prevailing party attorney fees and expert witness fees to the arbitrator for rulings. The arbitrator denied Call & Jensen an award of internal attorney fees based on *Trope v. Katz* (1995) 11 Cal.4th 274 and its progeny establishing the general rule that 'law firms and attorney litigants are precluded from recovering attorney fees for self-representation.' (*Soni v. Wellmike Enterprise Co. Ltd.* (2014) 224 Cal.App.4th 1477, 1488.)

"As reflected in the arbitrator's final award, Call & Jensen argued that *Lockton v. O'Rourke, supra*, 184 Cal.App.4th 1051 created an exception to the general rule so as to permit the recovery of internally incurred attorney fees when the parties' agreement expressly so provides. The arbitrator rejected the applicability of the exception, concluding the parties' engagement agreement provided that internally incurred attorney fees were only recoverable in connection with 'billing' disputes.

"In the final award, the arbitrator noted that all but 'five minutes' of the arbitration was spent addressing the malpractice issues in the case. The bills Call & Jensen submitted regarding unpaid legal fees from the Perry litigation were not disputed by the eGumball parties in type or amount. Therefore, the arbitrator reasoned, as the

request for internal attorney fees was based on fees incurred in defending the malpractice claim, not in connection with a billing dispute, Call & Jensen was not entitled to recover such fees under the terms of the engagement agreement.

"The arbitrator's decision not to award such fees was entirely based on the arbitrator's interpretation of the engagement agreement. There was not 'a direct, explicit contradiction between the contractual command and the arbitrator's refusal to award the prevailing party fees.' (*Gueyffier, supra,* 43 Cal.4th at p. 1188.) If the arbitrator erred in his interpretation, any such error would constitute legal error and not an act in excess of his powers." (*eGumball I, supra,* G055852.)

We concluded: "The trial court, therefore, did not err by concluding the arbitrator did not exceed his powers or by refusing to correct the award to include internally incurred attorney fees." (*eGumball I, supra,* G055852.)

IV.

THE ARBITRATOR'S CHARACTERIZATION OF THE DISPUTE AND INTERPRETATION OF THE PARTIES' AGREEMENT AND GOVERNING LAW, AS AFFIRMED ON APPEAL, BECOMES LAW OF THE CASE; THEREFORE, THE TRIAL COURT CORRECTLY DENIED THE MOTION FOR ATTORNEY FEES.

The arbitrator's determination that this dispute is a malpractice dispute for which the Call & Jensen parties cannot recover internally incurred attorney fees under the terms of the parties' engagement agreement was necessary to his decision reported in the final arbitration award, given Call & Jensen's request of the arbitrator for such fees. In confirming the final arbitration award and entering judgment on it, the trial court ruled that the arbitrator did not exceed his powers by making that determination. As discussed *ante*, we expressly affirmed the trial court's ruling and judgment in *eGumball I, supra,* G055852.

Therefore, the arbitrator's determination as affirmed on appeal is the law of the case that applies to Call & Jensen's postjudgment motion seeking internally incurred attorney fees in this matter following the final arbitration award. Applying the law of the

case, Call & Jensen is not entitled to internally incurred attorney fees in this same matter, regardless of when they were incurred, because the parties' agreement does not allow such a recovery in this malpractice dispute. This result finds direct support in the engagement letter referring to internally incurred fees: "It is agreed and understood that any *disputes regarding our billings* shall be litigated in California under California law, with the prevailing party entitled to recover costs and attorneys' fees *in connection with such dispute*, *including the enforcement and/or appeal of any judgment*, and including the standard hourly rate for time spent by C&J attorneys working on such matter." (Italics added.) Therefore, the parties' engagement agreement expressly stated that the right to recover internally incurred fees was the same—whether fees were incurred during the arbitration or after the arbitration was concluded.

In its current appellate briefing, Call & Jensen argues the trial court should have independently determined whether this matter should be characterized as a malpractice dispute or a dispute about billings within the meaning of the parties' engagement agreement. For the reasons stated *ante*, the dispute's character was necessarily decided by the arbitrator. We affirmed, thus rendering that decision the law of the case. In any event, it does not make sense that the character of a dispute between parties might change *after* the final decision by an arbitrator on the merits of the dispute but *before* resolution of postarbitration motions, entry of judgment on the award, and appeals from that judgment. There is no legitimate basis in a case such as this for the trial court to independently determine the character of a dispute that has already been necessarily determined by the arbitrator for the purpose of confirming that arbitrator's award and awarding attorney fees and costs.

V.
THE TRIAL COURT'S ORDER DENYING POSTARBITRATION, INTERNALLY INCURRED ATTORNEY FEES IS CONSISTENT WITH THE LAW OF PRECLUSION.

Our conclusion regarding the binding nature of the arbitrator's determinations of the unavailability of internally incurred attorney fees to Call & Jensen is consistent with the law of preclusion. "The law of preclusion helps to ensure that a dispute resolved in one case is not relitigated in a later case. Although the doctrine has ancient roots [citation], its contours and associated terminology have evolved over time. We now refer to 'claim preclusion' rather than 'res judicata' [citation], and use 'issue preclusion' in place of 'direct or collateral estoppel.'" (*Samara v. Matar* (2018) 5 Cal.5th 322, 326.) "Issue preclusion . . . prevents 'relitigation of previously decided issues,' rather than causes of action as a whole. [Citation.] It applies only '(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.' [Citation.] Courts have understood the '"necessarily decided"' prong to 'require[] only that the issue not have been "entirely unnecessary" to the judgment in the initial proceeding' [citation]—leaving room for a decision based on two grounds to be preclusive as to both." (*Id.* at p. 327.)

The preclusion doctrines apply to arbitration awards. (See *Wade v. Ports America Management Corp.* (2013) 218 Cal.App.4th 648, 653; *Kelly v. Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1335-1336; *Thibodeau v. Crum* (1992) 4 Cal.App.4th 749, 755 (*Thibodeau*); *Sartor v. Superior Court* (1982) 136 Cal.App.3d 322, 328.)

In *Thibodeau, supra,* 4 Cal.App.4th at page 759, the appellate court relied on *Trollope v. Jeffries* (1976) 55 Cal.App.3d 816, 822-823 in concluding that an unconfirmed arbitration award was entitled to res judicata effect. The *Trollope v. Jeffries* court stated: "Although it is true that an arbitration award is not a judgment having the same force and effect as a judgment in a civil action until it is confirmed [citations] and

that until it is confirmed it has only the same force and effect as a contract in writing between the parties to the arbitration [citations], it is, nevertheless, the final and binding decision or judgment of the arbitrator in the exercise of his quasi-judicial function . . . . [¶] . . . [¶] It is a recognized principle that an arbitration award is conclusive on matters of fact and law . . . 'and all matters in the award are thereafter res judicata, on the theory that the matter has been adjudged by a tribunal which the parties have agreed to make final, a tribunal of last resort for that controversy.'" (*Id.* at pp. 822-823; see *Kelly v. Vons Companies, Inc.*, *supra*, 67 Cal.App.4th at pp. 1335-1336 [findings made during arbitration may be given collateral estoppel effect in a subsequent lawsuit]; *Lehto v. Underground Constr. Co.* (1977) 69 Cal.App.3d 933, 939 [arbitration award conclusive on matters of fact and law and all matters thereafter are res judicata].)

In *Thibodeau*, the court explained the reason for this rule is the limited judicial review applicable to arbitration awards: "'[T]he purpose of arbitration is to settle differences in a summary manner outside of court for the purpose of expediting a decision by the use of an arbitrator . . . . [T]he essential adjudication in an arbitration proceeding is the award. The function of the court is limited to confirming the award as made, or to correct and confirm it as corrected, or to vacate it within the limitations and as provided by the statutes. [Citation.]' [Citation.] '[E]very presumption favors the arbitrator's award, and the merits of the award, either on question of law or fact, are generally not subject to review.'" (*Thibodeau, supra,* 4 Cal.App.4th at p. 760.)

Here, there has been a final and necessary adjudication of the arbitrator's determination that internally incurred attorney fees are unavailable to Call & Jensen in this malpractice dispute. That determination is being applied in the same matter against the same party, Call & Jensen, in its subsequent efforts in the same matter to seek internally incurred attorney fees based on the same contractual language. Although at the time Call & Jensen filed the instant postjudgment attorney fees motion, appeals from the judgment were pending, we have since affirmed the judgment so there is no question

about the finality of the arbitrator's determination on this point. Call & Jensen's motion was properly denied.

VI.

CALL & JENSEN CANNOT RECOVER INTERNALLY INCURRED FEES THROUGH EGLEY.

Call & Jensen argues that, in light of Egley's assignment of all rights to recover attorney fees and costs incurred on his behalf in this matter to Call & Jensen, it should have been at least able to recover fees it incurred internally in its representation of Egley. As discussed *ante*, we affirmed the judgment upholding the final arbitration award and its denial of all fees that were internally incurred by Call & Jensen in its representation of the Call & Jensen parties on the ground such an award was precluded by the self-representation rule. The law of the case doctrine renders the arbitrator's findings of fact and conclusions of law now final. So, even if the arbitrator had erred in its interpretation of the agreement or application of the law, given our opinion in *eGumball I, supra,* G055852, the matter is settled.

Notwithstanding the application of the law of the case doctrine, we consider Call & Jensen's argument that it should be allowed its requested fees because Egley never represented himself; he was always represented by Call and Call & Jensen thereby rendering the self-representation rule inapplicable. Under the facts of this case, Call and Call & Jensen's representation of Egley constitutes self-representation, precluding an award of fees incurred internally by Call & Jensen.

In *Soni, supra,* 224 Cal.App.4th at page 1488, the appellate court explained: "The teaching of *Trope* [*v. Katz*] and its progeny is that law firms and attorney litigants are precluded from recovering attorney fees for self-representation." Thus, a law firm may not recover attorney fees for its representation by its own attorneys. (*Id.* at p. 1490.) This is distinguishable from "attorney litigants who retain other attorneys to represent their personal interests [who] may recover attorney fees, just like nonattorney litigants. Thus, an attorney litigant who is represented by other attorneys in a matter involving the

attorney's *personal interests* may recover attorney fees, *even if represented by other attorneys within the firm*. (*Gorman* [*v. Tassajara Development Corp.* (2009)] 178 Cal.App.4th [44,] 91, 96 [attorney litigant was represented by an associate in connection with a personal matter concerning defective construction of his home]; *Gilbert* [*v. Master Washer & Stamping Co.* (2001)] 87 Cal.App.4th [212,] 214 [attorney litigant was sued personally for allegedly preventing lessee from recovering its property from the leased premises].)" (*Id.* at p. 1488.)

In *Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 375, the appellate court upheld the denial of a request for prevailing party attorney fees for services by a law firm's associate to the firm and its partners. The plaintiff law firm and partners argued the trial court erred in denying their fee request because the attorney who represented them was not a partner in the law firm and thus had no financial interest in it. (*Ibid.*) They also argued that even if the law firm plaintiff could not recover fees for the legal services of the associate, the individual plaintiff attorneys could recover fees attributable to that associate's services rendered on their behalf. (*Id.* at pp. 375-376.) The appellate court affirmed the denial of the attorney fees motion, holding: "(1) substantial evidence supports the trial court's finding that the attorney who represented plaintiffs in the prior appeal was doing so as an associate of the law firm and not as an independent contractor, and, therefore, plaintiffs legally are not entitled to an award of attorney fees and (2) the trial court was justified in concluding that based on the record, the individual plaintiffs could not recover attorney fees in connection with the appeal because there was no showing of any distinction between the cross-claims against the law firm plaintiff and those against the individual plaintiffs." (*Id.* at p. 376.)

Here, Call represented both his law firm (Call & Jensen) and Egley on eGumball's claims which included malpractice. Although Call identifies himself in his declarations as general counsel for Call & Jensen, the trial court record shows he is also, like Egley, a shareholder of Call & Jensen; he does not contend he represented Egley or

the law firm as an independent contractor and the record does not otherwise support such a position. Call & Jensen does not argue there was any distinction in its defense of Egley against the malpractice claim as opposed to its defense of itself against the same claim; the record does not suggest the malpractice claim subjected Egley "to potential individual liability separate and apart from the potential liability of [his] law firm." (*Carpenter & Zuckerman, LLP v. Cohen, supra,* 195 Cal.App.4th at p. 386.)

Call & Jensen does not argue Egley's personal interests were at issue in this dispute; the dispute was about legal services he rendered as an attorney at Call & Jensen. Therefore, Call & Jensen cannot avoid the prohibition against recovery of attorney fees internally incurred in the course of self-representation by seeking to recover those same fees through its representation of one of its shareholders. As explained in *Carpenter & Zuckerman, LLP v. Cohen*: "If a tort claim is asserted against a law firm, partners or associates who acted on behalf of the firm necessarily are exposed to liability. As noted above, the Supreme Court in *Trope, supra,* 11 Cal.4th 274 treated the individual partners as interchangeable with the law firm in connection with the issue of attorney fees for self-representation. As here, if the law firm and its partners or associates who acted on behalf of the firm are named and they are all represented by a partner or associate of the law firm, the principles of *Trope* and *Witte* [*v. Kaufman* (2006) 141 Cal.App.4th 1201] should apply, unless it can be shown that the representation of partners or associates related to the protection of their individual interests from realistic personal exposure. Anytime a law firm sues, its partners will individually benefit from any recovery. Anytime a law firm is sued, any recovery against it will detrimentally affect any partner. And when a law firm is sued in tort for the act of one or more of its lawyers, those lawyers are exposed to liability. In order to recover attorney fees for work done on behalf of individual attorneys in a law firm, there must be a showing that the fees sought to be recovered are not attributable to representation of the law firm. No such showing was made here. Thus, there was not sufficient evidence to overturn the trial court's

conclusion that the individual plaintiffs were not entitled to recover any attorney fees." (*Id.* at pp. 387-388.)[5]

The trial court did not err by denying fees incurred by Call & Jensen in its representation of Egley in this matter.

DISPOSITION

The postjudgment order is affirmed. Respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.

[5] In its appellate briefs, Call & Jensen argue that *Lockton v. O'Rourke, supra,* 184 Cal.App.4th 1051 supports its claim for recovering internally incurred attorney fees through Egley. That case is distinguishable because, inter alia, it is not clear whether the individual attorney defendant was a partner or shareholder in his co-defendant employer law firm, which represented them both in the breach of contract and malpractice action brought against them. (*Id. at* pp. 1073-1074.) The more recent decision in *Carpenter & Zuckerman, LLP v. Cohen, supra,* 195 Cal.App.4th 373 is more factually similar and directly applicable to the instant case; we are persuaded by its reasoning and follow it here.