2d Civil No. B311313

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1

CANYON VIEW LIMITED
Plaintiff and Appellant,
v.
LAKEVIEW LOAN SERVICING, LLC
Defendant and Respondent.

Appeal from Los Angeles Superior Court
Case No. PC057181
Honorable Stephen P. Pfahler

APPELLANT'S REPLY BRIEF

GREINES, MARTIN, STEIN & RICHLAND LLP
*Robin Meadow (SBN 51126)
rmeadow@gmsr.com
Jeffrey Gurrola (SBN 285157)
jgurrola@gmsr.com
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
(310) 859-7811 / Fax: (310) 276-5261

Attorneys for Appellant CANYON VIEW LIMITED

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INTRODUCTION

On remand from *Canyon View Limited v. Lakeview Loan Servicing, LLC, et al.*, 2d District No. B285489 (*Canyon View I*), this Court directed the trial court to identify any specific work that was not compensable and decline to award fees for that specific work. The trial court didn't do that at all. Instead, it applied an across-the-board 75 percent reduction to the two largest components of Canyon View's fee request, relating to prejudgment and appellate fees. Its stated reason for doing so was to eliminate fees incurred litigating against the *other* defendants in *Canyon View I*—Bank of America, Household, and Ocwen. Yet the foundational assumption that the four cases were billed jointly has zero record support.

Lakeview tries to defend the trial court's 75 percent reductions as a "negative multiplier." This is just wishful thinking. The trial court *said* what it was doing, and Lakeview's attempt to recast the 75 percent reductions as a negative multiplier is belied by the record.

And the trial court awarded *nothing* for work by the Law Offices of Edward A. Hoffman. Lakeview says that the trial court awarded fees to a different firm for different work during the same time period, and that this is good enough. That argument cannot be reconciled with *Canyon View I*.

The trial court's fee award must be reversed.

ARGUMENT

I. Lakeview Ignores The Trial Court's Failure To Follow This Court's Directives In *Canyon View I*, Which Renders The Fee Award Void And Therefore Requires Reversal.

On remand from *Canyon View I*, this Court gave the trial court clear instructions. It admonished the court that it could not make sweeping cuts to Canyon View's fee request "without engaging in an explicit analysis of the specific work performed or fees requested." (1-AA-71, citing *Garcia v. Santana* (2009) 174 Cal.App.4th 464, 476–477; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 1001.)[1]

On that premise, this Court directed: "[I]n order to properly assess the reasonableness of the fee amounts requested in light of [any] concerns, the court needed to examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work." (1-AA-72, citing *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 818–819.)

The opening brief demonstrated that the trial court failed to heed this directive and that its failure to follow this Court's directive renders the fee award *void*. (Appellant's Opening Brief

[1] All citations beginning "1-AA" are to the corrected first volume of appellant's appendix filed on March 9, 2022, which fixed missing and erroneous page numbers, but did not alter pagination. (See March 9, 2022 Request to File Corrected Volume 1 of Appellant's Appendix.)

[AOB] § I.A.) As Canyon View's authorities make clear, "[t]he trial court is empowered to act only in accordance with the direction of the reviewing court; action which does not conform to those directions is void." (AOB 33, internal quotations omitted, citing *Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859, *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655, and *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530.)

Lakeview's brief doesn't address this argument at all. Instead, Lakeview essentially argues—although it never acknowledges that this is what it's doing—that this Court should ignore the trial court's explicit rationale for its fee award, and instead infer that the trial court did things that its own words belie.

This approach is untenable. The record is clear that the trial court said what it meant.

II. The Trial Court Abused Its Discretion By Quartering Canyon View's Fee Request Based On The Mistaken Belief That Canyon View Sought Fees Incurred In All Four Cases.

A. There can be no reasonable debate about the trial court's rationale for reducing Canyon View's fee request by 75 percent, because the court said exactly what it was doing: attributing that 75 percent to fees incurred in other litigation.

1. The trial court's own words negate Lakeview's claim that the court applied a "negative multiplier."

"When the court states its reasons explicitly, we cannot infer its exercise of discretion rested on a wholly different basis." (*McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695, 705; see *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1384 ["The transcript of the fee hearing leaves no doubt that the court awarded costs and fees for the entire case and not just the motion to strike. When the record clearly demonstrates what the trial court did, we will not presume it did something different"].)

Despite this well-settled rule, Lakeview insists throughout its brief that the trial court's 75 percent reduction was actually a permitted "negative multiplier." (RB 18, 20, 22, 26–27, 29, 35.) There is no basis for this claim.

First, the trial court *said* it was "split[ting] the appellate fees *four ways*" based on its belief there were "total appellate fees of $78,982.63 on the four consolidated cases" and that Canyon

View's counsel had "admitted" as much. (2-AA-1201, italics added, citing 1-AA-1073–1074, ¶¶ 75–79.) That was wrong: There was never such an admission, and indeed the sole document the trial court cited says exactly the opposite. (See AOB § I.B.2., citing 1-AA-107, ¶¶ 29–30 & 1-AA-1073–1074, ¶¶ 75–79; see generally 1-AA-98–113, 900–904, 1055–1076 [none of counsel's declarations contains any such "admitted acknowledgement"].) The court's statement is thus entitled to no weight. (See *Department of Water Resources Environmental Impact Cases* (Cal. Ct. App., May 11, 2022, No. C091771) ___ Cal.App.5th ____ [2022 WL 1908832], at *8 ["A finding is not supported by substantial evidence if there is no reasonable basis for it in the record"]; *Frei v. Davey* (2004) 124 Cal.App.4th 1506, 1513 [attorney fee case; reversing trial court's finding regarding whether respondents failed to mediate where the only record evidence on the subject showed the opposite].) And correct or not, the court's statement is entirely inconsistent with applying any form of negative multiplier.

Then, with respect to prejudgment fees, the trial court stated: "Given the similarities of the four actions and the inability to sufficiently parse out the required, unique work, the court divides the previously represented balance of $79,483.76 into quarters thereby reducing potential duplicative recovery on potential subsequent motions against the remaining three defendants as well." (2-AA-1203.) This, too, has no record support and is inconsistent with applying any kind of negative multiplier. (See AOB § I.B.1.)

The court could not have been more clear that it was splitting the fees four ways to account for the four cases. Lakeview's argument ignores the trial court's own words.

2. The trial court itself eliminated any possible question about the basis of its fee award by later making an identical award in the BANA case based solely on the evidence in *this* case.

If there were still any question about whether the trial court did exactly what it said it did when it cut Lakeview's fees by 75 percent to account for the other three *Canyon View I* cases, its later fee order in one of those other cases leaves no room for doubt.

The same trial judge decided both the fee motion below and the fee motion in *Canyon View Limited v. The Bank of America, N.A.*, Los Angeles County Superior Court No. PC057199.[2]

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[2] The fee award in *Canyon View Limited v. Bank of America, N.A.* is before this court in 2d Civil No. B312259. Pursuant to rule 8.124(b)(2) and (6), appellant's reply appendix incorporates the appendix in that appeal, which we cite as ARA-[page number]. We recognize that the BANA fee award postdates the fee award in this case (ARA-982) and that ordinarily, "an appellate court will consider only matters which were part of the record at the time the judgment was entered." (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813.) "This rule preserves an orderly system of appellate procedure by preventing litigants from circumventing the normal sequence of litigation." (*Ibid.*) But that policy purpose doesn't apply here. Rather, the BANA fee award is relevant to this Court's review because in it, the trial court expressly ratified and reaffirmed its prior quartering of the Lakeview-specific fees to account for the other three *Canyon*

The motions were filed in two separate trial court actions. (Compare 1-AA-14 [Los Angeles Superior Court Case No. PC057181] with ARA-29 [Los Angeles Superior Court Case No. PC057199].) They were between Canyon View and two separate defendants: Lakeview and BANA.[3] (Compare 1-AA-14 with ARA-30.) They were supported by entirely different evidence. (Compare 1-AA-98–655, 900–1032, 1055–1130 with ARA-140–610, 614–728, 944–974.)

View I cases, erasing any doubt about the basis for the order challenged here. It is not evidence the trial court would have considered, but rather the trial court's own confirmatory acknowledgment of what Canyon View has shown is plain error. In any event, "because the fact is not in dispute, we do not usurp the fact-finding function of the trial court." (*Ibid.* [considering postjudgment evidence of court records].)

[3] While the opening brief used "BONY" to refer to the collective "BONY defendants" described in *Canyon View I* (see AOB 18, fn. 5) this brief uses "BANA" instead to be consistent with the briefing in the closely related BANA appeal.

It's no surprise, then, that the amounts requested were different:

	Lakeview	BANA
NWF Total Fees	$173,466.70[4]	$153,596.84[5]
Edward A. Hoffman's Fees	$13,687.50[6]	$20,812.50[7]
Grand Total Attorney Fees	$187,154.20[8]	$174,409.34[9]

Yet the trial court did not base its BANA fee award on the BANA evidence at all. Instead, the court simply grafted the Lakeview amounts onto the BANA order:

- Regarding prejudgment fees: "Consistent with the prior [i.e., Lakeview] order, the court awards the pro rata share of $19,870.94." (ARA-984.)
- Regarding appellate fees: "Consistent with the prior order on Lakeview Loan Servicing, the court finds the pro rata share of the appellate fees, $19,589.27, reasonable. The court therefore awards this amount for the appellate work in the instant action." (ARA-984.)

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[4] 1-AA-1075, ¶ 86; see 1-AA-1099–1101.

[5] The $153,596.84 amount for NWF reflects the $153,730.09 originally requested by NWF, less $133.25 in mistaken billings identified by counsel. (ARA-154, ¶ 43; ARA-960–961, ¶ 28; ARA-963, ¶¶ 33–34.)

[6] 1-AA-117, ¶¶ 14–16; 1-AA-1075, ¶ 86.

[7] ARA-163, ¶ 19.

[8] 1-AA-1075, ¶ 86; 1-AA-1106–1109.

[9] ARA-963, ¶ 34.

The result was two *identical* fee awards in two distinct and separately billed cases—the trial court even carried over its failure to award any fees for Mr. Hoffman (see ARA-984–985):

	Lakeview[10]	BANA[11]
NWF Prejudgment Fees	$19,870.94	$19,870.94
NWF Fees for First Fee Motion	$18,000.00	$18,000.00
NWF *Canyon View I* Appeal Fees	$19,589.27	$19,589.27
Hoffman Firm Fees	$0	$0

This ruling eliminates any possible basis for interpreting the Lakeview award—and the BANA award too, for that matter—as representing anything more or less than exactly what the trial court said it was: quartering the Lakeview fees so as to allocate them equally to all four *Canyon View I* cases.

[10] 2-AA-1202–1203.

[11] ARA-984–985.

B. There is no support in the record for Lakeview's attempt to recast the trial court's award as some sort of "rough justice" reduction.

1. Governing law: Reductions of the lodestar amount must be reasonably related to the number of non-compensable hours.

There must be "a reasonable basis for the trial court's reduction of the lodestar amount." (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101.) There is a reasonable basis where the court "determine[s] which work was unnecessary or unreasonable, and decline[s] to award fees and costs for that specific work." (1-AA-72.) On the other hand, a trial court's across-the-board "reduction in hours claimed" based on supposed flawed entries, "without any correlation shown to the number of hours claimed on the flawed entries, is arbitrary." (*Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 280–281.)

2. The four categories of supposedly "superfluous entries" in the trial court's November 2020 order do not provide a reasonable basis for the 75 percent reduction in fees.

a. The relevant time entries.

In its final fee order, the trial court awarded Canyon View the following fees:

Phase of Litigation	Fees Awarded[12]
NWF Prejudgment Fees	$19,870.94
NWF Fees for First Fee Motion	$18,000.00
NWF *Canyon View I* Appeal Fees	$19,589.27

The order quotes two paragraphs from the trial court's interim November 2020 order, which identified four categories of what the trial court referred to as "superfluous entries" (2-AA-1202):

1. "[E]ntries for a demurrer and trial preparation";
2. "[O]ver one hour billed just for the drafting of the withdrawal from the action after the stipulation, yet within three days of the trial prep and demurrer entries";

[12] 2-AA-1202–1203. The trial court also awarded $6,241.38 in fees for the second fee motion. That award is not relevant to this discussion.

3. "Billing for non-fee related items" through "the September 13, 2017 hearing denying the motion for attorney fees"; and
4. "[A]ppellate related costs through September 30, 2017."

(2-AA-1202.) Only the first of these four categories bears any relation to the trial court's 75 percent cuts—prejudgment activities, which the trial court reduced by 75 percent. The remaining three categories, incurred after judgment and before appeal, were not subject to the 75 percent reductions, and are not challenged in this appeal. And none of the categories identified by the trial court relates to the quartered fees for the *Canyon View I* appeal.

As we now show, the trial court's small sampling of entries reflected in the categories above is totally disconnected from the 75 percent reduction, rendering the reduction arbitrary. (See *Mountjoy*, *supra*, 245 Cal.App.4th at pp. 280–281; *Gorman*, *supra*, 178 Cal.App.4th at p. 101.)

b. The only category of supposedly "superfluous entries" relating to prejudgment fees does not support quartering those fees.

After quoting the "superfluous entries" above from its November order, the trial court next discussed the clarification and additional information that Canyon View provided in its supplemental briefing. (2-AA-1202–1203.) Based on this supplemental briefing, the trial court qualified its statement that "[i]t's also not clear why Plaintiff added entries for a demurrer

and trial preparation given the stipulation and fact that the case never went to trial" (2-AA-1202): "The parties specifically argue over the necessity of the hours of billed discovery, and the demurrer. A number of costs were incurred prior to the April 5, 2017 judgment. It still remains unclear exactly where the cut-off for said work occurred." (2-AA-1203.)

But then, instead of evaluating the necessity and reasonableness of the work for which Canyon View claimed fees, the court reduced the requested prejudgment fees (which included the demurrer and trial preparation entries) to account for supposed "crossover work" relating to *the other three cases*. (2-AA-1203; see § II.A., *ante*.)

This approach did not remotely comply with this Court's directive to "examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work" (1-AA-72) or the general requirement that there must be a reasonable basis for lodestar reductions (*Gorman*, *supra*, 178 Cal.App.4th at p. 101).

Nor could it, because at least as a general proposition, there can be no question but that it was reasonable and necessary to do the demurrer and discovery work. As shown in Canyon View's opening brief, Lakeview—not Canyon View—

created the need for demurrer- and discovery-related billing (AOB 14–17):

- When Canyon View asked Lakeview for a stipulated judgment, Lakeview refused. (1-AA-87; 1-AA-102–103, ¶ 16.)
- Lakeview's reconveyance and quitclaim deed were recorded with qualifications, offering Canyon View no assurance regarding its title. (1-AA-99, ¶ 4.)
- And the original clouding documents, recorded with the County of Los Angeles, had never been cancelled. (1-AA-19–20, ¶¶ 28–33; 1-AA-99–100, ¶ 5; 1-AA-1058, ¶ 13.)
- It was Lakeview that demurred. (1-AA-102–103, ¶ 16; 1-AA-901, ¶¶ 7–8; 1-AA-958–972.) Canyon View had no choice but to oppose the demurrer or risk an adverse judgment and even possibly liability for attorney fees. (1-AA-1058, ¶ 13; 1-AA-102–103, ¶ 16; see § 798.85 ["A party shall be deemed a prevailing party … where the litigation is dismissed in his or her favor"].)
- Had Canyon View simply dismissed the action, there is no guarantee it would have been entitled to its previously incurred fees under the Mobilehome Residency Law (MRL)—despite this Court's later holding that the lawsuit was necessary to enforce Canyon View's rights. (1-AA-62.) Given Lakeview's aggressive litigation conduct, Canyon View had every

reason to believe Lakeview would have argued that *Lakeview* was entitled to such fees.

- Even though Lakeview admitted in its reply that it "agree[d] that judgment should be entered in Plaintiff's favor" (1-AA-1059, ¶ 19; 1-AA-1093), Lakeview did not abandon its demurrer and stipulate to judgment, but rather pressed ahead toward defeat (1-AA-1032).

During this same time, Canyon View also defeated Lakeview's ex parte motion to stay discovery and successfully moved to compel Lakeview to comply with its discovery obligations—earning an award of sanctions in the process. (1-AA-102–103, ¶ 16 & fn. 9.) The trial court's rulings on both motions demonstrate that Canyon View acted reasonably in conducting discovery while Lakeview's demurrer was pending.

By standing up to Lakeview's hardline litigation tactics and successfully opposing Lakeview's attempt to get a judgment in its own favor, Canyon View ultimately obtained the very relief it had requested from Lakeview before ever filing the action. There was no basis for the trial court's apparent belief that Canyon View was somehow responsible for necessitating and then prolonging the litigation.

c. The remaining three categories of "superfluous entries" relate to fees incurred while litigating the first fee motion—but Canyon View does not challenge that award, which was not subject to the trial court's 75 percent cuts.

In addition to the demurrer and discovery tasks, the trial court's November order, as quoted in its March order, offered three more examples: (1) 1.5 total hours billed to withdrawing the lis pendens and trial preparation and demurrer-related work; (2) other unspecified billing unrelated to the fee motion; and (3) "appellate related costs through September 30, 2017." (2-AA-1202, quoting 1-AA-1037.)

These three examples relate not to prejudgment or appeal fees—the two categories of fees the trial court slashed by 75 percent—but to the separate period during which Canyon View litigated the first fee motion (i.e., April 6, 2017 through September 2017). And while the trial court quoted these "examples" in its final order, it then immediately went on to acknowledge the clarification offered by NWF in its supplemental briefing and to award $18,000 of the $27,000 requested for this April-to-September 2017 time period. (2-AA-1202; see table at AOB 27.)

Canyon View does not challenge that $18,000 award on appeal. These three examples do not overlap with—and thus have no relevance to the trial court's 75 percent cuts to—(1) fees through judgment or (2) appellate fees. (See table at p. 17, *ante*.)

d. The trial court did not identify any categories of "superfluous entries" during *Canyon View I* appeal phase—but cut those fees by 75 percent.

The appeal phase of this litigation ran from September 2017 through March 2020, yet the trial court did not identify a single "superfluous entr[y]" after September 2017.

In its order, the trial court stated that Canyon View's counsel "represents total appellate fees of $78,982.63 on the four consolidated cases" (not correct) "as well as an admitted acknowledgment supporting apportionment" (also not correct). (2-AA-1201; see AOB § I.B.2; § II.A.1., *ante*.) It then "split[] the appellate fees four ways" to account for the other *Canyon View I* cases—all before it ever addressed the so-called superfluous entries above. (2-AA-1201.)

The trial court's November order does describe as "superfluous entries" "appellate related costs through September 30, 2017." (2-AA-1202, quoting 1-AA-1037.) Since the appeal phase ran from September 14, 2017 to March 31, 2020 (1-AA-1107–1108), it's hard to conceive of how merely being appeal-related would make fees superfluous during the appeal phase of litigation. In any event, the small handful of appeal-related entries between September 14 and 30, 2017 relate to preliminary appeal research and the notice of appeal, which Canyon View filed September 27, 2017. (1-AA-247–250; 2-AA-1232.) There's nothing superfluous about that work.

The trial court made one more comment relevant to appeal fees, which Lakeview hardly misses an opportunity to quote. (RB 16, 26, 28, 29.) But far from providing a basis for the 75 percent reduction, it confirms that the reduction is unsupported.

The trial court stated in its November order: "The court finds Plaintiff's argument that it only sought $79,483.76 in fees in the original denied [2017] motion, but fees increased to [$187,154.20 by the end of 2020] is both unsupported and grossly exaggerated, through the examples as addressed above." (2-AA-1202, quoting 1-AA-1037.)

The problem with this reasoning is that "the examples as addressed above" refers right back to the four enumerated categories of "superfluous entries," none of which involves the three-year appeal phase. (See §§ II.B.2.a., b., c., *ante*.) Thus, these "examples" are manifestly irrelevant to the fee increase that happened *after* September 2017, because they all occurred before then.

This undermines Lakeview's claim that the statement above "demonstrates that the judge performed a detailed review of the billing records." (RB 25.) If the trial court had indeed "performed a detailed review of the billing records," and did indeed reach the conclusion it stated, then it utterly failed to do what this Court ordered: "engag[e] in an explicit analysis of the specific work performed or fees requested." (1-AA-71.) Either way, there is no credible basis for affirmance.

The record itself likewise undermines the trial court's statement, because the figures *are* supported: The fees for this time period are thoroughly documented in NWF's billing records and the exhibits specifically requested by the trial court in its November order. (See 1-AA-247–378 [detailed billing records from September 2017 through June 2020], 1115–1130 [detailed billing records from July 2020 through November 2020]; see also 1-AA-1099–1101 [fees billed by partner, associate, and paralegal], 1103–1104 [hours billed by partner, associate, and paralegal], 1106–1109 [schedule of attorney fees by stages of the action].)

This Court directed the trial court to "examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work." (1-AA-72.) Instead, the trial court cut the appeal fees by 75 percent without identifying a single "superfluous" entry after September 2017. The order cannot stand.

3. Lakeview's other arguments do not show a reasonable basis for the trial court's 75 percent reductions.

a. Lakeview's challenge to additional entries—virtually all of which Canyon View identified and excised from its request—does not save the 75 percent cuts.

Lakeview rattles off entries that it claims provide alternative support for the trial court's 75 percent reductions that explicitly account for the other three *Canyon View I* cases. It fails to state that the majority were among the small group of

erroneous entries—totaling only $2,116.45 or roughly one percent of the total fee request—that Canyon View identified and excised from its request below. (See AOB 38.)

- When Lakeview states that "Canyon View attempted to recover fees from Lakeview that it incurred in lawsuits involving JPMorgan Chase Bank, Kondaur Capital, Ocwen, and California Reconveyance Company" (RB 23, citing 1-AA-153, 154–155, 158–160, 175), it should have added that Canyon View removed those entries from its fee request (see 1-AA-902, ¶¶ 10–11).
- When Lakeview says that Canyon View "bill[ed] (on multiple occasions) to review and analyze affirmative defenses in the answer" (RB 24, citing 1-AA-179, 187, 198), it might also have mentioned that Canyon View removed two of these three entries from its request (1-AA-1062, ¶ 33), leaving, at most, a single, quarter-hour entry totaling $81.25. (See 1-AA-198.)
- When Lakeview says that Canyon View "continued [billing for discovery] even after the parties had agreed to a stipulated judgment" (RB 29–30, exclamation mark removed), it should have clarified that the parties had not, in fact, agreed to anything at all—they were *negotiating* a stipulated judgment. (Compare 1-AA-210, 212 [entries on March 14 and 22, 2017 challenged by Lakeview] with 1-AA-456 [stipulated judgment submitted to court on April 3, 2017]; see also RB 30 [acknowledging that parties were still negotiating

a "proposed [s]tipulation" on March 15, 2017]; 1-AA-211–213 [entries relating to continuing revision of draft stipulated judgment through the end of March 2017].) And the negotiation dragged on because Lakeview refused to agree that Canyon View could file a motion for MRL attorney fees (1-AA-1064–1065, ¶¶ 43–45)—the same motion that led to a successful appeal and this Court's partially published decision on that issue of first impression.

- Lakeview speculates about supposed overbilling on Canyon View's appeal. (RB 36–37.) Yet that's all this is: speculation. Again, the trial court never identified a single offending entry or other evidentiary basis to reduce the appeal-related billings by 75 percent. (See § II.B.2.d., *ante*.)

Ultimately, Lakeview has simply repeated every supposedly suspect entry it raised in its briefing below without regard to whether Canyon View excised or otherwise addressed those entries in response. But in the trial court, too, Lakeview was less than judicious in its challenges to Canyon View's fees. For instance, Lakeview argued in its opposition to the fee motion that Canyon View's counsel billed 243 hours to discovery. (1-AA-884–885.) After Canyon View pointed out this number had zero basis in the record (1-AA-903, ¶ 17), Lakeview dropped its estimate by nearly 100 hours to 149 hours (2-AA-1190). The actual number was 70.25. (See 1-AA-903, ¶ 17; 1-AA-1062, ¶ 32.)

Lakeview's argument in defense of the judgment essentially boils down to an unsubstantiated accusation that Canyon View's counsel defrauded its client and the trial court by "padding the billing with work that was unnecessary (or not even performed)." (RB 31.) The totality of Lakeview's "evidence" is a tiny fraction of the total fee request, almost all of which Canyon View acknowledged below and removed from its request.

b. There is no basis for Lakeview's claim that Canyon View needed to submit bills from the three other actions.

Lakeview repeatedly states that the trial court asked Canyon View to prove that it was not seeking fees from other cases—which, it seems to believe, required Canyon View to submit its bills from those other cases as well. (See RB 20, 35, 40 & fn. 3.) The trial court never requested that Canyon View submit its bills from other cases, and doing so would have been unorthodox if not improper. Even so, if this is what the trial court wanted, the court could have asked for it. It never did.

The trial court did ask for more information in its November 4 interim order: the "billable fees by partner, associate, and paralegal" and "a pro rata accountability for the appellate work handled by" NWF. (1-AA-1037–1038.) Canyon View provided all the information requested. (See 1-AA-1055–1130 [supplemental declaration and supporting exhibits, including breakdown of hours and fees in the formats requested by the trial court].) Since Canyon View had requested only its

Lakeview-related fees (see AOB § I.B.2.), the trial court's order required no further division of appellate fees.

Nor did Lakeview ever argue below that Canyon View's billing records—explicitly labeled "Lakeview" or "Shapiro Lot 213"—were actually bills for all four cases from *Canyon View I* or endorse quartering the fees on this basis. (See AOB 29.) Indeed, Lakeview *still* does not contend that Canyon View billed all four matters jointly, because Lakeview knows that is not the case. Instead, Lakeview argues that when the trial court said it was splitting Canyon View's fees "four ways" to account for BANA, Household, and Ocwen (2-AA-1201), it was really just performing a valid lodestar analysis.

This just isn't true, as the trial court's own words and the surrounding circumstances show.

4. Conclusion: There is no reasonable relationship between the supposedly offending entries and the trial court's 75 percent reductions.

Lakeview argues that the judgment is valid because the trial court didn't really do exactly what it said it was doing when it reduced fees by 75 percent to account for the BANA, Household, and Ocwen cases.

The argument fails. This Court commanded the trial court "to examine the specific work described, determine which work was unnecessary or unreasonable, and decline to award fees and costs for that specific work." (1-AA-72.) Because there is no rational relationship between the "specific work" challenged and

the 75 percent reduction, the judgment must be reversed. (See *ibid.*; *Gorman*, *supra*, 178 Cal.App.4th at p. 101; *Mountjoy*, *supra*, 245 Cal.App.4th at pp. 280–281.)

III. The Trial Court Abused Its Discretion By Failing To Award Any Fees For Mr. Hoffman's Work.

Lakeview defends the trial court's failure to award even a single cent for Mr. Hoffman's fees by saying that the majority of those fees were incurred in relation to the post-appeal fee litigation, and the court did award some fees for this litigation phase. (RB 41; see 1-AA-116–117, ¶¶ 12–13, 16 [25 hours at $375 per hour equals $9,375 billed by Mr. Hoffman relating to the fee motion].)[13] According to Lakeview, the trial court's award of $6,241.38 for nearly a year of fee motion-related litigation implicitly accounts for Mr. Hoffman's requested fees. (RB 41.)

That inference has zero support. The $6,241.38 amount was incurred by NWF. (See 1-AA-1075, ¶¶ 82–84 [accounting for NWF's fee-motion-related fees]; 1-AA-1109 [showing NWF fees for motion totaling $3,412.38 as of the time of filing and an additional $6,241.38 incurred thereafter]; 1-AA-1115–1130 [NWF's billing records for $6,241.38 in fees].) Those fees were included in *NWF's* total fee request. (1-AA-1075, ¶¶ 82–86.) As Mr. Norminton declared: "This does not include Mr. Hoffman's fees of $13,687.50 and costs of $294.60." (1-AA-1075, ¶ 86.)

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[13] Lakeview chastises Canyon View for referring to Mr. Hoffman as "appellate counsel." (RB 41.) But Mr. Hoffman is indeed a certified appellate specialist, and the trial court referred to him as appellate counsel as well. (E.g., 1-AA-1036.)

These amounts are not fungible: The work performed by Mr. Hoffman was entirely distinct from NWF's work. Awarding fees for NWF's work did not compensate Mr. Hoffman at all.

Lakeview cannot save the trial court from its error by arguing that "[a] trial court is not required to provide a detailed explanation—or any explanation at all—for its attorney fee award." (RB 42.) *Canyon View I* leaves no room at all for this argument: The trial court was required to identify specific work it found to be non-compensable and decline to award fees for that specific work. (1-AA-72.)

The trial court's approval of Mr. Hoffman's request in its November 2020 order but complete omission of his request from its final order appears to be a simple—yet significant—oversight. (See AOB § II.) The record belies any inference that the court made a deliberate decision to ignore Mr. Hoffman's fee request entirely as a means of accounting for supposed overbilling.

CONCLUSION

The trial court said outright that it was quartering Canyon View's fees to account for the other three *Canyon View I* defendants. Those reductions ran afoul of this Court's directive in *Canyon View I*, rendering the trial court's fee order void. Nothing in the record supports Lakeview's attempt to reverse-engineer an alternative basis for the trial court's decision.

This Court should reverse and instruct the trial court to enter a fee award consistent with this Court's earlier directive in *Canyon View I* and any further instructions this Court deems necessary.

Dated: June 23, 2022

Respectfully submitted,

GREINES, MARTIN, STEIN & RICHLAND LLP
Robin Meadow
Jeffrey Gurrola

By: */s/ Jeffrey Gurrola*

Attorneys for Appellant CANYON VIEW LIMITED

CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this Appellant's Opening Brief contains **5,271 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: June 23, 2022 */s/ Jeffrey Gurrola*

Jeffrey Gurrola

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, my email address is vworrell@gmsr.com.

On June 23, 2022, I served the foregoing document(s) described as: **APPELLANT'S REPLY BRIEF** on the interested party(ies) in this action, addressed as follows:

Melissa Robbins Coutts, SBN 246723
McCarthy & Holthus LLP
2763 Camino Del Rio S, Suite 100
San Diego, CA 92108-3708
Telephone: (619) 685-4800
Facsimile: (619) 685-4811
Email: mcoutts@mccarthyholthus.com

Attorneys for Defendant and Respondent, Lakeview Loan Servicing, LLC

California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797
[Electronic Service under Rules 8.44(b)(1); 8.78(g)(2)]

(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

Clerk - Hon. Stephen P. Pfahler
Department F49
Los Angeles Superior Court
9425 Penfield Avenue
Chatsworth, CA 91311

(X) Mail: By placing a true copy thereof enclosed in a sealed envelope addressed as above and placing the envelope for collection and mailing following our ordinary business practices.

I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Executed this day June 23, 2022 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Valerie Worrell
Valerie Worrell