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CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

PORTICO MANAGEMENT GROUP, LLC, Plaintiff and Appellant, v. ALAN J. HARRISON et al., Defendants and Respondents.	C062060 (Super. Ct. No. 03AS01691)

APPEAL from a judgment of the Superior Court of Sacramento County, Loren E. McMaster, Judge. Reversed.

Jeffrey H. Lowenthal, Carlos A. Alvarez, Steyer Lowenthal Boodrookas Alvarez & Smith, LLP, for Plaintiff and Appellant.

Daniel V. Kohls, Hansen, Kohls, Jones, Sommer & Jacob, LLP, for Defendant and Respondent, Alan J. Harrison.

Dennis M. Wilson, Wilson Law Firm, for Defendant and Respondent Wei-Jen Harrison and Harrison Family Enterprises II.

William P. Roscoe, III, Michele Ballard Miller, Joseph P. Mascovich, Miller Law Group, for Defendants and Respondents Kim Harrison and Lynn Harrison, as Beneficiaries and Interim Co-Trustees of the Harrison Children's Trust.

Plaintiff Portico Management Group, LLC (Portico) entered into a contract to purchase an apartment building owned by the

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* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts II-VI of the Discussion.

trustees of the Harrison Children's Trust (HCT) and Harrison Family Enterprise II (HFE II), a limited partnership. When the sale was not completed, Portico sued the sellers for specific performance and damages. The matter went to arbitration, resulting in an arbitration award of over $1.6 million in Portico's favor. Although in its lawsuit Portico properly named as defendants Alan Harrison and Wei-Jen Harrison as trustees of the HCT, and HFE II, the arbitration award was not against the trustees, but only against the HCT and HFE II.

In 2007, a judgment confirming the arbitration award against the trust and the limited partnership was entered; the trial court declined to accept a proposed judgment against the trustees.

Portico did not seek to correct or modify either the arbitration award or the judgment to indicate the arbitration award and judgment were properly against the trustees; nor did Portico appeal from the judgment against the trust. Instead, years of protracted litigation ensued. Portico sought to enforce the judgment by levying on funds generated by the apartment building and to add as judgment debtors the successor trustees of the HCT, and Wei-Jen Harrison as trustee of the Wei-Jen Harrison Revocable Trust (WHRT), to which HFE II had transferred its share of the apartment building. In response, the successor trustees of the HCT asserted a third party claim on the levied funds.

The trial court originally ruled in favor of Portico, but later changed its mind and accepted the argument that the HCT,

as a trust, was not an entity and did not hold title to any property; thus the judgment against it was unenforceable. The court also rejected the argument that Wei-Jen Harrison could be added to the judgment on an alter ego theory. The court awarded the successor trustees post-arbitration attorney fees as prevailing parties under the attorney fee provision of the purchase contract.

Portico appeals. It maintains, as it has throughout the litigation, that it is proper to enter judgment against a trust and such a judgment is enforceable against the assets of the trust. Portico contends that in granting various motions, the court, without jurisdiction, was permitting a collateral attack on the final 2007 judgment. It further contends the court's judgments and orders addressing adding judgment debtors and the validity of the third party claim must be reversed due to these errors. It argues the trial court erred in denying its motion to add Wei-Jen Harrison, as trustee of the WHRT, to the judgment on an alter ego theory. Finally, Portico claims the attorney fee award to the successor trustees must be reversed.

We find merit solely in Portico's contention of error regarding adding Wei-Jen Harrison to the judgment. In ruling on the motion, the trial court apparently misconstrued the motion and therefore erred. Accordingly, we shall remand for further proceedings on that motion. In all other respects, we shall affirm.

BACKGROUND

I

The Parties and the Purchase Contract

Alan Harrison and Wei-Jen Harrison were married in 1975; in 1987, they created the HCT for the benefit of their daughters, Kim and Lynn.[1] Alan and Wei-Jen were the general trustees of the HCT. The couple invested in several apartment complexes over the years, one of which was the 102-unit apartment complex in Carmichael known as the Continental. In 1999, Alan and Wei-Jen divorced; pursuant to a partial marital settlement agreement, the Continental was placed in the HCT. The HCT owned 87.5 percent of the Continental. The remaining 12.5 percent was owned by Wei-Jen's relatives. After the separation, Wei-Jen purchased their interest.

In 2001 or 2002, Wei-Jen organized the limited partnership HFE II, which held the 12.5 percent interest in the Continental. She planned to sell the Continental and manage the properties through HFE II. Wei-Jen, as "Trustee Asset Manager" of HCT and as general partner of HFE II, entered into a purchase agreement to sell the Continental to Portico. Alan refused to sign the deed and closing documents.

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[1] As all four members of the Harrison family referenced in this opinion share the same last name, we refer to these four members by their respective first names.

II

The Arbitration Award and Judgment

In 2003, Portico brought suit for specific performance, breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and negligent misrepresentation based on the failure to complete the sale of the Continental. The complaint named as defendants Alan and Wei-Jen, individually and as general trustees of the HCT, two special trustees of the HCT, HFE II, and Wei-Jen as general partner of HFE II. The complaint also sought to compel mediation and arbitration pursuant to paragraph 21 of the purchase agreement.

Portico's motion to compel arbitration was granted.

The arbitration hearing was held October 23 through October 27, 2006. In 2007, the arbitrator issued a final award. The arbitrator found for Portico on the breach of contract claim, as Alan's failure to sign the closing documents to permit the sale caused the sellers to breach the contract with Portico. The arbitrator found, however, that Portico had failed to carry its burden to show fraud and misrepresentation. Noting that the action was brought against Alan and Wei-Jen personally and as trustees and against Wei-Jen as general partner of HFE II, the arbitrator found "that the General Trustees are not personally liable for their acts as trustees of an irrevocable Trust. At all times, Plaintiff knew it was dealing with a trust and a partnership. Thus, the award in this case is against [HCT] and HFE II in proportion to their ownership interest in the

Continental (87.5% and 12.5%)." Portico had elected the remedy of damages rather than specific performance. The arbitrator awarded Portico damages, attorney fees, and costs totaling $1,621,435.80.

Portico petitioned to confirm the arbitration award. Portico proposed a judgment that was against HFE II and Alan and Wei-Jen as general trustees of the HCT. After Alan and Wei-Jen objected to this form of judgment, the trial court directed Portico to revise the proposed judgment. In August 2007, judgment was entered against the HCT and HFE II--without reference to trustees.

III

The Levy and Third Party Claim of Ownership

To enforce the judgment, Portico caused a writ of execution on the judgment to be issued. Pursuant to this writ, a notice of levy was served on FPI Management, Inc. (FPI). Portico sought to levy on all personal property of the HCT and HFE II, including rents from the Continental and all monies in the Continental Apartments Operating Account at Wells Fargo Bank.

FPI turned over $189,000 to the levying officer. This sum represented 87.5 percent of the monies in the Continental account that were dispersible under HUD requirements. FPI noted

the owner of 12.5 percent of the Continental was not named in the levy.[2]

Meanwhile, Kim and Lynn, Alan and Wei-Jen's adult daughters and beneficiaries of the HCT, had petitioned the court for appointment as cotrustees of the HCT. In March of 2007, after the arbitration but before the award issued, Kim and Lynn were approved and appointed interim successor cotrustees of the HCT.

Kim and Lynn filed a third party claim of ownership, pursuant to Code of Civil Procedure[3] section 720.110 et seq., on the property described in the notice of levy served on FPI and Wells Fargo Bank. They argued that no judgment had been entered against their predecessors, Alan and Wei-Jen as trustees of the HCT. Instead, the judgment was entered against the HCT, which was not an entity or person capable of owning title to property.

Portico applied for a temporary restraining order enjoining transfer of the levied funds and an order setting a hearing to determine the validity of the third party claim. The court issued a temporary restraining order, which did permit FPI to make mortgage payments, and pay taxes and other ordinary operating expenses.

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[2] As set forth *post* in Part IV, HFE II transferred its 12.5 interest in the Continental to Wei-Jen (as trustee of the WHRT) by grant deed in 2004.

[3] Further undesignated statutory references are to the Code of Civil Procedure.

IV

Motions to Add Judgment Debtors

Portico moved to add Kim and Lynn, as successor trustees, as judgment debtors. Portico argued Kim and Lynn's claim that a judgment cannot be entered against a trust failed under well-settled law. Nonetheless, if the court concluded Portico could not enforce the judgment against the successor trustees without adding them as judgment debtors, Portico asserted the court had power under section 187 to do so. Portico also sought to add Wei-Jen, as trustee of the WHRT, and the WHRT itself as judgment debtors. Portico asserted that despite the lis pendens it had filed on the Continental in 2003, Wei-Jen purported to transfer HFE II's 12.5 percent interest in the Continental to Wei-Jen as trustee of the WHRT. As a result of this purported transfer, FPI refused to deposit with the sheriff 12.5 percent of the funds it held, on the grounds that such funds did not belong to HFE II. Portico argued the purported transfer was "an obvious effort to frustrate Portico's efforts to enforce any resulting judgment against HFE II."

In opposition, Wei-Jen argued Portico knew in 2004 that title to the Continental had been transferred. In 2004, Portico took Wei-Jen's deposition and from the questions it was apparent that Portico knew about the transfer. Nonetheless, despite this knowledge, Portico did not amend its complaint to allege the property had been transferred and to add alter ego allegations. Nor did Portico make any effort to modify or correct the

arbitration award. Instead, Portico waited over three years to "amend the judgment."

Portico withdrew its motion to add Wei-Jen as a judgment debtor, but brought the motion again later.[4] In the second motion, Portico argued Wei-Jen and the WHRT were alter egos of HFE II. It relied on her deposition in a debtor's examination in which she conceded she, HFE II, and the WHRT were all the same entity. Portico argued there was no consideration for HFE II's transfer of its 12.5 percent interest in the Continental.

In response, Wei-Jen declared there was consideration for the transfer, as she had assumed a $100,000 note, gave up her interest in HFE II, and assumed responsibility for a claim by the listing brokers over the failed sale.

V

Initial Rulings, Final Rulings, and Judgment

On December 5, 2007, the trial court tentatively granted Portico's motion to add Kim and Lynn, successor trustees of the HCT, as judgment debtors. On December 28, the court ruled on the petition for an order determining the validity of the third party claim, treating it as a motion to amend the judgment. Finding that it was clear the arbitrator intended to order judgment against Alan and Wei-Jen in their capacity as *trustees* of the HCT, but not in their *individual* capacities, the court

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[4] Portico claimed it took the first motion off calendar as a courtesy to Wei-Jen's counsel, who had filed papers late over Thanksgiving weekend.

ordered the judgment amended to reflect that it was against Alan and Wei-Jen as trustees of the HCT. Since Kim and Lynn were now successor trustees of the HCT, a second amended judgment would be entered against them. The court found that Portico was entitled to enforce its judgment against the trust property.

In early January 2008, Alan made an ex parte application to stay entry of the amended judgment. He argued his due process rights were violated as there was no notice that an amendment of the judgment was being considered.

The court denied the motion to stay without prejudice, but indicated that it would not sign the amended judgment until all motions to vacate or reconsider were filed, stating that all disputes were still pending.

Alan, Wei-Jen, Kim and Lynn filed various motions to vacate, for reconsideration, and for a new trial.

On February 11, 2008, the trial court issued several tentative rulings. Again, the court ruled in favor of Portico. These rulings denied Kim and Lynn's motion for a new trial or reconsideration, Alan's motion to vacate, and Wei-Jen's motion for a new trial or reconsideration. The last tentative ruling granted Portico's request to add Wei-Jen as a judgment debtor; the court found Wei-Jen and the WHRT were alter egos of HFE II.

In the final rulings in March, however, the court changed its mind. Alan's motion to vacate was granted. The court found the arbitrator made a mistake in naming the HCT as the judgment debtor, but the arbitrator's decision was not subject to judicial review. The court vacated its orders that amended the

judgment and indicated a second amended judgment could be entered against Kim and Lynn.

Similarly, the court granted Wei-Jen's motion for a new trial or reconsideration and Kim and Lynn's motion for the same. The court found it had no authority to correct the arbitrator's error.

The court denied Portico's motion to add Wei-Jen as a judgment debtor. The court found Wei-Jen could not be added as an alter ego of the HCT.[5]

Portico's motion for clarification, correction and/or reconsideration was denied. The court found Portico failed to offer new facts, circumstances or law, and so had failed to comply with the requirements of section 1008 for a motion for reconsideration.

On April 7, 2009, the court issued two judgments. The first granted the third party claim of Kim and Lynn as to the $189,000, finding the claim was valid. The temporary restraining order was vacated and dissolved. This judgment was later amended nunc pro tunc to correct a clerical error. The second judgment denied the motion to add judgment debtors.

The court denied Portico's motion for a new trial.

Portico appealed from the two April 7 judgments.

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[5] Portico's theory, however, was that Wei-Jen and the WHRT were alter egos of the limited partnership HFE II, *not* of the HCT. See Discussion, Part V, *post*.

VI

Attorney Fee Award

Kim and Lynn moved for attorney fees under the attorney fee provision in the purchase contract. They asserted they were prevailing parties and sought $74,125 in fees and $1,529.40 in costs.

The court granted the motion.

Portico appealed from the order awarding attorney fees, as well as from the amended judgment correcting a clerical error in one of the April 7 judgments.

DISCUSSION

I

The Arbitration Award and Judgment Against the HCT

The key dispute in this case is the effect of the judgment having been entered against the HCT, rather than against its trustees. Portico contends that under well-established law it is proper to enter judgment against a trust and since the trial court believed otherwise, its judgments and orders must be reversed. The Harrisons counter that a judgment against a trust is unenforceable because a trust is not an entity; it cannot sue or be sued, or hold title to property. The Harrisons are correct on this point. The HCT was not a proper judgment debtor.

In contrast to a corporation, which the law often deems a person, a trust is not a person but rather "'a fiduciary relationship with respect to property.' [Citations.]" (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548.) "Legal title to

property owned by a trust is held by the trustee . . . . A trust . . . 'is simply a collection of assets and liabilities.'" (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1343-1344.) "[A]n ordinary express trust is not an entity separate from its trustees." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.)

A trust itself cannot sue or be sued. (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914.) "As a general rule, the trustee is the real party in interest with standing to sue and defend on the trust's behalf. [Citations.]" (*Estate of Bowles* (2008) 169 Cal.App.4th 684, 691.) "A claim based on a contract entered into by a trustee in the trustee's representative capacity, . . . may be asserted against the trust *by proceeding against the trustee in the trustee's representative capacity* . . ." (Prob. Code, § 18004, italics added.)

A trust does not fall within the statutory definition of a judgment debtor. A judgment debtor is "the person against whom a judgment is rendered." (§ 680.250.) A trust is not included within the definition of person. (§ 680.280.)

Since the HCT is not a separate entity, does not itself hold title to any property, and is not a judgment debtor, a judgment against the HCT is meaningless and cannot be enforced. To be enforceable against the trust property, the judgment should have been entered against those who held title to such property--the trustees.

In arguing that it is proper to enter judgment against a trust, rather than against its trustees, Portico relies on language in cases that suggest judgment was entered against a

trust itself. In none of these cases, however, was the *issue* whether judgment could be entered against the trust, or the effect of such a judgment. The statements, therefore, are dicta, and imprecise dicta at that. For example, in *Jans v. Nelson* (2000) 83 Cal.App.4th 848, at page 853, cited by Portico for the proposition that judgment may be entered for a trust, in setting forth the procedural history of the case, the court stated: "We directed entry of judgment against the trust and in favor of the bank in the full amount of the debt . . ." We need look no further for context than to the remainder of that same sentence--"we noted that the trustee was entitled to seek contribution against other coguarantors." (*Jans v. Nelson, supra,* 83 Cal.App.4th at p. 853.) It is clear that judgment was entered against the *trustee*.[6]

Portico also quotes from *Haskett v. Villas at Desert Falls* (2001) 90 Cal.App.4th 864, 880: "The statute's words plainly state that the enumerated types of claims 'may be asserted against the trust . . .'" Portico, however, again omits the remainder of the sentence, which reads: "by proceeding against the trustee *in the trustee's representative capacity, whether or*

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[6] To make this point clear, Alan requests this court take judicial notice of the unpublished prior decision that specifies judgment was against the trustee. Since we find it unnecessary to resort to this unpublished opinion for our analysis, we deny the request for judicial notice. (See *Ellison v. Sequoia Health Services* (2010) 183 Cal.App.4th 1486, 1500, fn. 2.) As we have noted, merely reading the remainder of the quoted sentence is sufficient to illuminate Portico's attempts to obfuscate the holding.

not the trustee is personally liable on the claim." (*Ibid.*, italics in original.)

These cases show merely that many courts use a shorthand, albeit technically incorrect, description for a judgment against trustees in their representative capacity, referring simply to a judgment against a "trust." We noted this practice of referring to the trust as a party rather than referring to the trustee in *Roberts v. Lomanto* (2003) 112 Cal.App.4th 1553, 1556, footnote 1: "In the trial court, and on appeal, Lomanto labels the parties 'the Cable Trust' and 'the Lomanto Trust.' As Roberts points out, however, a trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property. [Citation.] We therefore refer to Roberts and Lomanto, the persons who took the actions that led to this litigation, as the parties." Selective quotation of imprecise language does not provide *authority* that a judgment entered against a trust, a nonentity that cannot hold title to property, is enforceable against trust assets. It is not.

Portico further contends *Jensen v. Hugh Evans & Co.* (1941) 18 Cal.2d 290 is on point. In *Jensen*, "judgment was entered against the two trusts . . ." (*Id.* at p. 295.) Even if judgment were entered against the trusts rather than the trustees, *Jensen* is distinguishable because it involved a different type of trust, an unincorporated business or Massachusetts trust. (*Id.* at p. 292.) "In business trusts the object is not to hold and conserve particular property, with

incidental powers, as in the traditional type of trusts, but to provide a medium for the conduct of business and sharing of its gains." (15A Cal.Jur.3d (2011) Corporations, § 566.) Unlike traditional trusts, a business trust may be treated as a separate entity. For example, business trusts are treated as corporations for tax purposes. (*Ibid.*; Rev. & Tax. Code, § 23038, subd. (b)(1).) They are treated as a person and may be judgment debtors under the bankruptcy code. (*In re Sung Soo Rim Irrevocable Intervivos Trust* (1995) 177 B.R. 673, 675.) Because business trusts are not traditional trusts, general trust law, applicable here, does not apply to them.

Finally, Portico relies on the Law Revision Commission Comment to Probate Code section 18005. Probate Code section 18005 provides: "The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under Section 17200." The Law Revision Commission Comment reads in part: "It is permissible, and may be preferable, for judgment to be entered against the trust without determining the trustee's ultimate liability until later." While "[e]xplanatory comments by a law revision commission are persuasive evidence of the intent of the Legislature" (*Brian W. v. Superior Court* (1978) 20 Cal.3d 618, 623), such comments, like all statutory interpretation, must be read in the context of the statutory framework as a whole. (See *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 183.) The immediately preceding statute, Probate Code section 18004, makes clear that a claim against a trust "may be asserted

against the trust by proceeding against the trustee in the trustee's representative capacity . . ." Nothing in the Law Revision Commission comment changes the rule that a trust is not an entity and any action by or against the trust must proceed through the trustees. A judgment against trust assets must be asserted the same way, against the trustees in their representative capacity, as it is the trustees who hold title to the property held in trust.

Portico contends the arbitrator was free to ignore the technicalities of trust law and enter an award against the trust. An arbitrator has broad discretion to fashion any appropriate remedy as long as that remedy has a rational relationship to the contract. (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 381.) But the arbitrator's powers in fashioning a remedy are not at issue. The *legal effect* of a judgment entered against a trust, a nonentity, is at issue. A judgment against a trust, rather than against its trustees, is not enforceable. The arbitrator did not have the power to change the law.

The failure to bring suit properly against the trustees to obtain specific performance for the sale of property held in trust was not fatal in *Galdjie v. Darwish, supra,* 113 Cal.App.4th 1331. There, the named defendants were the Darwishes as individuals; the Darwishes were not named in their capacity as trustees of their revocable living trust. The property at issue was held in the trust. The court ruled in favor of plaintiff and ordered the Darwishes to specifically

perform the contract and sell the property to plaintiff. (*Galdjie v. Darwish*, *supra*, 113 Cal.App.4th at p. 1336.) On appeal, the Darwishes argued the judgment could not bind the trust because the trust was not named in the complaint, nor was it specified that the Darwishes were sued in their capacity as trustees of the trust. (*Id.* at p. 1342.)

After a thorough review of the common law and statutory law, the court concluded: "From the above authorities it is clear that the proper procedure for one who wishes to ensure that trust property will be available to satisfy a judgment, whether for damages for breach of contract or for specific performance, should sue the trustee in his or her representative capacity. We do not believe, however, that this results in an ineffectual judgment due to the specific facts of the case before us. The judgment did not give respondent the right to attach property owned by appellants as individuals; it entitled him to receive a piece of real property owned by the Trust by obtaining appellants' signatures on a deed. Courts have held that where a trustee signs a contract of sale or deed without reference to his or her representative capacity, the contract or deed is enforceable against the trust. [Citations.]" (*Galdjie v. Darwish*, *supra*, 113 Cal.App.4th at p. 1349.)

The court noted that "a revocable inter vivos trust is a probate avoidance device, but does not prevent creditors of the settlors--who are often also the trustees and the sole beneficiaries during their lifetimes--from reaching trust property." (*Ibid.*) "The evidence before us establishes that

the Trust is a revocable inter vivos trust, that appellants are the sole trustees and, that as beneficiaries, they have the power during their lifetimes to direct the sale of the real property owned by the trust. In view of the above authorities, their signatures as individuals on the title deed as required by the judgment entered herein is sufficient to convey good title from the Trust." (*Id.* at p. 1350.)

Galdjie does not aid Portico. First, unlike the revocable intervivos trust at issue in *Galdjie,* the HCT is an irrevocable trust in favor of the trustors' children, so the trust property was not the property of the trustors or, at the time of the breach of contract, the trustees. More importantly, the judgment in *Galdjie* was a proper judgment; it was against the Darwishes, persons who qualified as judgment debtors, albeit wrongly named as individuals rather than trustees. Here, in contrast, the judgment was against the HCT, a nonentity that was not a party to the lawsuit or arbitration and could not be a judgment debtor.

Faced with an arbitration award against the HCT containing such an obvious error, Portico had several possible remedies. Portico could have applied to the arbitrator to correct the award within 10 days of service of a signed copy of the award.[7]

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[7] Portico observes that even if the arbitrator made an error in failing to name Alan and Wei-Jen as trustees, the two had been replaced by Kim and Lynn by the time the arbitration award was made. Portico argues it could not reopen the arbitration to prove a case against the successor trustees, particularly since the arbitrator had already denied Alan and Wei-Jen's request to

(§ 1284.) Portico had 100 days to petition the court to correct the award.[8] (§§ 1286.6, 1288.) In 2009, at the final hearing, the trial court lamented it did not have authority to send the matter back to the arbitrator. Had Portico timely taken appropriate steps, remand to the arbitrator would have been an appropriate remedy. (See *Mossman v. City of Oakdale* (2009) 170 Cal.App.4th 83, 91-92 [where arbitration award unenforceable due to ambiguity, remand to arbitrator for clarification].) Further, Portico could have appealed from the 2007 judgment after the trial court rejected the proposed judgment naming the trustees.

This case again teaches the cautionary lesson noted in *Roehl v. Ritchie* (2007) 147 Cal.App.4th 338. "If anything is confirmed by the instant appeal, it is the significance of the process of confirming an arbitration award. The time to make sure that the i's are dotted, t's are crossed, and that the award decides all necessary issues in a single, final and self-contained award is *before* the award is confirmed, not *after*. That is the best way to ensure that an arbitrator's decision is

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reopen. Portico's arguments about the futility of requesting a correction by the arbitrator are speculative, since it never made such a request. In any event, an award against Alan and Wei-Jen as trustees would have been binding on Kim and Lynn as successor trustees. (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1131.)

[8] One ground for correcting an arbitration award is "an evident mistake in the description of any person." (§ 1286.6, subd. (a).) We express no opinion as to whether this ground is applicable to this case.

truly 'the end, not the beginning, of the dispute.' [Citation.]'" (*Roehl v. Ritchie, supra*, 147 Cal.App.4th at p. 341.)

"Is there a cautionary lesson? Perhaps it is this: Formalities matter, particularly when dealing with the informality of arbitration. The process of judicially confirming an arbitration award is the time when it is necessary to 'dress up' what otherwise can be a casual occasion. Be sure the arbitration award properly covers the submitted issues [and the proper parties] before wrapping it in the judicial cloak of confirmation." (*Roehl v. Ritchie, supra*, 147 Cal.App.4th at p. 355.)

Having accepted and confirmed the arbitration award against the HCT, without any attempt to have either the arbitrator or the court correct it to name the trustees as the proper parties,[9] Portico is bound by the terms of the arbitration award. "[A]n arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 6 (*Moncharsh*).) "In reaffirming this general rule, we recognize there is a risk

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[9] Although Portico initially submitted a judgment that differed from the arbitrator's award in that it included the trustees, merely submitting a judgment that reflects one party's idea of what the judgment *should* look like does not constitute moving for correction. But most importantly, Portico did not appeal the judgment that the trial court *actually* entered after rejecting Portico's first submitted version.

that the arbitrator will make a mistake. That risk, however, is acceptable for two reasons. First, by voluntarily submitting to arbitration, the parties have agreed to bear that risk in return for a quick, inexpensive, and conclusive resolution to their dispute." (*Id.* at p. 11.) "A second reason why we tolerate the risk of an erroneous decision is because the Legislature has reduced the risk to the parties of such a decision by providing for judicial review in circumstances involving serious problems with the award itself, or with the fairness of the arbitration process." (*Moncharsh, supra*, 3 Cal.4th at p. 12.) The court noted the procedure for correcting an award under section 1286.6 (*Moncharsh, supra*, at p. 13), a procedure Portico did not attempt.

Having determined that a judgment against the trust itself is ineffective to reach assets held in trust because the judgment must be against the trustees, we turn to Portico's other arguments, which we discuss *post* in the unpublished portion of our opinion.

II

Collateral Attacks on 2007 Judgment and Related Arguments

In late 2007, the trial court ruled it would amend the 2007 judgment to add the trustees of HCT as judgment debtors. In response, the Harrisons filed various motions in 2008 to vacate and for reconsideration, which were eventually granted. Portico characterizes these 2008 motions as collateral attacks on the 2007 judgment. Portico contends that since the 2007 judgment

was final, the trial court lacked jurisdiction to grant the 2008 motions, which it characterizes as collateral attacks.

The 2008 motions were intended to keep the 2007 judgment as it was--against the HCT and not the trustees. Portico does not explain how these motions were a collateral attack on the 2007 judgment. Presumably, Portico relies on its assertion that a judgment against a trust is sufficient to reach assets held in trust. As discussed *ante*, we have rejected that argument. Accordingly, we reject Portico's collateral attack argument as well.

In a similar vein, Portico contends that even if the arbitrator made an error in concluding that trust law permitted a judgment against the trust, the trial court lacked jurisdiction under *Moncharsh, supra,* 3 Cal.4th 1, to entertain Alan's argument about that error. We disagree. Alan was not seeking to have the court review the arbitration award and change the judgment; Portico was. Alan's argument went only to the *effect* of the judgment confirming the arbitration award. He argued that since the judgment was against the trust, not the trustees, it was not enforceable against trust assets. Alan did not seek review of the arbitration award with the intent of changing of the award; he sought only to keep the award as the arbitrator made it. In accepting Alan's argument, the trial court did not go against *Moncharsh.*

Portico contends the various 2008 motions were procedurally improper. It argues they were untimely because they were months after the 2007 judgment and they failed to offer new facts

orlaw, as required under section 1008. These motions, however, did not address the 2007 judgment. Instead, they addressed the December 2007 ruling to *amend* the judgment, secured by Portico. Further, they were in response to the court's ruling in January 2008. In that ruling, the court denied Alan's motion to stay the amended judgment, but indicated the court would not sign the amended judgment until all motions to vacate or reconsider were filed. The court set a briefing schedule for "any objection to the judgment" and indicated it would reconsider its ruling. "The Court deems all disputes in this matter to be pending until further order of the Court." A trial court has authority to reconsider a prior ruling. To do so, it should inform the parties, solicit briefing, and hold a hearing. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108-1109.) That is what happened in this case. There was no procedural impropriety, and no error.

III

Motion to Grant Third Party Claim

Portico contends the trial court erred in granting Kim and Lynn's third party claim on the levied funds. Portico contends Kim and Lynn, as successor trustees, are not third parties.

Section 720.100 permits "[a] third person claiming ownership or the right to possession of property" to make a third-party claim on levied property "if the interest claimed is superior to the creditor's lien on the property."

Portico's creditor's lien on the levied property was based on its judgment against the HCT. As a "general rule a judgment

or levy reaches only the interest of the debtor in the property because a judgment creditor can acquire no greater right in the property levied upon than that of its judgment debtor. [Citations.]" (*Regency Outdoor Advertising, Inc. v. Carolina Lanes, Inc.* (1995) 31 Cal.App.4th 1323, 1329.) Since the HCT did not own the levied property--the trustees did--and the HCT was not a judgment debtor, the judgment did not give Portico a valid claim to the levied property. Kim and Lynn, as successor trustees, owned the property and had an interest superior to that of Portico. The trial court did not err in granting their third party claim.

IV

Motion to Add Successor Trustees as Judgment Debtors

While Portico contends the 2007 judgment is enforceable as is, and binding on the successor trustees, it also argues the trial court erred in denying its motion to add Kim and Lynn, in their capacity as successor trustees, as judgment debtors. Portico contends the trial court had authority to add the successor trustees as additional judgment debtors under section 187 and such addition was appropriate because they acquired an interest in the lawsuit when they were named successor trustees of the HCT.

"Section 187 of the Code of Civil Procedure grants to every court the power to use all means to carry its jurisdiction into

effect, even if those means are not set out in the code.[10] [Citation.] Under section 187, the court has the authority to amend a judgment to add additional judgment debtors. [Citation.]" (*NEC Electronics, Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.) "Judgments are often amended to add additional judgment debtors on the grounds that a person or entity is the alter ego of the original judgment debtor. [Citations.] This is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. [Citations.]" (*Ibid.*)

Here, Portico did not rely on the alter ego doctrine to add the successor trustees. Instead, it sought to add them simply as successors to the original trustees, Alan and Wei-Jen. If the 2007 judgment had named Alan and Wei-Jen as trustees as judgment debtors, no motion to add Kim and Lynn would be necessary; the successor trustees would be bound by a judgment against their predecessors. "The powers of a trustee are not personal to any particular trustee but, rather, are inherent in the office of trustee. It has been the law in California for

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[10] Section 187 states: "When jurisdiction is, by the constitution or this code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code."

over a century that a new trustee 'succeed[s] to all the rights, duties, and responsibilities of his predecessors.' [Citations.]" (*Moeller v. Superior Court, supra,* 16 Cal.4th 1124, 1131.)

Further, as discussed *ante*, Portico's attempt to amend the judgment to name the trustees as judgment debtors had previously been rebuffed. In seeking to confirm the arbitration award, Portico submitted a proposed judgment against "Wei-Jen Harrison and Alan Harrison, as General Trustees of the Harrison's Children Trust, and Harrison Family Enterprise II . . ." The court, by Judge Loncke, rejected this proposed judgment; instead, judgment was entered against HFE II and the HCT. Portico sought to have Judge McMaster overrule Judge Loncke on this point.

"It is often said as a general rule one trial judge cannot reconsider and overrule an order of another trial judge. There are important public policy reasons behind this rule. 'For one superior court judge, no matter how well intended, even if correct as a matter of law, to nullify a duly made, erroneous ruling of another superior court judge places the second judge in the role of a one-judge appellate court.' The rule also discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a case ongoing before another judge and prevents a second judge from ignoring or arbitrarily rejecting the order of a previous judge which can result in a violation of due process." (*People v. Riva* (2003) 112 Cal.App.4th 981, 991, fns. omitted.)

The trial court did not err in denying Portico's motion to add Kim and Lynn as judgment debtors.[11]

V

Motion to Add Wei-Jen as Judgment Debtor

Portico contends the trial court erred in denying its motion to add Wei-Jen and the Wei-Jen Harrison Revocable Trust as judgment debtors on the theory that they were alter egos of HFE II.[12] Portico relies on Wei-Jen's testimony in her deposition that she used HFE II as her checking account, the transfer of the 12.5 interest in the apartment complex was "from me to me," and there was no consideration for transfer of the 12.5 percent interest in the Continental from HFE II to Wei-Jen, as trustee of the WHRT.

"The alter ego doctrine is premised on the theory that the person in charge of a single enterprise consisting of several alter ego entities is typically concerned with the total amount of his assets held by all entities, not with the specific amount

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[11] We do not foreclose the possibility that, in an appropriate case, the trial court could properly exercise its authority under section 187 to deem a judgment against a trust to be a judgment against trustees who were named in the lawsuit and participated in the trial. For reasons we have discussed at length *ante*, this was not an appropriate case for the trial court to do so, thus its refusal to do so was not error.

[12] Since we have concluded a trust is not a proper judgment debtor, we consider this contention only as to adding Wei-Jen as a judgment debtor in her capacity as *trustee* of the WHRT. "'Because a trust is not an entity, it's impossible for a trust to be anybody's alter ego.'" (*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 521 (*Greenspan*).)

held by any particular one." (*Greenspan, supra,* 191 Cal.App.4th 486, 510.) Portico provided evidence that Wei-Jen treated HFE II, the WHRT, and herself as one entity.

Wei-Jen does not dispute her testimony on which Portico relies; instead, she contends substantial evidence supports the trial court's ruling. She contends denial of the motion to add her as a judgment debtor, on the theory that she was the alter ego of HFE II, was proper because: (1) Portico knew of the transfer of an interest in the Continental from HFE II to Wei-Jen since July 2004 and delayed too long to assert claims arising from the transfer; (2) the arbitrator found Wei-Jen not liable for the breach of contract; (3) Wei-Jen was not an alter ego of HFE II because she gave consideration for the transfer of the 12.5 percent interest in the Continental; and (4) res judicata precludes adding Wei-Jen as a judgment debtor.

"Under section 187, the trial court is authorized to amend a judgment to add additional judgment debtors. [Citations.] As a general rule, 'a court may amend its judgment at any time so that the judgment will properly designate the real defendants.' [Citation.] Judgments may be amended to add additional judgment debtors on the ground that a person or entity is the alter ego of the original judgment debtor. [Citations.]" (*Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conf. Center Bd.* (1996) 41 Cal.App.4th 1551, 1554-1555.) "Amendment of a judgment to add an alter ego 'is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant.

[Citations.] "Such a procedure is an appropriate and complete method by which to bind new . . . defendants where it can be demonstrated that in their capacity as alter ego of the corporation they in fact had control of the previous litigation, and thus were virtually represented in the lawsuit." [Citation.]'" (*Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 21-22.)

"[I]t is something of a misnomer" to say section 187 provides a mechanism to bind *new* defendants to the judgment; more accurately, it "'"properly designate[s] the *real* defendants."' [Citations.] Simply put, section 187 recognizes 'the inherent authority of a court to make its records speak the truth.' [Citation.]" (*Greenspan, supra,* 191 Cal.App.4th at p. 509, original italics.)

The remedy provided under section 187 to add judgment debtors was available to Portico. The remedy applies to a judgment confirming an arbitration award. (*Greenspan, supra*, 191 Cal.App.4th at pp. 508-509.) Further, the alter ego doctrine may be used to reach trust assets. While the doctrine does not apply to a trust, it may apply to a trustee. (*Id.* at p. 518.) In *Greenspan*, the appellate court found the trial court erred in concluding that the alter ego doctrine could not be used to reach the assets of a trust; plaintiff properly sought to add the trustee under section 187 as the alter ego of the judgment debtor. (*Id.* at p. 522.)

Wei-Jen contends the equitable remedy of section 187 was not available to Portico because Portico unreasonably delayed in

seeking to add Wei-Jen as trustee of the WHRT. Wei-Jen relies on *Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39. In that case, a judgment was entered in February 1971 and a motion to add judgment debtors was made in December 1977. (*Alexander v. Abbey of the Chimes, supra*, 104 Cal.App.3d at p. 43.) The appellate court found the trial court abused its discretion in granting the belated motion to add a judgment debtor as an alter ego absent a reasonable explanation for the nearly seven-year delay. (*Id.* at pp. 48-49.) Wei-Jen contends here Portico gave no reason for waiting two years to assert a claim based on the transfer of the interest in the Continental.

The relevant timeline is as follows: The complaint was filed in March 2003 and the motion to compel arbitration was granted that August. The transfer from HFE II to Wei-Jen as trustee occurred in February 2004. Wei-Jen gave Portico a copy of the deed evidencing the transfer during discovery in July 2004. The arbitration took place in October 2006 and the award was issued in May 2007. The judgment confirming the award was entered in September 2007. Portico first moved under section 187 to add Wei-Jen, as trustee of the WHRT, as a judgment debtor in November 2007.

As this timeline shows, *Alexander* is distinguishable as there the plaintiff waited *seven years after judgment* to add the alter ego. Here, the motion was first made a few months after judgment. Portico had no obligation to litigate Wei-Jen's alter ego status in the arbitration because it was unrelated to the liability determinations made in arbitration. (*Greenspan*,

supra, 191 Cal.App.4th at p. 516.) "The remedy provided by section 187 is simply a means of satisfying a judgment . . ." (*Ibid*.) Nothing indicates that Portico was aware of Wei-Jen's alter ego status before Portico filed suit. (See *Greenspan, supra*, 191 Cal.App.4th at p. 517 [if, before filing suit, plaintiff reasonably believes an alter ego relationship exists, complaint should include alter ego allegations and name alter egos as defendants].)

Wei-Jen complains that Portico knew of the transfer in 2004, two years before the arbitration took place. She argues Portico had ample notice and time to amend its complaint to add the WHRT as a defendant. Wei-Jen ignores the effect of section 368.5.[13] Under that statute, an amendment to the complaint was not required; Portico had the option to amend its complaint to add the new owner of the Continental or continue the action against the original owners of the Continental. Portico's complaint sought specific performance or damages due to the failed sale of the Continental, so the Continental was the subject matter of the action.[14] "When a party transfers an

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[13] Section 368.5 provides: "An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

[14] Portico did not elect to seek damages rather than specific performance until January 2007, after the arbitrator issued her interim award.

interest in the subject matter of a pending action, the proceeding may be continued in the name of the original party. [Citations.]" (*Luster v. Collins* (1993) 15 Cal.App.4th 1338, 1345, citing predecessor statute to section 368.5.)

Wei-Jen next argues that she could not be added as a judgment debtor because the arbitrator had found her not liable for breach of contract. This assertion is not entirely correct. It is true that the arbitrator found Wei-Jen and Alan "not personally liable for their acts as trustees of an irrevocable Trust." The arbitration award did not specifically speak to Wei-Jen's liability as general partner of HFE II. The award, however, was against HFE II in proportion to its interest (12.5 percent) in the Continental. Wei-Jen was general partner of HFE II and a general partner is liable for the debts of a limited partnership. (*Evans v. Galardi* (1976) 16 Cal.3d 300, 305.) Thus, the arbitration award made Wei-Jen personally liable as the general partner of HFE II.

Wei-Jen contends she could not be added as an alter ego because substantial evidence showed that she paid consideration for the transfer. In response to Portico's second motion to add her as a judgment debtor, Wei-Jen submitted a declaration in which she declared that she assumed a $100,000 note, gave up her interest in HFE II, and assumed responsibility for a claim against the partnership. Although Wei-Jen contends this evidence is uncontradicted, it *was* disputed. Portico provided portions of Wei-Jen's deposition in which she admitted there was no monetary consideration for the transfer; she replied "I don't

know" or "I do not know" when asked if there was nonmonetary consideration. The grant deed recited: "Conveyance not the result of a sale."

"If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence. [Citation.]" (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143.) If the record indicated that the trial court found Wei-Jen's evidence more credible than that offered by Portico, we would of course accept the trial court's resolution of the disputed factual issue. In this case, however, the record does not support a conclusion that the trial court resolved the credibility contest in favor of Wei-Jen.

In its tentative ruling, the court rejected Wei-Jen's assertion that she provided consideration for the transfer. It found her declaration contradicted her previous sworn testimony, was unsupported by any documentary evidence, and was contrary to the "no sale" recital in the deed. In its final ruling, the court reversed itself on the issue of adding Wei-Jen as a judgment debtor. It did not, however, reverse its earlier finding as to credibility. Instead, the court ruled: "Plaintiff Portico's assertion that it may add Wei-Jen, in her capacity as alter ego of the Trust, as additional judgment debtor to the Judgment is incorrect. As the Trust is not a legal entity the Court finds that Wei-Jen cannot have been its alter ego. Wei Jen was a party before the arbitrator, who

specifically found her not liable. The court may not add her now."

We do not read this ruling to support an implied finding that Wei-Jen provided consideration for the transfer and therefore the alter ego doctrine does not apply. The first part of the ruling misstates Portico's contention. Portico contended Wei-Jen as trustee was the alter ego of the *limited partnership* HFE II, not the alter ego of the HCT. In finding she was not the alter ego of *the HCT*, the court answered the wrong question, a question that had not been asked. The second portion of the ruling, that the arbitrator found Wei-Jen not liable, was not completely accurate, as discussed *ante*. She was liable under the arbitration award as the general partner of HFE II.

In answering the wrong question--whether Wei-Jen as trustee was an alter ego of the HCT--the trial court left unresolved the actual issue--whether Wei-Jen as trustee was an alter ego of HFE II. We cannot affirm the court's ruling on the basis that Wei-Jen was not an alter ego of HFE II. "Where the record reflects that the trier of fact has not considered a theory under which the evidence is conflicting, the reviewing court cannot rely on that theory to sustain the action of the lower court. [Citations.]" (*Zak v. State Farm Mut. Liability Ins. Co.* (1965) 232 Cal.App.2d 500, 506.)

Thus the trial court's denial of Portico's motion to add Wei-Jen as additional judgment debtor under section 187 cannot be upheld on the basis that the trial court found Wei-Jen was

not an alter ego because she provided consideration for the transfer.

Wei-Jen contends adding her as a judgment debtor was barred by res judicata. She argues that because Portico's complaint sought specific performance, who owned the Continental was at issue in the arbitration. The arbitrator found HFE II owned 12.5 percent of the Continental because its interim award (before Portico elected damages as a remedy), awarded specific performance against HFE II. Wei-Jen contends this finding is binding and Portico cannot claim someone else owned the property at the time of the arbitration award. Again, Wei-Jen ignores the effect of section 368.5, which permits an action to proceed against the original owner after a transfer.

Wei-Jen contends the trial court rejected Portico's first attempt to add her to the judgment and therefore Portico is precluded from again attempting to add her. In petitioning to confirm the arbitration award, Portico offered a proposed judgment, naming Wei-Jen as judgment debtor. The trial court rejected that proposed judgment. In the proposed judgment, however, Portico named Wei-Jen only as trustee of the HCT, not as trustee of the WHRT. The court did not decide the issue of whether Wei-Jen as trustee of the WHRT should be added to the judgment.

Wei-Jen further contends Portico was obligated to raise all issues relating to the transfer of the Continental at the time it confirmed the arbitration award. Section 368.5, however, permits a plaintiff to continue the action in the name of the

original owner even after a transfer. Moreover, as *Greenspan* teaches, the *liability* determinations of arbitration are separate from the means of satisfying the judgment resulting from arbitration. (*Greenspan, supra*, 191 Cal.App.4th at pp. 516-517.)

The trial court erred in denying Portico's motion to add Wei-Jen as trustee of the WHRT as a judgment debtor pursuant to section 187.

VI

Motion for Attorney Fees

Portico contends the trial court erred when it awarded Kim and Lynn attorney fees as prevailing parties under the purchase contract pursuant to sections 685.040[15] and 1033.5, subd. (a)(10), and Civil Code section 1717.[16] First, Portico contends Kim and Lynn were not the prevailing parties, as Portico prevailed. Second, Portico contends there was no contractual right to recover for Kim and Lynn's third party claim. Portico

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[15] Section 685.040 permits a judgment creditor to recover costs, including attorney fees where provided by law, of enforcing the judgment.

[16] Civil Code section 1717 provides in part: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

asserts that claim was not based on the contract, but instead was a claim based on superior ownership.

"Generally, a party may recover attorney fees only when a statute or contract provides for fee shifting." (*Goldbaum v. Regents of University of California* (2011) 191 Cal.App.4th 703, 708-709.) Attorney fees are allowable as costs when authorized by statute, contract or law. (§ 1033.5, subd. (a)(10).)

Here, the purchase agreement provided for attorney fees for the prevailing party: "In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 21.A." Paragraph 21.A conditions entitlement to attorney fees on attempting to resolve any dispute through mediation before commencing an action.[17]

We have affirmed the trial court's rulings with respect to Kim and Lynn as successor trustees. Accordingly, we also affirm the trial court's finding that they are prevailing parties and entitled to attorney fees for their successful prosecution of their third party claim because it arose out of the purchase agreement.

"[A] contract provision that permits the recovery of fees in arbitration is broad enough to include fees in related

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[17] Portico's complaint sought to compel mediation. The record does not indicate whether mediation occurred.

judicial proceedings, including an appeal from the judgment confirming the award." (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 552.) A party who successfully opposes a petition to confirm an arbitration award is entitled to attorney fees for an action on the contract because the proceeding were initiated to enforce an award obtained pursuant to contractual arbitration. (*MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 7.)

The attorney fee provision here provides for fees for any action, proceeding, or arbitration "arising out of this Agreement." The phrase "arising out of this agreement" in an attorney fee provision is construed broadly; attorney fees are not limited merely to an action on the contract, but may be awarded in any action or proceeding arising out of the agreement. (*Lerner v. Ward* (1993) 13 Cal.App.4th 155, 160 [attorney fees awarded on successful defense of fraudulent inducement claim].)

Kim and Lynn's third party claim arose out of the purchase agreement. It was in response to Portico's attempt to enforce the judgment confirming the arbitration award, which resolved a dispute under the agreement. The trial court did not err in awarding Kim and Lynn, successor trustees, attorney fees as prevailing parties.

DISPOSITION

The judgment denying Portico's motion to add Wei-Jen as trustee of the Wei-Jen Harrison Trust is reversed and the matter is remanded with directions to the trial court to: (1) vacate

the order denying the motion to amend the judgment to add Wei-Jen as trustee of the WHRT; (2) conduct further proceedings on Portico's motion to amend the judgment; and (3) make factual determinations as to whether the evidence is sufficient to show that Wei-Jen was the alter ego of HFE II and whether Wei-Jen should be added as a judgment debtor to the judgment for breach of contract. In all other respects, the April 7, 2009 judgments, as amended, and the order awarding successor trustees Kim and Lynn attorney fees are affirmed. Alan, Kim and Lynn shall recover costs from Portico; Portico and Wei-Jen shall bear their own costs. (Cal. Rules of Court, rule 8.278(a)(2) & (3).)

DUARTE, J.

We concur:

RAYE, P. J.

HULL, J.