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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LAGUNA CREEK CALIFORNIA PARTNERS, LLC, a Washington limited liability company; LAGUNA CREEK ADMINISTRATION, INC., a Washington corporation,

Respondents/Cross-Appellants,

v.

BRENIA LAGUNA CREEK, LLC, a Washington limited liability company; BRITTINGHAM LAGUNA CREEK, LLC, a Washington limited liability company; CHANG LAGUNA CREEK, LLC, a Washington limited liability company; CHRISTENSEN LAGUNA CREEK, LLC, a Washington limited liability company; CHRISTENSEN II LAGUNA CREEK, LLC, a Washington limited liability company; DD LAGUNA CREEK, LLC, a Washington limited liability company; DECKER I LAGUNA CREEK, LLC, a Washington limited liability company; DECKER II LAGUNA CREEK, LLC, a Washington limited liability company; DREIS LAGUNA CREEK, LLC, a Washington limited liability company; DYKIER LAGUNA CREEK, LLC, a Washington limited

No. 79808-1-I

DIVISION ONE

UNPUBLISHED OPINION

liability company; EIGHT-ELEVEN LAGUNA CREEK, LLC, a Washington limited liability company; FOUR TWELVE NINETEENTH STREET LAGUNA CREEK, LLC, a Washington limited liability company; GOULD I LAGUNA CREEK, LLC, a Washington limited liability company; GOULD II LAGUNA CREEK, LLC, a Washington limited liability company; HO LAGUNA CREEK, LLC, a Washington limited liability company; HSIEH II LAGUNA CREEK, LLC, a Washington limited liability company; LEE I LAGUNA CREEK, LLC, a Washington limited liability company; KRUEGER I LAGUNA CREEK, LLC, a Washington limited liability company; KRUEGER II LAGUNA CREEK, LLC, a Washington limited liability company; KWAN LAGUNA CREEK, LLC, a Washington limited liability company; LARSON LAGUNA CREEK, LLC, a Washington limited liability company; LEUNG LAGUNA CREEK, LLC, a Washington limited liability company; LIPNOSKY LAGUNA CREEK, LLC, a Washington limited liability company; MARUMOTO LAGUNA CREEK, LLC, a Washington limited liability company; POON LAGUNA CREEK, LLC, a Washington limited liability company; RICHARDS LAGUNA CREEK, LLC, a Washington limited liability company; SWAN LAGUNA CREEK, LLC, a Washington limited liability company; SWEDBERG LAGUNA CREEK, LLC, a Washington limited liability company; TAYLOR G. LAGUNA CREEK LLC, a Washington limited liability company; and WHITNEY LAGUNA CREEK, LLC, a Washington limited liability company,

Appellants/Cross-Respondents,

PAUL S. BRENIA TRUST; WILLIAM BRITTINGHAM, a Florida resident; JEAN CHANG, a Taiwan resident; ELIZABETH CHRISTENSEN, a California resident; STEVE CHRISTENSEN, a California resident; M. STEVEN DAVISON, a California resident; DONALD DECKER, a California resident; ALICE DECKER, a California resident; MARTIN DREIS, a California resident; CHELSEA AND ENRICHETTA DYKIER TRUST; EIGHT ELEVEN CORP., a Virginia corporation; FOUR TWELVE NINETEENTH STREET LLC, a Virginia corporation; ANA GOULD, a Virginia resident; JEFFREY GOULD, a Virginia resident; BANG L. HO, a California resident; LEH-AN-HSIEH, a Maryland resident; JOHN R. KRUEGER and BOBE HA KRUEGER, Texas residents; ALAN KWAN, a California resident; HELEN LOUISE LARSON REVOCABLE TRUST; LIN-NAN LEE, a Maryland resident; LEUNG PROPERTY TRUST; JULIE THERON, a California resident; SUGAKO MARUMOTO, a California resident; FLORENCE AND CHRIS FAMILY TRUST; RICHARDS FAMILY TRUST; DONNA LEE SWAN REVOCABLE TRUST; SWEDBERG 1997 FAMILY TRUST; GARY and EMMA TAYLOR, California residents; and JOAN CAROLYN M. WHITNEY, a California resident,

Third-Party Plaintiffs/Appellants/
Cross-Respondents,

v.

JON A. WOOD and "JANE DOE" WOOD, Washington residents; ROGER E. KUULA and "JANE DOE" KUULA, Washington residents; and 1031 XPRESS LAGUNA CREEK, INC., a Washington corporation,

Third-Party Defendants/ Respondents/Cross-Appellants.

MANN, C.J. — A group of investors, through their single-purpose investor limited liability companies (LLCs) invested in a 160-unit apartment complex in Elk Grove, California, beginning in November 2003. In 2017, Laguna Creek California Partners, LLC, and Laguna Creek Administration, Inc., (collectively, Laguna) sued the investor LLCs (collectively, Brenia) to enforce the underlying project master LLC agreement. Brenia asserted counterclaims seeking injunctive relief, declaratory judgment and damages for breach of contract, breach of fiduciary duty, unjust enrichment, and breach of the Washington State Securities Act (WSSA), ch. 21.20 RCW. The trial court granted summary judgment and dismissed Brenia's contract claims on the merits, and Brenia's non-contract claims as time barred. The trial court subsequently awarded Laguna its attorney fees under the terms of the master LLC agreement.

Brenia did not appeal within 30 days of the trial court's orders dismissing its claims, but instead appealed after the trial court entered judgment on Laguna's motion for attorney fees. Laguna seeks dismissal of Brenia's claims on the underlying merits as untimely. Laguna cross appeals the trial court's judgment awarding attorney fees. Laguna argues that the trial court erred by not awarding fees against the individual investors, only their corresponding LLCs.

We agree with Laguna that Brenia's appeal on the merits was untimely and dismiss their appeal on those claims. We also affirm the trial court's award of attorney fees against the Brenia LLCs. Because the trial court's award of attorney fees is unclear as to whether it intended the attorney fee award to be against the LLCs and the individual investors, or just against the LLCs, we remand for clarification.

Dismissed in part, affirmed in part, and remanded for clarification of the award of attorney fees.

I. FACTS

A. The Project and Original Investment

In 2003, the American Capital Group, Inc. (ACG) developed, built, and financed The Laguna Creek Apartments (the Project), a 160-unit complex located in Elk Grove, California. The Project was originally owned by Laguna Creek Apartment Associates Partners, LLC (LC Associates). In 2003, LC Associates offered the Project for sale to individual investors as tenants in common (TIC).[1] LC Associates sought investors that were interested in benefiting from Section 1031[2] of the Internal Revenue Code. Potential investors received a 225-page confidential private placement memorandum (PPM) describing the risks, fees, documents, entities, processes, and structure of the investment.

The appellants here represent 31 of the original 39 original investors in the Project. We refer to the 31 original investors collectively as Brenia or the Brenia investors. Each of the Brenia investors received the PPM prior to investing. The PPM

[1] According to ACG in the early 2000s, TIC structures were commonly used to own, manage, and finance commercial real estate projects.

[2] Section 1031 allows investors to sell income-producing real property, then roll profits from the sale of that property into a new real estate investment without having to pay capital gain taxes.

established that the Brenia investors would have a passive role, giving the Project's manager the ability to make management and financing decisions on their behalf.

Each of the individual Brenia investors each formed single purpose LLCs and then signed a subscription agreement to acknowledge the terms of the PPM. By signing the subscription agreement, the Brenia investors represented that they were accredited investors as defined in the securities laws, had experience and expertise, had the opportunity to review investment in the Project with legal and tax counsel, understood the risk of the Project, and were purchasing the project "as is." The subscription agreement included a limited power of attorney authorizing the Project managers to execute and file on behalf of investors any necessary amendments to the original LC Associates LLC agreement and other Project Documents.

LC Associates sold approximately 98% of its interest in the Project to the Brenia investors, retaining approximately 2% of its interest in the Project. Each Brenia investor was subject to an investor operating agreement that was intended to hold each investor's interest in the project through its membership in the LC Associates LLC. The investors operating agreements contained safeguards to ensure that the individual investors remained passive investors. Safeguards included naming Laguna Creek Administration as the "Special Purpose Manager" (Manager) that had the sole authority to execute documents required to finance or refinance the project on behalf of the Investor LLCs. The Manager could not be removed without Laguna Creek Administration's authorization.

Management of the Project was originally governed by the "Master Lease Agreement." The Master Lease Agreement ran between LC Associates and 1031

Xpress Laguna Creek, LLC, an ACG affiliate. The Master Lease Agreement identified LC Associates as the "Landlord" and 1031 Xpress Laguna Creek as the "Master Tenant."

The Brenia investors were also subject to an option to purchase. The option to purchase granted the Master Tenant an option to purchase the Project at fair market value beginning November 21, 2008. It also allowed the Master Tenant to purchase an individual ownership interest of a defaulting individual investor at 50 percent of fair market value.

B. Recession and Beyond

For the first few years, the Project rental income and appreciation value were consistent with projections. In 2009, a real estate crisis hit, helping precipitate the "great recession." The recession devastated real estate throughout the country, including the Project. Despite the recession, ACG took measures that prevented the Project from failing and being lost to foreclosure.

On September 8, 2009, the Manager issued a $2,324,574 capital call, stating that the Project's initial lender required return of overpayments and advanced cash payments. All Brenia investors answered this capital call.

In 2014, the Project's initial financing was scheduled to come due, requiring ACG obtain a source of permanent financing. In addition to the real estate market, the recession affected the lending market as well. Notably, lending institutions were hesitant to issue loans to TIC structured projects due to a higher default rate. As a result, in 2012 the Manager proposed refinancing the project by consolidating the TIC interests into a single LLC.

Prior to consolidating the TIC interests into a single LLC, the Manager sent notice and consent authorizations to the Brenia investors. Ninety-five percent of investors approved the conversion, five percent did not return their ballots, and none voted against the conversion. Following this vote, the Manager formed Laguna Creek California Partners, LLC (the Master LLC), and its corresponding LLC agreement (the Master LLC Agreement). The Master LLC Agreement converted the former TIC interests into a percentage ownership of the Master LLC. The Master LLC Agreement maintained that investors had a passive role, and decisions to sell were limited to an up or down vote that must achieve approval by members meeting 51 percent ownership interests. The Master LLC Agreement also reaffirmed primary provisions of the Master Lease and option to purchase. On December 13, 2013, the Manager refinanced the Project.

In 2016, the Manager decided to sell the Project. It sent out a notice of sale and a consent authorization. Investors representing 67.1% of ownership approved the sale. The remaining investors did not return their authorization. No member voted against the sale.

In 2015, the Project began having water intrusion issues. During the winter of 2016-17, the Manager updated and obtained bids for necessary repairs to the roof, stairway, and individual units, informing the Brenia investors on March 20, 2017.

On April 21, 2017, presumably unsatisfied with the Manager's performance, Brenia began a resolution to replace the Manager and revoke their consents to sell.

C. Procedural History

On April 24, 2017, the Master LLC and the Manager (collectively, Laguna) sued Brenia for the breach of the Master LLC Agreement. On May 2, 2017, the Manager issued a second capital call in order to address the repairs stemming from water intrusion. Three of the Brenia investors did not answer the capital call, so the Manager exercised the Purchase Option on their ownership interests.

On June 23, 2017, the trial court granted Laguna a preliminary injunction prohibiting Brenia from replacing the Manager, affirming the validity of the capital call for repairs, and barring Brenia from rescinding their consents to sell.

On September 11, 2017, Brenia amended their answer, adding eight counter claims including: injunctive and declaratory relief, an accounting under the Project Documents, damages for breach of the Master LLC Agreement, breach of fiduciary duty, unjust enrichment, violation of the WSSA, and fraud.

Laguna's litigation costs began to accrue, increasing the Project's overall operating expenses. With cash reserves low, the Manager issued a third capital call of $1 million on January 18, 2018, in order to create a reserve for debt services. The Brenia investors did not pay this capital call. As a result, Laguna exercised its purchase option and the purchased the Brenia investors' ownership interests in the Master LLC.

On March 30, 2018, the trial court granted partial summary judgment in favor of Laguna. The court determined that Laguna was entitled to declaratory judgment that Brenia had no right to remove the Manager and that Laguna had the right to sell the Project under the terms of the Master LLC agreement and executed consent to sell. In doing so, the court affirmed the Brenia investor's consent to sell and held that the

Brenia investors had breached the subscription agreements, the Investor LLC agreements, the buyer acknowledgement agreement (including the master lease agreement referenced therein), and the Master LLC Agreement by seeking to remove the Manager and challenging the authority of the Manager to sell the Project pursuant to the terms of the executed consents to sell. The trial court also dismissed Brenia's first cause of action for injunctive relief and second cause of action for declaratory relief finding the second capital call valid and enforceable. Finally, the trial court determined that Brenia had abandoned and therefore dismissed their cause of action claiming Laguna breached the Master LLC Agreement. The court granted Brenia's CR 56(f) motion to continue summary judgment on their WSSA claim. Brenia moved for reconsideration. The trial court denied the reconsideration as part of its subsequent order granting Laguna summary judgment.

On June 19, 2018, Brenia again moved to amend their answer. The trial court denied the portion of the proposed amendment involving claims related to the TIC to LLC conversion, capital calls, and the consent to sell, stating:

> [such claims] cannot be resurrected through amendments or through the addition of other entities which [Brenia] knew about and now claim were acting for [API] and were known at the time of the [first] Summary Judgment Motion.

The trial court allowed Brenia to add claims relating to investments, water intrusion, and receivership, directing them to submit a proposed amended answer to allow Laguna to raise objections.

On August 14, 2018, Brenia filed their second proposed amendment, three days before Laguna's second summary judgment motion was due under the trial court's CR

56(f) order. As reflected in Brenia's redlined comparison of their June and August proposed amendments, Brenia changed almost none of the alleged facts and struck only one of the causes of action proposed in June. Laguna opposed the motion to amend, and concurrently moved to dismiss all of Brenia's "counterclaims and third party claims," that had not previously been dismissed, including those asserted in the proposed amendment.

On October 26, 2018, the trial court granted Laguna's second motion for summary judgment, determining:

- Brenia's securities and fraud claims under the WSSA were barred by a plain reading of the WSSA and the parties' relevant contracts and dismissed with prejudice.
- Because it had previously confirmed the TIC to LLC conversion was valid, Brenia's challenge to the conversion or Master LLC's ability to act were dismissed with prejudice.
- Because it previously confirmed the second capital call was enforceable, and Laguna's enforcement of the third capital call, Brenia's challenges to the second and third capital calls were dismissed with prejudice.
- Brenia's remaining fraud, breach of fiduciary duty, and improper maintenance claims were time barred and dismissed with prejudice.
- By approving the as is provision in the TIC purchase and sale, Brenia's claims for construction defects were waived and dismissed with prejudice.

In summary, the trial court determined that "[b]ecause there is no genuine issue of fact regarding any of [Brenia's] claims, [Laguna is] entitled to judgment as a matter of law on all [Brenia's] claims, and all of [Brenia's] claims are dismissed with prejudice."

The trial court also expressly stated that it assumed that Brenia's proposed second amended counterclaims and third party claims were approved in part and before the court on summary judgment. The court explained that the amendment "continues to be problematic, continuing to try and bring back in already dismissed or abandoned claims." The trial court rejected as "not the case," Brenia's contention that "the claims they bring now are [based on] different, more recent acts" and found they "are obviously the very same claims, the very same course of conduct."[3] The court denied Brenia's motion to add three claims of its 14 claims and confirmed "the remainder of the [second amended] complaint is deemed filed without those claims and was considered for purposes of summary judgment."

Finally, the trial court determined that Laguna was the "substantially prevailing party in this lawsuit" and that Laguna was entitled to an award of attorney fees and costs "to be determined after further submission of proof and argument by the parties as to the amount of those fees and costs."

Brenia did not seek reconsideration, argue that the trial court left claims unaddressed, or appeal the October 26, 2018, order granting summary judgment and dismissing all of their claims with prejudice.

[3] The trial court also noted Brenia's counsel had a "regular habit of violating or ignoring local (and state) rules on filing, page limits, time deadlines, etc. and asking for forgiveness later, or not at all."

On November 30, 2018, Laguna moved for an award of attorney fees as authorized by the October 26, 2018, order, stating that they had prevailed on all of their claims and defenses, and that they would be concurrently moving to dismiss their two remaining claims: damages and Brenia's breaches of contract. On December 12, 2018, Laguna filed its CR 41 motion for voluntary dismissal without prejudice, which the trial court granted leaving no further claims by either party remaining. Brenia did not oppose the CR 41 motion.

On December 12, 2018, Brenia opposed Laguna's fee motion. Brenia's opposition acknowledged that on October 26, 2018, the trial court "deemed [Laguna] the prevailing party in this lawsuit." On January 17, 2019, Brenia filed an opposition to Laguna's proposed findings of fact related to the fee award. In doing so, Brenia asserted for the first time that "all claims have not been adjudicated, [and] no party should be declared the prevailing party."

In March 8, 2019, the trial court entered findings of fact and conclusions of law on Laguna's motion for fees and costs, awarding $802,406.03. In doing so, the court noted that it granted Laguna's request for an award of fees in its dispositive rulings and that the "March 30, October 26, and December 12 [2018] orders together resolve and dispose entirely of all claims in this matter." The trial court also addressed Brenia's assertion that the court had not adjudicated all of Brenia's claims by stating:

> In an odd but inventive procedural move, instead of moving to reconsider the Court's [October 26, 2018] Summary Judgment Order docket no 467, [Brenia] assert, by opposition to an attorneys' fees motion, that [Brenia has] eleven causes of actions left to pursue.
>
> The Order docket no. 467 clearly states, on pages 7/19, and all of [Brenia's] remaining claims are dismissed with prejudice. If there was

> some question about the meaning of the very clear language, Defendants should have raised it. It has now been four months and obviously, the deadline under the rules has long passed. To the extent this legal position is a Motion to Reconsider, the Motion is Denied.

On March 26, 2019, the trial court entered a judgment for attorney fees and costs. On March 29, 2019, Brenia filed this appeal.[4] Laguna cross appealed.

On April 22, 2019, Laguna filed a motion to dismiss for an untimely filing of appeal. Brenia subsequently filed a motion to extend time to file. On June 14, 2019, a court commissioner referred these motions to the panel for resolution.

II. ANALYSIS

A. Timeliness of Appeal

We first consider Laguna's motion to dismiss and Brenia's alternative motion to extend time to file. We grant Laguna's motion to dismiss and deny Brenia's motion to extend time to file.

"[A] notice of appeal must be filed within . . . 30 days after entry of the decision of the trial court that the party filing the notice wants reviewed" or within 30 days of the entry of an order deciding a "timely . . . motion for reconsideration or new trial under CR 59." RAP 5.2(a), (e). An untimely motion for reconsideration is ineffective to challenge a judgment on the merits. Schaefco v. Columbia River Gorge Comm'n, 121 Wn.2d 366,

[4] Brenia filed its notice appealing orders spanning nearly two years including: (1) the March 26, 2019 Judgment Against Defendants for Attorneys' Fees and Costs; (2) the March 8, 2019 Findings of Fact and Conclusions of Law on Plaintiffs' Motion for Fees and Costs and Defendants' Motion for Fees and Costs; (3) December 12, 2018 Order Granting Plaintiffs' and Third-Party Defendants' CR 41(a)(1)(b) Motion for Mandatory Dismissal of Remaining Claims Without Prejudice; (4) the October 26, 2018 Order Denying Defendants' CR 56(f) Motion and Granting Plaintiffs' Second Summary Judgment Motion; (5) the March 30, 2018 Omnibus Order Concerning Plaintiffs' Motion for Partial Summary Judgment, Defendants' Motion for Stay Pursuant to CR 56(f), and Related Motions; (6) June 23, 2017 Order Granting Plaintiffs' Motion for Preliminary Injunction; and (7) "all orders and decisions that prejudicially affect the listed orders."

367-68, 849 P.2d 1225 (1993); FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 190 Wn.2d 281, 291, 413 P.3d 1 (2018).

Read together, RAP 2.2(a)(1) and RAP 2.4(b) require an appeal of a final judgment on the merits, even where the judgment allows for a subsequent award of attorney fees. As this court explained in Carrara, LLC v. Ron & E Enters., 137 Wn. App. 822, 825-26, 155 P.3d 161 (2007):

> RAP 2.2(a)(1) allows a party to appeal a final judgment of any proceedings, regardless of whether the judgment reserves for future determination an award of attorney fees or costs. This notice must be filed within 30 days after the entry of the decision of the trial court. RAP 5.2(a). RAP 2.4(b) allows a timely appeal of a trial court's attorneys' fees decision, but makes clear that such an appeal does not allow a decision entered before the award of attorney fees to be reviewed (i.e. it does not bring up for review the judgment on the merits) unless timely notice of appeal was filed on that decision. RAP 2.4(b); 2A Karl B. Tegland, *Washington Practice: Rules Practice RAP* 2.4 at 183 (6th ed. 2004). . . . "The practical lesson is clear—counsel should appeal from the judgment on the merits, even if the issue of attorney fees is still pending." 2A Tegland, supra, at 181.

See also Bushong v. Wilsbach, 151 Wn. App. 373, 375, 213 P.3d 42 (2009).

The final judgment for purposes of RAP 2.2(a)(1) is the trial court's "'last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment.'" State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) (quoting BLACK'S LAW DICTIONARY 857 (7th ed. 1999)).

"The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal. . . . The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under [RAP

18.8]." RAP 18.8(b). The rigorous test for extension under 18.8(b) has rarely been satisfied since the effective date of the Rules of Appellate Procedure on July 1, 1976. See Reichelt v. Raymark Industries, Inc., 52 Wn. App. 763, 765, 764 P.2d 653 (1988).

Here, appeals of all Brenia's claims save the trial court's award of attorney fees are untimely. The bulk of Brenia's claim—claims of which they seek this court's review—were disposed of in the October 26, 2018, order granting summary judgment. The order explicitly stated "because there is no genuine issue of fact regarding any of Defendants' claims, Plaintiffs are entitled to judgment as a matter of law on all Defendants' claims, and all of Defendants' claims are dismissed with prejudice." The final claims, belonging to Laguna, were disposed of in the December 12, 2018 order granting mandatory dismissal of remaining claims without prejudice. Therefore, the mandatory dismissal of remaining claims was the final judgment for purposes of RAP 2.2(a)(1). Brenia did not timely appeal this order. See Carrara, 137 Wn. App. at 826 (order granting summary judgment and dismissing defendant's claims with prejudice is a final appealable order).

Further, even if the trial court's order granting attorney fees was characterized as a motion to reconsider, the motion was neither granted nor timely. Except for the judgment awarding attorney fees, none of Brenia's claims have been timely-appealed. This judgment does not give Brenia an opportunity to revive their prior claims. Per RAP 2.4(b), an appeal of a decision awarding attorney fees cannot be used to review previously-entered decisions. See Carrara, 137 Wn. App at 825-26; Bushong, 151 Wn. App. at 175.

Brenia relies on Denney v. City of Richland, 195 Wn.2d 649, 462 P.2d 842 (2020), to argue that the trial court's orders created confusion, and as a result we should use our RAP 18.8(b) discretion to extend time to file. In Denney, a summary judgment order directed the prevailing party to present a judgment pursuant to CR 54. Denney, 195 Wn.2d at 652. Denney incorrectly believed the proposed judgment pursuant to CR 54, rather than the order for summary judgment, to be the final appealable order. Denney, 195 Wn.2d at 652. As a result, he missed the deadline for appeal. Denney, 195 Wn.2d at 652. The Washington Supreme Court reversed, holding that Denney reasonably misunderstood the judgment pursuant to CR 54 as being the final order, justifying an extension under RAP 18.8(b). Denney, 195 Wn.2d at 659.

Brenia does not benefit from the same confusion found in Denney. To the contrary, the trial court's October summary judgment order in plain language dismissed all of Brenia's claims with prejudice, and trial court's December order in plain language dismissed all of Laguna's remaining claims with prejudice. Nothing in either order directed entry of a separate final judgment. Indeed, Brenia conceded in its opposition to Laguna's motion for attorney fees and costs that Laguna had prevailed. It was not until the trial court's judgment awarding attorney fees that Brenia changed course and asserted there were unsettled claims. This assertion came months too late.

Brenia's motion to extend time to file does not consist of "extraordinary circumstances," nor would granting the motion prevent a "gross miscarriage of justice" justifying an extension of time under 18.8(b). Brenia simply appealed the lower court's dispositions too late.

An appeal must be filed within 30 days of the decision a party wants the appellate court to review. Brenia failed to appeal multiple orders, including the order explicitly incorporating their amended pleadings. Brenia again tries to bring claims that were either dismissed or have since become untimely. They do not demonstrate conditions to overcome the rigorous test of extension put forth by RAP 18.8(b).

B. Attorney Fees

Brenia did timely appeal the trial court's award of attorney fees. Brenia argues that the trial court erred in its determination of attorney fees. Laguna cross appeals and argues that the trial court erred by awarding fees only against the Investor LLCs, and not the investors in their individual capacities as well. We disagree that the trial court erred in its determination of the fee award, but remand to the trial court for further explanation of why fees were not also awarded against the investors in their individual capacities.

1. Reasonableness of Award

Appellate courts apply a two-part standard of review to a trial court's award or denial of attorney fees: (1) they review de novo whether there is a legal basis for awarding attorney fees by statute, under contract, or in equity and (2) they review a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fees award for an abuse of discretion. Gander v. Yeager, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012).

Courts may award attorney fees only when authorized by a contract provision, a statute, or a recognized ground in equity. King County v. Vinci Constr. Grands Projects/Parsons RCI/Frontier-Kemper, JV, 188 Wn.2d 618, 625, 398 P.3d 1093 (2017).

Here, the trial court recognized the legal basis for awarding Laguna its attorney fees was in the Project Documents. In its findings of fact and conclusions of law, the trial court directly quotes the relevant attorney fees provisions in the Subscription Agreement, the individual LLC operating agreements, the Buyer Acknowledgment agreement, and the Master LLC Agreement post-TIC to LLC conversion. These are appropriate bases to award attorney fees.

Trial courts have broad discretion when determining the amount of attorney fees awarded. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). In calculating these fees, the trial court must supply findings of fact and conclusions of law sufficient to permit this court to determine why the trial court awarded the amount in question. SentinelC3, Inc. v. Hunt, 181 Wn.2d 127, 144, 311 P.3d 40 (2014).

The trial court properly exercised its discretion in determining the amount of attorney fees to award. In addition to identifying relevant clauses in the Project Documents justifying a fee award, the trial court properly examined the rates charged by each attorney and the hours billed. The court determined that the rates billed to Laguna were at or even sometimes below the market standard. In addition, the court recognized the complexity of the case, and the difficulty Brenia imposed with their multiple motions and abusive discovery tactics. As a result, the court's determination of fees was not an abuse of discretion.

2. Liability of Individual Investors

Laguna argues that the trial court should have awarded fees against not only the Investor LLCs, but the individual investors as well. It is unclear why the trial court did not award fees against the individual investors, meriting clarification.

Laguna asserts that the trial court found that the individual investors breached their subscription agreements, and that their claims lacked merit, thereby warranting an award of fees against the individual investors as well as the Investor LLCs. Oddly enough, both Laguna and Brenia appear to have at one point agreed on this issue. In Laguna's motion for fees, they requested fees against investors for the same reasons they argue on appeal. In Brenia's response, they did not contend that fees should not be awarded against the investors. Rather, Brenia's response conceded that fees should be awarded against both the investors and the Investor LLCs, but argues for a particular apportionment of the fees between the two. Laguna identified this concession in their reply.

In the trial court's findings of fact and conclusions of law on Laguna's petition for fees and costs, it stated:

> The award of attorneys' fees and costs is governed by a series of contracts arising from Defendants' and Third-Party Plaintiffs' investment in [the Project] . . . Several of those documents require an award of attorneys' fees and costs to the substantially prevailing party in this litigation. Because the Plaintiffs are the substantially prevailing parties, an award of attorneys' fees and costs is required under the relevant contracts against both the Third Party Plaintiffs—that is, the individuals who invested in the [Project]—and the Defendants—that is, the [Investor LLCs] formed by each of the individual investors in the Project as the vehicle for their investments.

In sum, both the investors and Investor LLCs are liable for attorney fees under the Project Documents.

The court further elaborated on the topic, stating:

> More specifically, before they were permitted to invest in the Project, all Third-Party Plaintiffs voluntarily executed a Subscription Agreement in which they made a number of specific representations and warranties.

. . . .

> [T]o the extent the Third-Party Plaintiffs made any misrepresentation or untrue statement in the Subscription Agreement, they are obligated to pay Plaintiffs' attorneys' fees and costs under Section 4(c) of the Subscription Agreement. It is uncontested that Plaintiffs would not have agreed to enter into this investment with Third-Party Plaintiffs if Plaintiffs knew that Third-Party Plaintiffs' representation and warranties contained in the Subscription Agreement were untrue.

The trial court bolstered the case against individual investor's liability for attorney fees.

Following these findings of fact, the court stated that "after long consideration, [it concluded] that it ruled solely on the statute of limitations arguments and made no findings on the Third-Party Plaintiffs thus the fees are awarded only against the Defendants." This statement was in direct contradiction to the court's earlier findings, and merits further explanation.

Because the trial court found that the Project Documents were the legal grounds for awarding attorney fees, and that fees should be awarded against both the investors and Investor LLCs, it subsequently abused its discretion by failing to properly explain why it contradicted its earlier findings. We remand for determination of fees consistent with its opinion.

C. Attorney Fees on Appeal

Laguna requests attorney fees on appeal under RAP 18.1. Under RAP 18.1, a party may request reasonable attorney fees on appeal if an applicable law grants the party the right to recover. Laguna requests attorney fees based on the provisions in the Project Documents that awarded fees at trial. We generally recognize a provision in a contract allowing attorney fees to include fees on appeal as well as at trial. Edmundson

v. Bank of America, 194 Wn. App. 920, 932-33, 378 P.3d 272 (2016). Because Laguna substantially prevailed, we award attorney fees on appeal subject to compliance with RAP 18.1.

Dismissed in part, affirmed in part, and remanded for determination of attorney fees consistent with this opinion.

Mann, C.J.

WE CONCUR: