NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

FEATHER RIVER ANESTHESIA MEDICAL GROUP, INC., et al., Plaintiffs and Appellants, v. THE FREMONT-RIDEOUT MEDICAL GROUP, INC., et al., Defendants and Respondents.	C049851 C050832 (Super. Ct. No. CV CS02-0176)

Plaintiff Feather River Anesthesia Medical Group, Inc. (Feather River) terminated its exclusive dealing agreement to provide anesthesia services to the patients of The Fremont-Rideout Health Group (Hospital). After the Hospital entered into an exclusive dealing agreement with another group of anesthesiologists, The Fremont-Rideout Medical Group, Inc. (Medical Group), Feather River and its member anesthesiologists

sued the Hospital, the Medical Group, and several individual defendants.[1]

The plaintiffs allege the agreement between the Hospital and the Medical Group and their activities in connection with that agreement gave rise to several causes of action, including (1) interference with prospective economic advantage, (2) antitrust, (3) unfair competition, (4) interference with the right to practice a profession, and (5) interference with contract. As an element of some of its causes of action, Feather River asserts that the Hospital and Medical Group violated the statutory ban on the corporate practice of medicine. (Bus. & Prof. Code, § 2000 et seq.)

The trial court granted the defendants' motion for summary judgment. Its decision was based, primarily, on its conclusion that the defendants did not violate the ban on the corporate practice of medicine.[2] On appeal, the parties present their

---

[1] We refer to the plaintiffs collectively as "Feather River," except where it is necessary to identify the individual plaintiffs.

[2] "One of the provisions of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.) . . . is Business and Professions Code section 2400, providing that corporations and other artificial legal entities 'shall have no professional rights, privileges, or powers'; in general, this section embodies a ban on the corporate practice of medicine." (*Conrad v. Medical Bd.* (1996) 48 Cal.App.4th 1038, 1041, fn. omitted.) "In a nutshell, the corporate practice doctrine provides that a corporation may not engage in the practice of the profession of medicine. [Citation.] The 'principal evils' thought to spring from the corporate practice of medicine are 'the conflict between the professional standards and obligations of the doctors and the

arguments concerning the trial court's reasoning and ruling on this issue. Under the facts of this case, however, we conclude that it is neither necessary nor appropriate, at this stage, to determine whether the defendants violated the ban on the corporate practice of medicine.[3]

To determine whether the trial court properly granted summary judgment, we must view the judgment in the light of *all* of the facts and legal arguments. Doing so, we conclude (1) Feather River has failed to raise a triable issue of fact and the undisputed evidence does not support Feather River's claim with respect to the cause of action for interference with prospective economic advantage (part I of the Discussion),

---

profit motive of the corporation employer.' [Citation.]" (*Id.* at p. 1041, fn. 2.)

[3] A ruling on the corporate practice issue is neither necessary nor appropriate at this stage for three reasons: First and foremost, a conclusion concerning whether the defendants violated the ban on the corporate practice of medicine does not affect the outcome of this appeal. As will be seen, the determination of whether the trial court erred by granting summary judgment, as to each cause of action, does not depend on whether the defendants violated the ban on the corporate practice of medicine. Second, the allegation that the defendants violated the ban on the corporate practice of medicine is not, of itself, a cause of action. Instead, it is an allegation made to support the causes of action -- that is, to show wrongful conduct as an element of the unfair competition, antitrust, and interference causes of action. And third, the Hospital, undeniably one of the main actors in the facts that may or may not show the corporate practice of medicine, is not a party to this appeal. Because the Hospital made cross-claims against the plaintiffs that were not resolved by the summary judgment proceedings, there is, as yet, no final judgment with respect to the Hospital.

(2) Feather River has raised a triable issue of fact, precluding summary judgment, as to the causes of action for antitrust, unfair competition, and interference with the right to practice a profession (part II of the Discussion), and (3) Feather River has failed to raise a triable issue of fact and the undisputed evidence does not support Feather River's claim with respect to the cause of action for interference with the contract between Feather River and Dr. Richard Del Pero (part III of the Discussion).

In part I of the Discussion, we conclude that summary judgment was proper as to the cause of action for interference with prospective economic advantage. The elements of a cause of action for interference with prospective economic advantage are "(1) an economic relationship between the plaintiff and a third party, with a probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of this relationship; (3) intentional and wrongful conduct on the part of the defendant, designed to interfere with or disrupt the relationship; (4) actual disruption or interference; and (5) economic harm to the plaintiff as a proximate result of the defendant's wrongful conduct." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 713.) Feather River contends that the defendants' violation of the ban on the corporate practice of medicine satisfied the third element -- intentional and wrongful conduct. We conclude, however, that summary judgment as to this cause of action was proper because, as the defendants contended below, their conduct did not

proximately cause Feather River's economic harm -- the fifth element.

In part II of the Discussion, we conclude summary judgment was improper as to the antitrust, unfair competition, and interference with the right to practice a profession causes of action. The trial court erred by granting summary judgment because Feather River has raised triable issues of fact concerning the defendants' wrongful conduct. There are triable issues of fact as to wrongful restraint of trade because there was evidence that the defendants sought to exclude the Feather River doctors from practicing in the Marysville/Yuba City market and that the resulting exclusive agreement harmed competition and resulted in higher medical costs. Since there is a triable issue of fact concerning whether the defendants' actions were a wrongful restraint of trade, we conclude summary judgment was improper as to these causes of action, without reaching the issue of whether the alleged violation of the ban on corporate practice of medicine was also wrongful conduct supporting the causes of action.

In part III of the Discussion, we conclude the trial court properly granted summary judgment on the cause of action for interference with the contract between Feather River and Dr. Del Pero, who worked for Feather River before taking on duties with the Medical Group. Even viewing the evidence in the light most favorable to Feather River, as we must, the defendants' activities did not induce a breach of the contract between Feather River and Dr. Del Pero because, when Dr. Del Pero

undertook his duties with the Medical Group, Feather River had ceased to perform its obligation to provide work for him.

The parties also raise various issues not related to the elements of the causes of action. As to those issues, we conclude (1) the contention of individual defendants Thomas Hayes and William Pace that they cannot be held personally liable for the actions they undertook as corporate officers is without merit (part IV of the Discussion), (2) the plaintiffs fail to establish that the trial court's error in denying the plaintiffs' request for judicial notice was a miscarriage of justice (part V of the Discussion), and (3) the plaintiffs fail to proffer authority that the trial court's denial of the plaintiffs' discovery motion and the court's postponement of the hearing on the motion to reconsider the discovery ruling constituted prejudicial error (part VI of the Discussion).

We therefore reverse the judgment (case No. C049851) because the trial court erred by granting summary judgment.

After the trial court entered judgment, it granted costs in favor of the defendants. Feather River appeals the costs awards. (Case No. C050832.) Because we reverse the judgment, we also reverse the costs awards (part VII of the Discussion).

We consolidated the cases for review.

UNDISPUTED FACTS

Feather River provided anesthesia services at the Hospital on an exclusive basis, under various contracts, from 1992 to 2002. In 1997, the parties entered into an exclusive agreement for anesthesia services. Before that agreement expired,

however, Feather River provided written notice that it was terminating the agreement. After negotiations, Feather River and the Hospital entered into another exclusive agreement in January 2000.

The 2000 agreement provided that it would "be in force for a period of three (3) years . . . ." It also provided for early termination, as follows: "Either party may terminate this Agreement without cause or penalty upon giving the other party two-hundred and forty (240) days prior written notice. During the first sixty (60) days following receipt of the termination notice, the parties agree to meet and discuss the issues giving rise to the termination notice. If after the discussion the party issuing the notification still desires to terminate the Agreement, then this Agreement shall expire one hundred and eighty (180) days later."

After Feather River's early termination of the 1997 agreement, the Hospital became concerned about its continuing ability to obtain anesthesiology services. As a result, the Medical Group was formed in August 2000. Joseph Coulter, a physician, was named president and treasurer. Pam Ford, and later Thomas Hayes, was secretary. Coulter was the sole shareholder in the corporation. Although the corporate documents listed Coulter as the treasurer, he stated during his deposition testimony that William Pace, who is not a physician, was the treasurer.

In January 2001, the Hospital and Feather River discussed the Hospital's plan to begin a cardiac surgery program. The

Hospital advised Feather River that it would need anesthesiologists to provide coverage for the program. The Hospital and Feather River met in March and April 2001 to discuss the new cardiac surgery program, and Feather River informed the Hospital that the revenue from the program would not be enough for Feather River to recruit anesthesiologists. On April 25, 2001, Feather River offered to provide coverage for the cardiac surgery program for $1 million per year. Feather River also told the Hospital that its anesthesiologists were among the lowest paid in the state and additional compensation was needed. In addition to the $1 million for coverage of the cardiac surgery program, Feather River asked the Hospital to pay another $1.1 million to Feather River. The Hospital concluded that the amount requested by Feather River was too high.

In a letter dated May 29, 2001, Feather River gave notice to the Hospital that it was terminating the 2000 agreement. This letter triggered the provision that the parties would meet and discuss the issues giving rise to the notice within 60 days. It also served as a 240-day notice of termination. In the letter, Feather River informed the Hospital that the compensation under the 2000 agreement was inadequate.

Feather River and the Hospital met and discussed the issues raised by the termination notice. They were unable, however, to resolve the issues during the 60-day negotiation period. Even after the 60-day period, they engaged in discussions concerning the disputed issues.

The following minutes were from a meeting of the Hospital's board of directors on September 27, 2001, four months after the termination notice and two months after the 60-day negotiation period ended: "It is the recommendation of the Executive Committee as well as the task force to allow the current termination submitted by [Feather River] to lapse. Recognizing the need for additional anesthesiologists, the Executive Committee's recommendation is to negotiate individual contracts with the anesthesiologists, under the [Medical Group] professional corporation, establishing one anesthesiologist as medical director to oversee anesthesia services including operation room efficiency. . . . [¶] After discussion, upon motion made and seconded, it was resolved to approve setting up individual contracts as outlined."

In November 2001, nearly six months after the termination notice, the Hospital informed Feather River that it intended to enter into an exclusive anesthesia contract with another provider. Feather River did not rescind its termination notice, and, at the end of the 240-day period, in January 2002, the 2000 agreement was terminated. As a result of the termination of the 2000 agreement, the Hospital privileges of the Feather River anesthesiologists were terminated.

After Feather River gave the Hospital the termination notice concerning the 2000 agreement, the Hospital considered looking to the Medical Group as an alternative source of anesthesia services. Eventually, an agreement was formed between the Hospital and the Medical Group and became effective

on January 23, 2002, the day after Feather River's termination of the 2000 agreement. The Hospital offered Feather River the opportunity to work side-by-side with the Medical Group, but Feather River declined. Also, the Medical Group offered contracts to the Feather River anesthesiologists but they did not accept the offer, except for Dr. Del Pero.

Eric Lefever, president of Feather River, requested the Department of Health Services, in 2002, to investigate the relationship between the Hospital and the Medical Group to determine whether there was a violation of the ban on the corporate practice of medicine. The Department of Health Services, however, has taken no adverse action against the defendants.

PROCEDURE

The plaintiffs, on February 26, 2003, filed a first amended complaint in the Sutter County Superior Court. The plaintiffs consist of Feather River and Doctors Eric Lefever, Henry King, Herb Henderson, James Chapman, Oscar Barrios, Philip Caruso, Jose Antony, and Joseph Ruccione. The defendants are the Hospital, the Medical Group, and Dr. Richard Del Pero (along with his professional corporation), Dr. Joseph Coulter, William Pace, and Thomas Hayes. The complaint alleged causes of action (and who they were alleged against if not against all defendants) for (1) unfair competition, (2) violation of the Cartwright Act, (3) interference with contract (against the Hospital and the Medical Group), (4) breach of contract (against Del Pero and his corporation), (5) breach of fiduciary duty

(against Del Pero and his corporation), (6) interference with the right to practice a profession, and (7) interference with prospective economic advantage.

The Hospital cross-complained against Feather River, Lefever, and Caruso, alleging causes of action for (1) unfair competition, (2) interference with contract, (3) interference with prospective economic advantage, and (4) defamation. Del Pero and his corporation cross-complained against Feather River for (1) breach of contract, (2) unfair competition, and (3) interference with prospective economic advantage.

Feather River and the individual plaintiffs filed a motion on November 10, 2004, to compel the Hospital to comply with discovery orders and its prior agreements to produce documents. The court, with Judge Christopher Chandler presiding, denied the motion on January 19, 2005. It determined that the Hospital had not violated any discovery order.

The defendants, in January 2005, acting as three separate groups ((1) the Hospital, Hayes, and Pace; (2) the Medical Group and Coulter; and (3) Del Pero and his corporation), filed motions for summary judgment or summary adjudication of issues as to the plaintiffs' first amended complaint. Additionally, Del Pero and his corporation sought summary judgment on their cross-complaint against Feather River, and Feather River sought summary adjudication of issues as to the cross-complaints of the Hospital and Del Pero and his corporation.

After the various summary judgment and summary adjudication motions had been filed, Judge Chandler recused himself, stating:

“On March 18, 2005, the Court became aware of facts that might cause others to reasonably entertain a doubt as to the Court’s impartiality. [¶] Christopher R. Chandler recuses himself as Judge in this proceedings.” Judge Chandler gave no further indication of his reason for recusing himself. On March 23, 2005, Feather River and the individual plaintiffs filed a motion for reconsideration of the motion to compel the Hospital to comply with discovery orders. The motion for reconsideration was based on the “changed circumstances” in that Judge Chandler had recused himself.

Judge H. Ted Hansen was assigned to rule on the motions for summary judgment and adjudication. After a hearing, the court granted summary judgment on the first amended complaint in favor of each defendant. In addition, the court denied the motion for summary judgment of Del Pero and his corporation on their cross-complaint. And the court denied Feather River’s motions for summary adjudication of issues.[4]

The court entered judgment in favor of each defendant and against Feather River and the individual plaintiffs on the first amended complaint. Still pending in the trial court are the Hospital’s complaint against Feather River, Lefever, and Caruso, and the complaint of Del Pero and his corporation against

---

[4] The plaintiffs state that, after the trial court entered judgment in favor of the defendants, it denied the plaintiffs’ motion for reconsideration of the discovery motion as moot. The plaintiffs, however, provide no record citation for this statement.

Feather River. The Hospital, Del Pero, and Del Pero's corporation are not parties to these appeals. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743; Code Civ. Proc., § 577 [one final judgment].)

STANDARD OF REVIEW

In their motions for summary judgment, the defendants raised several issues, the resolution of which they asserted would entitle them to judgment on the plaintiffs' first amended complaint. For example, on the plaintiffs' cause of action for interference with prospective economic advantage, the defendants asserted that their conduct did not cause the injuries of which the plaintiffs complained. Concerning the Cartwright Act cause of action, the defendants asserted that substitution of one exclusive provider of anesthesiology services for another does not harm competition and that the plaintiffs do not have standing to bring a Cartwright Act claim. The defendants' also asserted that, as a matter of law, their actions did not violate the corporate practice doctrine.

These are just a few of the many contentions raised by the defendants in their summary judgment motions. It is a complex case with multiple parties, pleadings, and issues.

When the trial court considered the defendants' motions for summary judgment, it determined that the first two causes of action ((1) unfair competition and (2) violation of the Cartwright Act) in the first amended complaint were without merit because the evidence did not support a conclusion that the defendants had violated the corporate practice doctrine. The

court opined that the defendants' other arguments as to those causes of action "may be well taken" but declined to consider them because of its determination that the undisputed facts did not support a conclusion that the defendants violated the corporate practice doctrine. The court then found that the undisputed facts also did not support the plaintiffs' other causes of action, which revolved around Del Pero's joining of the Medical Group, because he did not join until after Feather River's contract with the Hospital was terminated.

In reviewing a judgment entered after the trial court granted summary judgment, we review the propriety of the ruling, not the reasons given. The trial court's reasoning does not bind us on appeal. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694; *Heller v. Franchise Tax Bd.* (1994) 21 Cal.App.4th 1730, 1735.) Instead, we review the granting of the motion for summary judgment de novo. The plaintiffs' burden is to establish that summary judgment was improperly granted, not that the trial court's reasoning was incorrect. "On review of a summary judgment, the appellant has the burden of showing error, even if he did not bear the burden in the trial court. [Citation.]" (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230.)

With the burden on appeal in mind, we turn to the plaintiffs' opening brief. The defendants note that the plaintiffs focus only on the corporate practice doctrine and assert that the plaintiffs have forfeited arguments concerning whether other grounds support the judgment. The plaintiffs

respond in their reply brief: "The trial court based its ruling granting summary judgment in [the defendants'] favor upon the mistaken determination that all of Feather River's causes of action hinged upon a CPM [corporate practice of medicine] violation, and that there were supposedly no triable issues of material fact related thereto. [Record citation.] Recognizing the infirmity of the trial court's ruling, much of [the defendants'] briefs focus on a series of erroneous alternative arguments not relied upon by the trial court. In this regard, [the defendants] erroneously assert that Feather River's alleged Notice of Termination of the 2000 ASA, (which was intended to foster further negotiations) was the proximate cause of its damages. In addition, [the Medical Group] devotes several pages of argument, not relied upon by the trial court, in attempting to defend the trial court's summary adjudication of Feather River's claim that [the defendants] interfered with the contract between Feather River and Del Pero. [¶] Because [the defendants'] alternative arguments were not relied upon by the trial court, they are not among the many reasons the trial court erred. Accordingly, they were not addressed in Feather River's opening brief. To the extent the Court of Appeal nevertheless focuses on those or any other issues not relied upon by the trial court, Feather River respectfully requests leave to supplementally brief those issues pursuant to Code of Civil Procedure § 437c(m)(2)." (Italics added.)

Even though the trial court, when it granted summary judgment, relied exclusively on its determination that the

defendants did not violate the corporate practice doctrine, we need not consider the corporate practice doctrine. For purposes of summary judgment, the merit of each cause of action in the first amended complaint can be determined without regard to whether the defendants violated the corporate practice doctrine, as discussed below. We obtained supplemental briefing from the parties on the remaining arguments raised by the defendants in favor of summary judgment. (Code Civ. Proc., § 437c, subd. (m)(2).) Accordingly, we turn to those issues.

DISCUSSION

I

Interference with Prospective Economic Advantage

The plaintiffs claim that the defendants' alleged violation of the corporate practice doctrine caused a disruption in the economic relationship between the plaintiffs and their patients and precluded the plaintiffs from practicing anesthesiology in the Yuba City/Marysville area. The plaintiffs, however, have failed to present evidence showing the defendants caused the injury of which they complain.

We test the allegations of the complaint and the supporting evidence produced in the summary judgment proceedings to determine whether they are legally sufficient to support the causes of action alleged in the complaint. (See *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1277 [motion for summary judgment necessarily tests pleadings].) As noted above, an intentional interference with prospective economic advantage cause of action requires, among other elements,

(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff and (2) economic harm to the plaintiff proximately caused by the defendant. (*Overstock.com, Inc. v. Gradient Analytics, Inc., supra*, 151 Cal.App.4th at p. 713.)

The plaintiffs' first amended complaint alleges, with respect to the cause of action for interference with prospective economic advantage, that "Defendants' actions in excluding Plaintiffs from the practice of anesthesiology within Defendants' facilities, and in establishing [the Medical Group] as a sham and illegal corporation, did in fact proximately and actually cause the disruption of and/or interference with Plaintiffs' relationships with referring surgeons, referring physicians, patients, the Fremont Medical Center, the Feather River Surgery Center and the insurance and governmental payers of their services in the Marysville/Yuba City area."

"As a matter of law, there is a threshold causation requirement in order to establish the tort of intentional interference with prospective economic advantage. What is required is 'proof that it is *reasonably probable* that the lost economic advantage would have been realized *but for* the defendant's interference.' (*Youst v. Longo* (1987) 43 Cal.3d 64, 71, italics added, except for the word 'probable.') 'Over the past several decades, California courts analyzing the tort of interference with prospective economic advantage have required such a threshold determination. In *Buckaloo v. Johnson* [(1975) 14 Cal.3d 815] . . . , where [the court] set out the five

elements of the *intentional* form of the tort, [it] stated that the first element requires "the *probability* of future economic benefit." [Citation.] Although varying language has been used to express this threshold requirement, the cases generally agree it must be reasonably probable that the prospective economic advantage would have been realized but for defendant's interference. [Citations.]' (*Id.*, at p. 71, fn. omitted.)" (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 271, italics added.) "The law precludes recovery for overly speculative expectancies . . . ." (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 522.)

Feather River's termination of the contractual relationship with the Hospital weighs heavily against finding a reasonable probability that a prospective economic advantage would have been realized. The relevant cases consider whether there is a preexisting relationship between the plaintiff and the entity from which the plaintiff sought to obtain economic advantage -- here, both the Hospital and the plaintiffs' patients. Supreme Court precedent "support[s] the view that the interference tort applies to interference with existing noncontractual relations which hold the promise of future economic advantage. In other words, it protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative expectation that a potentially beneficial relationship will eventually arise." (*Westside Center Associates v. Safeway Stores 23, Inc., supra*, 42 Cal.App.4th at p. 524 [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311 and *Youst v.*

Longo, supra, 43 Cal.3d 64], italics and fn. omitted.) Although there had been an economic relationship between Feather River and the Hospital, Feather River terminated that relationship -- the relationship through which the plaintiffs obtained and maintained their patients. Only after the relationship ended did the Medical Group begin practicing medicine in a way that Feather River alleges violated the corporate practice doctrine.

The plaintiffs, by invective and innuendo, attempt to lay blame on the defendants for the termination of their relationship with the Hospital. They contend, referring to the argument that they ended the relationship: "[The defendants'] view of the world is but a fantasy, which attempts to ignore the hard and unpleasant evidence, revealing a hidden scheme to improperly and covertly seize control of anesthesia care in the Yuba City/Marysville market, to violate California's ban on the corporate practice of medicine, and to deny Feather River any hope of good faith negotiations to resolve their contractual differences. To suggest that Feather River is exclusively to blame for its injuries because it attempted to invoke its contractual right to negotiate a solution is to ignore not only the realities of this case, but also well-settled California authority regarding the factual nature of causation."

Several established facts belie this argument. There is no evidence the Hospital, after Feather River issued the termination notice, failed to negotiate with Feather River in good faith as required by the 2000 agreement. In fact, Feather River has not alleged that the Hospital breached its contract by

failing to negotiate in good faith or acted fraudulently with respect to Feather River. While it is true that the Medical Group was incorporated long before Feather River issued the termination notice, Feather River has presented no evidence the Hospital did anything other than negotiate in good faith or that the defendants involved in this appeal caused the Hospital to breach its contract with the plaintiffs. The only reasonable conclusion is that the defendants did not interfere in the relationship between Feather River and the Hospital. In other words, what these defendants did prior to the termination of the relationship between Feather River and the Hospital did not cause the termination of the relationship. That the defendants may have engaged in the corporate practice of medicine after the termination of the relationship is not sufficient to show causation because the plaintiffs' relationship with the Hospital (and necessarily the patients in the Hospital) had already ended.

Feather River's theory of causation assumes too much. It assumes that, if the defendants had not engaged in the corporate practice of medicine, Feather River and the Hospital would have reached a new agreement concerning anesthesia services. Feather River could have, but did not, rescind its termination notice and continue to the contractual end of its relationship with the Hospital. Instead, it allowed the termination notice to remain effective. Thus, we can only speculate concerning whether Feather River and the Hospital would have agreed to a new contract.

Feather River attempts to blame the Hospital for the termination of the contract. Asserting that, by issuing the termination notice, Feather River did no more than seek negotiations to modify the 2000 agreement and that the Hospital was responsible for allowing the contract to "lapse," Feather River fails to acknowledge that it initiated the process to terminate the contract and, even though the contract allowed Feather River to rescind the notice, it did not. There was no contract provision that would have allowed the Hospital to enforce the termination notice if Feather River had rescinded the notice. The suggestion, therefore, that the Hospital terminated the contract is factually and legally untenable.

Feather River also asserts: "[The defendants] admit that toward the end of negotiations, <u>the two sides reached an agreement on the financial terms of an arrangement</u> that would have allowed Feather River to continue to practice at the Hospital. [Record citations.] Therefore, [the defendants'] refusal to finalize a new contract with Feather River clearly and undeniably had nothing whatsoever to do with compensation." (Underscoring in original, fn. omitted.) This assertion ignores the problem that compensation was not the only issue to be resolved. The parties never agreed, for example, whether Feather River would provide cardiac anesthesia services as part of the contractual relationship. The critical point is that, even though Feather River and the Hospital may have already reached agreement on some issues, the parties were unable to

negotiate a new contract to replace the 2000 agreement terminated by Feather River.

Under these circumstances, the law does not allow a jury to find "economic harm to the plaintiff proximately caused by the acts of the defendant," a necessary element in an intentional interference with prospective economic advantage cause of action. (*Youst v. Longo, supra,* 43 Cal.3d at p. 71, fn. 6.)

The arguments of amicus curiae California Medical Association (CMA), in support of Feather River, actually serve to highlight the weaknesses in Feather River's position. CMA argues that "the [defendants] in this case are attempting to control medical care and to circumvent all responsibility for potentially violating the corporate practice of medicine bar in this case by suggesting to this Court that [Feather River has] no right to recover since they themselves 'caused' the damage by refusing to affiliate themselves with an apparently illegal medical group. Not only would this argument, if accepted by this Court, shield the [defendants] from accountability under the law, but it would force the physicians in this case to pick one of two poisons -- (1) aid and abet the illegal practice of medicine and face hefty penalties under California law, including, but not limited to, loss of licensure, fines, and imprisonment (Business & Professions Code §§ 2286, 2314, 2315), or (2) cease practicing at the hospital altogether, thereby destroying these physicians' ability to earn a livelihood in the Yuba City/Marysville community (given the market share of the defendant hospital system) and leave these physicians remediless

for this injury. Longstanding equitable principles do not countenance such a result. *See* California Civil Code § 3523 ('for every wrong there is a remedy')."

First, contrary to CMA's suggestion, the defendants, simply by prevailing in this action, cannot avoid accountability if indeed they are violating the corporate practice doctrine. As CMA itself asserts, violation of the corporate practice doctrine is a crime and can result in fines and imprisonment, as well as loss of license. (Bus. & Prof. Code, §§ 2314, 2315.) If the defendants in this case violated the corporate practice doctrine and, yet, prevail in this action, they are not absolved of accountability for any actions that may be illegal. Applying general tort standards of causation and liability, therefore, does not allow the defendants to get away with anything.

Second, the dispute here is not over whether the plaintiffs caused their own injuries. Instead, we must determine whether the defendants caused the plaintiffs' injuries, assuming for the purpose of argument that the plaintiffs were injured at all. Therefore, who caused the plaintiffs' injuries is relevant only to the extent the plaintiffs can show that the defendants caused those injuries.

Third, CMA's argument presents a false dichotomy: the plaintiffs had to aid and abet the corporate practice of medicine or cease practicing in the Marysville/Yuba City area. If the plaintiffs had not terminated their contract with the Hospital, they would have continued to practice in the

Marysville/Yuba City area *and* they would not have aided and abetted the corporate practice of medicine.

And fourth, CMA's assertion that the maxim, "for every wrong there is a remedy," a maxim on which the plaintiffs also rely, requires a remedy in this action fails because, if the plaintiffs were wronged, they still must show the defendants caused that wrong. They do not prevail simply because they can show injury. The assertion of the maxim simply begs the question of whether the defendants wronged the plaintiffs.

We therefore conclude that the plaintiffs' cause of action for interference with prospective economic advantage is defective because the plaintiffs have failed to raise a triable issue of fact concerning whether the defendants caused the injuries of which the plaintiffs complain. Regardless of whether the defendants violated the corporate practice ban, the plaintiffs have failed to establish the causation element of the interference with prospective economic advantage cause of action.

II

Antitrust, Unfair Competition, and Interference with Right to Practice

In their first amended complaint, the plaintiffs alleged that the defendants violated the Cartwright Act (Bus. & Prof. Code, § 16720 et seq.)[5] because the agreement between the

---

[5] Unspecified code citations in this section of the opinion are to the Business and Professions Code.

Hospital and the Medical Group restrained trade and controlled the market for anesthesia services in the Marysville/Yuba City area. They further alleged that they "suffered and will continue to suffer actual damages in the form of lost revenues for professional anesthesiology services, in that [they] have been prevented from providing these services in the Marysville/Yuba City area."

"The Cartwright Act prohibits every trust, defined as 'a combination of capital, skill or acts by two or more persons' for specified anticompetitive purposes. (§ 16720.) Section 16720 generally codifies the common law prohibition against restraint of trade. [Citation.] [¶] The federal Sherman Act prohibits every 'contract, combination . . . or conspiracy, in restraint of trade.' (15 U.S.C. § 1.) 'The similar language of the two acts reflects their common objective to protect and promote competition. [Citations.] Since the Cartwright Act and the federal Sherman Act share similar language and objectives, California courts often look to federal precedents under the Sherman Act for guidance. [Citation.]' [Citations.]" (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court* (2003) 114 Cal.App.4th 309, 334.)

"In California, exclusive dealing arrangements are not deemed illegal per se. . . . Consequently, a determination of illegality is tested under a rule of reason and 'requires knowledge and analysis of the line of commerce, the market area, and the affected share of the relevant market. [Citation.]' [Citation.] The resulting factual inquiry often makes summary

judgment inappropriate. [Citations.]" (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court, supra*, 114 Cal.App.4th at p. 335.)

The defendants assert that, as a matter of law, "the substitution of one exclusive supplier of anesthesia services for another does not harm competition for the provision of those services . . . ." This broad assertion is unsupportable. As noted above, exclusive dealing arrangements are subject to the rule of reason analysis. Some exclusive dealing arrangements survive antitrust claims. (See, e.g., *Coffey v. Healthtrust, Inc.* (10th Cir. 1992) 955 F.2d 1388, 1393 [change of exclusive provider did not harm competition where no showing made to define market or establish harm to competition].) However, not all are legal. "After the claimant has proven that the conspiracy harmed competition, the fact finder must balance the restraint and any justifications or pro-competitive effects of the restraint in order to determine whether the restraint is unreasonable. [Citations.] This balancing process requires a thorough examination into all the surrounding circumstances. [Citation.]" (*Oltz v. Saint Peter's Community Hosp.* (9th Cir. 1988) 861 F.2d 1440, 1445.)

Here, the plaintiffs produced evidence in response to the motion for summary judgment raising a triable issue of material fact concerning whether the restraint, the exclusive agreement, was reasonable. For example, the plaintiffs produced evidence that the defendants knew the surgeons who practiced at the Hospital (1) expected the quality of service Feather River had

given and (2) were concerned that the Medical Group was not prepared to offer the same quality. As late as December 6, 2001, less than two months before the termination of the contract with Feather River, the Hospital's board of directors discussed the problems the Medical Group was having in recruiting anesthesiologists. Feather River also presented evidence that, after the Medical Group took over anesthesiology services at the Hospital, the cost of those services rose dramatically, which would tend show the contract was anticompetitive. At first, the Hospital did not pay a subsidy to the Medical Group. However, later, the Hospital paid a subsidy of more than $3 million per year ($253,000 per month) and extended a $2.8 million line of credit to the Medical Group to keep it afloat. As a result of the Hospital's higher expenses, the rates charged to patients for anesthesiology services rose each year from 2002 to 2004. Thomas Hayes, the Hospital's chief executive officer, was reported to have told Dr. Del Pero that Hayes "would pay a lot of money to get rid of [Feather River]."

In *Oltz v. Saint Peter's Community Hosp., supra,* 861 F.2d 1440, a nurse anesthetist brought suit alleging a conspiracy among anesthesia service providers and the local hospital to enter an exclusive dealing contract and eliminate competition. The hospital was the only facility in Helena, Montana equipped to perform general surgery. (*Id.* at pp. 1442-1443.) The nurse anesthetist performed services in the hospital at a rate less than what was charged by anesthesiologists. The

anesthesiologists demanded that the hospital stop using the nurse anesthetist's services. The hospital relented and entered into an exclusive dealing contract with the anesthesiologists, thus terminating the relationship with the nurse anesthetist. Under the new arrangement, the annual earnings of the anesthesiologists increased by 40 to 50 percent. A jury found a violation of the federal Sherman Act and awarded damages to the nurse anesthetist. (*Id.* at pp. 1443-1444.)

On appeal, the *Oltz* court applied the rule of reason to determine whether the concerted conduct unreasonably restrained competition. It found that the facts supported the jury's determination in favor of the nurse anesthetist. The conduct injured competition for anesthesiology services in the Helena market. The exclusive agreement between the hospital and the anesthesiologists was intended to restrain competition by eliminating the option of using the nurse anesthetist's services. And the hospital and the anesthesiologists conspired to exclude the nurse anesthetist from practicing within the market. (*Oltz v. St. Peter's Community Hosp., supra,* 861 F.2d at pp. 1446-1451.) In response to "the assertion that no rural hospital could lawfully grant an exclusive contract if [the hospital] is now liable," the *Oltz* court stated: "The rule of reason requires an evaluation of each challenged restraint in light of the special circumstances involved. [Citation.] That the analysis will differ from case to case is the essence of the rule. As noted above, the conspiracy [the hospital] joined involved more than the establishment of an exclusive contract.

The absence of a goal to remove [the nurse anesthetist] and reduce the competition for the patients whom he served would have dramatically altered the outcome of this case. Our decision, therefore, cannot be read as establishing any rule applicable to other situations involving rural hospitals engaged in exclusive contracts for staff privileges. The legality of those arrangements will depend on their individual case merit." (*Id.* at p. 1449.)

Applying the reasoning of *Oltz* to the facts presented in support of and opposition to the motion for summary judgment in this case, we conclude the plaintiffs proffered evidence sufficient to raise a triable issue of fact concerning whether the defendants are liable under the Cartwright Act and the plaintiffs are entitled to enforce the act. There was evidence that the defendants sought to exclude the plaintiffs from practicing in the Marysville/Yuba City market and that the resulting exclusive agreement harmed competition. The defendants' only attempt to distinguish *Oltz* is to observe that the hospital, in that case, terminated the contract with the nurse anesthetist, not the other way around. This difference is trivial, however, because, if the contract between the Hospital and the Medical Group is an illegal restraint on trade, it may not matter that the plaintiffs had an earlier contract with the Hospital. At most, the plaintiffs' termination of the prior contract is only one factor to consider in applying the rule of reason.

The defendants also contend the plaintiffs cannot establish that the defendants caused the plaintiffs’ injuries. Unlike the injury associated with interference with prospective economic advantage, which tort vindicates specific relationships, the injury in a Cartwright Act claim is harm to competition and the resulting impairment of the plaintiffs’ ability to compete. (See *Brown Shoe Co. v. United States* (1962) 370 U.S. 294, 320 [8 L.Ed.2d 510, 532-533] [antitrust law protects competition].) Therefore, while the defendants’ actions were not the legal cause of the plaintiffs’ alleged injuries with respect to interference with prospective economic advantage, the plaintiffs have presented sufficient evidence, with respect to antitrust injury, that the plaintiffs “lost revenues for professional anesthesiology services, in that [they] have been prevented from providing these services in the Marysville/Yuba City area.”

Regardless of whether the defendants violated the corporate practice doctrine, the plaintiffs have sufficiently alleged in their pleadings and presented evidence establishing a triable issue of material fact as to whether they suffered injury, with respect to the Cartwright Act, as a result of the relationship between the Hospital and the Medical Group. The trial court erred in concluding the Cartwright Act cause of action was without merit.

For the same reasons that we find the trial court erred in granting summary judgment as to the Cartwright Act cause of action, we conclude the trial court erred in granting summary judgment as to the unfair competition and interference with the

right to practice a profession causes of action. “When a plaintiff who claims to have suffered injury from a direct competitor's ‘unfair’ act or practice invokes section 17200, the word ‘unfair’ in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187, fn. omitted.)

The defendants assert the plaintiffs cannot prevail on unfair competition and interference with the right to practice a profession causes of action because the plaintiffs terminated their contract with the Hospital. Unlike the interference with prospective economic advantage cause of action, however, the injury of which the plaintiffs complain with respect to these causes of action is the continuing harm to competition. They claim the defendants’ unlawful anticompetitive conduct has caused them actual injury by preventing them from getting work in the Marysville/Yuba City market. Thus, even though the plaintiffs’ causation allegations fail as to the cause of action for interference with prospective economic advantage, the allegations are sufficient as to the unfair competition and interference with the right to practice a profession causes of action.

III

Interference with Del Pero Contract

Dr. Richard Del Pero, one of the defendants in this action, is an anesthesiologist whose professional corporation, Richard Del Pero, M.D., Inc., also a defendant, was under contract with Feather River. The contract provided that, for 12 months beginning on January 10, 2001, Del Pero would provide services as an independent contractor to the Hospital on behalf of Feather River. The contract also stated that Feather River "intend[ed] to provide professional services at other locations . . . ." Feather River would assist Del Pero in obtaining and maintaining staff privileges at the Hospital. The contract did not bind Del Pero to devote all of his time to Feather River, but instead required Del Pero to devote sufficient time to Feather River to cover the schedules for anesthesiology services established by Feather River.

On November 29, 2001, while Feather River was still providing services to the Hospital, Del Pero signed a contract with the Medical Group. However, the contract between Del Pero and the Medical Group did not take effect until the day after the 2000 agreement between Feather River and the Hospital was terminated in January 2002. Del Pero performed under his contract with Feather River until Feather River terminated its relationship with the Hospital.

The plaintiffs' first amended complaint asserted a cause of action against the Medical Group for interference with the contract between Del Pero (along with his corporation) and

Feather River by inducing Del Pero to breach his contract with Feather River. The complaint asserted that the contract between Feather River and Del Pero contained protective covenants precluding Del Pero from contracting with the Medical Group.

"It has long been held that a stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract. [Citations.] The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. [Citations.]" (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

The plaintiffs contend the trial court erred in granting summary judgment as to the cause of action for interference with the contract between Del Pero and Feather River because the evidence shows interference. According to the plaintiffs, the signing of the agreement with the Medical Group in November 2001, interfered with the Feather River contract regardless of whether the effective date of the new contract was after the termination of Feather River's contract with the Hospital. We disagree.

When Del Pero signed the contract with the Medical Group, Feather River had already put in motion the termination of the

2000 agreement. Feather River only obtained work for its anesthesiologists through the Hospital. (The plaintiffs' contention that Feather River had included in its contract with Del Pero a clause saying it intended to use Del Pero's services at other locations is unavailing because it is established no such opportunity ever arose.) Since Feather River would have no more work for Del Pero after the termination of the 2000 agreement, Del Pero did not breach his contract with Feather River because Feather River had ceased to perform its obligation to Del Pero to provide work. (See *Bomberger v. McKelvey* (1950) 35 Cal.2d 607, 613 [anticipatory breach excuses performance by other party].) Therefore, the defendants did not interfere with the contract between Del Pero and Feather River.

As noted above with respect to the interference with prospective economic advantage and antitrust causes of action, it is unnecessary to determine whether the defendants' activities violated the corporate practice ban. Even if the defendants violated the corporate practice ban, their activities did not induce a breach of the contract between Feather River and Del Pero.

IV

Personal Liability of Hayes and Pace

Defendant Thomas Hayes is the chief executive officer of the Hospital, and defendant William Pace is the chief financial officer of the Hospital. Hayes and Pace contend they cannot be held personally liable for the actions they undertook as officers of the Hospital. The contention is without merit.

"Corporate director or officer status neither immunizes a person from personal liability for tortious conduct nor subjects him or her to vicarious liability for such acts. [Citations.] . . . 'Directors or officers of a corporation do not incur personal liability for torts of the corporation merely by reason of their official position, unless they participate in the wrong or authorize or direct that it be done. They may be liable, under the rules of tort and agency, for tortious acts committed on behalf of the corporation. [Citations.]'" (*PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1379.)

Here, the plaintiffs have alleged that defendants Hayes and Pace engaged in various acts personally. They encouraged the Hospital to obtain anesthesiology services from the Medical Group. Hayes served as secretary of the Medical Group, and Pace assisted the Medical Group by performing duties of the treasurer. Hayes signed the contract with the Medical Group on behalf of the Hospital and personally directed the Hospital's relationship with the Medical Group. In other words, defendants Hayes and Pace personally participated in the activities that the plaintiffs now assert were unlawful. Accordingly, the contention of defendants Hayes and Pace that they cannot be held personally liable is without merit on the facts presented in connection with the summary judgment motion.

V

Denial of Judicial Notice

The plaintiffs contend the trial court erred in denying their request for judicial notice of specific contents of the

trial court's own files. Evidence Code section 452 and 453 require a court, upon proper request, to take judicial notice of court files. (Evid. Code, §§ 452, subd. (d); 453.) Thus, the court erred. We cannot reverse based on error in denying judicial notice, however, unless the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13 [no reversal if error complained of did not result in miscarriage of justice].) Although judicial notice was mandatory here, the error was harmless.

In opposition to the defendants' motions for summary judgment and adjudication, the plaintiffs filed a request for judicial notice of the declaration of Feather River's attorney, Michael J. Thomas, and attached exhibits, totaling more than 400 pages, which Thomas previously filed in support of a request for discovery orders and sanctions. Thomas's exhibits included deposition testimony by John Cary, the Hospital's board chairman, that he had shredded documents relating to the Hospital during the pendency of this litigation and after the plaintiffs had made a request for discovery. Cary shredded the documents consistent with his policy to shred, periodically, the documents he had accumulated, but he did so without determining whether the documents were relevant to the plaintiffs' discovery request. The trial court, without explanation, denied the request for judicial notice.

California law provides for an "evidentiary inference that evidence which one party has destroyed or rendered unavailable was unfavorable to that party." (*Cedars-Sinai Medical Center* v.

Superior Court (1998) 18 Cal.4th 1, 11, citing Evid. Code, § 413.) The law, however, does not recognize a cause of action for tortious spoliation of evidence. (*Cedars-Sinai Medical Center v. Superior Court, supra,* at pp. 17-18.)

Evidence Code section 413 permits a trier of fact to consider a party's willful suppression of evidence in deciding what inference to draw from the evidence.[6] The plaintiffs assert they were entitled to an inference that certain documents, destroyed by Cary, supported their claims. "The destruction of those documents," conclude the plaintiffs, "raises a reasonable inference that the documents supported Feather River's claims and thus, mandated denial of the defendants' motions for summary judgment. Code Civ. Proc., § 437c(c) and (e); Evid. Code § 413; BAJI 2.03; *see also, Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1 (eliminating spoliation of evidence tort cause of action in favor of inferences to be drawn pursuant Evidence Code § 413)." (Sic.)

While claiming that inferences should be drawn in their favor, the plaintiffs do not reveal what inferences would be drawn. They fail to demonstrate the existence of any specific issue of material fact. They therefore fail to establish how

---

[6] Evidence Code section 413 provides: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

error in denying their request for judicial notice of documents establishing that Cary shredded files was prejudicial to them.

The plaintiffs seek to use the fact that Cary destroyed some documents as a litigation trump card -- that is, they are entitled to inferences in their favor on any claim simply by showing evidence was destroyed. Such an application of *Cedars-Sinai Medical Center v. Superior Court*, however, is overbroad and would effectively recognize a spoliation of evidence tort cause of action, an application directly contrary to the plain language of the Supreme Court precedent, because it would make the defendant liable simply because evidence was despoiled.

Because the plaintiffs offer no valid reason the granting of the request for judicial notice would have benefited them in the trial court's consideration of the motion for summary judgment, the plaintiffs' contention that the judgment must be reversed is without merit. (Cal. Const., art. VI, § 13.)

VI

Denial of Discovery Motion

The plaintiffs contend the trial court committed reversible error by denying their discovery motion, which sought production of documents the plaintiffs claimed were in the Hospital's possession. In making this contention, the plaintiffs offer no standard of review, no statutory or case authority concerning the trial court's duties with regard to a discovery motion, and no authoritative support for their conclusion that the trial court erred. The only case they cite concerns proving motive and intent in an antitrust case.

On appeal, the appellant bears the burden of showing error. To do so, the appellant must support arguments with relevant authority. A brief that fails to do so is inadequate to raise the issue for our consideration. (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 126.) We therefore reject the discovery motion contention because it is inadequately raised and briefed.

The plaintiffs also assert the trial court's postponement of the hearing on the motion for reconsideration of the discovery ruling until after it granted summary judgment prejudiced them. Likewise, they fail to provide any authority for this proposition. As we did with the assertion that the trial court erroneously denied the discovery motion, we conclude the plaintiffs have failed to raise and brief adequately the postponement of the motion to reconsider.

VII

Costs Appeal

After judgment was entered in favor of the defendants, the trial court entered orders awarding costs to those defendants. On July 27, 2005, the trial court awarded $118,953 in costs to defendants Hospital, Hayes, and Pace. On July 28, 2005, the trial court awarded $36,824.24 in costs to defendants Medical Group and Coulter. The plaintiffs appeal from those orders. (Case No. C050832.) Because we reverse the judgment, and the costs awards were based on that judgment, we must also reverse the costs awards as to the parties involved in this appeal.

(*Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1436.)

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings consistent with this opinion (C049851). The costs awards in favor of defendants Medical Group, Coulter, Hayes, and Pace are reversed. (C050832). In both appeals, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.276(a)(3).)

NICHOLSON, J.

We concur:

SCOTLAND, P.J.

BLEASE, J.