MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD88284

JOSEPH C. BARBER AND BRENDA L. BARBER,
Respondents,

v.

KIMBERLY R. WEGER,
Appellant.

Opinion Filed: November 17, 2026

Appeal from the Circuit Court of Boone County, Missouri
The Honorable Michael William Bradley, Judge

Before Special Division: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Kimberly R. Weger ("Kimberly") appeals from the trial court's judgment in favor of Joseph C. Barber ("Joseph") and Brenda L. Barber ("Brenda") (collectively "the Plaintiffs").[1] Kimberly asserts that the trial court's judgment must be reversed because it

[1]Because Kimberly Weger shares a surname with her husband, Aubrey Weger, we refer to her by her first name for the purposes of clarity. The same is true for Joseph C. Barber and Brenda L. Barber.

is not supported by substantial evidence. Finding no error, we affirm. We also remand the case for determination of an award of attorney's fees.

Factual and Procedural History[2]

In 2006, the Plaintiffs purchased a parcel of real estate located at 4905 West Route F, Clark, Missouri ("Property") from Kimberly and her husband, Aubrey Weger ("Aubrey") (collectively "the Wegers").[3] The Plaintiffs executed a promissory note in the amount of $37,325 representing a portion of the purchase price and a deed of trust in favor of the Wegers to secure payment of the promissory note. The deed of trust was recorded with the Boone County Recorder of Deeds on November 22, 2006. The terms of the promissory note required the Plaintiffs to make monthly principal and interest payments of $450 on the first day of each month beginning December 1, 2006, and continuing through November 2015. If the monthly installment payment was not made before the 15th day of the month, a late fee of $25 would be assessed. The Plaintiffs made installment payments required by the promissory note so that the last payment was made in November 2015 when the note matured.

We have elected to refer to Joseph and Brenda collectively as the Plaintiffs because, according to Brenda's testimony, Joseph and Brenda are no longer married to one another.

[2]When reviewing a court-tried case, we view all evidence and inferences drawn therefrom in the light most favorable to the judgment, disregarding all contrary evidence and inferences. *Shelter Mut. Ins. Co. v. Hill*, 739 S.W.3d 735, 739 (Mo. App. W.D. 2026).

[3]Because Aubrey Weger shares a surname with his wife, we refer to him by his first name. No familiarity or disrespect is intended. Despite being a defendant to the Plaintiff's suit, Aubrey is not a party to this appeal.

In April 2022, the Plaintiffs entered into a contract to sell the Property for $272,500. The contract provided that the closing date would be May 13, 2022. Prior to the closing date, the Plaintiffs discovered that the deed of trust in favor of the Wegers remained as an encumbrance on the Property.

The Wegers refused to release the deed of trust, asserting for the first time that they did not receive all monthly payments due under the note, particularly in 2014 and 2015. Despite asserting that they had not received all payments due under the promissory note, the Wegers refused to provide a payoff amount. Instead, Aubrey told Brenda that she "couldn't sell the Property" because the Plaintiffs "didn't own it," and that he would "stop the sale" because he "really wish[ed] they had the house and property back." Ashtin Weger ("Ashtin")[4], the Wegers' son, told Brenda that he "would do whatever it took and make sure people knew [the Plaintiffs] didn't own [the Property] and couldn't sell it" because he wanted his "parents to have" the Property.

In response to the Wegers' refusal to release the deed of trust, the Plaintiffs hired an attorney. On May 5, 2022, the Plaintiffs' attorney sent the Wegers a demand letter pursuant to section 443.130.[5] The letter demanded that the Wegers execute and record a deed of release for the deed of trust; and either produce and cancel the promissory note in

[4]Because Ashtin Weger shares a surname with his parents, we refer to him by his first name. No familiarity or disrespect is intended. Despite being a defendant to the Plaintiffs' suit, Ashtin is not a party to this appeal.

[5]All statutory references are to RSMo 2016 as supplemented through May 5, 2022, unless otherwise noted.

the presence of the Recorder of Deeds or execute and record an affidavit reciting that the promissory note has been paid. Enclosed with the letter was evidence of most of the monthly payments made by the Plaintiffs on the promissory note in 2014 and 2015. The letter informed the Wegers that, because the financial records were nearly seven years old and some payments were made via money order, "a handful of payment records could not be located." Pursuant to section 443.130.2, the letter enclosed a check advancing the expense associated with recording the required documents. The letter also enclosed a form deed of release and a form affidavit for the Wegers' convenience. The letter was sent via certified mail, return receipt requested. The letter was not accepted by the Wegers and instead was returned to sender.

After the letter was returned to sender, the Plaintiffs' attorney sent the same letter and its enclosures via certified mail to the Wegers' attorney. Through their attorney's communications with the Wegers' attorney, the Plaintiffs asked for "the amount [the Wegers] dispute the [Plaintiffs] still owe." The Plaintiffs offered to place the disputed amount in escrow if the Wegers executed a deed of trust so that the sale of the Property could be complete. The Wegers continued to refuse either to provide a payoff amount for the promissory note or to release the deed of trust.

The Plaintiffs filed a petition against Kimberly, Aubrey, and Ashtin (collectively "Defendants") in the Circuit Court of Boone County on August 19, 2022. The petition asserted two claims. Count I alleged that the Wegers violated section 443.130 by refusing "to record a full deed of release" after receiving a demand letter from the

Plaintiffs' attorney that complied with the statute. Count I asked the trial court to award the Plaintiffs damages in the lesser amount of $3,732.50 or $300 per day until the Wegers submit a deed of release for recording; an award of reasonable attorney's fees; and an order releasing the deed of trust or, in the alternative, an order that requires the Wegers to execute and record a deed of release. Count II asserted a claim of tortious interference with a real estate contract against all three Defendants. With respect to Ashtin, Count II alleged that Ashtin advised the Wegers not to release the deed of trust in hopes that the contract to sell the Property would fail and the Wegers could purchase the Property back from the Plaintiffs. With respect to the Wegers, Count II alleged that the Wegers had refused to release the deed of trust or provide the Plaintiffs with the amount due on the promissory note. Count II claimed that, due to the Defendants' interference with the Plaintiffs' pending real estate contract, the Plaintiffs were damaged in the form of "diminution of value of the Property and their capacity to sell the Property." Count II asked for an award of actual damages, punitive damages, and costs incurred in connection with the action.

On June 18, 2024, the trial court entered a partial judgment. The partial judgment entered a consent judgment against Kimberly insofar as her agreement that the deed of trust should be ordered released. The partial judgment entered a default judgment against Aubrey. The partial judgment ordered the deed of trust on the Property to be released,[6]

[6]As required by law, the partial judgment included the legal description of the Property, permitting its recordation, which was also expressly authorized by the partial

but deferred disposition of the Plaintiffs' claims for damages under section 443.130 and for tortious interference.

During a bench trial to resolve the remaining issues, Brenda and Kimberly each testified. The trial court also admitted evidence regarding the payments made by the Plaintiffs to the Wegers and regarding the Plaintiffs' attempt to sell the Property before the partial judgment releasing the deed of trust.

Brenda testified that the buyers of the Property were unwilling to close while the deed of trust remained an encumbrance on the Property. The Plaintiffs extended the closing date three times and reduced the sale price to $225,000. However, the sale of the Property to the original buyers never closed because the Wegers refused to release the deed of trust. Brenda testified that, because the initial sale of the Property never closed, she paid caretakers to care for the Property after her relocation to Michigan, paid for water and electric service to the Property, and paid the Property's mortgage, insurance, and real estate taxes. After the partial judgment ordering the release of the deed of trust, the Plaintiffs were able to sell the Property for $225,000 on September 16, 2024.

Kimberly testified that, while she was still married to Aubrey, the couple had been separated since October 2023 when he moved out of the marital home. According to Kimberly, brain injuries suffered in 1983 and 2014 caused Aubrey to be physically and mentally abusive so that she had to obtain an order of protection. Kimberly testified that

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judgment. Because release of the deed of release is not an issue in this appeal, we have not included the legal description of the Property in our opinion.

she kept records pertaining to the Plaintiffs' payment of the promissory note. According to those records, the Plaintiffs were required to make 107 payments but only made sixty-seven payments, leaving $17,079.97 outstanding, not including additional late fees. Kimberly testified that she had not had any conversations with the Plaintiffs about repaying the loan since approximately 2017, the year the Wegers suffered a house fire. Kimberly testified that she had documentation of all payments made on the promissory note because the home's office was the only room that did not burn during the fire. Kimberly testified that she never "intentionally [did] anything to stop the sale of [the Property]" because she could not force Aubrey to sign a deed of release. Kimberly explained that, even though the promissory note was never paid by the Plaintiffs in full, she agreed that the deed of trust should be released. Kimberly testified that she was "willing to forgive the debt if [she] had an opportunity to get onto the Property" via an easement, but that ultimately did not happen after the entry of the partial judgment.

After receiving briefing from the Plaintiffs and from Kimberly and Ashtin in lieu of closing arguments, the trial court issued its judgment in May 2025 ("Judgment"). The trial court's Judgment resolved the pending claim in Count I for damages based on the Wegers' violation of section 443.130 in favor of the Plaintiffs and against the Wegers, and ordered the Wegers to pay the Plaintiffs $3,732.50, with attorney's fees in the amount of $28,065.77, and court costs. With respect to Count II, the claim for tortious interference with a real estate contract, the Judgment found in favor of the Plaintiffs and against the Wegers in the amount of $47,500 plus court costs. The Judgment found in

favor of Ashtin on the Plaintiffs' claim against him for tortious interference with a real estate contract.[7]

Kimberly appeals.

Standard of Review

"In court-tried cases, appellate courts will affirm a [trial] court's judgment 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.'" *Owens v. Hoskins*, 739 S.W.3d 786, 793 (Mo. App. W.D. 2026) (quoting *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). The trial court's judgment is presumed to be correct, and the appellant bears the burden to demonstrate otherwise. *In Matter of Davis*, 738 S.W.3d 737, 742 (Mo. App. W.D. 2026). In evaluating the appellant's claim of error, we view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the judgment, disregarding all contrary evidence and inferences. *Shelter Mut. Ins. Co. v. Hill*, 739 S.W.3d 735, 739 (Mo. App. W.D. 2026).

A substantial-evidence challenge is distinct from an against-the-weight-of-the-evidence challenge. *In Matter of Davis*, 738 S.W.3d at 742. "Substantial evidence is competent evidence from which the trier of fact could reasonably decide the case." *Id.* (quoting *In re Est. of Schooler*, 204 S.W.3d 338, 344 (Mo. App. W.D. 2006)). A substantial-evidence challenge requires the appellant to:

[7]The Judgment also found in favor of Ashtin on Count I even though Ashtin was not named as a defendant on Count I.

(1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;

(2) identify all of the favorable evidence in the record supporting the existence of that proposition; and,

(3) demonstrate why the favorable evidence, when considered along with the reasonable inferences drawn from that evidence, does not have probative force upon the proposition such that the trier of fact could not reasonably decide the existence of the proposition.

Id. (quoting *Houston v. Crider*, 317 S.W.3d 178, 187 (Mo. App. S.D. 2010)). An against-the-weight-of-the-evidence challenge, on the other hand, requires the appellant to:

(1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;

(2) identify all of the favorable evidence in the record supporting the existence of that proposition;

(3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,

(4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

Id. (quoting *Houston*, 317 S.W.3d at 187). The failure to follow the appropriate framework is fatal to a point on appeal. *Id.*

Analysis

Kimberly presents two points on appeal, both of which argue that the Judgment is not supported by substantial evidence. We consider the points in order.

Point One: Substantial Evidence Established Full Payment of the Promissory Note

Kimberly's first point on appeal asserts that, by finding in favor of the Plaintiffs on Count I, which asserted that the Wegers violated section 443.130, the Judgment was not supported by substantial evidence in that there was no evidence establishing that the promissory note had been paid in full. To support her argument, Kimberly cites the absence of evidence of any payments made by the Plaintiffs prior to 2014 and the lack of records to support Brenda's testimony the Plaintiffs made all monthly payments in 2014 and 2015. Kimberly argues that, because Brenda admitted during her testimony that the Plaintiffs made late payments throughout the lifespan of the promissory note, the Plaintiffs were required to demonstrate that they paid all late fees due, which the Plaintiffs failed to do.

Section 443.060.1 sets forth the mortgagee's duty upon receiving full payment of a debt secured by a deed of trust:

> If any mortgagee . . . receive[s] full satisfaction of any security instrument, he shall, at the request and cost of the person making the same, deliver to such person a sufficient deed of release of the security instrument . . . .

Section 443.130 provides the mechanism for a mortgagor to seek the mortgagee's release of a deed of trust after full payment of the promissory note. *See Lee v. Peters*, 250 S.W.3d 783, 790 (Mo. App. W.D. 2008) ("The purpose of section 443.130 is to enforce

the duty of the mortgagee to clear the mortgagor's title, so that the record is no longer encumbered.") (quoting *Garr v. Countrywide Home Loans, Inc.*, 137 S.W.3d 457, 460 (Mo. banc 2004)). The process for seeking release of a deed of trust is as follows:

> [T]he mortgagor or his or her agent shall provide the request in the form of a demand letter to the secured party by certified mail, return receipt requested or in another form that provides evidence of the date of receipt to the mortgagor. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

Section 443.130.2. If, after receipt of such a demand letter along with evidence of satisfaction and payment of the expense of filing and recording, the mortgagee fails to submit a deed of release for recording within forty-five days, the mortgagee is liable to the mortgagor "for the lesser of an amount of three hundred dollars a day for each day, after the forty-fifth day . . . or ten percent of the amount of the security instrument, plus court costs and attorney fees." Section 443.130.1. Thus, recovery under section 443.130 is permitted if the mortgagor proves "(1) payment of the debt, (2) demand for a deed of release, and (3) 'tender of costs.'" *Trovillion v. Countrywide Funding Corp.*, 910 S.W.2d 822, 824 (Mo. App. E.D. 1995).

Kimberly does not argue that the Plaintiffs failed to prove that they demanded a deed of release and tendered the costs of recording a deed of release. Instead, the first point on appeal asserts that there was no evidence presented at trial establishing full payment of the promissory note. A review of the record on appeal refutes Kimberly's position.

The trial court had competing evidence before it: Brenda's testimony and Kimberly's testimony. Brenda testified that the Plaintiffs made every payment due under the promissory note until November 2015 when the Plaintiffs made the final payment due under the promissory note's terms. Brenda acknowledged that the Plaintiffs occasionally made those monthly payments after the 15th and explained that, if they made a late payment, they included an additional $25 late fee pursuant to the promissory note's terms. Brenda explained that she did not keep records of every payment the Plaintiffs made to the Wegers because she "thought [the promissory note] was completed." Brenda testified that, because the Wegers informed the Plaintiffs that not all payments were made in 2014 and 2015, she contacted her banks to obtain records of all payments made during that period, but the banks were unable to locate proof of six of the monthly payments made during that time. The Plaintiffs entered the bank records she was able to locate from 2014 and 2015 into evidence. According to Brenda, the banks no longer had all the records because seven years had passed between the Plaintiff's final payment on the promissory note and the Wegers' first assertion that the Plaintiffs had not satisfied the promissory note.

In contrast, Kimberly testified that her records indicated that the Plaintiffs had only made sixty-seven of the 107 monthly payments required under the terms of the promissory note. Kimberly admitted that her records did not include some of the payments made by the Plaintiffs in 2014 and 2015 for which the Plaintiffs produced copies from their banks. Kimberly insisted that her records were otherwise accurate and

complete. Kimberly expressed that it was "amazing" that, despite suffering a house fire in 2017, the home office where she kept all the records pertaining to the promissory note "was the only room in the house that did not burn."

The Judgment did not include a factual finding regarding full payment of the promissory note though full payment is an essential element of a claim for the statutory penalty contemplated by section 443.130. However, pursuant to Rule 73.01(c),[8] "[a]ll fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached." In entering judgment in favor of the Plaintiffs on Count I, the trial court necessarily found Brenda's testimony that the Plaintiffs made all payments due under the promissory note, including late fees contemplated by the promissory note, to be credible and necessarily rejected Kimberly's testimony to the contrary as incredible.[9] We are bound by that credibility determination. *Cadwalader v. Cadwalader*, 738 S.W.3d 697, 704 (Mo. App. W.D. 2026) ("In reviewing whether the trial court's judgment is supported by substantial evidence, we view the evidence in the light most favorable to the trial court's judgment and defer to the trial court's credibility determinations."). Brenda's testimony and bank records corroborating

[8]All Rule references are to *Missouri Supreme Court Rules, Volume 1--State, 2025*, unless otherwise noted.

[9]Kimberly does not argue that the promissory note required the payment of anything more than a $25 fee for late payments. As such, *Roberts v. Rider*, 924 S.W.2d 555 (Mo. App. S.D. 1996), which held that the mortgagor's failure to pay "reasonable attorney fees" as provided by the terms of the promissory note rendered the imposition of a penalty pursuant to section 443.130 inappropriate, is inapplicable to our resolution of the first point on appeal.

her testimony provided substantial evidence to support the trial court's determination that the Plaintiffs fully paid the promissory note secured by the Wegers' deed of trust and were entitled to damages pursuant to section 443.130.

Point One is denied.

Point Two: Substantial Evidence Established that Kimberly Was Not Justified in Refusing to Execute a Deed of Release

Kimberly's second point on appeal claims that the Judgment's finding in favor of the Plaintiffs on Count II, which asserted a claim of tortious interference with a real estate contract, was not supported by substantial evidence because there was no evidence presented at trial to establish that Kimberly was not justified in her refusal to release the deed of trust. Kimberly argues that the evidence presented at trial demonstrated that the Plaintiffs had not fulfilled their obligations under the terms of the promissory note, which gave Kimberly the privilege to interfere with the real estate contract to protect her economic interest as a mortgagee.

A claim for tortious interference with a contract requires proof of the following: "(1) a contract; (2) defendant's knowledge of the contract; (3) intentional interference by the defendant inducing or causing a breach of the contract; (4) absence of justification; and (5) damages resulting from defendant's conduct." *Creative Compounds, LLC v. ThermoLife Int'l, LLC*, 669 S.W.3d 330, 340 (Mo. App. E.D. 2023) (quoting *Rail Switching Servs., Inc. v. Marquis-Mo. Terminal, LLC*, 533 S.W.3d 245, 259 (Mo. App.

E.D. 2017)). Kimberly's second point on appeal only challenges whether substantial evidence established that Kimberly's interference with the contract was not justified.

A plaintiff asserting a claim of tortious interference with a contract bears the burden of affirmatively showing the absence of justification. *Stehno v. Sprint Spectrum, L.P.*, 186 S.W.3d 247, 252 (Mo. banc 2006). "[I]f the defendant has a legitimate interest, economic or otherwise, in the expectancy the plaintiff seeks to protect, then the plaintiff must show that the defendant employed improper means in seeking to further only his own interests." *Reyna Hotel Corp. v. Lotus Hosp. Mgmt., LLC*, 714 S.W.3d 423, 436 (Mo. App. W.D. 2025) (quoting *Stenho*, 186 S.W.3d at 252)). "Improper means are those that are independently wrongful, such as threats, violence, trespass, defamation, misrepresentation of fact, restraint of trade, or any other wrongful act recognized by statute or the common law." *Creative Compounds, LLC*, 669 S.W.3d at 342 (quoting *Bishop & Assocs., LLC v. Ameren Corp.*, 520 S.W.3d 463, 472 (Mo. banc 2017)).

Kimberly, as a mortgagee, had a financial interest in the promissory note and the deed of trust serving as security for the promissory note. *See JAM Inc. v. Nautilus Ins. Co.*, 128 S.W.3d 879, 894-95 (Mo. App. W.D. 2004) (holding that a "financial interest" encompasses "ownership, a monetary responsibility under a promissory note, [and] a legal monetary right under a deed of trust" as well as "a monetary stake or claim in the property or a monetary responsibility for the property"). However, Kimberly's financial interest in the deed of trust was extinguished upon full satisfaction of the promissory note. *See id.* As discussed *supra*, the trial court resolved competing evidence about full

payment of the promissory note in favor of the Plaintiffs. As such, substantial evidence established that when the Wegers refused to execute a deed of release to allow the Plaintiffs to sell the Property in 2022, they did not have a legitimate economic interest that justified their refusal.

Kimberly's mere assertion that she reasonably believed that the promissory note had not been fully paid when the Plaintiffs demanded release of the deed of trust does not require a different conclusion. The trial court's necessary rejection of Kimberly's self-serving assertion is also supported by substantial evidence. The parties stipulated at trial that, in the normal course of selling a parcel of real estate, "a lender who has a deed of trust . . . will provide a payoff amount so that the seller can pay that amount out of closing [so] that the transaction to sell the property, including the closing, can go ahead and proceed." Despite requests from the Plaintiffs to provide a payoff amount so that the deed of trust could be released, the Wegers refused to do so. This alone belies Kimberly's claim that she reasonably believed that the promissory note was not fully paid. In addition, substantial evidence established that the Wegers' refusal to release the deed of trust was not motivated by an unpaid balance due and was instead motivated by a desire to prevent the Plaintiffs from selling the Property because they wanted the Property back. Kimberly conceded at trial that she wanted an easement over the Property and claimed that she was willing to "forgive" the allegedly outstanding balance due on the promissory note to secure an easement.

Substantial evidence established that the Wegers' refusal to release the deed of trust was not justified by a legitimate belief that the underlying promissory note was not fully paid and was instead driven by the desire to prevent the Plaintiffs' sale of the Property to further the Wegers' self-interest. This was improper conduct that encumbered the Plaintiffs' title to the Property without legal justification.

The Judgment's finding in favor of the Plaintiffs and against the Wegers on their claim for tortious interference with real estate contract is supported by substantial evidence.

Point Two is denied.

Motion for Attorney's Fees on Appeal

While this matter was pending on appeal, the Plaintiffs filed a motion for attorney's fees on appeal, citing the availability of such an award pursuant to section 443.130.1. The Plaintiffs ask that we order Kimberly to pay their post-Judgment and appellate attorney's fees and that we remand the matter to the trial court for the limited purpose of determining the amount of attorney's fees the Plaintiffs should be awarded.

As noted *supra*, one of the penalties permitted by section 443.130.1 if a mortgagee fails to execute a deed of release after a proper demand to do so has been made by the mortgagor is an award of "court costs and attorney fees to be recovered in any court of competent jurisdiction." As we concluded in our discussion of Kimberly's first point on appeal, the Judgment's finding in favor of the Plaintiffs on Count I, which alleged a violation of section 443.130, was supported by substantial evidence. Accordingly, the

Plaintiffs are entitled to an award against Kimberly for their reasonable attorney's fees incurred post-Judgment and on appeal.

"Although [we have] the authority to allow and fix the amount of attorney's fees on appeal, we exercise this power with caution, believing in most cases that the trial court is better equipped to hear evidence and argument on this issue and determine the reasonableness of the fee requested." *Holmes v. Mo. Dep't of Corr.*, 697 S.W.3d 97, 104 (Mo. App. W.D. 2024) (quoting *McCrainey v. Kansas City Mo. Sch. Dist.*, 337 S.W.3d 746, 756 (Mo. App. W.D. 2011)). As such, we remand the matter to the trial court for further determination of the post-Judgment and appellate attorney's fees Kimberly should be ordered to pay the Plaintiffs.

Conclusion

The Judgment is affirmed. The Plaintiffs' motion for post-Judgment and appellate attorney's fees is granted. We remand this matter to the trial court for the limited purpose of determining the reasonable post-Judgment and appellate attorney's fees that Kimberly should be ordered to pay the Plaintiffs.

Cynthia L. Martin

Cynthia L. Martin, Judge

All concur