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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

BILL R. FRISBIE et al.,

Plaintiffs and Appellants,

v.

ADA SERVICE CORPORATION et al.,

Defendants and Respondents.

A137836

(Sonoma County
Super. Ct. No. SCV245354)

In their action alleging various types of mortgage fraud, Bill Frisbie and his wife, Kitty Frisbie (appellants or the Frisbies), appeal the trial court's grant of summary judgment in favor of defendants Countrywide Home Loans, Inc. (Countrywide); Bank of America, N.A. (BANA); Recontrust Company, N.A. (Recontrust); The Bank of New York Mellon (BONY); and ADA Service Corporation, formerly known as H&R Block Mortgage Corporation (ADA or H&R Block) (collectively, defendants or respondents). The Frisbies' narrative pro per briefs contain a host of allegations without adequate citation to the record and do not clearly set forth their stated grounds for relief. Nevertheless, we conclude that the gist of their complaint is that the trial court's grant of summary judgment in this matter was improper due to the existence of disputed material facts. Having completed our own de novo review of the record, however, we see no error and therefore affirm.

I. BACKGROUND[1]

The Frisbies are a couple in their seventies who have resided at 3634 Frei Road in Sebastapol (the Property) for more than 40 years. Mr. Frisbie was in the real estate business for 50 years as a self-employed developer and operator of mobile home parks. In connection with this business, he entered into multiple loans and acquired and sold numerous properties. Between 1998 and 2007, for instance, the Frisbies took out six separate loans, using the equity in the Property to finance the acquisition of a number of mobile home properties.[2] Prior to 1998, Mr. Frisbie estimated that he had acquired somewhere between 48 and 100 parcels of real property. Mr. Frisbie had also acted as a lender, carrying back notes on properties he sold. Additionally, prior to these proceedings, Mr. Frisbie was deposed on several occasions with respect to real estate matters. And, during the timeframe relevant to the loan transactions at issue in this appeal, he was involved in multi-million dollar litigation with respect to certain real estate interests held by a family-owned company, Yankee Court, LLC (Yankee Court). Based on this history, Mr. Frisbie agreed that he was "pretty sophisticated" with respect to loan transactions.[3] Kitty Frisbie relied on her husband to make their mortgage decisions.

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[1] This background summary is based on facts that are either undisputed, taken from the Frisbies' own deposition testimony, or are facts with respect to which we have concluded that the Frisbies have failed to show the existence of a triable issue.

[2] Specifically, during that timeframe, the Frisbies borrowed the following amounts from Wells Fargo Bank, N.A. (Wells Fargo) in transactions secured by the Property: (1) $150,000 in September 1998; (2) $150,350 in February 2000; (3) $100,000 in June 2000; (4) $150,000 in July 2001; (5) $150,000 in June 2002; and (6) $150,000 in December 2002.

[3] Much of Mr. Frisbie's history in real estate can be found in deposition testimony attached to the declaration of ADA attorney Bruce Bauer, which was submitted by ADA to support its motion for summary judgment/summary adjudication in the trial court (Bauer Declaration). We are in receipt of ADA's motion dated July 19, 2013, to augment the record in this matter to include the Bauer Declaration. By order dated August 19, 2013, we indicated our intention to consider ADA's unopposed motion in connection with the merits of this appeal. We note that all of the deposition testimony attached to the Bauer Declaration can be found elsewhere in the existing record on appeal. Nevertheless,

A. *The 2006 and 2007 Loans*

In January 2006, the Frisbees obtained a loan (2006 Loan) in the amount of $487,000.00 from H&R Block. The 2006 Loan was secured by the Property and a deed of trust memorializing this fact was recorded on January 17, 2006 (First Deed of Trust). The 2006 Loan was classified as a prime loan. It was an adjustable rate loan, with a beginning interest rate of 6.125 percent for the first five years of interest-only payments. Thereafter, the interest rate adjusted annually based on changes to a designated index, with a maximum interest rate of 11.125 percent.[4]

According to Bill Frisbie, the couple obtained the 2006 Loan because they had accumulated debt in connection with the Yankee Court litigation described above and they wanted to consolidate their obligations and increase their cash flow until the litigation was resolved. In fact, the Frisbies' loan application for the 2006 Loan indicated that the couple had approximately $330,000 in secured loans remaining on the Property (which was valued at $980,000) as well as a large amount of unsecured debt. Their monthly debt service was approximately $4595. The proceeds of the 2006 Loan paid off the two prior mortgages as well as approximately $145,000 in unsecured obligations, including at least $100,000 in credit card debt, for a total of approximately $475,000. Thus, at $487,000, the 2006 Loan almost exactly mirrored the total amount of the Frisbies' previously existing debt. However, due to the refinancing, their monthly obligations decreased by over $2000, from $4595 to $2486. Mr. Frisbie admitted that the 2006 Loan was beneficial to them.

Despite the relief afforded by the 2006 Loan, however, the Frisbies continued to accumulate debt in connection with their Yankee Court litigation. In February 2007, the Frisbies obtained a loan from Wells Fargo in the amount of $125,000 which was secured

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as the Bauer Declaration was filed in the trial court and considered in connection with the summary judgment motions here at issue, we order the record augmented to include it.

[4] Specifically, the adjusted rate would be equal to the average of the Interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR) plus 2.25 percent.

by a second deed of trust on the Property (Wells Fargo Loan). Thereafter, in August 2007, the Frisbies obtained a $199,000 loan from Countrywide (2007 Loan). The 2007 Loan was secured by a second deed of trust on the Property and allowed the Frisbies to repay the Wells Fargo Loan as well as approximately $60,000 in credit card debt.

Pursuant to the express terms of the First Deed of Trust, the 2006 Loan, including any servicing rights, was freely assignable without notice to the Frisbies. The Frisbies were entitled, however, to written notice of any change in the loan servicer in accordance with the federal Real Estate Settlement Procedures Act, 12 U.S.C. section 2601 et seq. (RESPA). The Frisbies were informed around the time that they entered into the 2006 Loan that Countrywide would be the servicer on the Loan, effective March 1, 2006. They were directed to make all payments under the 2006 Loan to Countrywide, beginning with their first payment on March 1, 2006. The Frisbies also received a RESPA notice in the same timeframe indicating H&R Block's intention to assign the servicing rights under the 2006 Loan. This notice indicated that H&R Block had transferred the servicing rights for 100 percent of its first mortgages in each of the previous three years. Countrywide remained the servicer for the 2006 Loan until it was acquired by BANA in 2008, and the Frisbies admit that all of the payments they made with respect to the 2006 Loan were properly applied by Countrywide. With respect to the ownership of the underlying loan, a Substitution of Trustee and Assignment of Deed of Trust recorded in September 2010 indicates that Recontrust was substituted for Premier Trust as trustee under the First Deed of Trust, and BONY became the beneficiary under the First Deed of Trust.

In July or August 2008, the Frisbies stopped making payments on the 2006 Loan. According to Mr. Frisbie, he stopped making the monthly payments because he believed he had "paid enough" and had "paid more" than he felt he was "obligated to pay." Mr. Frisbie cited concerns regarding the identity of the original lender and other claimed irregularities with the loan documents. He maintained that both the 2006 Loan and the 2007 Loan were part of a "Ponzi pyramid scheme" and should be voided. He also admitted, however, that he stopped paying on the 2006 Loan due to cash flow problems. A Notice of Default was recorded against the Property on May 20, 2009.

B. ***Proceedings in the Trial Court***

In June 2009, Bill Frisbie filed an initial complaint in this matter, alleging a laundry list of claims related to the 2006 Loan, including, inter alia, fraud, fraudulent misrepresentation, breach of fiduciary duty, negligence, civil conspiracy, tortious interference with economic advantage, and conversion. In November 2009, the trial court sustained a demurrer filed by BANA, Countrywide, and Recontrust as to each of the 15 causes of action set forth in the initial complaint, both for failure to state a claim and for failure to join Kitty Frisbie as a necessary party. Since the demurrer was granted with leave to amend, the Frisbies filed a First Amended Complaint in November 2009. This pleading was also successfully challenged by demurrer, with the trial court suggesting that the couple retain counsel because only one further amendment would be allowed.

After obtaining representation, the Frisbies filed their Second Amended Complaint in March 2010. However, despite the involvement of counsel, the trial court in April 2010 again sustained a demurrer filed by BANA, Countrywide, and Recontrust, this time without leave to amend. In granting the demurrer, the trial court indicated that the Frisbies had failed to allege facts sufficient to show that BANA, Countrywide, and Recontrust could be held liable for actions taken by H&R Block. On reconsideration in September 2010, though, the trial court changed its mind and granted the Frisbies leave to amend, concluding that it "seems possible that the demurring defendants could be held liable for the actions of Defendant H&R Block."

Thus, on September 21, 2010, a Third Amended Complaint (TAC) was filed by the Frisbies. The TAC was limited to only four causes of action: (1) fraud; (2) unfair business practices in violation of California's Unfair Competition Law as set forth in section 17200 et seq. of the Business and Professions Code (UCL claim); (3) violation of the implied covenant of good faith and fair dealing; and (4) financial elder abuse in violation of Welfare and Institutions Code section 15610.30 (FEA claim). In October

2010, BANA, Countrywide, and Recontrust again filed a demurrer, this time to the TAC. Noting that the four claims asserted by the Frisbies were all defective in one or more ways and that the Frisbies had been given four opportunities to file an adequate complaint, the moving defendants argued that their demurrer should be sustained without leave to amend. In addition, H&R Block—who had been recently served in the action—also filed a demurrer to the TAC. It complained, among other things, that BONY was an indispensible party and had not been named. Ultimately, the trial court sustained the defendants' demurrers without leave to amend with respect to the causes of action for fraud and breach of the covenant of good faith and fair dealing, but allowed the UCL Claim and the FEA Claim to stand. In June 2011, BONY was substituted in as a party through a further amendment to the TAC.

In June 2012, after conducting discovery, BANA, Countrywide, Recontrust, and BONY (collectively, the Countrywide defendants) filed a motion for summary judgment/summary adjudication with respect to the two remaining causes of action, the UCL claim and the FEA claim. ADA filed a similar motion for summary judgment/summary adjudication. While these motions were pending, the Frisbies made their own motion for leave to further amend their complaint. As we discuss further below, the trial court denied the Frisbies' motion as procedurally defective, untimely, and unfairly prejudicial to the defendants.

Thereafter, by order dated October 29, 2012, the trial court granted summary judgment to both the Countrywide defendants and ADA. Specifically, with respect to the FEA claim, the court concluded that the Frisbies had provided no admissible evidence that ADA or the Countrywide defendants misrepresented their roles in the 2006 Loan or that the couple was harmed in any way by the alleged misrepresentations. Regarding the UCL claim, the trial court also found summary judgment appropriate as the Frisbies had offered no admissible evidence of injury caused by the alleged unfair business practices. A final judgment with respect to the matter was entered on November 15, 2012, with notice of its entry dated December 6, 2012. A timely notice of appeal brought the case before this Court.

II. DISCUSSION

A. *Standard and Scope of Review*

The standards for granting summary judgment are well-settled and easily delineated. A trial court must grant a motion for summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Summary judgment in favor of a defendant such as the Countrywide defendants or ADA is proper if (1) the defendant shows that one or more of the elements of a cause of action cannot be established or that there is a complete defense to it; and (2) the plaintiff fails to meet his or her burden of showing the existence of a triable issue of material fact. (*Id.*, subd. (p)(2).) A triable issue of material fact cannot be raised through speculation or conclusory assertions. (*Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1014 (*Lyons)*.) Thus, the plaintiff cannot rely upon "the mere allegations or denials of its pleadings," but must instead set forth the "specific facts" supporting the existence of the material fact. (Code Civ. Proc., § 437c, subd. (p)(2).)

On appeal, we undertake de novo review of the trial court's decision to grant summary judgment, "considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) " '[W]e are not bound by the trial court's stated reasons or rationales.' " (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 805.) Rather, we engage anew in " 'the same three-step analysis required of the trial court.' " (*Lyons, supra,* 40 Cal.App.4th at p. 1012.) " ' "First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond." ' " (*Ibid*.) Next, we " ' "determine whether the moving party's showing has established facts which negate the opponent's claim and justify a judgment in movant's favor." ' " (*Ibid.*) Finally, if the moving party has made an initial showing justifying summary judgment, we " ' "determine whether the opposition demonstrates the existence of a triable, material factual issue." ' " (*Ibid.*)

The Frisbies' briefs on appeal are largely a repetition of the allegations made in the TAC and in opposition to the motions for summary judgment in the trial court. There is very little authority to support their claims and even less reasoned legal argument. In addition, the briefs are repetitive and unclear in many places. On these grounds alone, we could declare the Frisbies' arguments forfeited and affirm on that basis. (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C); *Okasaki v. City of Elk Grove* (2012) 203 Cal.App.4th 1043, 1045, fn.1; *Evans v. Centerstone Development Co*. (2005) 134 Cal.App.4th 151, 165.) We choose, however, to address the Frisbies' basic arguments on the merits. In doing so, we will not review every single allegation that the couple repeats in their briefs.[5] Rather, we focus only on those essential to the respective causes of action.

B. *Financial Elder Abuse (FEA) Claim*

At the time when the 2006 Loan was originated, section 15610.30 of the Welfare and Institutions Code provided that financial elder abuse occurs when a person or entity "[t]akes, secretes, appropriates, or retains real or personal property of an elder . . . to a wrongful use or with intent to defraud, or both." (Stats. 2000, ch. 442, § 5, p. 3220; see Historical and Statutory Notes, 76A West's Ann. Welf. & Inst. Code (2011 ed.) foll. § 15610.30, pp. 381-382.)[6] Further, a "wrongful use" was defined as occurring "if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith." (*Ibid*.) A person is an "elder" for FEA purposes if he or she is over the age of 65. (Welf. & Inst. Code, § 15610.27.) Thus, in order to maintain an

[5] Nor will we consider any of the documents attached to the Frisbies' briefing that do not otherwise appear in the record. We have received no motion to augment the record or request for judicial notice with respect to these materials. However, even if we were to consider them, they would not change our analysis.

[6] Although the statute was amended effective January 1, 2009, at least one appellate court has concluded that the changes were substantive and thus do not apply retroactively given the absence of a clear expression of legislative intent to that effect. (See *Das v. Bank of America* (2010) 186 Cal.App.4th 727, 736-737; cf. *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1560-1562 [discussing retroactivity of prior amendments to the elder abuse laws].) We therefore consider the statutory language that was operative in 2006, at the time of the loan transaction at issue.

action under the FEA during the timeframe here at issue, a plaintiff over the age of 65 must have identified conduct that was either fraudulent or taken in bad faith and that deprived him or her of some interest in property.

In the present case, it is undisputed that the Frisbies were "elders" within the meaning of the FEA statute at the time of the 2006 Loan. They base their claim of FEA misconduct on allegations in their TAC that both ADA and the Countrywide defendants took financial advantage of them by: (1) misrepresenting to them that the 2006 Loan was competitive; (2) misrepresenting to them that the 2006 Loan was suitable when, in fact, they could not afford to service the debt; and (3) misrepresenting to them that H&R Block would be the lender and would service the 2006 Loan, when, in fact, H&R Block had a pre-existing arrangement with Countrywide (a subprime lender) to transfer the 2006 Loan to Countrywide. The Frisbies claim that, had they known of Countrywide's involvement and that the above-described representations made to them were false, they would not have entered into the 2006 Loan.[7] The Frisbies also allege in the TAC that

[7] When responding to the summary judgment/summary adjudication motions filed by ADA and the Countrywide defendants in this matter, the Frisbies raised additional theories of liability that were not alleged in the TAC. Specifically, they claimed that H&R Block misrepresented to the couple that they were entering into a fixed rate loan; that the terms of the loan were changed to a variable rate loan without their knowledge or consent; and that they were unable to review the loan documents in detail because the notary who was "arranged" by H&R Block, Countrywide and their agents to notarize the documents allowed only 15 minutes for the signing. The trial court denied the Frisbies' subsequent motion to amend their complaint to add these claims as procedurally defective, untimely, and unfairly prejudicial. As a consequence, the trial court properly granted the Countrywide defendants' motion to strike these new allegations as outside of the pleadings. (See *Nash v. Fifth Amendment* (1991) 228 Cal.App.3d 1106, 1116 [" '[a] motion for summary judgment must be directed to the issues raised by the pleadings. The [papers] filed in response to a defendant's motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings' "]; see *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1275 [" ' "[t]he function of the pleadings in a motion for summary judgment is to delimit the scope of the issues: the function of the affidavits or declarations is to disclose whether there is any triable issue of fact within the issues delimited by the pleadings" ' "].) Thus, although the Frisbies repeatedly raise these issues in their briefing before this court, they are not properly before us and we do not consider them.

Countrywide misrepresented to them that the 2007 Loan was suitable for their financial condition based on the existing equity in the Property when this was not true. However, the Frisbies admit that they have maintained their payments on the 2007 Loan; that they do not contest any of the terms of the 2007 Loan; and that they have not been damaged in any way as a result of entering into the 2007 Loan. Moreover, the trial court made no rulings with respect to the 2007 Loan, and the Frisbies do not contest this outcome on appeal. We therefore consider this issue abandoned and focus our analysis solely on the 2006 Loan.

Both ADA and the Countrywide defendants argue on appeal that summary judgment was appropriate with respect to the Frisbies' FEA claim because the couple provided no evidence of fraudulent or otherwise abusive behavior in connection with the origination or transfer of the 2006 Loan. ADA additionally argues that the couple's FEA claim is barred by the statute of limitations. We agree that the Frisbies have failed to establish the existence of a triable issue of material fact based on any identified abusive behavior in connection with the 2006 Loan. Thus, summary judgment was appropriate. (Code Civ. Proc., § 437c, subd. (p)(2).)

First, the Frisbies, themselves, admit that the 2006 Loan was competitive. Specifically, while they could have obtained it from any number of lenders, they chose H&R Block because "[t]he cumulative representations made by the H&R Block representatives were, overall, more in line with [the Frisbies'] time lines and schedules, cost factors and transfer needs [than] those of Wells Fargo, Chase, WAMU, Bank of America or other lenders whose offers required higher interest, more points charged, larger penalty payoffs or other terms." Next, to the extent H&R Block may have made representations to the Frisbies regarding the suitability of the 2006 Loan, "[s]uch statements are merely opinions or predictions about future events, they are not factual representations." (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 607 (*Graham*).) Thus, "[p]redictions about a buyer's real estate investment or the fair market value for property in the future" cannot be *actionable misrepresentations*. (*Ibid.*) Rather, "[a] borrower must rely on his or her own judgment and risk assessment to decide whether to accept a loan." (*Id*. at p. 608; cf. *Sierra-Bay Fed. Land Bank Assn. v. Superior Court* (1991) 227 Cal.App.3d 318, 334-335 ["It is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid. . . . [A] commercial lender is privileged to pursue its own economic interests and may properly assert its contractual rights"].) Indeed, given Bill Frisbie's level of sophistication in real estate matters, it seems highly unlikely that he would fail to make his own assessment as to the suitability of the 2006 Loan, and the evidence suggests that is exactly what he did before choosing among the available options.

This leaves the Frisbies with a single alleged misrepresentation—their contention that H&R Block falsely represented itself as both the lender and the servicer for the 2006 Loan when, in fact, it was engaged in some sort of bait-and-switch scheme with Countrywide to funnel H&R Block's customers into Countrywide's subprime lending business. However, as the trial court correctly found, the Frisbies failed to present any specific evidence to support their conclusory assertions regarding this alleged misrepresentation. In contrast, the defendants produced substantial evidence regarding the origination, funding, and transfer of the 2006 Loan that decisively rebuts the Frisbies' claims. For instance, as part of the closing for the 2006 Loan, the Frisbies signed the RESPA notice described above indicating H&R Block's intention to assign the servicing rights under the 2006 Loan. They also signed a First Payment Letter indicating they should make their first payment under the 2006 Loan to Countrywide, and they do not dispute that H&R Block informed them in early January 2006 that Countrywide would be the servicer for the 2006 Loan effective at the time of their first payment in March 1, 2006. Thus, the Frisbies were clearly and repeatedly informed that Countrywide would be their loan servicer, belying any claim that H&R Block engaged in some type of secret conspiracy with Countrywide with respect to the transfer of the servicing rights under the 2006 Loan.

As for the origination of the 2006 Loan, the First Deed of Trust, the related promissory note signed by the Frisbies, and the closing statement prepared by First American Title Company all indicate that the original lender was H&R Block. Although, as pointed out by the Frisbies, there were clearly some issues with improper dating on various notices with respect to the subsequent transfer of the 2006 Loan, these discrepancies are patently insufficient to undermine the clear import of the operative legal documents. Moreover, as stated above, the First Deed of Trust clearly states that the 2006 Loan was freely assignable without notice to the Frisbies. Thus, H&R Block had no duty to disclose its transfer plans to the couple. (*Graham*, *supra*, 226 Cal.App.4th at p. 609, fn. 8 [noting that, while a lender has a duty to refrain from committing fraud, it does not have a duty to borrowers to disclose its postloan activities], citing *Bank of America Corp. v. Superior Court* (2011) 198 Cal.App.4th 862.) Again, the Frisbies have failed to establish any actionable misconduct to support their FEA claim, and thus summary judgment was proper.

C. *Unfair Business Practices (UCL) Claim*

The Frisbies' second surviving cause of action under the TAC is for violation of California's Unfair Competition Law (the UCL). The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) "Its purpose 'is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.' " (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320 (*Kwikset*).) "In service of that purpose, the Legislature framed the UCL's substantive provisions in ' "broad, sweeping language" ' [citations] and provided 'courts with broad equitable powers to remedy violations' [citation]." (*Ibid*.)

However, "[a]lthough the UCL's 'substantive reach . . . remains expansive . . .;' the approval of Proposition 64 by the California electorate in November 2004 'substantially revised the UCL's standing requirement' for private individuals." (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 520-521 (*Jenkins*); see *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1590 (*Peterson*).) Specifically, in the wake of Proposition 64, a private person has standing to bring a UCL action only if he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, §17204; *Peterson, supra*, 164 Cal.App.4th at p. 1590.) Thus, to establish standing, a private plaintiff "must make a twofold showing: he or she must demonstrate injury in fact *and* a loss of money or property caused by unfair competition." (*Peterson*, *supra*, 164 Cal.App.4th at p. 1590.) Our Supreme Court has explained that there are "innumerable ways in which economic injury from unfair competition may be shown. A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary. [Citation.]" (*Kwikset*, *supra*, 51 Cal.4th at p. 323.) "It suffices to say that . . . a private plaintiff filing suit . . . must establish that he or she has personally suffered [economic] harm." (*Ibid*.)

Both ADA and the Countrywide defendants argue on appeal that summary judgment was appropriate with respect to the Frisbies' UCL claim because the couple produced no evidence of any unfair, unlawful, or fraudulent business practice with respect to the 2006 Loan and had suffered no economic loss as a result of obtaining the 2006 Loan. The Countrywide defendants also argue that they cannot be held vicariously liable for any improper conduct of H&R Block. Finally, ADA additionally asserts that, to the extent the Frisbies' UCL claim relies on allegations of improper disclosures related to the terms of the 2006 Loan or its transfer, the claim is not supported by the evidence, is time-barred, and is preempted by federal law, specifically the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. (TILA) and the Home Owners Loan Act, 12 U.S.C. §§ 1461 et seq. (HOLA).

We need not address all of these issues, but conclude that there are at least two reasons why this cause of action fails. First, as discussed in detail above, the Frisbies have been unable to establish any unlawful, fraudulent, or unfair conduct by the defendants with respect to the origination of the 2006 Loan. In addition, and equally fatal to the Frisbies' cause, the couple lack standing to bring an unfair competition claim because they have failed to establish that they have suffered harm related to any alleged misconduct with respect to the 2006 Loan.

Indeed, the Frisbies admit that, at the time they entered into it, the 2006 Loan was beneficial to them. Specifically, while almost exactly mirroring the total amount of the Frisbies' previously existing debt, the 2006 Loan decreased the couple's monthly obligations by over $2000. Moreover, according to Bill Frisbie, in addition to relieving financial stress, the 2006 Loan bought the Frisbies "additional time until we could get our arms around the [Yankee Court] litigation and who was responsible, what we could accept as far as settlement and satisfy any of our other obligations we might have." Finally, as stated above, the Frisbies also admit that the 2006 Loan was competitive.

Thus, the only economic injury the Frisbies can possibly point to is harm they may have suffered due to the subsequent threat of foreclosure with respect to the Property. However, the Frisbies admit that they stopped making payments on the 2006 Loan in 2008. It is clear from the record that this was essentially a business decision on Bill Frisbie's part. Indeed, he indicated that the couple had a monthly cash flow at the time of between $75,000 and $100,000, such that the obligation on the monthly payments under the 2006 Loan was "relative." Further, he stated that he could have raised the money to avoid the 2008 default by compromising in the Yankee Court litigation, as the insurance company was offering him "seven figures" at that time. Instead, the Frisbies chose to stop making payments under the 2006 Loan, allowing them to further delay settling the Yankee Court litigation in hopes of maximizing their return.[8] Under these circumstances, the prospect of losing the Property to foreclosure was the result of the Frisbies' calculated decision to default rather than any alleged fraudulent conduct of the defendants. Since there is no causal connection between the defendants' alleged misconduct and the threatened foreclosure, any injury resulting from the foreclosure threat is insufficient to establish standing for purposes of the UCL claim. (See *Graham*, *supra*, 226 Cal.App.4th at p. 614; *Jenkins*, *supra*, 216 Cal.App.4th at pp. 522-523 [nonjudicial foreclosure

[8] In fact, the Frisbies had received a $4 million dollar judgment in connection with the Yankee Court litigation in 2008, although—at the time of Bill Frisbies deposition in 2012—the matter was still being litigated and they had therefore not yet received any actual money from the judgment.

proceedings triggered by default are not economic injury caused by alleged UCL violations].)

In sum—as with the Frisbies' FEA claim—we conclude that the trial court properly granted summary judgment to ADA and the Countrywide defendants with respect to the Frisbies' UCL claim.[9]

III. DISPOSITION

In the wake of the recent subprime mortgage crisis, countless stories of the harm suffered by ordinary homeowners due to the predatory lending and abusive underwriting practices of many of this nation's financial institutions have, unfortunately, come to light. (See generally Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse (April 13, 2011).) This, however, is not one of those stories. The judgment is affirmed. In the interests of justice, each party shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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[9] As a final matter, we note that, in their reply brief, the Frisbies argue that H&R Block's respondent's brief was untimely. Per stipulation, the brief was to be filed by July 18, 2013. It was mailed on that date by overnight express, and received by the clerk on July 19. Thus, it was timely filed pursuant to California Rules of Court, rule 8.25(b)(3)(A).

REARDON, J.

We concur:

RUVOLO, P.J.

RIVERA, J.