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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

ANITA BRANDT,

Plaintiff and Appellant,

v.

NATIONAL ONE MORTGAGE  
CORP. et al.,

Defendants and Respondents.

E054388

(Super.Ct.No. RIC479262)

**OPINION**

APPEAL from the Superior Court of Riverside County. Thomas A. Peterson, Judge. (Retired judge of the L.A. Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed.

Beberman Stoffel & Beberman and James Jay Stoffel for Plaintiff and Appellant.

Law Office of Mark B. Dobkin and Mark B. Dobkin for Defendants and Respondents National One Mortgage Corporation and Jeffrey Maas.

No appearance for Defendants and Respondents Mary Epley and Terry Epley.

# I

## BACKGROUND

Plaintiff and appellant Anita Brandt (Brandt), a real estate lender, brought this action for fraud, breach of fiduciary duty, constructive fraud, and unfair business practices against real estate brokers and salespersons involved in a loan transaction. She also sued the borrowers for nonpayment.

Following a court trial, the trial court ruled that one person, Shannon Grant (Grant),<sup>1</sup> was the broker for the loan within the meaning of Business and Professions Code<sup>2</sup> section 10232.4.<sup>3</sup> The trial court further ruled that defendant and respondent Jeffrey Maas (Maas) and Earl William Dexter (Dexter)<sup>4</sup> were not brokers for the transaction within the meaning of the section. It also ruled that Maas and defendant and respondent National One Mortgage (National One) had “no broker/princip[al] relationship” with Brandt.

Brandt appeals, arguing that the trial court erred in its application of the law to the facts. Maas and National One (collectively, respondents) respond by arguing that section

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<sup>1</sup> Grant was not sued. Although she testified at the trial, she is not involved in this appeal.

<sup>2</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

<sup>3</sup> The reporter’s transcript refers to section 10223.5. There is no section of this number, and we assume the trial court was referring to section 10232.4.

<sup>4</sup> Dexter, sued as Doe 1, defaulted. He, too, testified at the trial but is not involved in this appeal.

10323.4<sup>5</sup> does not apply because they only represented the borrowers and did not solicit the lender, Brandt.<sup>6</sup> Defendants and respondents Mary and Terry Epley did not file a brief.

## II

### FACTS

Although the trial court did not make specific factual findings, the historical facts are relatively undisputed. The primary issue in the case is the nature and scope of the fiduciary duties of real estate brokers and salespersons to a lender of money when the real estate licensees contend they only represented the borrowers in the loan transaction.

Essentially, Brandt loaned Terry and Mary Epley \$62,000, secured by a second deed of trust on their home. National One and its owner, Maas, brokered the loan. Grant held a real estate broker license and Dexter held a real estate salesperson license; both were employees of National One. Mrs. Epley held a real estate salesperson license and worked for National One. Mr. and Mrs. Epley defaulted on the loan almost immediately after the loan closed and also stopped making payments on the first deed of trust. Washington Mutual Bank, the holder of the first deed of trust, foreclosed on the property, and Brandt lost her \$62,000.

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<sup>5</sup> This section is also nonexistent. The section quoted in respondents' brief is section 10232.4, subdivision (a).

<sup>6</sup> The parties are reminded that California Rules of Court, rule 8.204(a)(1)(C) provides that a brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." We therefore disregard pages 1 through 3 of appellant's opening brief and pages 1 through 3 of respondents' brief.

Viewing the evidence in the light most favorable to respondents, we will review the testimony at trial and the documentary evidence in more detail.

A. *Brandt*

Brandt testified that she was age 66 at the time of the loan transaction and worked in advertising sales for a newspaper. In early December 2005, Brandt had several conversations with Grant.<sup>7</sup> Brandt testified that during the first conversation, “I wasn’t thinking about doing what you are calling a hard money loan. [Grant] thought that it might be a way for me to earn more money, a little bit more money so I can make—retire a little bit earlier.” In a second conversation, Grant “called and asked if [Brandt] might be interested in helping someone out. It was someone who worked for their company. She had been approached by someone in her company. That the lady was a top producer in the Riverside office. Her husband had a heart attack. They were just getting back on their feet. It would be a short term thing so I could retire in two years.”

Brandt did not question the terms of the loan or the ability of the borrowers to repay it, but instead decided to invest on the terms Grant described to her. Subsequently, Grant told Brandt that she had checked comparable sales, and there was sufficient equity in the property. Brandt, a novice investor, trusted Grant and took this to mean that the loan was “safe.” Brandt did nothing to verify the statements made to her by Grant. Brandt did not receive any written information regarding the loan investment prior to funding.

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<sup>7</sup> Grant and Brandt are related by marriage. Brandt’s son is married to Grant’s daughter.

B. *Grant*

Grant testified she first obtained a real estate salesperson license in 1975 and subsequently obtained a broker's license in 1980. She became an employee of National One in September 2002 and became the office manager of the Temecula office in 2003. In December 2005, she was paid \$3,500 a month plus a percentage of commissions generated by the office.

In December 2005, Dexter, another employee of National One, told her that he had been trying to find a lender for a "hard money loan" for "one of the top producers in the Riverside office."<sup>8</sup> He said "her husband had a heart attack and they were getting back on their feet." Grant then called Brandt and asked her if she was willing to make a loan to them. The terms, as stated by Dexter, were that it was a two-year loan at 15 percent, with 15 points. Grant discussed these terms with Brandt, and Brandt agreed to make the loan.

Grant then called Maas and asked for his help in processing the loan. Maas told her that Dexter would help her. Maas also advised Grant to use one of the company's loan processors and to use Maas's escrow company, Escrow One. She did so.

Mr. and Mrs. Epley submitted a loan application to Grant, and Brandt deposited the funds into escrow. No written loan disclosures were given to Brandt before escrow closed on December 20, 2005. At closing, National One received a five percent origination fee, instead of the requested 15 percent, amounting to \$3,100. Grant received a commission of approximately \$2,800 as the loan officer on the transaction.

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<sup>8</sup> The statement was false. Mrs. Epley had only been employed for two weeks at the time. There was no evidence that she was a "top producer."

Brandt received “four months worth” of payments, and then Mr. and Mrs. Epley stopped making payments on the note. Also, they stopped paying the first deed of trust in March 2006. The property was foreclosed on by Washington Mutual Bank, and Brandt lost her investment of \$62,000.

Subsequently, Grant discussed the situation with Maas, and he told her that he had no responsibility to Brandt because she was not his client.

C. *Maas*

Maas testified that he became a real estate broker in 1990. At that time, he became the sole owner and responsible broker for National One. Dexter was Maas’s loan expert “as far as handling questions about loans for agents with questions on loans.” Dexter gave the company’s real estate agents classes on loan transactions and was a trusted employee. Dexter was considered the company’s expert on loan transactions, and Grant’s job description required her to consult with Dexter on loan questions.

In the subject transaction, Maas testified that National One represented only the borrowers, Mr. and Mrs. Epley. He acknowledged, however, that the company had disclosure obligations to the lender as well as to the borrowers. Maas denied that the company arranged loans for a lender, but he admitted that the broker had a fiduciary duty to the lender. His stated policy was to give basic information to the lender and, thereafter, the lender would decide what additional information it needed to approve the loan. However, Maas had never seen a lender/purchaser disclosure statement (Cal. Dept. of Real Estate form No. RE851A) and had never dealt with the form in his career. His only direct involvement in this loan transaction was to call Grant and tell her that “a new

agent” wanted a hard money loan. Grant told Maas that she would ask Brandt if she was interested in loaning the money.

Maas also testified that, in the active 2005 real estate market, institutional hard money lenders were not interested in the borrower’s credit report because, almost by definition, a person seeking a hard money loan usually had bad credit. A lender would usually focus on the appraisal of the property to determine what a home was worth.<sup>9</sup> However, there was no evidence that there was actually an appraisal of the subject property.

Maas testified that the office occasionally pursued private money loans for borrowers who did not qualify for conventional loans. Maas also indicated that occasionally he made loans from his personal assets, through National One. Maas did not want to make the loan from his personal assets, but he did seek a private hard money lender for Mr. and Mrs. Epley. If Brandt was not interested, he was going to ask another person, Dale Beaver, if he wanted to make the loan.

D. *Dexter*

Dexter testified that he was employed by National One as an office manager, training coach, as well as corporate secretary. The company made mortgage loans and occasionally made hard money loans. After reviewing Mr. and Mrs. Epley’s credit report, he told Mrs. Epley that her credit was so bad that she could only try to get a hard money loan. He said he would ask Maas if he or his associates were interested in making the loan.

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<sup>9</sup> Presumably, the institutional lenders felt safe because they had the resources to pay off the first deed of trust if there was a foreclosure.

Dexter further testified that he had never used a lender/purchaser disclosure statement (form No. RE851A), and he did not teach its usage in his classes for new employees of National One. In his classes, he taught that the only obligation to lenders was to give the lender any documentation they required. He was still unaware of California's "minimum disclosure requirements" at the time of trial. He holds a real estate salesperson license and is not a broker.

### III

#### DISCUSSION

##### A. *A Real Estate Broker's Fiduciary Relationship with the Borrower*

On appeal, Brandt contends that the trial court erred in finding that National One did not have a broker/principal relationship with Brandt.

National One and Maas argue that Mr. and Mrs. Epley, as borrowers, were the persons who were the principals in the transaction with the broker, National One. They, thus, argue that National One and Maas owed a fiduciary duty to their principals, Mr. and Mrs. Epley, not to Brandt.

National One and Maas cite *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773 (*Wyatt*): "A mortgage loan broker is customarily retained by a borrower to act as the *borrower's agent* in negotiating an acceptable loan. All persons engaged in this business in California are required to obtain real estate licenses. [Citations.] Thus, general principles of agency [citations] combine with statutory duties created by the Real Estate Law [citations] to impose upon mortgage loan brokers an obligation to make a full and accurate disclosure of the terms of a loan to borrowers and to act always in the utmost good faith toward their principals. 'The law imposes on a real estate agent "the same

obligation of undivided service and loyalty that it imposes on a trustee in favor of his beneficiary.” [Citations.] This relationship not only imposes upon him the duty of acting in the highest good faith toward his principal but precludes the agent from obtaining any advantage over the principal in any transaction had by virtue of his agency. [Citation.]’ [Citation.] A real estate licensee is ‘charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal’s decision. [Citations.]’ [Citations.]” (*Id.* at 782.)

Unquestionably, the broker owes a fiduciary duty to the borrower it represents. *Wyatt* is undoubtedly an accurate statement of that duty. The trial court was clearly correct in finding that there was no principal/broker relationship between Brandt and National One.

#### B. *A Real Estate Broker’s Statutory Duties to Lenders*

The trial court’s finding that there was no principal/broker relationship with the lender does not end the matter. There are statutory duties owed to lenders, even though the broker is not representing the lender.

The trial court began its statement of decision by discussing these statutory duties. Section 10232.4, subdivision (a), provides, in relevant part: “In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property, . . . a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase . . . .”

Section 10232.5 provides the contents of the disclosure statement in detail. Subdivision (a) states: “If the real estate broker is performing acts described in

subdivision (d) of Section 10131 in negotiating a loan to be secured by a lien on real property, . . . the statement required to be given to the prospective lender shall include, but shall not necessarily be limited to, the following information.” If required, disclosure is generally accomplished by completing a lender/purchaser disclosure statement (form No. RE851A).

Section 10131, subdivision (d), defines a real estate broker to include a person who “[s]olicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property. . . .”

The trial court did not discuss section 10131 but, instead, focused on the portion of section 10232.4 quoted above. It then discussed whether Maas, Dexter, or Grant fit the definition. The trial court concluded that Grant was the broker in this case. It concluded: “Grant solicited Brandt, negotiated the terms, and suggested that Brandt . . . do the deal.” The trial court then granted judgment in favor of National One and Maas “in that there was no broker/princip[al] relationship between these defendants and Brandt.”<sup>10</sup> The trial court did not explain this decision or its reasoning further.

As discussed, *ante*, we agree that there was no broker/principal relationship between Mortgage One and the lender, Brandt. But there was a statutory duty: “In addition to the general fiduciary duty imposed on mortgage loan brokers, the Business

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<sup>10</sup> The trial court also found insufficient evidence that Mr. and Mrs. Epley had committed actual or constructive fraud. It therefore granted judgment in their favor, even though it was undisputed that they had not repaid their note, as alleged in the fourth and fifth causes of action in the complaint. However, even if there was no fraud, the borrowers still owed the money.

and Professions Code imposes on the broker the duty to provide a prospective lender with a statement including, inter alia, the '[e]stimated fair market value of the securing property.' [Citation.]" (*Barry v. Raskov* (1991) 232 Cal.App.3d 447, 456.)

The issue here is the statutory duty National One and Maas owed to the lender who did not have a broker/principal relationship with them.

Respondents seek to avoid application of the statutes by pointing out that the statutes only apply to brokers who solicit lenders and further arguing that they did not solicit Brandt. The argument fails to survive scrutiny of the record here.

There was ample substantial and undisputed evidence that National One, Maas, and their employees were soliciting private lenders for Mr. and Mrs. Epley. The trial court expressly found that Grant did solicit Brandt. Dexter asked Maas if he was interested in a personal loan, and Maas said he was not interested. However, Maas did call Grant. Maas testified that he would have called another person if Brandt was not interested in making the loan.

Since National One solicited and negotiated the loan with the lender, the disclosure statutes were applicable.<sup>11</sup> Because there was no compliance with section 10232.5, the trial court erred in finding for National One and Maas.

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<sup>11</sup> Section 10232.4 also applies to negotiations, and there was undisputed evidence of negotiations here. Dexter originally suggested a charge of 15 points for the loan, but Grant thought that was too high. After discussion with Brandt, the loan closed with a five percent origination fee.

C. *Persons Having a Duty Under Section 10232.4*

Section 10232.4 applies to real estate brokers who solicit lenders and negotiate with lenders. The brokers in this case were Grant and Maas, individually and as the responsible broker for National One.

The trial court apparently believed it had to find the one real estate broker or salesperson most responsible for the transaction. However, more than one broker can violate the law in a single transaction, and the trial court failed to explain why National One itself, as the broker for the loan transaction, was not held liable for the acts of its employees. The trial court also failed to explain why Maas, the owner and responsible broker of National One, was not responsible for breach of his statutory duty.

All of the documentation of the loan was in the name of National One, and it received an origination fee for the loan. This was clearly a corporate transaction, and National One and its responsible broker, Maas, are liable for breach of the statutory duties of the corporation. Accordingly, the failure of National One, acting through Maas and its employees, to furnish a disclosure statement required by sections 10232.4 and 10232.5 is a conspicuous breach of a statutory duty.

D. *A Real Estate Broker is Also Responsible for Breaches by Its Employees*

Section 10211 states: “If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker . . . .” (See also §§ 10006, 10130, 10131, 10158.) As a licensed broker, National One acted through Maas, as its owner and responsible broker, and both National One and Maas had the duties imposed on all licensed brokers. (See generally 3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency & Employment § 48, pp. 87-88.)

As to Maas, section 10159.2, subdivision (a) states: “The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.” (See generally 2 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 4:31, pp. 4-87-4-88.)

Dexter and Grant were employees of National One.<sup>12</sup> There is no evidence in the record to support respondents’ contention that Grant acted on her own behalf.

E. *National One Employees Breached Their Duties*

There was undisputed evidence of prohibited conduct toward Brandt by National One employees. “The real estate law proscribes, in broad terms, all conduct that is fraudulent, dishonest, or in violation of the broker’s fiduciary duties. [Citations.]” (3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency & Employment § 58, pp. 99-101; see also § 10176 [grounds for revocation of real estate license.])

Respondents cite *Ward v. Taggart* (1959) 51 Cal.2d 736, 741, for a definition of those duties: “Even though Taggart was not plaintiff’s agent, the public policy of this state does not permit one to ‘take advantage of his own wrong’ (Civ. Code § 3517), and the law provides a quasi-contractual remedy to prevent one from being unjustly enriched

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<sup>12</sup> Respondents argue, without record citation, that Grant was an independent contractor for National One. However, the relationship between them does not matter because section 10032, subdivision (a) provides that “all . . . obligations of brokers and real estate salespersons to members of the public shall apply regardless of whether the real estate salesperson and the broker to whom he or she is licensed have characterized their relationship as one of ‘independent contractor’ or of ‘employer and employee.’”

at the expense of another. Section 2224 of the Civil Code provides that one ‘who gains a thing by fraud . . . or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.’ As a real estate broker, Taggart had the duty to be honest and truthful in his dealings. [Citations.] The evidence is clearly sufficient to support a finding that Taggart violated this duty. Through fraudulent misrepresentations he received money that plaintiffs would otherwise have had. Thus, Taggart is an involuntary trustee for the benefit of plaintiffs on the secret profit of \$1,000 per acre that he made from his dealings with them.” (*Id.* at pp. 741-742, fn. omitted.) Thus, a real estate broker has a general duty to be honest and truthful in his dealings.

Brandt cites *Barry v. Raskov*, *supra*, 232 Cal.App.3d 447. In that case, the court held that a mortgage loan broker is liable to the lender for fraud or negligence of an appraiser it employs to appraise the property. (*Id.* at p. 453.) It said: “[T]he employer of an independent contractor will generally be held liable for the contractor’s torts . . . .” (*Ibid.*) Further, the court stated: “A mortgage loan broker owes a fiduciary duty of the ‘highest good faith toward his principal’ and ‘is “charged with the duty of fullest disclosure of all material facts concerning the transaction that might affect the principal’s decision.”” [Citation.] *The broker owes this duty to the lender-investor as well as to the borrower.*” (*Id.* at p. 455, italics added; see also *Wyatt v. Union Mortgage Co.*, *supra*, 24 Cal.3d at pp. 782-783.)

As Maas conceded, the broker had general duties to the lender: “We can’t falsify documents and we have to be truthful. We can’t misrepresent anything.” National One

breached these duties because the employees of National One were not honest and truthful in their dealings with Brandt.

First, Grant gave Brandt false information about the borrowers. She told Brandt that Mrs. Epley was a “top producer” in the office. This was a false statement, first made by Dexter to Grant, and was itself a breach of duty when communicated to Brandt.

Second, Grant told Brandt that she had checked comparable sales and that there was sufficient equity in the property. Brandt interpreted this to mean that the loan was safe. Grant did not tell Brandt that, in the event of a default on the first deed of trust, Brandt would have to pay off the first deed to protect her position. The breach was especially egregious because of the familial relationship between Grant and Brandt.

Again, Grant’s statements were not made on her own, but as an employee and representative of National One.

Other relevant information known to the broker was not communicated to Brandt: (1) Brandt was not given a copy of the credit report, which showed that Mr. and Mrs. Epley had missed two payments on the first mortgage; (2) Brandt was not told that property taxes were delinquent; (3) Brandt was not told that the proceeds of the loan would be used to pay off two car loans instead of curing these delinquencies; (4) Brandt was not told that Mr. Epley was actually self-employed because the company he worked for was owned by his wife; and (5) Brandt was not told that Mrs. Epley had only worked for National One for two weeks (instead of the two years stated on the loan application) and was not a “top producer” in the Riverside office.

Brandt testified that she would not have made the loan if she had known these facts. She did not know that the broker was required to give her certain information, and

she did not realize that she could lose her money if there was a foreclosure by the holder of the first deed of trust. Nor did Brandt know that she might be required to make payments on the first deed in order to protect her second deed.

F. *Summary*

To summarize, section 10232.4 tracks the language of section 10131 by imposing a disclosure obligation on real estate brokers, including corporate brokers, who solicit and negotiate a loan secured by real estate. Such brokers must make the disclosures required by section 10232.5. As discussed, *ante*, there was ample evidence that National One, acting through its broker owner and employees, had such a disclosure obligation. No attempt was made to comply with section 10232.5, and Maas and Dexter were unaware of their statutory responsibilities to disclose the required information to Brandt.

National One's employees misled and failed to disclose material facts to Brandt. They therefore violated the broker's duty to be honest and truthful in their dealings with the lender. National One and Maas are responsible for the actions of their employees.

We agree with Brandt that the trial court erred in applying the law to the nearly undisputed facts. Accordingly, the judgment absolving National One and Maas of responsibility for the corporation's breach of fiduciary duty cannot stand.

While we find it unnecessary to discuss Brandt's further contentions that National One and Maas violated section 17200 et seq., the trial court should revisit the issue on remand. It should also reconsider Brandt's request for attorney fees under section 17082 and related statutes and her requests for judgment and attorney fees against Mr. and Mrs. Epley on the unpaid note.

IV

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings in accordance with the views expressed in this opinion. Brandt shall recover her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.