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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MICHELLE J. NORRIS et al.,

Plaintiffs and Appellants,

v.

WELLS FARGO BANK, N.A. et al.,

Defendants and Respondents.

E060669

(Super.Ct.No. RIC1208319)

OPINION

APPEAL from the Superior Court of Riverside County. John Boyd, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michele J. Norris and Daniel D. Norris, Sr., in pro. per., for Plaintiffs and Appellants.

Severson & Werson, Jan T. Chilton and Kerry W. Franich for Defendants and Respondents.

Plaintiffs Michelle and Daniel Norris sued Wells Fargo Bank, N.A. (Wells Fargo), doing business as America’s Servicing Co. (ASC),¹ alleging eight causes of action arising from a nonjudicial foreclosure sale of their home. The trial court granted summary judgment in favor of Wells Fargo and plaintiffs appealed. On appeal, plaintiffs assert that the judgment should be reversed because (a) they were not notified that a judge pro tempore would be hearing the summary judgment motion; (b) the hearing judge was an associate in a firm that represented title and financial companies; and (c) the court showed prejudice in granting summary judgment.² We affirm.

BACKGROUND

We set out the undisputed material facts as ascertained from the uncontroverted allegations of the complaint and answer, as well as from matters judicially noticed by the trial court. (See *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 327; *Consol. Fire Prot. Dist. v. Howard Jarvis Taxpayers’ Ass’n* (1998) 63 Cal.App.4th 211, 214, fn.2.)

Between September and October 2005, plaintiffs purchased a residence in Temecula, California. To finance the purchase, plaintiffs obtained a \$383,650 loan from Family Lending Services. The Deed of Trust securing the mortgage identifies Mortgage

¹ Most of the actions alleged in the action involved ASC, a subsidiary of Wells Fargo. However, the motion for summary judgment was filed by Wells Fargo, and the declaration submitted in support of the motion was executed by a Wells Fargo representative. For convenience, we will refer to the defendants collectively as Wells Fargo.

² A fourth issue is entitled, “The Standard for Summary Judgment,” but does not point to a particular error committed by the court. We address the summary judgment standards throughout this opinion.

Electronic Registration Systems, Inc. (MERS) as the beneficiary of the Deed of Trust. The beneficial interest under the loan was subsequently assigned to HSBC Bank, USA, N.A., as Trustee. Wells Fargo, doing business as America's Servicing Company, serviced the loan on HSBC's behalf. The deed of trust obligated plaintiffs to pay all taxes and insurance for the property. It further authorized the lender to impose an escrow account to cover those expenses to protect its security.

In May and June 2007, Wells Fargo sent letters to plaintiffs notifying them that the property taxes were delinquent. Plaintiffs were delinquent on the property taxes because they used the money to repair a rental property. Plaintiffs failed to provide proof to Wells Fargo that they paid the delinquent taxes, so an escrow account was created on August 17, 2007. On August 23, 2007, plaintiffs paid the 2006-2007 taxes, including a penalty and interest.

On November 14, 2007, Wells Fargo paid \$3,826.56 for the first installment of the 2007-2008 real estate taxes. However, on December 10, 2007, plaintiffs made a duplicate tax payment to Riverside County for the same amount, which Wells Fargo confirmed on December 13, 2007. As a consequence of the duplicate payments, Wells Fargo received a refund in the amount of \$3,826.56 from the taxing authority, but only deposited \$3,789.89 into plaintiff's escrow account, causing the account to incorrectly reflect a deficiency of \$31.66. By May 16, 2008, the escrow accounting error was corrected, the \$31.66 was credited to plaintiffs' account, and the escrow account was deleted. The accounting error did not create a delinquency on the loan.

Plaintiffs again became delinquent on the property taxes, and notices were sent to plaintiffs in July and August 2008 regarding the most recent delinquency. The last time plaintiffs had paid property taxes was December 2007. From that point forward, Wells Fargo advanced the property taxes until April 2011. On October 8, 2008, Wells Fargo contacted plaintiffs regarding the default. However, plaintiffs declined to be reviewed for loan workout options. A Notice of Default was recorded on December 12, 2008 and foreclosure proceedings were initiated.

In November 2008, plaintiff's requested a loan modification review. Wells Fargo prepared a forbearance plan that was approved and signed by plaintiffs. Under the terms of the forbearance agreement, Wells Fargo agreed to temporarily accept reduced payments in exchange for temporarily forbearing from foreclosing. The first forbearance plan payment was due on December 30, 2008 in the amount of \$1,957.94, with three payments in successive months in the amount of \$2,384.73, and a balloon payment of \$6,970.70 was due on April 29, 2009. Wells Fargo received the first four payments.

Plaintiffs' request for a loan modification was denied on April 2, 2009, because plaintiffs could not afford a modified loan payment based on income information they provided. The final balloon payment, which would have been added back into the loan balance if the Wells Fargo approved the loan modification, was not paid.

On April 6, 2009, Wells Fargo sent a letter to plaintiffs with information about how to receive payment relief and suspend the foreclosure process for 30 days. However, workout options were denied in July and August 2009 because plaintiffs could not afford

a modified loan payment. In the meantime, a notice of trustee's sale had been recorded on May 6, 2009.

Plaintiff Michelle Norris called Wells Fargo on August 18, 2009, and August 22, 2009, and was advised of the upcoming foreclosure sale date of September 25, 2009. On September 8, 2009, plaintiff Michelle Norris advised Wells Fargo that plaintiffs were not interested in a short sale. On September 15, 2009, plaintiff Michelle Norris called and requested another workout review, and was asked to provide financial information, including a hardship letter, financial worksheet and current proof of income.

On September 19, 2009, plaintiffs filed a Qualified Written Request under the federal Real Estate Settlement Procedures Act. (12 USC § 2605, subd. (e).) In the Qualified Written Request, plaintiffs complained about the accounting and servicing of their mortgage, and requested a complete audit of the loan.

On September 23, 2009, plaintiffs called Wells Fargo to request a repayment plan and postponement of the sale. The following day, Wells Fargo advised plaintiffs that a complete loan modification application had not been received, and that more documents were needed for a workout review, including a rental agreement (for the rental property) and proof of income. Because those documents were not received, and because plaintiffs did not have a completed loan modification pending, the foreclosure sale was held on September 25, 2009. Following the foreclosure sale, ownership of the property reverted to HSBC.

After the property was sold, plaintiffs contacted the Attorney General's office, where they were advised to submit a complaint to the Office of the Comptroller of the

Currency (OCC). The OCC responded on December 11, 2009, that it had contacted the bank requesting a response to plaintiffs' issues. Plaintiffs also filed an action against ASC in the United States District Court, Central District, seeking a Notice of Pendency of Action and a temporary restraining order in 2011. The federal court allowed the filing of the Notice of Pendency of Action, but denied the restraining order.

A first amended complaint was filed on October 10, 2012. Although the caption of that complaint indicates 10 causes of action, in reality, it alleged eight: (1) Fraud; (2) Rosenthal Fair Debt Collection Practices Act; (3) Negligence; (4) Intentional and Negligent Misrepresentation; (5) Promissory Estoppel; (6) Wrongful Foreclosure; (7) Violations of Business and Professions Code, Sections 17200 and 17204 (unfair competition); and (8) Quiet Title.

On October 18, 2013, defendants filed a motion for summary judgment as to all causes of action. That motion was granted, resulting in judgment for the defendants. Plaintiffs appealed.

DISCUSSION

Plaintiffs take issue with the trial court's ruling. We begin with the standard of review.

a. General Principles and Standard of Review Relating to Summary Judgments.

The purpose of a motion for summary judgment is to discover whether the parties possess evidence which requires the fact-weighting procedures of a trial. (*Soto v. County of Riverside* (2008) 162 Cal.App.4th 492, 496, quoting *City of Oceanside v. Superior Court* (2000) 81 Cal.App.4th 269, 273.) A trial court properly grants summary judgment

where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

Three steps are involved in determining a motion for summary judgment: First, the court analyzes the pleadings, which define the issues. (*La Rosa v. Superior Court* (1981) 122 Cal.App.3d 741, 744.) Second, the court examines the moving party's showing, to determine whether the affidavits in support of the motion are sufficient to sustain a judgment in his favor. (*Id.* at p. 744.) Third, when a summary judgment motion prima facie justifies a judgment, the final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue. (*Mark Tanner Constr. V. Hub Internat. Ins. Svcs.* (2014) 224 Cal.App.4th 574, 583.)

Once a moving party has shown that one or more of the elements of a cause of action cannot be established, the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action" (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.) An opposition to a summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative, or based on conjecture and speculation. (*MRI Healthcare Center of Glendale, Inc. v. State Farm General Ins. Co.* (2010) 187 Cal.App.4th 766, 777; *Wiz Technology, Inc. v. Coopers & Lybrand LLP* (2003) 106 Cal.App.4th 1, 11.)

Statements found in affidavits (or declarations) submitted in opposition to a summary judgment motion, which merely repeat the allegations of the party's complaint or answer, constitute only conclusory assertions with respect to undisputed facts and do not give rise to a triable factual issue so as to defeat a motion for summary judgment. (*Parker v. Twentieth Century-Fox Film Corp.* (1970) 3 Cal.3d 176, 184.)

We review the trial court's decision de novo, 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, citing *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.) Because we review de novo, the trial court's stated reasons for granting summary judgment are not binding on us; we review the ruling, not the rationale. (*Soto v. County of Riverside, supra*, 162 Cal.App.4th at p. 496; *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.)

In independently reviewing a motion for summary judgment, we apply the same three-step analysis used by the superior court. (*Airline Pilots Assn. Internat. v. United Airlines, Inc.* (2014) 223 Cal.App.4th 706, 714.) We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue. (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261.) If there is no triable issue of material fact, we affirm the summary judgment if it is correct on any legal ground applicable to this case, whether that ground was the legal theory adopted by the trial court or not, and whether it was raised by the moving party in the trial court or first

addressed on appeal. (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1071; see *Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 181.)

b. *Analysis*

1. *Issues Pertaining to the Judge Pro Tempore*

Issues one and two of the plaintiffs' brief appear to argue that summary judgment should be reversed because a judge pro tempore heard the motion, plaintiffs were unaware that a pro tem would hear the case, and because the pro tem is an associate in a firm representing title and financial companies. These arguments were not properly preserved for appeal and are not well founded.

The Register of Actions includes a minute order for the date of the hearing. That minute order reflects that a 10:00 a.m., "Parties advised of the right to have matter heard before a commissioner or judge by posted and verbal notice. Parties are deemed to have stipulated to temporary judge pursuant to CRC rule 2.816." The matter was assigned to Judge Pro Tem John Boyd.

Rule 2.816 of the California Rules of Court governs stipulations for matters to be heard by a temporary judge when the court has appointed and assigned an attorney to serve as a temporary judge in that court. The rule requires notice to each party that a temporary judge will be hearing the matter prior to the commencement of the proceeding and that the temporary judge is a qualified member of the State Bar. (Cal. Rules Ct., rule 2.816(b).) This notice, however, may be given by way of a sign posted inside or outside the courtroom, accompanied by oral notification by a court officer, or by written notice provided to each party. (Cal. Rules of Ct., rule 2.816(c).) After notice has been given, a

party is deemed to have stipulated to a court-appointed temporary judge by failing to object to the matter being heard by the temporary judge before the temporary judge begins the proceeding. (Cal. Rules of Ct., rule 2.816(d)(1).)

Here, the clerk's minutes reflect that notice was given by a posted sign as well as verbal notice. Absent affirmative evidence to the contrary, we are compelled to presume that those actions were duly performed. (Evid. Code, § 664.) Plaintiffs had adequate notice. Additionally, at the inception of the hearing, neither plaintiff objected to a temporary judge, so they are deemed to have stipulated to the temporary judge.

As to plaintiffs' implication of judicial bias, there is nothing in the record on appeal to indicate that the temporary judge was an associate in any particular type of law firm, or the nature of his clientele. The issue was forfeited by plaintiffs' failure to object or to seek disqualification of the temporary judge. (*Frisk v. Superior Court* (2011) 200 Cal.App.4th 402, 409; *Andrisani v. Saugus Colony Limited* (1992) 8 Cal.App.4th 517, 525.) More significantly, the issue was not developed in the trial court with an adequate record of the temporary judge's background.

The assertions in the brief are based on information outside the record, which we are precluded from considering. (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 882.) The record is inadequate for meaningful review of any claim of judicial bias, so we do not consider it. An appellant has the burden of affirmatively demonstrating error by providing an adequate record. (See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9; see, *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

2. *Challenges to Summary Judgment*

The plaintiff's argue in their third issue that "the court showed prejudice." This point heading is misleading where plaintiffs challenge various aspects of the ruling on the summary judgment. In many respects, plaintiffs' challenges refer on "evidence" that the trial court determined was inadmissible. In other respects, plaintiffs point to information alleged in their own pleadings, but disregard any unfavorable contrary evidence. This is inappropriate. (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.)

a. *Evidentiary Matters*

Plaintiffs make several claims relating to the court's failure to consider their "evidence," and the court's consideration of matters submitted by defendants. The court properly considered matters presented by defendants and properly rejected plaintiffs' "documents" which were not properly presented with authenticating declarations or affidavits, and were not proper subjects for judicial notice.

First, plaintiffs argue that the court skimmed their documents and many of the details recited by the court were wrong, pointing to their own detailed chronology in the Statement of Facts in their amended complaint. The allegations of the plaintiffs' complaint are not evidence, and are not subject to judicial notice. "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (Evid. Code, § 140.) The same is true of plaintiffs' statement of facts, and their chronology; they are not evidence. Defendants' declaration and documents were supported by admissible evidence.

Plaintiffs' complaint that the trial court ignored their evidence refers to their allegation that they documented every time they interacted with defendants. However, they did not produce admissible evidence of their interactions. Further, none of the documented interactions related to a material issue of triable fact as to any of the plaintiffs' causes of action because none of the interactions contradicts the defendants' showing that plaintiffs were in default on their mortgage. Plaintiffs also take issue with certain statements made by the court at the hearing on the summary judgment motion, but we do not need to address many of them because they were either immaterial to the court's decision, or the result of plaintiffs' own pleadings.³

Plaintiffs' complain that the court referred to documents recorded with the County Recorder's Office, implying that this was improper. Recorded documents may be judicially noticed. (Evid. Code, § 452; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265.) It was completely proper to rely on matters of which judicial notice may be taken in determining a summary judgment motion. (Code Civ. Proc., § 437c, subd. (b)(1).)

Next, plaintiffs complain that the court sustained defendants' objection to plaintiffs' evidence. However, plaintiffs have not provided a legal argument by which

³ For instance, the criticism regarding the court's comment that the complaint has eight causes of action but originally had ten was the direct result of the plaintiffs' caption, which lists ten causes of action, although the body of the complaint stated claims on eight. Additionally, although plaintiffs argue in their brief that Mr. Norris was only unemployed for two months, in their opposition to the summary judgment motion, they attached as an exhibit a copy of a letter they allegedly sent to ASC in which they sought a loan modification because Mr. Norris had been without permanent employment for a year and a half. The misinformation originated with plaintiffs, so any error is deemed invited.

we can evaluate any error in the court’s evidentiary ruling, which must, therefore, stand. Plaintiffs’ go on to argue that because of the court’s “lack of regard” for their documents and evidence, it erroneously granted summary judgment on the first and fourth causes of action. They go on to assert—without pointing to any admissible evidence in the record—that they did not fail to make the last payment of the forbearance agreement.

Unfortunately, the record refutes plaintiffs’ unsupported claim that they made all the payments under the forbearance agreement. To the contrary, the forbearance agreement stated that the final (balloon) payment would be tacked to the end of the loan *if—and only if—the* loan modification was approved. The loan modification was denied, as plaintiffs acknowledge. But they did not pay the balloon payment. Therefore, under no theory can it be said that plaintiffs proved they were current in their payments under the forbearance agreement.

As the trial court pointed out at the beginning of the hearing, plaintiffs never disputed that they were in default on their payments. Plaintiffs never proved they were not in default beyond the first four payments under the forbearance agreement. As a matter of law, they were in default. Re-arguing irrelevant matters that had long since been resolved (the misapplied reimbursement of real estate taxes into the escrow account) does not demonstrate a triable issue of material fact on any of the causes of action. The rule of liberal construction which is applied to papers opposing motions for summary judgment has never been stretched so far as to hold that a triable issue of fact is created by a declaration that contains no evidentiary facts at all. (*Hoover Cmty. Hotel Dev. Corp. v. Thomson* (1985) 167 Cal.App.3d 1130, 1137.)

It was plaintiffs' failure to present competent evidence to contradict the defendants' prima facie showing of plaintiffs' default that led to the summary judgment ruling. None of the matters complained of gives rise to a triable issue of material fact such as would warrant reversal.

b. *Plaintiffs' Other Claims of Error*

(i) *First Cause of Action for Fraud*

Plaintiffs argue that the trial court erroneously granted summary judgment on the cause of action for fraud⁴ because of its "lack of regard" for plaintiffs' documents and evidence. We disagree. Plaintiffs argue their version of the facts on appeal, as they did in the trial court, but present no legal argument demonstrating reversible error, and point to no affidavits, declarations, admissible evidence, or matters subject to judicial notice to support the argument.

The aim of the summary judgment procedure is to discover whether the parties possess evidence requiring the weighing procedures of a trial. (*Kurokawa v. Blum* (1988) 199 Cal.App.3d 976, 988.) Plaintiffs have not shown, by affidavits, declarations, responses to interrogatories or deposition testimony, the existence of any actionable fraud. Notwithstanding their claim that defendants promised not to foreclose during the loan modification process plaintiffs have not proven that a loan modification had been approved. Plaintiffs further assert that they were not in default on the forbearance agreement, but they did not provide evidence that the final payment (the balloon

⁴ Plaintiffs referred incorrectly to the first and fourth causes of action as being fraud claims. However, only the first cause of action referred to fraud.

payment, which was payable on schedule *unless* a loan modification were approved) had been made.

In fact, the actual exhibits and admissible evidence presented to the trial court contradict their allegations. Insofar as no actionable misrepresentation was established by competent evidence, and no evidence controverts the defendants' evidence that plaintiffs were in default on their mortgage, summary judgment on the fraud claim was proper.

(ii) *Second Cause of Action for Violation of the Rosenthal Fair Debt Collection Practices Act.*

In the first sub-issue numbered "vii,"⁵ plaintiffs argue that the court erroneously concluded that the Rosenthal Fair Debt Collection Practices Act (RFDCPA) does not apply in this case. We disagree.

Civil Code, section 1788, et seq., governs the RFDCPA. The purpose of the legislation is to "prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts[.]" (Civ. Code, § 1788.1, subd. (b).) A nonjudicial foreclosure does not constitute a "debt collection activity" covered by the RFDCPA. (*Sipe v. Countrywide Bank* (E.D. Cal. 2010) 690 F.Supp.2d 1141, 1151; *Izenberg v. ETS Services, LLC* (2008) 589 F.Supp.2d 1193, 1199.) Thus, the court did not err in finding that the RFDCPA did not apply.

⁵ Plaintiffs have numbered three subsections as "vii."

(iii) *The Third and Fourth Causes of Action for Negligence and Negligent-Intentional Misrepresentation.*

In a sub-issue dealing with the third cause of action for negligence, which plaintiffs refer to in their brief as the cause of action relating to negligent and intentional misrepresentation, plaintiffs argue the trial court erred in stating that California law does not impose a duty of due care on a lender. In fact, plaintiffs argue that the court's statement was "false." However, plaintiffs cite no authority to support a claim that the defendants owed a duty, or, more importantly, how defendants breached it. Plaintiffs have further confused the issue by relating it to their fourth cause of action for negligent and intentional misrepresentation. Summary judgment was proper as to both causes of action.

As to the negligence claim, the existence of a duty of care owed by a defendant to a plaintiff is a prerequisite to establishing a claim for negligence. (*Nymark v. Heart Fed. Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) Whether such a duty exists is a question of law. (*Ibid.*) Lenders and borrowers operate at arm's length. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 63.) As a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money. (*Ibid.*, citing *Nymark, supra*, at p. 1096.)

A lender's liability to a borrower for negligence arises only when the lender actively participates in the financed enterprise beyond the domain of the usual money lender. (*Wagner v. Benson* (1980) 101 Cal.App.3d 27, 34-35.) No fiduciary duty exists

between a borrower and lender in an arm's length transaction. (*Ragland v. U.S. Bank Nat. Assn.* (2012) 209 Cal.App.4th 182, 206.) Offering loan modifications is sufficiently entwined with money lending so as to be considered within the scope of typical money lending activities.

In *Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941, the plaintiffs alleged the defendants breached a duty to exercise care in the review of their loan modification in failing to consider their application in a timely manner, foreclosing while plaintiffs were being considered for a modification, and mishandling their application by relying on incorrect salary information, and misplacing application documents. There, the court held that on the facts of that case, the lender owed a duty of care.⁶

Even if there were a duty, the evidence presented in support of the motion showed the defendants timely considered plaintiffs' application for a loan modification, and denied the requested modification after plaintiffs failed to present documentation supporting their income to qualify for the modified loan, and did not initiate foreclosure proceedings until after the application for loan modification had been denied. Defendants discharged any duty owed.

As to the misrepresentation theories posited in the fourth cause of action, plaintiffs have not established a triable issue of material fact as to whether defendants made a false

⁶ Defendants urge us not to follow the decision of *Alvarez v. BAC Home Loan Servicing, supra*, because it was wrongly decided. That case did not involve negligent misrepresentation, so it is inapposite to the point under consideration here.

statement to plaintiffs, negligently or intentionally. All of the admissible evidence establishes that plaintiffs affirmatively sought a loan modification, which was denied after they were found to be unqualified for a modified loan, which occurred before foreclosure took place. Plaintiffs argue that defendants made misrepresentations about the taxes, insurance, escrow account, and debt owed on the property. However, they fail to show what defendants represented or how it was false.

To survive a summary judgment, once defendants made a prima facie showing they were entitled to judgment, the burden shifted to plaintiffs to prove, with competent evidence, that a triable issue of material fact—not theory—existed. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850; *Ram’s Gate Winery, LLC v. Roche* (2015) 235 Cal.App.4th 1071, 1078.) The plaintiff may not simply rely on the allegations of their pleadings but, instead, must set forth the specific facts showing the existence of a triable issue of material fact. (Code Civ. Proc. § 437c, subd. (p)(2); *Ram’s Gate Winery, LLC*, *supra*, 235 Cal.App.4th at p. 1078.)

Plaintiffs have not established a triable issue of material fact as to any actionable negligence, or misrepresentation, negligent or intentional. Summary judgment was proper on the third and fourth causes of action.

(iv) *Fifth Cause of Action for Promissory Estoppel.*

Plaintiffs argue that “[t]he judge was wrong” in granting summary judgment on the promissory estoppel claim because the reason they did not make payments was because they were told by defendants not to do so during the modification process. Plaintiffs point to no evidence in the record to support this claim, relying exclusively on

allegations in their complaint. Additionally, while plaintiffs reargue their theories without evidentiary support, they also omitted to provide any legal argument or analysis to demonstrate judicial error.

The evidence before the court included a copy of the forbearance agreement which contains no provisions whatsoever instructing plaintiffs to make no payments during the modification process. To the contrary, the entire focus of the forbearance agreement was to assist the plaintiffs in bringing their account, which was then in arrears, current, by providing a payment schedule, as to which plaintiffs failed to make the final payment. There was no error in granting summary judgment on this cause of action.

(v) *The Sixth Cause of Action (Wrongful Foreclosure) and Eighth Cause of Action (Quiet Title).*

Plaintiffs argue the trial court erroneously granted summary judgment on the sixth and eighth causes of action by stating that it did not have any acceptable admissible evidence to conclude differently. Plaintiffs attribute the court's error to its refusal to accept their evidence. We disagree. We have previously explained why the court rejected their documents (which did not constitute admissible evidence). Plaintiffs present no legal argument to support their claims of error. They have not met their burden of proving error on appeal.

(vi) *The Seventh Cause of Action for Violations of Business and Professions Code, Sections 17200 and 17204.*

Plaintiffs argue that summary judgment on the seventh cause of action was wrong. They fault the court for not considering their evidence in finding plaintiffs still owed money. However, they present no legal argument to demonstrate reversible error and

point to no admissible evidence to support their claim that the trial court's factual findings were erroneous. Plaintiffs have not met their burden of proving error on appeal.

In a separate sub-issue, plaintiffs note that the trial court asked them if they ever asked for a QWR (Qualified Written Request) under the Real Estate Settlement Procedures Act (RESPA). (12 U.S.C. §§ 2601, et seq.) This issue does not require any analysis because plaintiffs did not allege any cause of action under the RESPA, and the court did not grant summary judgment on a RESPA-related theory.

(vii) *The Eighth Cause of Action for Quiet Title.*

Plaintiffs do not discuss the trial court's ruling on the eighth cause of action for quiet title. They have forfeited any challenge to the summary judgment on this cause of action. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, *Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 948 [where brief fails to contain a legal argument with citation of authorities on the points made, reviewing court may treat any claimed error as waived or abandoned]; see also, *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [parties are required to include argument and citation to authority in their briefs; the absence of these necessary elements allows reviewing court to treat issue as waived].)

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

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RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.