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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHASE BANK USA, N.A.,

Plaintiff and Respondent,

v.

MICHAEL J. PERAGINE,

Defendant and Appellant.

G045657

(Super. Ct. No. 30-2009-00122798)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed.

Jerome D. Stark for Defendant and Appellant.

AlvaradoSmith, S. Christopher Yoo and Thomas S. Van for Plaintiff and Respondent.

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In a 2007 mortgage refinancing transaction, plaintiff Chase Bank USA, N.A. (Chase) loaned \$819,900 to Donald R. Contardi, Jr., and Deanna Lynn Contardi (Contardis), the owners of a residence located in Foothill Ranch, California (the Property). Defendant Michael J. Peragine was the third of three secured lenders paid with funds out of the 2007 refinancing escrow. Unlike the beneficiaries of the first deed of trust and second deed of trust, Peragine did not reconvey his deed of trust. Chase instituted the instant action for quiet title, declaratory relief, and injunctive relief, seeking a judicial determination that Chase's security interest in the Property was first in line. Peragine contended he was not paid in full and therefore was entitled to maintain his (now) first secured position to the extent of the amount owed to him on his underlying note. At a bench trial, the trial court entered judgment in favor of Chase, ordering Peragine to reconvey his deed of trust.¹ We affirm.

FACTS

Complaint

On May 8, 2009, Chase filed its verified complaint for quiet title, declaratory relief, and injunctive relief against: (1) the Contardis, the owners of the Property; (2) Peragine; (3) Fidelity National Title Insurance Company (Fidelity); and (4) all persons unknown, having any legal or equitable right to the Property. Basically, Chase sought a determination that defendants' interests in the property, if any, were inferior to the beneficial interest of Chase. Defaults were entered against the Contardis; it is unclear what role, if any, Fidelity played in the litigation.

¹ This lawsuit (and the judgment that resulted therefrom) did not directly address whether Peragine was still actually owed money by the Contardis. We note this oddity to make clear that we do not express any opinion with regard to the legitimacy of Peragine's claim that he is owed more money by the Contardis.

Factual Record

The factual record is limited to the testimony of a Chase employee tasked with authenticating and describing documents in Chase's files,² excerpted deposition testimony of Peragine (who did not appear at trial), and certain exhibits admitted into evidence. Neither the Contardis nor anyone else with personal knowledge of the events surrounding the refinancing transaction testified.

The Contardis have owned the Property since 2002. On February 3, 2004, lender First Franklin Financial Corp. (First Franklin) recorded two deeds of trust on the Property that secured separate loans made to the Contardis: (1) a first deed of trust securing a promissory note in the amount of \$576,000; and (2) a second deed of trust securing a promissory note in the amount of \$108,000. On March 16, 2006, Peragine recorded a deed of trust on the Property purporting to secure a note in the principal sum of \$155,000.³ All three deeds of trust bore the purported signatures of the Contardis. Unlike the lengthy First Franklin deeds of trust, the Peragine deed of trust was only two pages long (plus an exhibit describing the Property) and did not disclose any of the terms of the promissory note.

² The Chase employee is described as a custodian of records, but this title is accurate only with regard to loan files that have been referred to litigation. In this case, the custodian obtained the file from Chase's legal counsel, not from other Chase employees.

³ The purported Peragine note (which includes a notary seal and signature) is in the record as exhibit No. 26. The one-page note indicates that the Contardis promised to pay Peragine \$155,000 at 16 percent interest "for value received." The note does not provide the amount owed for monthly payments, but indicates "interest payable monthly beginning April 16, 2006 and continuing until March 15, 2011 at which time the entire principal balance plus accrued interest and/or late fees shall become due and payable." The note also includes a late payment fee of five percent of the interest payment due and a prepayment penalty for payment of principal prior to April 15, 2011. According to Peragine's deposition testimony, the Contardis never made a payment on the loan and Peragine never took any formal actions (e.g., writing a letter, foreclosing) to collect on the loan. Peragine claims he "made a lot of phone calls" to the Contardis.

On September 11, 2007, the Contardis submitted a loan application to Chase, by which the Contardis sought to borrow \$819,000. The Contardis identified the amount of their existing liens as \$689,697.17. Elsewhere on the application, two debts specifically identified as real estate loans were listed: (1) \$582,639.75 owed to Chase Home Finance; and (2) \$107,057.42 owed to Wilshire Credit. These entities were apparently the servicers of the two loans originated by First Franklin. The application separately (on a different page, along with credit card and automobile financing debts) identified an additional liability as the "PERAGINE 3RD MORTGAGE." The application stated that the Contardis owed Peragine \$100,000, with 100 monthly payments of \$1,000 owed. There is no explanation in the record as to why the \$100,000 Peragine debt was not listed as a real estate loan and included in the amount of existing liens on the Property. But Chase's custodian of records testified that he understood the purpose of the proposed Chase loan was to pay off all three existing loans secured by the Property.

It is Chase's policy to obtain a payoff demand from all lienholders. On September 12, 2007, Chase Home Finance provided Chase with a payoff demand of \$571,232.52 with regard to the loan secured by the first deed of trust; this payoff amount was good through October 12, 2007. On October 23, 2007, Chase Home Finance provided Chase with an updated payoff demand of \$582,639.75; this payoff amount was good through November 23, 2007. On September 14, 2007, Wilshire Credit Corporation provided a payoff demand of \$107,377.55 with regard to the loan secured by the second deed of trust; this payoff amount was good through October 12, 2007. On October 23, 2007, Wilshire Credit Corporation provided an updated payoff demand of \$107,051.42 with regard to the loan secured by the second deed of trust; this payoff amount was good through October 31, 2007.

The primary factual dispute at trial was whether a payoff demand statement (Civ. Code, § 2943, subd. (a)(5)) was ever requested and obtained from Peragine.

Chase's custodian of records testified that Chase received a document admitted as exhibit No. 9 from Peragine, but this testimony was based solely on his observation that the document was in the file and signed by Peragine. Exhibit No. 9 is a one-page letter: (1) with Peragine's letterhead and signature; (2) with no recipient designated (addressed "[t]o whom it may concern"); and (3) dated September 21, 2006 (not 2007). The one-paragraph body of the letter states: "I hold a Trust Deed on [the Contardis' Property]. Payments are deferred on this loan. The current balance on this Loan is \$100,000.00. This pay-off is good through October 10th. Borrowers hereby agree that a calculation error in pay-off amount does not relieve the obligation of repayment."

Peragine admitted at his deposition that the signature on exhibit No. 9 was his and further admitted there was no reason to believe he did not issue the payoff quote. But Peragine claimed the payoff letter was issued in 2006 as the date on the letter indicated. Peragine had no idea how this letter came to be in the possession of Chase. Trying to explain why he would have indicated only \$100,000 was owed on a purported \$155,000 debt (plus accruing interest), Peragine suggested he could have proposed \$100,000 as a settlement of the debt to the Contardis in September 2006 (about 6 months after execution of the note). According to a spreadsheet prepared by Peragine, the Contardis still owed approximately \$157,000 as of the time of trial (taking into account the \$100,000 paid to Peragine out of the Chase loan escrow), due to continually accruing interest and late payment fees.

Based on his review of the loan file, the custodian of records testified it was his belief that the date used on exhibit No. 9 (Sept. 21, 2006) was a "mistake, because in our conversation logs, it does indicate that we had a telephone conversation with Mr. Peragine and we confirmed that the amount was \$100,000." This phone call was "documented in [Chase's] conversation log," which is "basically what employees use to communicate with each other in regards to the [loan]." Notes in the conversation log "are inputted by employees" contemporaneously with the receipt of information. The 2007

conversation log indicated that on September 19, 2007, an individual inputted a log entry based on statements by the loan officer, who said “THE \$155,000 LIEN ON TITLE WILL NEED TO BE PAID IN FULL. BENEFIT IS TO REMOVE OFF TITLE.” A subsequent notation on September 21, 2007 indicates: “VERIFY NO PMT ON 3RD MTG.” According to the conversation log, on October 23, 2007, a conference call took place during which the third mortgage holder, “MICHAEL,” “STATED THAT THE P/O IS \$100K AND THAT THERE WERE NO PAYMENTS THAT WERE OBLIGATED TO BE PAID. THE P/O STAYS AT \$100K.” A document from Chase’s file indicates one task was to “VERIFY NO PAYMENT PLAN ON THIRD MTG.” A handwritten note⁴ on the document indicates: “no pymts, 100,000 310-496-4913.” The custodian testified this means “somebody had called Mr. Peragine and confirmed that there are no payments.” Nothing in the record links the listed phone number to Peragine. The conversation log indicated in an October 23, 2007 entry that a third mortgage payoff letter had been received and placed in the file. The custodian’s review of the file disclosed no possible explanation for the presence of the Peragine payoff letter in the file other than Peragine sending the letter to Chase in response to Chase’s inquiries.

The loan closed on October 26, 2007. Chase’s written instructions to its closing agent indicated Chase’s \$819,900 loan to the Contardis was to be in the first lien position. The instructions listed the following debts payable in connection with the loan: (1) Peragine 3rd mortgage - \$100,000; (2) Chase Home Finance - \$582,639.75 (“Good Thru 11/23/07 @ 154.43”); and (3) Wilshire Credit - \$107,057.42 (“Good Thru 10/31/07 @ 28.12”).⁵ Chase’s custodian testified that Chase would not have made a loan in excess

⁴ The conversation logs are typewritten. The custodian of records did not explain why a handwritten note would appear at the bottom of a conversation log.

⁵ The Peragine mortgage did not include a “good thru” date or a daily interest amount.

of \$800,000 to the Contardis if it did not believe it would be in a first priority lien position.

Judgment

On July 22, 2011, the court entered judgment in favor of Chase after a bench trial. We quote the contents of the judgment extensively, as it explains the factual findings made by the court justifying the relief provided to Chase.

“On October 26, 2007, the Contardis executed a residential loan from Chase in the original principal amount of \$819,000.00 (‘Chase Loan’). Contardis executed a deed of trust (‘Chase DOT’) in favor of Chase as security for the Chase Loan, which was to encumber the [P]roperty However, the Chase DOT was not recorded with the Orange County Recorder’s Office. Under Civil Code [section] 3415, the Court orders that Chase is hereby allowed to record a copy of the Chase DOT . . . with the Orange County Recorder’s Office, because the original Chase DOT is lost or unavailable. The Court orders that the Chase DOT will be deemed recorded with the Orange County Recorder’s Office as of October 26, 2007.”⁶

“After considering the evidence and testimony presented, the Court hereby adjudicates that the payoff quote letter from Peragine dated September 21, 2006 was in effect sent on September 21, 2007, and that on October 23, 2007, Peragine confirmed with employees of Chase that the unpaid loan balance under this loan was \$100,000 and would remain \$100,000. Thus, under Civil Code [section] 2943, Chase properly relied on the payoff quote sent by Peragine, and having received \$100,000 in October 2007, Peragine is hereby ordered to reconvey his deed of trust recorded with the Orange County Recorder’s Office on March 16, 2006 . . . within 30 days of the date on which this

⁶ This portion of the judgment is not at issue on appeal. Peragine did not take issue in his opening brief with the court’s ruling that Chase could record a copy of its deed of trust pursuant to Civil Code section 3415.

Judgment is entered. If Peragine fails to reconvey his Deed of Trust pursuant to this Judgment, his deed of trust will be deemed subordinate to the Chase DOT, and in fact, void as a matter of law.”

“Even assuming that the payoff quote letter from Peragine was not in fact sent to Chase in September 2007, and thus, Chase could not have relied on Peragine’s payoff quote letter, alternatively, Chase is entitled to a lien position superior to that of the Peragine Deed of Trust based on principles of equitable subrogation and relief via an equitable lien in favor of Chase for the amounts that it paid off to senior lienholders.”

DISCUSSION

This appeal concerns the interpretation of Civil Code section 2943 (section 2943), as well as the application of this statute to the facts of the case. We review questions of statutory interpretation de novo. (*Freedom Financial Thrift & Loan v. Golden Pacific Bank* (1993) 20 Cal.App.4th 1305, 1309 (*Freedom Financial*) [interpreting Civil Code § 2943].)⁷ And we review the court’s factual findings for substantial evidence. (*Vanderkous v. Conley* (2010) 188 Cal.App.4th 111, 121 [“we review the record in the light most favorable to the judgment and will draw all permissible inferences and presumptions in favor of its validity”].)

The Facts

The factual record in this case is a mess. The small excerpts of deposition testimony from Peragine suggest something unusual was afoot with regard to his loan to the Contardis. Taking Peragine’s testimony at face value, one wonders why he loaned the Contardis \$155,000, only to agree six months later to accept \$100,000 as payment in

⁷ Dictum in *Freedom Financial* was disapproved on a point not relevant to the instant matter in *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 53, footnote 5.

full.⁸ Our review of Peragine’s deposition testimony suggests the court had good reason to conclude (implicitly in its findings) that Peragine was not being forthcoming in his testimony. To put stock in Peragine’s testimony is to believe (without any basis in the record for doing so) that a \$155,000 personal loan he made to the Contardis was so inconsequential to Peragine that he simply cannot recall any of the details. Neither Chase nor Peragine elicited the testimony of the Contardis to help sort out the legitimacy of and actual amount owed on the underlying Peragine note.

At the same time, Chase’s case is seemingly dependent on an alleged payoff demand that: (1) is dated a year early (2006 rather than 2007); (2) purports to expire October 7, 2006 (the loan closed October 26, 2007); (3) is not addressed to Chase; (4) does not match up with the terms of the underlying Peragine promissory note with regard to principal or interest owed; and (5) is not accompanied by any written documentation suggesting Chase requested a payoff demand from Peragine. Through

⁸ We note the following deposition testimony. “Q. Is [exhibit No. 9, the Peragine payoff demand] the document that you created? [¶] A. Is this the document that I created?” Q. “Do you see a signature above your name, Michael J. Peragine? [¶] A. Yes. [¶] Q. Is that your signature? [¶] A. Yes. [¶] Q. Do you recall issuing this payoff quote at any time? [¶] A. Not at the timeframe — [¶] no, not in 2007. [¶] Q. At any time I said. [¶] A. I don’t recall. [¶] Q. Do you have any reason to doubt that this payoff quote was generated by you? [¶] A. It has got my signature on it. [¶] Q. Is this the letterhead that you used in 2006 or 2007? [¶] A. I don’t remember what letterhead I used in 2006 or 2007. [¶] Q. Again, I ask you, do you have any reason to believe that whether it was issued in 2006 or at any other time, this is a payoff quote that was generated by you? [¶] A. I believe that in 2006 this could have been a payoff quote that I issued. [¶] Q. Do you know who requested this payoff quote? [¶] A. I do not at this time.” Q. “What is the amount of the payoff quote on this document? [¶] A. It says 100,000.” Q. “Do you have any reason to doubt that the amount of the payoff quote of \$100,000 was inputted by you? [¶] A. On September 21st, 2006 I don’t have any reason to believe I didn’t put that number in there.” Q. “What is the amount that’s owed as of September 16, 2006 [according to the spreadsheet you prepared]? [¶] A. It says it is 167,916.67. [¶] Q. Why is the payoff 100,000 [in] your payoff . . . quote statement? [¶] A. On September 21st, 2006 it appears that I was willing to settle or agree to take a short pay for 100,000.”

business records maintained by Chase, one can infer that telephone communications took place with someone named Michael (Peragine?) on October 23, 2007 to confirm the \$100,000 amount prior to closing. But Chase did not procure the testimony of any percipient witnesses from its own company to confirm this explanation, instead relying on a custodian of records who simply reviewed the file and made informed, logical inferences about the meaning of the various records contained therein.

Despite the limitations of Chase's evidence,⁹ we conclude the evidence was substantial enough to support the court's relevant factual findings: "the Court hereby adjudicates that the payoff quote letter from Peragine dated September 21, 2006 was in effect sent on September 21, 2007, and that on October 23, 2007, Peragine confirmed with employees of Chase that the unpaid loan balance under this loan was \$100,000 and would remain \$100,000." The court was entitled to infer that Chase's records, as interpreted by Chase, reflected the reality of what occurred.

The Law

The question remains whether the court reached the right result under the law. According to Peragine, the lack of compliance with the letter of section 2943 precludes Chase from relying on the payoff letter and other information it had at its disposal. We thus examine section 2943 and apply it to the facts in this case.

"A beneficiary [of a deed of trust] shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand." (§ 2943, subd. (c).) If a beneficiary fails to comply with this requirement, "he or she is liable to the entitled person for all damages which he or she may sustain by reason of the

⁹ Peragine did not argue at trial and does not argue on appeal that Chase's evidence was inadmissible. Instead, Peragine argues that Chase's evidence is not substantial enough to support the court's factual findings.

refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars (\$300).” (*Id.*, subd. (e)(4).)

The Contardis (“trustor[s]” of the Peragine deed of trust) are “[e]ntitled person[s].” (§ 2943, subd. (a)(4).) Thus, Peragine, the “beneficiary” of the third deed of trust (*Id.*, subd. (a)(1)), was obligated to prepare and deliver a payoff demand statement to Chase (the agent of an entitled person demanding the statement), if Chase made a written demand to Peragine. (See *Cathay Bank v. Fidelity Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 266, 270.)

“‘Payoff demand statement’ means a written statement, prepared in response to a written demand made by an entitled person or authorized agent, setting forth the amounts required as of the date of preparation by the beneficiary, to fully satisfy all obligations secured by the loan that is the subject of the payoff demand statement. The written statement shall include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.” (§ 2943, subd. (a)(5).)

“A . . . payoff demand statement . . . may be relied upon by the entitled person or his or her authorized agent in accordance with its terms, including . . . reliance for the purpose of establishing the amount necessary to pay the obligation in full. If the beneficiary notifies the entitled person or his or her authorized agent of any amendment to the statement, then the amended statement may be relied upon by the entitled person or his or her authorized agent as provided in this subdivision.” (§ 2943, subd. (d)(1).) “If notification of any amendment to the statement is not given in writing, then a written amendment to the statement shall be delivered to the entitled person or his or her authorized agent no later than the next business day after notification.” (*Id.*, subd. (d)(2).)

“Upon the dates specified in subparagraphs (A) and (B), *any sums that were due and for any reason not included in the statement or amended statement* shall continue to be recoverable by the beneficiary *as an unsecured obligation* of the obligor pursuant to the terms of the note and existing provisions of law. [¶] (A) If the transaction is voluntary, the entitled party or his or her authorized agent may rely upon the statement or amended statement upon the earlier of (i) the close of escrow, (ii) transfer of title, or (iii) recordation of a lien.” (§ 2943, subd. (d)(3), italics added.)

The court ruled exhibit No. 9 was a “payoff demand statement,” and Chase was therefore entitled to rely on exhibit No. 9 (and subsequent oral communications). The court therefore ordered Peragine to reconvey his deed of trust, deeming it void as a matter of law. Of course, the judgment does not entail a conclusion that the underlying debt allegedly owed by the Contardis is void. (§ 2943, subd. (d)(3); see also *Freedom Financial, supra*, 20 Cal.App.4th at p. 1313 [“a beneficiary may look only to the obligor for any due but unpaid sums in the payoff of a secured loan where the underpayment was the result of the beneficiary’s error in preparing the payoff demand statement”].)

Peragine argues in his brief: “First, no evidence was admitted at trial that Chase ever made a written demand for a payoff demand statement at any time, including a written demand for Exhibit 9. Second, Exhibit 9 does not meet the statutory definition of a payoff demand statement under section 2943. Finally, assuming, arguendo, that the September 21, 2006 date indicated on Exhibit 9 was a ‘clerical error,’ Exhibit 9 still lapsed on October 10, 2007, and was invalid for reliance upon any financial institution, for the purposes of determining a payoff balance, over two (2) weeks prior to the October 26, 2007 closing on the Chase Loan”

Lack of Written Demand

Peragine’s first argument goes nowhere. Section 2943 outlines the duty of a beneficiary (such as Peragine) to provide, among other things, payoff demand

statements to beneficiaries and their agents (such as Chase). Section 2943 enables entitled persons to obtain information from beneficiaries that can be relied upon. (*Freedom Financial, supra*, 20 Cal.App.4th at p. 1309.) Clearly, if a written demand for a payoff demand statement was not delivered to Peragine, Peragine was not obligated to provide a payoff demand statement. But even assuming there was no written demand by Chase, the court's factual findings suggest Peragine provided a payoff demand statement nonetheless (perhaps in response to an oral request). Peragine's willingness to waive its right to receive a written request under section 2943 does not negate the validity of a payoff demand statement issued by Peragine. It would subvert the purpose of section 2943 to allow a beneficiary to disclaim the validity of a responsive payoff demand statement merely because the beneficiary waived its procedural right to a written request for a payoff demand statement.

Valid Payoff Demand Statement

Peragine's second argument, that exhibit No. 9 is not a "payoff demand statement" under section 2943, subdivision (a)(5), is also unpersuasive. Peragine is correct that not every written communication from a beneficiary constitutes a payoff demand statement. (*California Nat. Bank v. Havis* (2004) 120 Cal.App.4th 1122, 1134-1135 (*Havis*)). In *Havis*, an investor group sought to purchase real property encumbered by a \$1.2 million deed of trust. (*Id.*, at p. 1127.) After initially providing a payoff demand statement to an escrow agent on June 20, the beneficiary of the \$1.2 million deed of trust, California National Bank, delivered a July 24 letter to the escrow agent stating: "This letter is to verify that California National Bank received payoff funds for the above referenced loan on July 24, 2002, in the amount of \$1,175,247.14. [¶] It is our policy to issue the Full Reconveyance, 10 days after receipt of the pay off check. Therefore, a Full Reconveyance will be sent to the County Recorders on or about August 5, 2002.'" (*Id.*, at p. 1128.) Escrow closed on the property on August 1, 2002, without

confirmation that the deed of trust had been reconveyed and without payment to California National Bank. (*Id.* at p. 1129.) The check received (outside of escrow) by California National Bank was subsequently dishonored, the secured loan was not paid off, and California National Bank did not reconvey its deed of trust. (*Id.* at p. 1129.)

Reversing a grant of summary judgment against California National Bank in a subsequent lawsuit over lien priority, the court concluded the July 24 letter to the escrow agent was not a payoff demand statement under section 2943: “It did not advise the borrower of the sums needed to pay off the loan, nor did it provide a per diem interest rate as required under the statute. The . . . letter states that Bank had ‘received payoff funds’ for the Johnson loan in the amount of \$1,175,247.14. It also said . . . that no reconveyance could be recorded . . . until 10 days after receipt of the ‘*payoff check.*’ In this context, the phrase ‘payoff funds’ was not used as a term of art but was used to inform the escrow agent of an event *not* contemplated by the escrow instructions; that is, the receipt outside of escrow of a check purporting to pay off the Johnson loan.” (*Havis, supra*, 120 Cal.App.4th at p. 1134.)

In the case before this court, exhibit No. 9 states in relevant part: “Payments are deferred on this loan. The current balance on this Loan is \$100,000.00. This pay-off is good through October 10th.” Exhibit 9 *does* “advise the borrower of the sums needed to pay off the loan” (*Havis, supra*, 120 Cal.App.4th at p. 1134.) Although exhibit No. 9 does not include a per diem interest rate, the court reasonably inferred that the reference to payments being deferred on the loan meant no interest was accruing at the time and there was no need to pay additional interest on a per diem basis. Moreover, the court found Chase reasonably followed up with Peragine by calling him on the phone to inquire further into the payoff demand amount. And to the extent that not including a per diem amount (even if it is \$0) on the payoff demand statement is a violation of section 2943, Peragine’s failure to comply with the letter of section 2943 cannot accrue to his benefit.

Lapse of Payoff Demand Statement

Peragine's third and final claim is that the payoff demand letter lapsed by its own terms as of October 10. Thus, even if exhibit No. 9 was actually sent in 2007 (rather than 2006) in response to a request from Chase, the letter could not have been relied upon because escrow did not close until October 26, 2007. Chase counters (and the trial court found) that Chase's October 23, 2007 phone call to Peragine confirmed the particular terms of exhibit No. 9 were still applicable as of October 26, 2007.

Peragine's argument is correct with regard to the effect of section 2943. "A . . . payoff demand statement may be relied upon by the entitled person or his or her authorized agent *in accordance with its terms*, including . . . reliance for the purpose of establishing the amount necessary to pay the obligation in full." (§ 2943, subd. (d)(1), italics added.) Chase was not relying on the payoff demand letter as of closing on October 26, 2007. Instead, Chase was relying on an October 23, 2007 phone conversation in which Peragine reaffirmed the continued accuracy of the lapsed payoff demand statement. Chase is simply wrong to contend that section 2943, subdivision (d)(1), obligates a beneficiary like Peragine to "amend" in writing a lapsed payoff demand statement. Peragine would have been obligated to provide an updated payoff demand statement if he had been presented with an updated written request for a payoff demand statement in October 2007. There is no evidence in the record of such a written request.

But the judgment must still be affirmed under principles of equitable estoppel.¹⁰ "Equitable estoppel requires that "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the

¹⁰ We invited, and the parties submitted, supplemental briefing on the issue of equitable estoppel.

conduct to his injury.”” (Havis, supra, 120 Cal.App.4th at p. 1137 [reversing summary judgment for new lienor, holding that question of equitable estoppel was question of fact that required trial].) Here, the court’s findings (included in the judgment) explicitly and implicitly make clear: (1) Peragine was apprised of the facts in issuing the payoff demand statement and orally confirming its continuing accuracy as of October 23, 2007; (2) Chase had a right to believe Peragine intended that his statements could be relied upon; (3) Chase was ignorant of the purportedly “true state of facts,” i.e., the Contardis actually owed more than \$100,000 as of the time of closing escrow; and (4) Chase relied on Peragine’s representations to its injury.

“If the decision of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds upon which the lower court reached its conclusion.” (Mike Davidov Co. v. Issod (2000) 78 Cal.App.4th 597, 610.) “The rationale for this principle is twofold: (a) an appellate court reviews the action of the lower court and not the reasons given for its action; and (b) there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct.” (Ibid.) We therefore affirm the judgment on the ground that Peragine is equitably estopped from asserting his lien on the Property.

DISPOSITION

The judgment is affirmed. Chase shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.