

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL CORDAS et al.,

Plaintiffs and Appellants,

v.

JPMORGAN CHASE BANK, N.A., et al.,

Defendants and Respondents.

G046728

(Super. Ct. No. 30-2010-00431971)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cynthia M. Herrera, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Badame & Associates, Kristopher P. Badame and Michele Eileen Pillette for Plaintiffs and Appellants.

Morrison & Foerster, Sean P. Gates and Joshua G. Simon for Defendants and Respondents.

* * *

Plaintiffs and appellants Michael Cordas and Cathy Cordas (collectively, Plaintiffs) refinanced their home mortgage through a lender other than defendants and respondents JPMorgan Chase Bank, N.A. (Chase) and California Reconveyance Company (CRC; collectively Chase and CRC shall be referred to as Defendants). Plaintiffs alleged the “Lender Defendants” misrepresented the terms of Plaintiffs’ loan, failed to make all legally required disclosures regarding the loan and the parties who participated in its origination, and knowingly provided Plaintiffs a loan they could not afford. After Plaintiffs defaulted on the loan, someone (Plaintiffs do not allege who) initiated foreclosure proceedings against Plaintiffs’ home. Plaintiffs filed this action to stop the foreclosure and recover damages for the Lender Defendants’ acts and omissions in originating and seeking to collect on Plaintiffs’ loan.

Defendants demurred to Plaintiffs’ first amended complaint, arguing (1) Plaintiffs failed to allege either Chase or CRC were Lender Defendants or otherwise participated in the origination or collection of Plaintiffs’ loan; (2) all claims against Defendants based on the loan’s origination failed because Defendants did not participate in the loan’s origination and did not assume liability for the loan originator’s conduct when they acquired Plaintiffs’ loan months later; and (3) Plaintiffs failed to allege facts establishing any of the 20 causes of action Plaintiffs alleged against Defendants. The trial court sustained Defendants’ demurrer and granted Plaintiffs leave to amend on 15 of their 20 causes of action. Plaintiffs’ second amended complaint dropped the five causes of action on which the trial court denied leave to amend but otherwise added no allegations to identify Defendants as Lender Defendants or allege how Defendants were responsible for any injury Plaintiffs suffered. Accordingly, the trial court sustained Defendants’ demurrer to the second amended complaint without leave to amend and entered an order dismissing all claims against Defendants with prejudice.

We affirm the trial court’s ruling sustaining Defendants’ demurrer to the second amended complaint because Plaintiffs failed to allege any facts showing

Defendants participated in the loan's origination or committed any act or omission that caused Plaintiffs any harm. Plaintiffs also fail to allege any basis for holding Defendants' liable for any other entity's acts or omissions relating to Plaintiffs' loan. We affirm the trial court's decision denying Plaintiffs leave to amend because Plaintiffs made no effort to identify what specific additional facts they could allege or explain how they could allege any cause of action against Defendants.

I

FACTS AND PROCEDURAL HISTORY

We summarize the underlying facts as alleged in the operative second amended complaint because this appeal follows the sustaining of a demurrer. (*Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 456.) Unfortunately, Plaintiffs greatly complicated that task in two ways. First, the second amended complaint is nearly 50 pages of vague and conclusory allegations against the mortgage industry in general without any description of what Chase or CRC allegedly did to support a specific cause of action. It alleged the "Lender Defendants" committed misconduct regarding the origination and servicing of Plaintiffs' loan, but failed to define the phrase Lender Defendants or otherwise identify a single person or entity who was a Lender Defendant. Second, Plaintiffs' opening brief failed to provide a summary of the underlying facts relevant to the issues on appeal as required by California Rules of Court, rule 8.204(a)(2)(C).¹ Plaintiffs' brief failed to identify, let alone discuss, what facts they believe supported their claims.

According to the complaint, Plaintiffs refinanced their home mortgage in June 2007 and "executed Promissory Notes and Security Agreements in favor of Lender

¹ Plaintiffs' brief includes a section entitled "Statement of the Facts," but it provides nothing more than a summary of the case's procedural history without describing any of the facts giving rise to this action.

Defendants.” In making the loan, the Lender Defendants failed to provide Plaintiffs with all disclosures required by the Truth in Lending Act (15 U.S.C. § 1601 et seq.; TILA), the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.; RESPA), the Home Ownership and Equity Protection Act (15 U.S.C. §§ 1602(aa) & 1639; HOEPA), and “other applicable state and federal standards” Moreover, the Lender Defendants misrepresented the terms of Plaintiffs’ loan and knowingly placed Plaintiffs in a loan destined to result in a default and foreclosure because Plaintiff could not afford the loan.

After making the loan, the Lender Defendants bundled Plaintiffs’ loan with many other loans to create a “mortgage backed security investment.” As part of a mortgage backed security, Plaintiffs’ loan was repeatedly sold and assigned to various financial institutions without Plaintiffs’ knowledge. Plaintiffs initially made their payments to Washington Mutual and they received all “correspondence and statements” regarding their loan from Washington Mutual until July 2010. Plaintiffs do not know who currently holds the promissory note on their loan, but after July 2010 all “correspondence and statements” came from Chase. Despite Plaintiffs’ good faith efforts to make their payments, they eventually defaulted on the loan and foreclosure proceedings were initiated against their home. Plaintiffs do not allege who initiated the foreclosure proceedings.

In December 2010, Plaintiffs filed this action to stop the foreclosure and recover damages for the Lender Defendants’ misconduct in originating and servicing Plaintiffs’ loan. Plaintiffs voluntarily filed a first amended complaint that alleged 20 causes of action and named Chase and CRC as the only defendants. The trial court sustained Defendants’ demurrer to all causes of action alleged in the first amended complaint because Plaintiffs failed to allege sufficient facts to state a cause of action against Defendants. The court granted Plaintiffs leave to amend 15 of the 20 causes of action.

Plaintiffs filed a second amended complaint, alleging 15 causes of action that fall into three groups. The first group includes claims based on acts or omissions by the parties who originated Plaintiffs' loan (hereinafter, loan origination claims). For this group, Plaintiffs filed the following causes of action: fraud, negligence, negligent misrepresentation, breach of fiduciary duty, fraudulent misrepresentation, concealment, HOEPA violations, civil conspiracy, civil Racketeer Influenced and Corrupt Organizations Act (RICO) violations, TILA violations, RESPA violations, and violation of California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.; Section 17200). The second group includes claims based on the acts or omissions by the parties who sought to collect on Plaintiffs' loan (hereinafter, loan collection claims). As to this group, Plaintiffs filed causes of action for violation of the Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.; Rosenthal Act) and breach of the implied covenant of good faith and fair dealing. In the final group Plaintiffs filed a single cause of action to quiet title to their home against all parties who claim an interest based on the deed of trust Plaintiffs signed in June 2007.

Defendants demurred to the second amended complaint on several grounds. First, they argued the pleading was uncertain because Plaintiffs' allegations asserted an undefined group of "Lender Defendants" acted improperly, but failed to lodge any specific allegations regarding Defendants' involvement in the origination or any other aspect of Plaintiffs' loan. Second, Defendants contend they are not to be liable on the loan origination claims because they were not involved in making Plaintiffs' loan. According to Defendants, Washington Mutual originated Plaintiffs' loan in June 2007, the Office of Thrift Supervision closed Washington Mutual and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver for Washington Mutual in September 2008, and Chase purchased Washington Mutual's assets from the FDIC under the Purchase and Assumption Agreement. The Purchase and Assumption Agreement expressly stated Chase did not assume liability for any claims borrowers had against

Washington Mutual, leaving liability for these claims with the FDIC. Finally, Defendants argued Plaintiffs failed to allege at least one element of every cause of action in the second amended complaint. To support their demurrer, Defendants requested the trial court judicially notice the deed of trust Plaintiffs executed in Washington Mutual's favor when they obtained the loan, the notices of default and notices of trustee's sale recorded against Plaintiffs' home, and the Purchase and Assumption Agreement between Chase and the FDIC.

The trial court granted Defendants' request for judicial notice and sustained their demurrer without leave to amend on all causes of action. The court found (1) the pleading was uncertain because it failed to allege Defendants were "Lender Defendants" or any specific conduct by Defendants; (2) the loan origination claims failed because Defendants had no involvement in the loan's origination and Chase did not assume liability for any misconduct regarding the origination when it purchased the loan as one of Washington Mutual's assets; (3) the statute of limitations barred several of the loan origination claims; (4) the quiet title claim failed because Plaintiffs did not allege the date on which they sought the title determination or that they tendered the outstanding balance on their loan to Defendants; (5) all fraud claims failed because Plaintiffs did not allege the elements with the required specificity; (6) the negligence and breach of fiduciary duty claims failed because Plaintiffs did not allege facts showing Defendants' owed Plaintiffs any duties; (7) the conspiracy claim failed because Plaintiffs did not allege facts showing Defendants agreed to or participated in a conspiracy; (8) the RICO claim failed because Plaintiffs did not allege any acts by Defendants constituting racketeering activity; (9) the RESPA claim failed because Plaintiffs did not allege actual damages caused by a RESPA violation; (10) the Section 17200 claim failed because Plaintiffs did not allege unlawful activity amounting to unfair competition; (11) the Rosenthal Act claim failed because foreclosure activities are not debt collection activities and Defendants are not debt collectors under the Rosenthal Act; and (12) the breach of the implied covenant of good

faith and fair dealing claim failed because Plaintiffs did not allege Defendants interfered with Plaintiffs' right to receive their loan benefits. The trial court entered an order dismissing all claims against Defendants with prejudice and Plaintiffs timely appealed.

II

DISCUSSION

A. *Standard of Review and Plaintiffs' Burden on Appeal*

When the trial court sustains a demurrer, we review the complaint de novo to determine whether it alleges facts stating a cause of action on any possible legal theory. (*Koszdin v. State Comp. Ins. Fund* (2010) 186 Cal.App.4th 480, 487 (*Koszdin*.) ““We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” [Citations.]” (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400.) “Further, ‘we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.’ [Citations.]” (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 528.) We also “consider matters that must or may be judicially noticed.” (*Hoffman*, at p. 400.)

Nonetheless, “[t]he plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer, and if the defendant negates any essential element, we will affirm the order sustaining the demurrer as to the cause of action. [Citation.] We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings. [Citation.]” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031; *Sui v. Price* (2011) 196 Cal.App.4th 933, 938.)

“When a demurrer is sustained without leave to amend, we also must decide whether there is a reasonable possibility that the defect can be cured by

amendment.” (*Koszdin, supra*, 186 Cal.App.4th at p. 487.) “The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.] . . . [¶] To satisfy that burden on appeal, a plaintiff ‘must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the ‘applicable substantive law’ [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.]” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43-44 (*Rakestraw*)).

B. *Plaintiffs Failed to Allege Facts Stating Any Cause of Action Against Defendants*

Although the trial court relied on several grounds to sustain Defendants’ demurrer to the second amended complaint, we need not reach many of them. We affirm the trial court’s ruling for the simple reason the second amended complaint failed to allege Defendants did anything to injure Plaintiffs or that they are responsible for any other entity’s acts or omissions relating to Plaintiffs’ loan. The second amended complaint alleged the Lender Defendants committed all acts and omissions giving rise to Plaintiffs’ claims, but it failed to define that phrase or otherwise allege Chase or CRC were Lender Defendants.

The second amended complaint included just four allegations regarding Chase: (1) Chase “is engaged in a general commercial banking business [and] is subject to regulation, supervision and examination by the Office of the Comptroller of the Currency”; (2) the Lender Defendants “allege” Chase is the successor in interest from the FDIC and the current beneficial holder of Plaintiffs’ loan; (3) Chase sent Plaintiffs “correspondence and statements” regarding their loan starting in July 2010; and (4) Chase

“ha[s] been compensated through derivatives insurance and other forms of insurance, including government subsidies, at approximately 90-100 Percent of the face value of the alleged mortgage transactions held in these mortgage pools.” (Boldface deleted.) The only allegation the second amended complaint made against CRC is that Does 51 through 100 were CRC’s “agents and/or employees.”

Plaintiffs’ loan origination claims allege the Lender Defendants

(1) fraudulently induced Plaintiffs to take a loan they could not afford by misrepresenting the loan’s terms and concealing other information regarding the loan and the parties involved in making the loan (see Plaintiffs’ claims for fraud, negligent misrepresentation, fraudulent misrepresentation, and concealment); (2) breached the professional and fiduciary duties they owed Plaintiffs by knowingly placing Plaintiffs in a loan destined to result in a default and foreclosure because Plaintiffs could not afford the loan (see Plaintiffs’ claims for negligence and breach of fiduciary duty); (3) violated several federal and state laws by failing to make all required disclosures regarding the loan and the parties involved in making it (see Plaintiffs’ claims for HOEPA violations, TILA violation, RESPA violations, and Section 17200 violations); and (4) conspired with one another to do all of the foregoing (see Plaintiffs’ claims for civil conspiracy and civil RICO violations).

Plaintiffs’ loan collection claims allege the Lender Defendants (1) violated the Rosenthal Act by threatening to foreclose on Plaintiffs’ home based on a promissory note for which they did not hold the beneficial interest, falsely stating the amount of the debt, increasing the debt by including illegal amounts, and using unconscionable means to attempt to collect a debt, and (2) breached the covenant of good faith and fair dealing implied in the promissory note and deed of trust by “submitting fraudulent Affidavits.”

All of these loan origination and loan collection claims fail to state a cause of action against Defendants because Plaintiffs do not allege either Chase or CRC committed any act or omission giving rise to these claims. Plaintiffs make no attempt to

allege either Chase or CRC were involved in making the loan that is the subject of Plaintiffs' complaint. Indeed, the only involvement Plaintiffs allege either Chase or CRC had with any aspect of Plaintiffs' loan is that Chase sent Plaintiffs "correspondence and statements" regarding the loan in July 2010, three years after Plaintiffs obtained the loan. Nor do Plaintiffs allege Defendants took any specific act to collect on Plaintiffs' loan or foreclose on Plaintiffs' house after Defendants began sending Plaintiffs correspondence and statements. Moreover, Plaintiffs do not allege any basis on which they may hold Defendants liable for the acts or omissions of any other entity relating to Plaintiffs' loan. Plaintiffs attempt to state a cause of action for civil conspiracy, but they fail to allege Defendants agreed to or participated in a conspiracy. (*Mosier v. Southern Cal. Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1048 ["The elements of a civil conspiracy are '(1) the formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting'"]; *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582 ["[t]he basis of a civil conspiracy is the formation of a group of two or more persons who have agreed to a common plan or design to commit a tortious act." [Citations.] The conspiring defendants must also have actual knowledge that a tort is planned and concur in the tortious scheme with knowledge of its unlawful purpose".])

Plaintiffs' only claim that requires further analysis is their quiet title claim. Plaintiffs seek to quiet title to their home against all parties who claim an interest adverse to them based on the deed of trust Plaintiffs signed when they obtained the loan. Plaintiffs allege the deed of trust is void on its face and therefore no one could rely on it to acquire an interest in their property. Plaintiffs do not state a quiet title claim, however, because they failed to allege the date on which they seek a title determination. A complaint to quiet title must allege "[t]he date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is

sought.” (Code Civ. Proc., § 761.020, subd. (d).) Plaintiffs allege they seek to “quiet title as of a date yet to be determined” despite the trial court sustaining Defendants’ demurrer to the quiet title claim in the first amended complaint on this same ground.

Plaintiffs also fail to state a quiet title claim because they failed to allege they tendered the outstanding balance due on the loan to Defendants or otherwise satisfied their loan obligations. A property owner who gives a mortgage on his or her property as security for a debt may not quiet title against that mortgage without satisfying the debt or at least tendering the outstanding balance. (*Mix v. Sodd* (1981) 126 Cal.App.3d 386, 390 [“It is well established in law that a mortgagor in possession may not maintain an action to quiet title, even though the debt is unenforceable because of the statute of limitations”]; *Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477-478.) This rule is based on the equitable principle that one who seeks equity must do equity and a court of equity therefore will not aid a person in avoiding his or her debts. (*Mix*, at p. 390; cf. *Caira v. Offner* (2005) 126 Cal.App.4th 12, 24-25 [quiet title is an equitable remedy].) Plaintiffs admit they signed the deed of trust creating the mortgage on their property and that they received the proceeds of the loan. Plaintiffs would receive a windfall if they could quiet title without returning the money they admit receiving.

Plaintiffs acknowledge this tender rule, but argue there are three exceptions that apply in this case: (1) a tender is not required when the borrower’s action attacks the underlying debt’s validity because a tender would constitute an affirmation of the debt; (2) a tender is not required where it would be inequitable to require one; and (3) a tender is not required when the underlying debt is void on its face. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112-113.) Unfortunately for Plaintiffs, they fail to allege facts to support any of these exceptions. Although Plaintiffs offer the conclusion the loan is invalid, they fail to allege sufficient facts to state a claim to invalidate the loan on any ground. Similarly, they fail to allege any facts or provide any explanation why it would be inequitable to require them to tender the outstanding balance.

As explained above, Plaintiffs bore the burden to show they alleged facts sufficient to establish every element of every claim they sought to allege. (*Rakestraw*, *supra*, 81 Cal.App.4th at p. 43; see also *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 655 [“the burden is on the appellant to demonstrate the existence of reversible error [and] we need only discuss whether a cause of action was stated under the theories raised on appeal”].) Plaintiffs’ brief, however, made no attempt to identify a single element of a single claim Plaintiffs alleged or any specific facts they alleged. Instead, Plaintiffs offered nothing more than vague conclusions that Defendants acted fraudulently, failed to make required disclosures, and improperly sought to foreclose on Plaintiffs’ home. Plaintiffs’ brief does not even refer to many of the causes of action alleged in the second amended complaint.

The only cause of action Plaintiffs’ brief specifically addressed was the Section 17200 claim for unfair competition. Plaintiffs contend they may state a cause of action under Section 17200 based on any unlawful, unfair, *or* fraudulent business practice or act, and they adequately alleged a claim based on Defendants’ unlawful business acts and practices. According to Plaintiffs, the second amended complaint identifies several laws Defendants’ conduct violated and therefore they adequately alleged a claim under Section 17200. Plaintiffs are mistaken.

“By proscribing ‘any unlawful’ business practice, ‘[S]ection 17200 ‘borrows’ violations of other laws and treats them as unlawful practices’ that the unfair competition law makes independently actionable. [Citations.]” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) A complaint for unlawful business practices under Section 17200 must specifically identify the law the defendant allegedly violated and “state with reasonable particularity the facts supporting the statutory elements of the violation.” The conclusion some other law was violated is not sufficient to withstand demurrer. (*People v. McKale* (1979) 25 Cal.3d 626, 635; *Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612,

619.) Here, Plaintiffs argue Defendants violated a variety of laws, including California's Consumer Legal Remedies Act, TILA, and RESPA, and otherwise engaged in misleading business practices. As with all other causes of action, however, Plaintiffs allege no facts to support these conclusions and therefore fail to state a cause of action.

Finally, Plaintiffs contend the trial court erred by granting Defendants request that the court judicially notice the deed of trust Plaintiffs signed in June 2007, the notices of default and notices of trustee's sale recorded against Plaintiffs' home, and the Purchase and Assumption Agreement between Chase and the FDIC. According to Plaintiffs, the trial court erroneously took judicial notice of the truth, validity, and legal effect of these documents to conclude Chase could not be liable on the loan origination claims. We need not reach this argument, however, because Plaintiffs failed to allege facts showing Defendants had any involvement in the loan's origination, or could be liable for any other entity's misconduct. This failure defeats the loan origination claims without requiring us to consider Defendants' request for judicial notice.

C. *The Trial Court Properly Denied Plaintiffs Leave to Amend*

Plaintiffs invoke California's liberal policy in favor of permitting amended pleadings and argue the trial court erred by denying them leave to amend. As explained above, however, it is not sufficient for Plaintiffs to assert "an abstract right to amend." (*Rakestraw, supra*, 81 Cal.App.4th at p. 43.) Instead, Plaintiffs must "clearly and specifically" set forth the legal authority for the claims they contend they can allege, the elements of each of those claims, and the specific factual allegations that would establish each of those elements. (*Ibid.*) Plaintiffs made no attempt to meet this burden.

Plaintiffs also contend they should be given leave to amend to allege Chase and CRC committed all acts and omissions the second amended complaint alleged the Lender Defendants committed. This argument also fails because Plaintiffs ignore that the

trial court previously granted them leave to amend to correct this defect in their pleading and Plaintiff made no effort to do so.

In the first amended complaint, plaintiffs also alleged the Lender Defendants committed all acts and omissions giving rise to Plaintiffs' claims. That defect was one of the grounds on which the trial court sustained Defendants' demurrer to the first amended complaint with leave to amend. The second amended complaint, however, made no attempt to correct the defect and is virtually identical to the first amended complaint, with the exception that Plaintiffs dropped the causes of action on which the trial court sustained the prior demurrer without leave to amend. Given Plaintiffs' failure to make any effort to correct this defect when given the opportunity, we presume Plaintiffs have stated their case as strongly as they can. (See *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 605; *Schick v. Lerner* (1987) 193 Cal.App.3d 1321, 1327.) Moreover, Plaintiffs offer no explanation regarding how they would cure any of the other defects the trial court found in the second amended complaint, such as Plaintiffs' failure to allege their fraud claims with the required specificity. (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 ["In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] . . . 'This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered""] (original italics].)

III

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.