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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BONNIE L. KENT and TERI SUE KENT LOVE, trustees of the JAMES KYLE KENT, JR., ONE WAY TRUST NOVEMBER 9, 2008, et al., Plaintiffs and Appellants, v. CELINK et al., Defendants and Respondents.	G052039 (Super. Ct. No. 30-2013-00685950) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed.

Law Offices of Lenore Albert and Lenore L. Albert for Plaintiffs and Appellants.

Alpert, Barr & Grant, Gary L. Barr and Alexander S. Kasendorf for Defendant and Respondent Celink.

Boss Law Firm, Daniel R. Salas and Bobby B. Ashrafi for Defendant and Respondent Urban Financial Group.

Shulman Bunn and Richard A. Bunn for Defendants and Respondents Placer Title Company and Jennifer Perrine.

Locke Lord, Thomas J. Cunningham and Daniel A. Solitro for Defendant and Respondent Security One Lending.

* * *

Bonnie Kent (Bonnie) sued several entities she believed helped facilitate her now-deceased husband's decision to obtain a reverse mortgage on their residence in Yorba Linda (the Property) without her knowledge or consent. In 2012 James Kyle Kent Jr. (James), acting as the trustee of the James Kyle Kent, Jr., One Way Trust dated November 9, 2008 (One Way Trust), obtained a reverse mortgage loan and forged Bonnie's name on several loan-related documents. Bonnie and James's daughter, Teri Sue Kent Love (Love), filed the lawsuit in their individual capacities and as the One Way Trust's successor co-trustees (hereafter, Bonnie and Love will be referred to jointly as the co-trustees unless the context requires otherwise). Jacob Kent, a minor and the sole beneficiary of the One Way Trust was later added to the lawsuit via his guardian ad litem James K. Kent III (collectively they will be referred to in the singular as Jacob).

The co-trustees and Jacob sued the original lender, Security One Lending (Security One), the current loan servicer (Celink), the beneficiary of the loan, Urban Financial Group (UFG), the trustee, Placer Title Company, (Placer Title) and an employee of Placer Title, Jennifer Perrine (Perrine). During the litigation, the co-trustees sold the property and paid off the loan. The trial court granted Celink and UFG's motions to collect their attorney fees from the loan payoff amount. After several rounds of demurrers, the court sustained without leave to amend demurrers to causes of action alleged in the third amended complaint (TAC), effectively dismissing Security One, Placer Title, and Perrine from the lawsuit. The remaining causes of action against Celink and UFG related solely to their attorney fee collection tactics. The fourth amended complaint (FAC) was limited to these claims, and the court sustained the demurrers without leave to amend.

On appeal, the co-trustees challenge the court's orders sustaining the demurrers to the TAC and FAC, and the order authorizing release of the attorney fees to Celink and UFG. The primary focus of the appeal is to reverse the attorney fee order and allow the co-trustees to pursue three causes of action related to the imposition of those fees. They devote little effort to challenging the court's order sustaining the demurrers as to all defendants on the TAC's causes of action concerning the loan's origination and alleged misconduct immediately following James's death. Indeed, the appellant's appendix contains only 19 documents, all relating to the attorney fee dispute. UFG supplied this court with an eight-volume appendix to assist us in our review of all the rulings challenged on appeal. After carefully considering the arguments, we conclude all the contentions on appeal lack merit, and we affirm the judgment.

I

A. Preliminary Appellate Procedural Issues

In its briefing, UFG maintains the notice of appeal refers to non-appealable orders and the issues on appeal are limited to those properly raised on behalf of the One Way Trust. UFG notes Bonnie and Love did not appeal in their individual capacities. UFG is correct.

We begin with the issue of the non-appealable orders. The co-trustees did not appeal from the trial court's final judgment entered on June 3, 2015. The notice of appeal states they appealed from the orders sustaining "all demurrers" and the order granting the attorney fee motion. The co-trustees also list in the notice of appeal the dates corresponding to those non-appealable orders. (See *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695 ["Orders sustaining demurrers are not appealable"].)

UFG recognizes this court has the discretion to treat the notice of appeal as being taken from the final dismissal judgment, but urges us not to because it "might cause prejudice." However, we find no risk of prejudice because UFG and the other parties briefed all issues raised by the co-trustees as if they appealed from the final judgment. In the interests of judicial economy, we shall deem the appeal from orders to incorporate the judgment of dismissal.

The second procedural issue raised by UFG significantly impacts the scope of our review. UFG asserts the appellants are the trustees of the One Way Trust and, consequently, only issues relating to the One Way Trust may be considered on appeal. We agree. Although the appellants' opening brief's caption states Bonnie and Love are appealing in their capacities as trustees *and individuals,* the notice of appeal does not list Bonnie or Love in their individual capacities. Rather, the notice of appeal clearly and simply states the appeal was by "Bonnie Kent, and Teri Sue Kent Love, as trustees and Guardian ad litem." This plainly means Bonnie and Love appealed as trustees on behalf of the trust, and not in their individual capacities (the guardian's appeal has no relevance to this issue).

The co-trustees appear to concede this point because they do not offer any responsive argument in the reply brief. We recognize the reply brief contains the argument Bonnie had standing below to sue various entities in her individual capacity despite the fact she did not hold title to the Property. But that argument entirely misses the mark. It does nothing to refute the contention Bonnie, as an individual, *did not appeal* from rulings made against her. A trustee lacks standing to raise arguments on appeal concerning rulings made against anyone or anything other than the trust he or she represents. Moreover, we cannot consider arguments made by an appellant on behalf of a non-appellant.

Unlike UFG's first contention, this is not a matter that can be cured by liberally construing the notice of appeal. We found no case law holding trustees, *having* *standing to appeal in that representative capacity*, should be treated by this court as also necessarily bringing an appeal in their individual capacities. We recognize there are cases holding that when a trustee or estate administrator lacks standing to appeal, but is personally aggrieved by the ruling below, the appellate court may consider "the representative designation as merely descriptive and treat the appeal as having been taken in the appellant's individual capacity. [Citation.]" (*Graham v. Lenzi* (1995) 37 Cal.App.4th 248, 254.) Those courts determined the interests of justice were served by not dismissing the appeal. (*Ibid.*)

The same cannot be said for a trustee who has standing to appeal a ruling detrimental to the trust he or she represents. A party acting in this representative capacity has distinct claims from an individual seeking distribution of the trust's assets. It is well settled the One Way Trust's trustees would have no standing to contest any adjudication which determined the respective (or conflicting) rights of trust beneficiaries or disappointed spouses. (See *Estate of Goulet* (1995) 10 Cal.4th 1074, 1084.) Those trustees only had standing to appeal a ruling detrimental to the trust they represent or that pertained to the proper exercise of the trustee's fiduciary duties that might result in personal liability. (Eisenburg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶¶ 2:307 to 2:309, pp. 2-196 to 2-197.)

The notice of appeal clearly stated the One Way Trust's trustees pursued the appeal. There is no policy or legal reason to construe the notice as including individuals not named. To do so would defy common sense and judicial economy. It is not unusual for a losing party (having standing to appeal) to cut their losses and not join an appeal raised by other real parties in interest. We conclude Bonnie and Love, in their individual capacities, did not appeal the judgment. Consequently, any arguments raised by the trustees on behalf of non-appellants will not be considered.

We note this conclusion, as a practical matter, does not in any way affect Love. The appellate briefing contains no issues relating to her personal rights or purported damages as an individual. As for Bonnie, the briefing makes no clear distinction between claims raised by Bonnie, individually, or on behalf of One Way Trust. The co-trustees consistently refer to "plaintiffs" as being all the same, having the same interests. As determined above, this is incorrect, and we will not consider arguments the co-trustees raised on behalf of Bonnie, in her individual capacity.

We turn next to the confusing issue of whether Jacob's "guardian" is a party to this appeal. The notice of appeal states the "[g]uardian ad litem" intended to appeal. Whether the guardian was Bonnie, Love, or the same guardian serving during the trial does not matter because the briefing does not raise any arguments on Jacob's behalf. We treat an appellant's failure to raise an issue in his or her opening brief as a waiver of that challenge. (*Tisher v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 349, 361; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 ["'Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived'"].) In summary, Jacob is a real party in interest who filed a notice of appeal but waived any issues by failing to raise them in the appellate briefing.

B. Background Facts

The facts of this case are jumbled and disjointed because each version of the complaint told a slightly different story and changed its focus regarding the alleged wrongful conduct. We will discuss the procedural evolution of the case in more detail below, but for the sake of clarity and simplicity, we begin with an abbreviated summary of the facts leading up to the dispute.

Bonnie and James were married for over 55 years. They had a family trust created in 1998 called the "James K. Kent, Jr. and Bonnie L. Kent (The Kent Family Trust)" (hereafter 1998 Family Trust). Our record does not contain a copy of the 1998 Family Trust, but Bonnie claims it said James's entire estate would be given to her.

In 2006, the couple sold real estate in Santa Barbara and took advantage of a Revenue and Taxation Code section 1031 exchange (1031 exchange) to minimize their capital gains taxes. The transaction culminated in the acquisition of the Property plus a second house located on Sumac Drive in Yorba Linda (Sumac Property). Title to each residence transferred to either James or Bonnie as their separate property. Specifically, the Property's recorded grant deed showed it was transferred to James Kent "a married man as his sole and separate property." Bonnie admitted title to the Sumac Property was transferred to her name, held as her separate property.

Soon thereafter, James obtained a loan using the Property as security. At the same time, Bonnie recorded a notarized "Interspousal Transfer Grant Deed," gifting the Property to James and waiving any community property interest. She claimed James verbally assured her this was merely a business decision and she would always be able to live in the residence. The loan was paid off in June 2008, however, title to the property remained in James's name as his separate property.

Several months later, in November 2008, James created the One Way Trust and designated himself as the sole trustee. Our record does not contain a copy of the trust but Bonnie alleged section 7.16 granted her a life estate and the named beneficiary of the trust was Jacob.

Two months later, James officially funded the One Way Trust and recorded a grant deed showing the grantor (James in his individual capacity) was granting title of the Property to the One Way Trust. Around this same time, he amended the One Way Trust and eliminated section 7.16 (Bonnie's life estate). James designated Bonnie and Love to serve the trust upon his death as the successor trustees. Jacob remained the sole beneficiary. The co-trustees refer to this amendment as creating a "secret trust."

On March 23, 2012, James in his capacity as trustee of the One Way Trust, obtained a reverse mortgage loan secured by the Property. In the various complaints, the co-trustees suggest James obtained the loan, however, it is undisputed the One Way Trust obtained the loan. The loan documents and trust deed show the money was loaned to the One Way Trust, not James individually.

The different versions of the complaint contain many facts regarding the alleged wrongdoings of other business partners and attorneys. These facts have no relevance to this appeal other than providing a motive for James's decision to borrow money and create other testamentary gifts without Bonnie's knowledge. Bonnie first learned about James's secret dealings in October 2012. In her home office, Bonnie serendipitously found suspicious "codicils" and her forged name on several reverse mortgage loan-related documents. The complaint alleged Bonnie confronted James and she claimed he promised to fix everything and transfer the assets back to her. The co-trustees alleged James died before the transactions could be completed. After his death in July 2013, Bonnie learned for the first time she had no life estate in the Property and that a lender wanted immediate repayment of the reverse mortgage loan (totaling approximately $150,000). As palpably revealed in the various complaints, she sued everyone but James for her misfortune.

The first few versions of the complaint contained causes of action seeking rescission of the reverse mortgage and damages due to loss of equity based on the following two theories: (1) all defendants were at fault for somehow assisting James in illegally borrowing money through a reverse mortgage without his wife's consent or authorization; and (2) defendants were liable for wrongfully threatening to foreclose on the property and refusing to work with Bonnie on refinancing the loan. Midway through the lawsuit, the co-trustees sold the Property and agreed to pay off the loan. The final version of the complaint contained allegations of misconduct occurring after the co-trustees sold the Property because they were forced to pay Celink's and UFG's attorney fees from the sale proceeds.

It is important to note there are no allegations in any version of the various complaints asserting defendants played a role in James's creation of the "secret" version of the One Way Trust, his elimination of Bonnie's life estate, or his decision to make

Jacob the sole beneficiary. The co-trustees concede James is responsible for these misdeeds.

As mentioned earlier, the scope of this appeal is limited to issues properly raised by the One Way Trust. We will not consider arguments brought by the co-trustees asserting the court erred in refusing to allow Bonnie to recover for the harm she suffered individually. The co-trustees stand in the shoes of the prior trustee (James), inheriting the rights, duties, and responsibilities for managing the One Way Trust.

C. Original Complaint

In November 2013, Bonnie and Love, in their capacities of co-trustees of the One Way Trust, filed a complaint against Celink, Security One, UFG, Placer Title and Perrine. The complaint described the One Way Trust and stated James served as sole trustee. It was alleged James amended the trust to remove Bonnie's life estate and specified the Property would transfer to Jacob "on the death of James" and "at the same time" named Bonnie and Love as trustees. The complaint alleged Bonnie was unaware of these changes until after James's death.

The complaint described some of the terms of the reverse mortgage. It alleged James obtained a $938,250 "loan commitment" based on the Property's appraisal plus James's personal financial statement. The loan was negotiated by Premier Reverse Closing, a division of Placer Title. The lender, Security One, gave James a total of $430,969. At the time of James's death, the One Way Trust only owed $147,813. The co-trustees alleged they were unable to find any evidence the loan funds were deposited into an account for the One Way Trust's benefit.

In the first cause of action, the co-trustees alleged all the named defendants were liable for "Conspiracy Re Fraud in the Inducement [¶] To Vitiate the Deed of Trust [¶] Rescission." They maintained the trust deed securing the reverse mortgage was invalid against One Way Trust "even though the loan may be a valid claim against [James's estate]." They asserted Placer Title knew James was married, the couple resided at the Property, and that Bonnie "in all probability had a community property interest" in the Property. The co-trustees alleged representatives of Placer Title "were required, and did prepare appropriate documents that would both inform Bonnie . . . of the pending loan and would require her to subordinate her community property interest, if any interest existed, to the reverse mortgage deed of trust." They noted it was the industry's "custom and practice" to have a spouse's signature notarized, or require the spouse to sign the documents at Placer Title's office "in the presence of its personnel" to verify her consent.

The complaint stated Placer Title failed to adhere to standard practices and gave the documents to James, "who forged Bonnie['s] signature to the documents" and returned them to Placer Title. With respect to the forgery, the complaint noted the following: "The forgeries were obvious. The forged signature bore no resemblance to the signatures in possession of, or available to, the [Placer Title] folks. Violating the custom and practice in the industry, the [Placer Title] personnel made no effort to verify the accuracy of the signatures and/or to have same verified by a notary."

In addition, the co-trustees alleged Placer Title should have, but failed to inquire the loan was made for the "'purposes of the trust.'" The co-trustees maintained the loan was made for James's personal needs and his personal ability to repay the loan. He did not deposit the loan proceeds into the One Way Trust's account and he made loan payments from "non-trust sources." The One Way Trust did not receive any benefit from the loan and did not have the ability to repay the loan. The co-trustees asserted Security One was required to restrict James's use of the money. Based on the above allegations, the co-trustees concluded the reverse mortgage's deed of trust was void "due to fraud." They summarily concluded defendants acted "as co-conspirators with James . . . to fraudulently secure his loan with trust property."

In the second cause of action, the co-trustees alleged all the named defendants were liable for "Failure of Consideration [¶] To Vitiate the Deed of Trust [¶]

Rescission." This cause of action alleged the deed of trust securing the reverse mortgage was invalid against the One Way Trust because it was "void and unenforceable due to a material failure of consideration." The co-trustees asked the court to expunge the recorded trust deed.

In the last section of the original complaint, the co-trustees sought a court order holding all responsibilities created by the reverse mortgage's deed of trust were the obligation of James's estate and not the One Way Trust. They also sought a determination the deed of trust was void and asked for its expungement from the county recorder's records. The co-trustees sought to "recover damages per proof at the time of trial" as well as attorney fees and costs.

All defendants demurred to the complaint and asked the court to take judicial notice of the trust deed. The co-trustees did not oppose the demurrers. The court sustained the demurrers with leave to amend, stating the complaint was uncertain and fraud must be pled with more specificity.

D. The First Amended Complaint

The co-trustees added several new facts to their amended complaint but the causes of action remained the same, focusing on irregularities in the loan origination process. They added a few new allegations relating to Celink's and UFG's demand for repayment of the loan. For example, the co-trustees maintained Celink and UFG had no right to demand payment of loan proceeds not distributed to the One Way Trust.

In an attempt to plead with more specificity, the co-trustees alleged "[T]he fraudulent conduct of [Placer Title and Security One was] imputed to Celink and [UFG], and barr[ed] any and all collection activity against [the One Way] Trust." In addition, the first amended complaint alleged Security One's agent, Nancy Scott, and Placer Title's agent, Perrine, "had actual, as well as constructive notice of the contents of the Interspousal Transfer Grant Deed whereby Bonnie . . . granted her interest in the [Property] to her husband" and "notwithstanding this conveyance, Bonnie . . . most likely still had a vested community property interest in the [Property]." It stated Perrine and Scott were required to, and did prepare documents to inform Bonnie "of the pending loan and would require her to subordinate her community property interest . . . to the reverse mortgage deed of trust." Specifically, it alleged Perrine and Scott gave James four documents for Bonnie to sign as the "non-borrower spouse." James forged Bonnie's signature on the documents titled, "'Ownership Interest Certification,'" "'Important Notice to Non-Borrowing Spouse or Resident,'" "'Borrower's Certification and Authorization,'" and "'Certification of HECM Counseling.'" Scott and Perrine did not require that the signature be notarized and they did not personally verify Bonnie's consent. Like the original complaint, the first amended complaint alleged defendants "conspired with James and using the above described forged documents, completed the loan process . . . ."

In addition, the first amended complaint maintained Security One and James conspired to illegally use the reverse mortgage process. It alleged the trust deed required repayment of principal upon death of the borrower or occupant of the home, yet this term would "never apply to a trust" because a trust does not die. Alternatively, the co-trustees argued the loan was not a valid obligation due to the lack of consideration, i.e., the One Way Trust never received the loan proceeds or any benefit from the loan.

All affected parties demurred to the first amended complaint. The co-trustees filed oppositions and characterized the case as relating to elder abuse. They asserted successor trustees have standing to sue for financial abuse of an elder. In the briefing, they revealed James secretly changed the terms of the trust to obtain the reverse mortgage because Bonnie would not agree to the loan. The co-trustees argued there were sufficient facts to support a fraud claim because it was alleged, "the defendants forged [Bonnie's] name to the loan documents" and made the loan without her consent or knowledge. "Normally a lender requires the borrowers to actually take the deed out of the trust's name in order to even loan this type of product. This lender did not and should suffer its consequences." Alternatively, they argued "defendants breached the agreement because [it] was made with the trust . . . and the trust has not yet deceased." The court sustained all the demurrers and gave the co-trustees leave to amend.

E. Second Amended Complaint (SAC)

This complaint added new causes of action, alleging additional improprieties in the servicing of the loan and misconduct following James's passing. In addition, Bonnie and Love asserted they were now suing in their individual capacities, in addition to their positions as co-trustees of the One Way Trust. Jacob was inserted into the complaint as an additional plaintiff.

The SAC contained several new facts relating to how the co-trustees learned about James's secret business dealings in amending the trust and securing the reverse mortgage. They also disclosed more details about the nature of the 1031 exchange. The SAC acknowledged Bonnie waived her right to the Property as part of the 1031 exchange, however, James assured her the waiver was a business decision and she would always have a home. The complaint alleged Bonnie paid the Property's mortgage, utilities, and repairs from a joint bank account and it was listed on the couple's joint tax return.

The complaint contained many facts about James's other business dealings, partnerships, and the family's many assets. We need not repeat them in detail because they are not relevant to this appeal. Suffice it to say, the complaint alleged there were other business associates making financial demands and taking advantage of the knowledge Bonnie did not currently have "liquidity of assets" to fight back. It was alleged Bonnie was "in a financial mess."

The SAC contained new facts about what happened when Bonnie first discovered the reverse mortgage and other secretly prepared testamentary gifts to friends and family. It was alleged James "had been ill, making it easier for people to manipulate him." After discovering what James had done, Bonnie left James and stayed with her son. James promised Bonnie the documents she found were meaningless and no longer valid. He assured Bonnie that she would always be able to reside at the Property. James started working on getting assets transferred to Bonnie's name. For example, James "signed over" to Bonnie "the Palm Desert property, the Sumac Ridge house, the Race Street Lot and the Needles property" but passed away before he could "transfer[] the rest of real estate and stock."

The SAC asserted that on June 23, 2014, Bonnie wrote Celink, asking to refinance the loan. "The Celink representative told Bonnie . . . that effective on the death of her husband, the [P]roperty was automatically in foreclosure and that Bonnie . . . only had [three] months to sell or else they would take the property." The co-trustees alleged Celink concealed from Bonnie her right to apply for refinancing or to postpone the sale for one year.

The SAC raised the following causes of action: (1) fraud and deceit; (2) negligence; (3) breach of fiduciary [duty] and constructive fraud; (4) "Tender of Payoff Estoppel and Gross Inadequacy"; (5) "Set Aside and Cancellation"; (6) violation of "HBOR"; and (7) violation of Business and Professions Code section 17200. The first three causes of action (for fraud, negligence, and breach of fiduciary duty) all concerned the defendants' use of forged documents to give James the loan secured by the Property. For example, the fraud cause of action alleged Placer Title, Perrine, Security One, and Scott gave James documents "to get his wife's signature, knowing of the great likelihood of forgery and the likelihood of Bonnie . . . not consenting." It alleged "the land records gave constructive notice or actual notice of [James's] marriage to Bonnie . . . on the grounds an interspousal deed was recorded in the chain of title." It asserted that by using the forged documents to close escrow and pay the loan to James, "defendants misrepresented that the documents were valid and properly signed . . . and accepting documents whose signatures were unverified, defendants knowingly assisted . . . James . . . in breaching his fiduciary duty as a husband to his wife" regarding the Property.

The remaining causes of actions focused on Celink's alleged misconduct in refusing to allow Bonnie to pay off or refinance the loan. "Defendants were legally obligated to offer refinancing of the lien" and "breached . . . the condition precedent to accelerate a default on the loan . . . ." All defendants filed demurrers to this complaint. Celink also filed a motion to strike the newly added plaintiffs.

F. Sale of the Property

Before the trial court considered the demurrers to the SAC, the co-trustees listed the Property for sale. After finding a buyer, the co-trustees filed an ex parte application for a temporary restraining order (TRO) and order to show cause (OSC) "why a preliminary injunction should not be granted to restrain and enjoin defendants" Celink, Security One, UFG, Placer Title, and Perrine from "frustrating the close of escrow" on the property. They also sought a preliminary injunction "to stay any and all further action by defendants, including but not limited to demanding attorney fees in the amount of $32,520.74 from [UFG] and $35,783.57 from Celink . . . with respect to the sale of the [P]roperty until this Court has resolved all issues regarding title to and possession" of the Property. The co-trustees stated escrow was set to close in a few days and Celink and UFG refused to remove their attorney fees and costs as part of the payoff.

The court scheduled a hearing regarding attorney fees on the same date as the hearing date for the demurrers to the SAC. The court ordered the escrow holder to transfer the demanded attorney fees to UFG's attorney-client trust account. On December 4, 2014, the Property was sold and $68,304.31 was transferred to the law firm's trust account.

Celink and UFG then filed motions requesting release of the sequestered attorney fees. In its motion, Celink stated the co-trustees "walked away with over $500,000" after the Property sold. Celink asserted it was entitled to attorney fees pursuant to the terms of the deed of trust that secured the loan. It argued that contrary to the trial court's suggestion at the ex parte hearing, Celink and UFG did not need to file motions for writs of attachment.

The co-trustees did not oppose demurrers to the SAC and instead moved ex parte for an order permitting them to file a third amended complaint to add allegations based on Celink's and UFG's misconduct in collecting attorney fees. The court granted the motion and scheduled a new hearing for the attorney fee motions.

G. Third Amended Complaint (TAC)

The TAC alleged nine causes of action, adding new claims against UFG and Celink for fraud and conversion based on their decision to include attorney fees in the loan payoff amount. The TAC contained a second fraud cause of action focused on Celink and UFG. It asserted these entities made a misrepresentation in the HUD-1 statement by including attorney fees in the payoff amount. The complaint added the eighth cause of action for conversion and relied on these same factual allegations as the fraud claim. The TAC alleged the co-trustees "were entitled to $68,304.31, the possession of funds from the sale that . . . Celink and [UFG] hid in line 504 of the HUD-1 Settlement Statement." The co-trustees asserted, "While it is true that [Celink and UFG] were entitled to the payoff amount on the [reverse mortgage, the co-trustees] are informed and believe that [Celink and UFG] puffed up the amount to $277,188.05 when it should have only been $158,739.36, and converted such funds by wrongful acts and/or improperly exercised dominion and control of [the Property's sale proceeds] by hiding litigation fees in this number." The co-trustees asserted Celink and UFG overcharged the loan account by $68,304.31, prematurely collecting litigation costs in an ongoing and unresolved litigation.

The TAC contained a few other new facts relating to the other causes of action: (1) Bonnie never consented or authorized James to give her information to Scott; (2) Bonnie never went through counseling on a reverse mortgage with a certified HUD counselor as required by law; (3) Bonnie believed James took her documents to the "broker/realtor and then someone forged her signature on the loan documents in order to obtain a reverse money mortgage on the property"; and (4) a Celink representative falsely told Bonnie she only had three months to sell the Property when in fact she was entitled to full year to "get her matters in order and either apply for refinancing, obtain outside financing, sell the home, or give it back to the bank."

UFG and Celink filed demurrers and renewed their motions for release of the sequestered attorney fees. The other defendants also filed demurrers to the TAC. After considering oral argument, the court sustained without leave to amend the demurrers of Security One, Placer Title, and Perrine. This ruling disposed of all causes of action alleged in the TAC against these entities.

As to Celink and UFG, the court sustained without leave to amend all causes of action relating to alleged misconduct during the loan origination and servicing (the first, third, fourth, fifth, sixth, and seventh causes of action). It granted the co-trustees leave to amend the complaint with respect to second, eighth, and ninth causes of action, relating to whether it was improper to have included attorney fees and costs in the loan payoff amount. In the same order, the court granted UFG's and Celink's motions to release the sequestered funds.

H. Fourth Amended Complaint (FAC)

This complaint alleged only three causes of action against Celink and UFG for fraud, conversion, and violation of Business and Professions Code section 17200. The other defendants and causes of action were deleted. The factual basis for the three causes of action was that Celink and UFG falsely represented the total payoff amount in the payoff statement and HUD-1 Statement. UFG and Celink filed demurrers and the co-trustees filed oppositions. The trial court sustained the demurrers without leave to amend.

In its minute order, the trial court explained there was a court order releasing the funds to UFG and Celink and, therefore, they "lawfully obtained possession of the disputed funds." The court noted the first cause of action for fraud and deceit was based on the allegation Bonnie listed the property for sale because she was worried the loan would be foreclosed. The claim "further alleges [Bonnie] asked . . . Celink for a payoff statement," which she received on June 4, 2014, and indicated the total payoff amount was $154,750.08. The co-trustees assert they relied on this representation when they put the house up for sale. The court explained the terms of the June 4, 2014 payoff stated it would expire on June 30, 2014. It concluded, "This representation was no longer effective when escrow closed months later. [There was] no allegation that the proposed payoff was false in June, when it was effective."

The court stated that after the co-trustees found a buyer and opened escrow, they asked for a new payoff statement. This payoff statement "indicated [they] were seeking $277,188.05, which included attorney fees of $35,783.57 to Celink and $32,520.74 to [UFG]." The court concluded the co-trustees "allegations are muddied, but are to the effect that [Celink and UFG] failed to disclose that they were going to seek attorney[] fees from this litigation from the proceeds of the sale of the property" and that the co-trustees "acted under duress" during closing and lost $68,304.31.

The court agreed with Celink's and UFG's arguments that the claim was missing the elements of justifiable reliance and damages. The co-trustees failed to allege how they relied on the first payoff statement, which did not include the attorney fees, because they had already decided to sell the Property. In addition, there were no viable allegations of damages because the attorney fees "were essentially a lien on the property that had to be paid." The beneficiary of the trust deed and promissory note were contractually entitled to recover attorney fees and costs incurred to enforce and protect the secured obligation. The court concluded the co-trustees "were not entitled to sell the [P]roperty free and clear of [the] lien" and consequently "the monies did not belong to them and they could not have suffered resulting damages."

As for the conversion claim, the trial court concluded the co-trustees failed to allege facts showing why they would be entitled to the money, "which represent[ed] attorney[] fees incurred by [Celink and UFG] in protecting their security." The court again pointed to the terms of the deed of trust authorizing them to protect their rights in the Property and include those costs in the payoff amount.

And finally, the court rejected the unfair competition claim (violation of Business and Professions Code section 17200). It stated the allegations were "boilerplate" and contradicted other statements in the complaint. The court concluded the attorney fees were properly assessed against the Property, and not the co-trustees personally, and therefore they did not suffer any damages as individuals.

II

The co-trustees appealed from the orders sustaining the demurrers to the TAC and FAC, and the order authorizing release of the attorney fees to Celink and UFG. These orders are not separately appealable, and as mentioned earlier, we will treat the appeal as being from the June 3, 2015, final judgment. Before addressing each order, we first must analyze a jurisdictional argument raised in all four respondents' briefs, questioning whether the co-trustees' had standing to file the lawsuit.

A. Standing

"A litigant's standing to sue is a threshold issue to be resolved before the matter can be reached on the merits. [Citation.] 'If we were to conclude that plaintiff did not have standing to maintain the action, not having been personally damaged by the defendants' conduct, then there would be no need to address the merits of her cause. Equally wasteful of judicial resources would be a resolution on the merits without reaching the standing issue.' [Citation.] We will not address the merits of litigation when the plaintiff lacks standing, because '"California courts have no power . . . to render advisory opinions or give declaratory relief."' [Citation.] Standing '"goes to the existence of a cause of action." [Citation.]' [Citation.] [¶] Lack of standing may be raised at any time in the proceeding, including at trial or in an appeal. [Citations.] We may decide a standing issue even if the trial court did not rule on the issue. [Citations.]" (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.)

Each defendant argues the demurrers were properly sustained without leave to amend because the co-trustees lacked standing below and on appeal. They point to allegations appearing in the SAC that asserted the One Way Trust specified that upon James's death the Property transferred to Jacob, the sole beneficiary. In their demurrers to the SAC and TAC, defendants asserted this trust provision meant the One Way Trust and the co-trustees had no legal interest in the Property after James's death. In other words, they maintained Jacob alone held legal title to the Property and was the only real party in interest.

It is interesting to note the TAC added Jacob as a plaintiff and at the same time omitted all previous allegations regarding his inheritance rights to the Property. The TAC simply alleged Jacob had "a potential stake in this action as the beneficiary under the One Way [T]rust" but he would not "challenge his grandmother's right to the home." Security One maintains the co-trustee's removal of key allegations regarding Jacob's inheritance of the Property from the TAC was "a transparent attempt to avoid the standing issue." Placer Title aptly argued the co-trustee's "attempt to contradict destructive allegations made in superseded pleadings runs afoul of the sham pleading doctrine" and they could not cure the standing defect by omitting the allegations without explanation. (Citing *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 426 [policy against sham pleadings requires satisfactorily explanation regarding omission].) We agree the deletion of facts relating to standing was suspicious. But after reviewing the record and causes of action, we conclude there is no standing issue with respect to the One Way Trust.

"In general, California law does not give a party personal standing to assert rights or interests belonging solely to others. [Citations.]" (*Yvanova v. New Century*

Mortgage Corp. (2016) 62 Cal.4th 919, 936; see Code Civ. Proc., § 367 [action must be brought by or on behalf of the real party in interest].) "A real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law. [Citation.] 'The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant [citation].' [Citation.] 'The right to relief . . . goes to the existence of a cause of action . . . . Where the complaint states a cause of action in someone, but not in the plaintiff, a general demurrer for failure to state a cause of action will be sustained.' [Citation.] (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.)

"While ordinarily the owner of the real property is the party entitled to recover for injury to the property, the essential element of the cause of action is injury to one's interests in the property—ownership of the property is not. It has been recognized in many instances that one who is not the owner of the property nonetheless may be the real party in interest if that person's interests in the property are injured or damaged. [Citation.]" (*Vaughn v. Dame Construction Co.* (1990) 223 Cal.App.3d 144, 148-149 (*Vaughn*) ["a party can transfer or assign the right to recover for damages to the property without also conveying title to the property"].)

Here, the various complaints at issue alleged three distinct injuries. First was the creation of a void reverse mortgage secured by the Property. Second was the wrongful threatened foreclosure and other misconduct following James's death. Third was the purported illegal insertion of attorney fees into the loan payoff following the Property's sale. The remedies sought for these injuries include monetary damages, rescission of the deed of trust and lien, and halting foreclosure. Contrary to defendants' contentions, the focus is not on the nature of the remedy. The threshold issue we must decide is whether the causes of action arising from each injury vested in the One Way Trust.

At the time of the first injury, we conclude the co-trustees would have standing to pursue any claims on behalf of the trust regarding the loan's origination. One Way Trust obtained the reverse mortgage. It also held full title to the Property at that point in time.

Whether the One Way Trust had standing with respect to the second and third alleged injuries is more complicated. Although the complaint clearly alleged title to the Property passed to Jacob upon James's death, there were also allegations and evidence in the record indicating the transfer was not immediate. For example, it was undisputed the One Way Trust named two successor trustees to manage trust assets for some period of time following James's death. In addition, attached to UFG's demurrer was a copy of the grant deed recorded after the Property sold to third parties. The grant deed stated Love, in her capacity as One Way Trust's trustee, conveyed title of the property to the new buyers. This document suggests the One Way Trust held title to the Property from the time of James's death until its sale. Any harm occurring to the One Way Trust, while it held title to the Property, could certainly be brought by the current or successor trustees.

We need not address if Bonnie or Love, as individuals had standing to bring any cause of action. We have determined they are not parties to this appeal. And the trustees of the One Way Trust (the appellants) cannot raise issues on appeal unrelated to harm suffered by the trust they represent. The powers of a trustee "are not personal to any particular trustee but, rather, are inherent in the office of trustee." (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1131.) The co-trustees merely succeeded to all the rights, duties, and responsibilities of their predecessor (James). (*Eddy v. Fields* (2004) 121 Cal.App.4th 1543, 1548.)

B. Standard of Review

"Because a demurrer both tests the legal sufficiency of the complaint and involves the trial court's discretion, an appellate court employs two separate standards of review on appeal. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Under both standards, the plaintiff *bears the burden* of demonstrating the trial court erred. (*Pollack v. Lytle* (1981) 120 Cal.App.3d 931, 939, disapproved on another ground in *Beck v. Wecht* (2002) 28 Cal.4th 289, 298.) Appellate courts first review the complaint de novo to determine whether or not the plaintiff's complaint alleges facts sufficient to state a cause of action under any legal theory, [citation], or in other words, to determine whether or not the trial court erroneously sustained the demurrer as a matter of law. [Citation.] [¶] To establish that [appellant] adequately pleaded even one of his [or her] causes of action, [appellant] must show that he [or she] pleaded facts sufficient to establish *every element of that cause of action*. (*Friendly Village Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal.App.3d 220, 224-225 [affirming the sustaining of demurrer when plaintiff failed to allege any facts which would support only one of the elements of the cause of action].) Thus, if the defendants negate *any* essential element of a particular cause of action, this court should sustain the demurrer to that cause of action. [Citation.] As a consequence, [appellant] bears the burden of overcoming *all* of the legal grounds on which the trial court sustained the demurrers, i.e., all of the grounds raised in [all] demurrers. [Citation.]" (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879-880, italics added, fns. omitted.)

Where, as here, "the trial court sustains a demurrer without leave to amend, we review the determination that no amendment could cure the defect in the complaint for an abuse of discretion. [Citation.] The trial court abuses its discretion if there is a reasonable possibility that the plaintiff could cure the defect by amendment. [Citation.] The plaintiff has the burden of proving that amendment would cure the legal defect, and may meet this burden on appeal. [Citations.]" (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1468.)

C. Demurrer to the TAC

The court sustained the TAC as to all defendants without leave to amend on the six causes of action relating to the loan's origination. The co-trustees assert this ruling was erroneous because the elements of each cause of action were sufficiently pled. They are wrong.

We begin our analysis by reviewing the first cause of action for fraud. "'"The elements of fraud, which gives rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage."' [Citation.]" (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) "Fraud must be pleaded with specificity rather than with '"general and conclusory allegations."' [Citation.] The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made. [Citation.] [¶] We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'"' [Citation.]" (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793.)

The co-trustees assert the fraud elements were sufficiently pled, stating, "all defendants acted in concert when they forged the loan documents with Bonnie['s] signature and had her husband fax over a copy of her driver's license and social security card when the [d]efendants knew that the law required an in person signing and also spousal counseling before giving permission for another spouse to take out [a reverse mortgage].” They assert all defendants made the following two misrepresentations: (1) Bonnie was counseled by a HUD approved counselor prior to giving the reverse mortgage loan to James; and (2) Bonnie signed the appropriate documents in the presence of defendants’ personnel before it processed the documents and gave money to the trust. The co-trustees maintain they adequately pled the “who, what, where and when” required for a fraud action by attaching a copy of the reverse mortgage to the complaint, as well as Scott’s e-mail requesting a copy of Bonnie’s social security card and driver’s license.

Noticeably missing from the co-trustees’ argument on appeal is how exactly the One Way Trust justifiably relied on these purported misrepresentations, or was damaged by the alleged fraudulent conduct. The TAC alleged James, in his capacity as the One Way Trust’s trustee, worked in concert with other defendants to obtain the loan secured by the Property. Based on these allegations, it appears the One Way Trust was not misguided as to the basis for the loan. More importantly, noticeably absent from the argument on appeal, as well as from allegations of the TAC, is any theory explaining how the One Way Trust was damaged. “Every element of a fraud cause of action must be specifically pleaded,” including the elements of causation and damage. (*Moncada v. W. Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 776.) “‘Deception without resulting loss is not actionable fraud. [Citation.] “Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown.”’ [Citations.]” (*Ibid.*) Given the absence of any allegations (or argument on appeal) regarding causation and damages, it cannot be said the court erroneously sustained the demurrer on this cause of action.

In their opening brief, the co-trustees assert the fraud action could also be based on evidence of concealment. They recognize this claim requires allegations concerning how the defendants were under a duty to disclose a fact to the plaintiff.

(*Boschma v. Home Loan Center Inc.* (2011) 198 Cal.App.4th 230, 248.) The co-trustees allege the defendants owed Bonnie a duty to disclose that if she refused to sign the loan documents they would forge her name. They noted Security One (as the loan broker) and Placer Title (the title company) owed "[p]laintiffs a duty not to conceal these material things and forge Bonnie's . . . name to loan documents after she refused to enter into the [reverse mortgage] loan." These facts may have been sufficient for Bonnie, individually, to state a cause of action. However, they are insufficient for a viable cause of action by the One Way Trust. There are no allegations regarding how each defendant owed a duty to the One Way Trust, how the forgery was concealed from the trust, and how the fraudulent concealment caused the One Way Trust to suffer damages.

Although this court reviews the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory, the appellant has the burden of demonstrating the trial court erroneously sustained the demurrer as a matter of law. (*Rakestraw v. California Physicians' Services* (2000) 81 Cal.App.4th 39, 43.) An appellant also bears the burden of proving there is a reasonable possibility of amendment. (*Ibid.*) Here, the co-trustees failed to meet their burden on appeal. They did not set forth specific factual allegations satisfying the required elements *for the One Way Trust* to maintain a fraud cause of action against UFG, Celink, Security One, Placer Title, or Perrine. They offer nothing to cure the defects by a possible amendment.

The court's ruling on the TAC also eliminated five other causes of action. The co-trustees lump these "remaining claims" together and simply assert the court erred in dismissing them. They fail to provide any legal authority outlining the necessary elements for these five causes of action or point to allegations that would satisfy all those elements. Moreover, of the five "remaining claims" the co-trustees briefly discuss two causes of action (negligence and breach of fiduciary duty) as belonging to Bonnie, individually. As with the fraud claim, the co-trustees failed to carry their burden on appeal to establish a cause of action on behalf of the Trust.

In conclusion, we will treat as waived the co-trustees claim the court erred in dismissing causes of action not discussed in the briefing. Even when our standard of review is de novo, the scope of review is limited to issues that have been adequately raised and are supported by analysis. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466.)

As for the negligence cause of action, the co-trustees focus on the requirement of "foreseeable damages," ignoring the other elements. They argue "Plaintiff" was damaged by the reverse mortgage because "she lost equity in her home" and "was forced to sell within a year while the economy was still rebounding." The co-trustees maintained it was reasonably foreseeable *Bonnie* would be forced to pay off the lien within a year, however, "[t]he lender is surely morally blameworthy here and the closeness in connection in forging her name [and] the loss of her home or equity in it is closely connected." These allegations on appeal are partially belied by the record. The One Way Trust, having title to the property, not Bonnie, sold it during litigation. There is nothing suggesting the One Way Trust improperly lost equity or was otherwise harmed by the transaction. The allegation Bonnie, as an individual, lost her community property interest in the Property by the reverse mortgage or by a forced speedy sale is not an issue we can review in this appeal. She is not an appellant.

Similarly, little needs to be said about the breach of fiduciary duty/constructive fraud claim. The co-trustees allege this claim requested an order setting aside the marital community property interest. They do not assert a remedy on behalf of the One Way Trust. In addition, the co-trustees maintain "the banks" owed Bonnie a duty under Family Code section 1100 and the loan violated Probate Code section 5021. These are plainly arguments made by the One Way Trust on Bonnie's behalf, i.e., to recover her personal interest in the Property. For example, Probate Code section 5021 relates to setting aside a nonprobate transfer of community property upon a spouse's death. We fail to understand how this provision applies because James transferred the Property into the secret trust and obtained the reverse mortgage *during his lifetime*.

Similarly, Family Code section 1100 is inapt because it provides a spouse, managing a business that contains community property, must give the other spouse notice of any transfer of property. Failure to give written notice "shall not adversely affect the validity of the transaction nor of any interest transferred," but gives the harmed spouse a claim for breach of fiduciary duty against the other spouse (Fam. Code, §§ 1100, subd. (d) & 1101.) In short, these provisions would give Bonnie the right to sue James's estate (and she chose not to do so). They are inapplicable to the One Way Trust's rights and remedies.

"The only remaining question is whether the trial court abused its discretion in sustaining the demurrer [the the TAC] without leave to amend. [Citations.] The burden of showing an abuse of discretion rests on plaintiff. [Citations.]" (*Friendly Village Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal.App.3d 220, 225-226.) The co-trustees failed to meet this burden because they have not offered a proposed amendment to the six causes of action at issue. We conclude, "[T]he record is devoid of any indication that the complaint could be so amended as to state a cause of action in plaintiff. [Citations.]" (*Id.* at p. 226.) The demurrer to the TAC was properly sustained without leave to amend. We affirm the judgment dismissing Security One, Placer Title, and Perrine from the action.

D. The FAC

In this complaint, the co-trustees alleged three causes of action against Celink and UFG. All three claims related to Celink's and UFG's addition of attorney fees and costs to the outstanding loan balance collected from the Property's sale proceeds. The co-trustees alleged the damages totaled almost $70,000. The viability of this cause of action is properly raised on behalf of the One Way Trust, however, we agree the demurrers were properly sustained without leave to amend.

The co-trustee's first argument is the trial court incorrectly determined the fraud claim failed to meet the requirements for specificity. They maintain the following facts satisfied the pleading requirements: In the June 4, 2014, payoff statement (June statement), Celink and UFG failed to disclose their intention to seek litigation fees as part of the seller costs if the co-trustees sold the Property. The attorney fees were not disclosed until after the Property was sold and were mentioned for the first time in the November 26, 2014, payoff statement (November statement). The co-trustees assert these allegations were sufficient to support a fraud claim.

The co-trustees disagreed with the trial court's assessment that because escrow closed several months after the June statement expired (on June 30, 2014), the "representation was no longer effective." They argue it was irrelevant the principal amount would change after June 30, 2014. "That the principal amount would change in relation only to the principal owed, and not to secretly adding in attorney fees" of nearly $70,000 is an important distinction. They maintain it does not matter the November statement contained a correct accounting of both the loan amount and attorney fees owed.

However, to prevail on a fraud claim, the co-trustees must allege more than the existence of a misrepresentation. They must allege how the June statement qualified as a damage-causing misrepresentation. As determined by the trial court, there was no allegation the statement incorrectly stated the amount due on the loan, i.e., the information included was accurate but incomplete. The complaint alleged Bonnie placed the house on the market because of the threat of foreclosure and requested a payoff statement. During escrow, the co-trustees learned UFG and Celink added their attorney fees to the payoff amount and they immediately filed an ex parte motion to avoid payment. They proceeded to sell the Property, knowing the court ordered that if the Property sold the attorney fees would be placed in a trust account. Consequently, there were no facts alleged to show justifiable reliance on an incomplete and expired payoff statement. Based on the co-trustees' legal maneuvering to eliminate the fees before the

Property was sold, there was no indication the One Way Trust was surprised by the inclusion of attorney fees in the HUD-1 or November statement.

With respect to the issue of damages, the trial court determined all causes of action failed because the co-trustees failed to allege facts showing why the One Way Trust would be legally entitled to keep the money. It noted the trust deed and promissory note informed the borrower of the contractual right to recover attorney fees and costs incurred to enforce and protect the secured obligation as a lien. The co-trustees never explained why they were entitled to sell the Property clear of this lien. Moreover, UFG and Celink lawfully obtained possession of the funds via a court order.

We agree with the court's interpretation of the trust deed and the conclusion the One Way Trust was not damaged by paying the lien. The deed of trust contained several provisions regarding the collection of sums paid to protect the secured obligation.

The first paragraph of the deed of trust stated, in relevant part, "This Security Instrument secures to Lender: . . . (b) the payment of all other sums, with interest, advanced under paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument . . . ."

Paragraph 5 was titled "Charges to Borrower and Protection of Lender's Rights in the Property." It provided, in relevant part, the following: "If Borrower fails to . . . perform any other convenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2. [¶] To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due . . . for the Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by the Security Instrument."

The co-trustees do not dispute the underlying lawsuit had the potential to "significantly affect Lender's rights in the Property" and the Lender expended attorney fees and costs to protect its security in the Property. They offer no contract analysis to contradict UFG's and Celink's interpretation of the phrase "[]this Security Instrument secures to Lender [the payment of fees advanced in litigation]" to mean such fees become an additional debt of the borrower. The only contract interpretation analysis the co-trustees offer is to assert paragraph 5 limited attorney fees to the three types of legal proceedings listed, i.e., bankruptcy, condemnation, or enforcement of laws/regulations. We disagree.

The list must be read in context. The provision provides if "there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation, or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property . . . ." The co-trustees narrowly read the list of legal proceedings as restricting the categories of possible lawsuits covered by paragraph 5. This interpretation is not supported by the clear language indicating the list was meant to be illustrative. Use of the phrase "such as" immediately before the list suggests it is part of a larger one. "Any contract must be construed as a whole, with the various individual provisions interpreted together so as to give effect to all, if reasonably possible or practicable. [Citations.] Courts must interpret contractual language in a manner which gives force and effect to every provision, and not in a way which renders some clauses nugatory, inoperative or meaningless. [Citations.]" (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.) We interpret paragraph 5 as including in its definition of "legal proceedings" the lender's defense of a fraud action brought by the borrower seeking to extinguish the lien and stop foreclosure on the secured property. As such we agree with the trial court's contractual interpretation and ruling the co-trustees were not entitled to sell the Property clear of the entire lien (including the obligation to pay attorney fees). The One Way Trust was not legally entitled to keep the money.

The co-trustees also challenge the manner and method used to collect the attorney fees, advocating the sum was not payable until after the lawsuit was over. Essentially this argument is simply a different version of the same attack of the trial court's decision to allow UFG and Celink to collect their attorney fees from the payoff amount.

We found instructive two cases cited by UFG, relating to the proper collection of contractually recoverable fees and costs. The *Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36 (*Wutzke*), case involved competing claims of creditors, one of whom also sought foreclosure. Wutzke had sold the property, carrying back a deed of trust for part of the purchase price. The buyers later fraudulently orchestrated a reconveyance of the deed of trust that they recorded and then encumbered the property with a second deed of trust. The beneficiary of the second deed of trust in good faith believed there was clear title. The trial court determined both creditors were innocent parties, however, Wutzke's deed of trust was in priority. It issued a decree of foreclosure and included Wutzke's attorney fees in the amount to be satisfied from sale proceeds. (*Id.* at pp. 38-40.)

On appeal, the competing but subordinate lien holder challenged the court's ruling giving Wutzke the right to be reimbursed for attorney fees out of the sales proceeds. (*Wutzke, supra,* 151 Cal.App.3d at p. 46.) The appellate court affirmed the ruling, holding, "Where, as here, attorney fees are contractually provided for in the trust deed and promissory note, the beneficiary is entitled to recover attorney fees and costs incurred in order to enforce and protect his secured obligation." (*Ibid.*)

The opinion in *Saucedo v. Mercury Sav. & Loan Assn.* (1980) 111 Cal.App.3d 309, 315 (*Saucedo*), is also instructive, although we recognize it is factually distinguishable. It concerns the appellate court's extension of remedial reciprocity established by Civil Code section 1717, to a nonassuming grantee who succeeded in stopping a nonjudicial foreclosure. The case is relevant only in that the court observed "'the beneficiary [following foreclosure] is entitled to recover its fees as a condition to redemption and if the non-assuming grantee wishes to protect his equity in the property he will have to pay those fees. [Because] the grantee expended fees to enjoin the foreclosure, there is an indication that there was a sufficient equity in the property to be protected. . . .'" (*Id.* at p. 314.) The appellate court determined the certainty of the beneficiary's right to fees and the nonassuming grantee's obligation to pay them in order to protect its equity in the property was a good reason to extend Civil Code section 1717's reciprocity fee provisions to a prevailing grantee. (*Id.* at p. 315.) "While the nonassuming grantee would not have been personally liable for payment of attorney fees under the note and deed of trust, the trustee and/or beneficiary would have been entitled to attorney fees under the provisions of the deed of trust had they prevailed, *and these fees would have become part of the debt secured by the deed of trust.* To prevent foreclosure of his interest, the nonassuming grantee would have had to pay off the secured debt, including the attorney fees, by refinancing or otherwise. (See Civ. Code, §§ 2905, 2924c, subd. (a).) This practical 'liability' of the nonassuming grantee is sufficient to call into play the remedial reciprocity established by Civil Code section 1717." (*Ibid.*, fn. omitted, italics added.)

These cases support UFG's and Celink's argument their attorney fees became part of the debt secured by the deed of trust and were therefore recoverable when the Property sold and the trust deed was extinguished. The co-trustees do not discuss or attempt to distinguish the holding of these cases. Instead, they cite to *Behniwal v. Mix* (2007) 147 Cal.App.4th 621, to support their theory attorney fees *can never* be deducted from the purchase price of a home. They misread the case. It concerns the enforcement of a contract for the sale of real property where the seller reneged on the parties' agreement, i.e., a breach of contract action. (*Id.* at p. 623.) That case recognized the general rule that when a contract provides for attorney fees in an action to enforce or interpret the contract, fees may be awarded in an action for specific performance. However, the appellate court reversed the trial court's order allowing the prevailing party buyers to deduct their attorney fees from the purchase price, holding such fees were not "'incident'" to the grant of specific performance but were the subject of a money judgment. (*Id.* at p. 624.) The court explained that allowing the deduction would give the buyer an improper priority advantage over other parties with security interests in the property. (*Id.* at p. 636 ["To allow a deduction from the purchase price for the buyer's attorney fee award would play absolute havoc with the established expectations of third party lenders. All of a sudden, the "cushion" between what they were owed and the value of the property would disappear"].) In summary, the *Behniwal* case did not concern the payment of attorney fees added to the lender's lien on the property pursuant to the terms of the contract. Celink and UFG did not recover fees under the prevailing party statute (Civ. Code, § 1717), but rather pursuant to the express terms of the deed of trust.

For this same reason, the co-trustee's reliance on *Sheehy v. New Century Mortg. Corp.* (E.D.N.Y. 2010) 690 F.Supp.2d 51, is misplaced. In that case, "[A]lthough [Plaintiff] believed she was simply making a real estate investment, she was unwittingly used as a straw buyer so that her personal information and credit score could be used to obtain a fraudulent mortgage for a higher value than the property was worth." (*Id.* at p. 55.) Her boyfriend encouraged her to invest in real estate. Plaintiff was misled into believing her boyfriend would be a co-mortgagor. She later discovered her boyfriend and his business partner received over $30,000 in connection with the sale. The co-trustees argue the *Sheehy* case supports the theory the One Way Trust can assert a common law claim for fraud based on a "falsely prepared" HUD-1. The co-trustees contend that like the *Sheehy* plaintiff, the One Way Trust was cheated out of nearly $70,000 in attorney fees. We do not find the case to be factually or legally analogous. As mentioned earlier, we found no legal authority, and the co-trustees cite to none, to support their theory the One Way Trust was not legally obligated to pay the attorney fees.

The One Way Trust cannot be cheated of money it legally owed to Celink and UFG. As described earlier, the One Way Trust executed a deed of trust clearly notifying the borrower that any money expended "to protect the security" would be added to the underlying loan obligation secured by the Property, i.e., become part of the lien. The co-trustees do not dispute that their lawsuit, seeking to extinguish the deed of trust and lien, caused the lender (and the loan servicer) to hire counsel to protect the lender's rights in the Property securing the loan. Pursuant to the contract, the approximately $70,000 in attorney fees and costs were added to the debt secured by the Property. The One Way Trust's decision to sell the Property would have the effect of extinguishing the trust deed. The HUD-1 payoff correctly represented a sum totaling the outstanding loan plus the added attorney fees expended to secure the Property.

The rest of the co-trustees arguments relate to allegations Celink and UFG cannot recover their attorney fees because they failed to comply with federal regulations. Specifically, they argue Celink and UFG violated the Real Estate Settlement and Procedures Act (RESPA) (24 C.F.R. § 3500 et seq.), a consumer protection statutory scheme. "Through RESPA, Congress sought 'to effect certain changes in the settlement process for residential real estate that will result—[¶] (1) in more effective advance disclosure to home buyers and sellers of settlement costs; [and][¶] (2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services . . . .' [Citation.]" (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1475 (*McKell*).) "RESPA requires that lenders use a uniform settlement statement form known as the HUD–1 form. (12 U.S.C. § 2603; 24 C.F.R. § 3500.8 (2005).) The HUD–1 form must 'conspicuously and clearly itemize all charges imposed on the borrower . . . in connection with the settlement . . . .' (12 U.S.C. § 2603(a).)" (*Ibid.*)

The co-trustees allege "line 504" of the HUD-1 statement overstated the loan payoff amount because it included the owed attorney fees. They assert the attorney fees should have been separately itemized and combining these fees with the loan amount amounted to fraud. To support this claim they cite to an outdated and inapplicable provision of the Federal Code of Regulations. Specifically, they argue Celink and UFG violated "RESPA § 35009." No such provision exists. It appears they may have been referring to former 24 Code of Federal Regulations part 3500.9 (2014), which was repealed in July 2014 and replaced by 12 Code of Federal Regulations part 1024.9 (2017). (Removal of Regulations Transferred to the Consumer Financial Protection Bureau, 79 Fed. Reg. 34224-01 (June 16, 2014).) Because the co-trustees received the HUD-1 statement in November 2014, the new provision applied.

The second problem with the co-trustees' argument is they cite to language found in a completely different regulation. The "reproduction" of settlement statements is regulated by 12 Code of Federal Regulations part 1024.9 (formerly 24 C.F.R. part 3500.9). Regulations regarding the content of original HUD-1 forms are found in 12 Code of Federal Regulations part 1024.8, titled "Use of HUD-1 or HUD-1A settlement statements." It provides the "actual charges" paid by the borrower must be included, and the settlement agent "must separately itemize each third party charge paid by the borrower and seller." (12 C.F.R. § 1024.8(a)(1).) It explains the settlement agent must itemize origination services as the "loan originator's own charge." (*Ibid.*) Similarly, "Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge." (*Ibid.*)

Next, the regulation discusses the prohibition of overcharges. (12 C.F.R. § 1024.8(a)(1).) This is the section quoted by the co-trustees. It provides, "The amount stated on the HUD-1 or HUD-1A *for any itemized service cannot exceed the amount* *actually received by the settlement service provider for that itemized service*, unless the charge is an average charge in accordance with paragraph (b)(2) of this section." (*Ibid.*, italics added.)

The co-trustees read this provision as precluding the lender from including attorney fees as part of the loan payoff amount listed on the HUD-1. We disagree. The attorney fees were not an itemized service provided by a "settlement service provider." They did not represent fees earned by an attorney during the loan closing or escrow process. The attorney fees were earned in outside litigation and became part of the underlying debt, secured by the property.

Support for this conclusion is found in the definitions provided by the federal regulations. "Settlement" is defined as "the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called 'closing' or 'escrow' in different jurisdiction." (12 C.F.R. § 1024.2 (2017).) "Settlement service" is defined as meaning "any service provided in connection with a prospective or actual settlement . . . ." (*Ibid.*)

In light of these definitions, the regulations make clear a borrower must receive an accurate accounting of original fees, title services, and costs associated with preparing the escrow documents. Under RESPA, "[n]o person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan *other than for services actually performed*." (12 U.S.C. § 2607, subd. (b), italics added.)

Here, the attorney fees at issue were not incurred as part of settlement services. They were created in response to litigation initiated by the co-trustees. The deed of trust allowed fees and costs incurred to protect the secured property to be added to the outstanding loan balance. Thus, the payoff notice and HUD-1 accurately represented the full amount contractually owed to the lender. Simply stated, attorney fees, not arising from settlement services, need not be separately itemized on the HUD-1 form pursuant to RESPA.

For this reason, the cases cited by the co-trustees regarding fraud actions arising out of RESPA violations are inapt. They concern unearned fees or misrepresented escrow services. (See *McKell*, *supra*, 142 Cal.App.4th 1457 [complaint alleged overcharging for underwriting, tax services, and wire transfer fees in conjunction with home loans]; *Cohen v. JP Morgan Chase & Co.* (2nd Cir. 2007) 498 F.3d 111 [concerned unearned undivided loan discount fees paid by borrower]; *Poblete v. Indymac Bank* (D.D.C. 2009) 657 F.Supp. 86 [irregularities in settlement fees and payments disclosed in HUD-1]; *Stith v. Thorne* (E.D.Va. 2007) 488 F.Supp.2d 534, 558 [discussing abusive practice of referral fees, kickbacks and other unearned fees].)

As an alternative to their argument attorney fees must be separately itemized, the co-trustees argue "advance litigation fees" are not allowed in a HUD-1 statement. To support this argument the co-trustees cite to 24 Code of Federal Regulations part 206.31(a)(1). This regulation lists the type of "[f]ees at closing" the mortgagee is allowed to collect "in connection with the origination of the mortgage loan." (24 C.F.R. § 206.31(a).) Thus, it is a reference to all settlement services a mortgagee may collect. We are not surprised litigation fees acquired from an unrelated legal action would not be listed in the federal regulation. As stated, the attorney fees at issue were not incurred as part of settlement services and, therefore, are not part of the consumer protection statutory scheme.

In addition to 24 Code of Federal Regulations part 206.31(a)(1), the co-trustees cite to several documents without record citations or appropriate legal citations for us to locate them in the record or elsewhere. They refer to the following documents: "FHA Mortgage Letter 2008-43, FHA Mortgage Letter 2013-23, and FHA Mortgage Letter 2014-15" all "clarified by the FHA and HUD on 9/25/14 wherein it issued a one page sheet captioned FHA Pre-Foreclosure Sale Program (PFS) Settlement Statements:

Allowable and Disallowable Fees Paid from Seller's Funds at Closing." We assume these letters confirm litigation fees unrelated to settlement services cannot be included on the HUD-1 settlement statement.

This argument hurts rather than helps the co-trustees. The reason why advance litigation fees should not be included on a HUD-1 statement is because the purpose of the HUD-1 is to clearly itemize services provided by settlement service providers. The attorneys representing Celink and UFG provided representation in a lawsuit unrelated to settlement services and costs connected to sale of the Property. Contrary to the co-trustees' contention the attorney fees were not "advanced" or awarded to these entities under the prevailing party statute (Civ. Code, § 1717). They were legally added to the loan secured by the Property.

Next, we turn to the second cause of action, conversion. """"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages.'""" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) We agree with the trial court's conclusion this claim fails because the One Way Trust failed to allege facts showing it was entitled to keep the money. The trust sold the property serving as security for the debt. The One Way Trust had no right to withhold its payment of the entire loan amount.

In urging this court to salvage the conversion claim, the co-trustees repeat the same arguments we have considered and rejected with respect to the fraud cause of action. We will not repeat our analysis. We note they offered one new argument contained in a single sentence, suggesting Celink should not be entitled to recover its attorney fees because it was merely the loan servicer and was not a party to the deed of trust. The cite to a case, *Thoryk v. San Diego Gas & Electric Co.* (2014) 225 Cal.App.4th 386, without discussing it or directing us to a particular section of the lengthy opinion.

The *Thoryk* case does not concern lenders or loan servicers. It addressed antideficiency protections for a borrower and application of the equitable conversion doctrine. (*Id.* at pp. 392-393.) An appellant may not simply make the assertion the trial court's ruling was erroneous and leave it up to the appellate court to figure out why. When an appellant raises an issue "but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*).)

Finally, we review the cause of action for violating Business and Professions Code section 17200 (unfair competition law). "'The purpose of the UCL [citation] "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]"' [Citation.] 'A UCL action is equitable in nature; damages cannot be recovered. [Citation.] . . . [U]nder the UCL, "[p]revailing plaintiffs are generally limited to injunctive relief and restitution."' [Citation.] [¶] The UCL does not proscribe specific acts, but broadly prohibits 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . . .' [Citation.] 'The scope of the UCL is quite broad. [Citations.] Because the statute is framed in the disjunctive, a business practice need only meet one of the three criteria to be considered unfair competition.' [Citation.] '"Therefore, an act or practice is 'unfair competition' under the UCL if it is forbidden by law or, even if not specifically prohibited by law, is deemed an unfair act or practice."' (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1381.)

The FAC alleged violations of several statutes. The co-trustees state the "unlawful prong" is met if this court determined any of those causes of action survived. As explained, we have determined none of the alleged "acts" were forbidden by law and those claims were properly dismissed. Thus, to maintain the UCL action, the co-trustees must show the alleged acts can be prohibited as unfair or deceptive, even if not unlawful.

"'The UCL does not define the term "unfair." . . . [And] the proper definition of "unfair" conduct against consumers "is currently in flux" among California courts.' [Citation.]" (*In re Adobe Systems, Inc. Privacy Litigation* (N.D. Cal. 2014) 66 F.Supp. 3d 1197, 1226.) Some California courts apply a balancing approach, which requires courts to ""“weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim”"" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 886), while other have held that "unfairness must 'be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition'" (*Lozano v. AT&T Wireless Services, Inc.* (9th Cir. 2007) 504 F.3d 718, 735). Some California courts have adopted the three-part test set forth in section 5 of the Federal Trade Commission Act (the FTC test), providing "(1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." (*Camacho v. Automobile Club of Southern California* (2006) 142 Cal.App.4th 1394, 1395.)

The co-trustees argue the FAC alleged facts satisfying all three tests because there was a substantial injury, i.e., "Plaintiffs lost $70,000." They make conclusory statements that this monetary injury outweighed any benefits to consumers, the injury could not be avoided, and the action offended public policy. They cite to two cases holding the act of hiding costs or lumping costs together in a HUD-1 settlement was deemed unfair and created UCL causes of action. (*McKell, supra,* 142 Cal.App.4th at p. 1472 [bank padded costs into underwriting and wire transfer costs]; *Szczubelek v. Cendant Mortgage Corp.* (D.N.J. 2003) 215 F.R.D. 107, 112 [RESPA fee splitting violation resulted from "combining actual cost of a property appraisal with administrative costs associated with the appraisal and charging only one fee"].)

As discussed at length, the facts of this case are distinguishable from those involving fee splitting and padded costs. The One Way Trust was notified in the deed of trust about the obligation to pay attorney fees incurred to protect the security and that the sum would be added to the underlying loan. This contractual obligation was not hidden. Thus, the $70,000 was not "lost" but rather satisfied the legally owed debt and cleared the lien on the Property. Moreover, the One Way Trust took legal measures *before* the sale of the secured property to avoid paying the fees. It offered no rational reason for pushing forward with selling the Property, knowing the fees would be deducted from the sale price. The property was not unfairly foreclosed upon. Simply saying an action offends public policy does not make it so.

As with the fraud claim, the co-trustees do not explain how they would amend the complaint to cure the defects. Although they recognize they were given one opportunity to amend the allegations relating to the attorney fee payoff issue, they simply assert the causes of action could be saved by a second opportunity to amend. The burden of demonstrating that a complaint's deficiencies can be cured through further amendment is "squarely on the plaintiff." (*Blank*, *supra*, 39 Cal.3d at p. 318.) After reviewing the record and the co-trustees' allegations concerning the trust they represent, we are unpersuaded further amendment would lead to a viable complaint.

E. The Attorney Fee Motion

The co-trustees argue, "When a trial court errs in sustaining demurrers without leave to amend, any award of attorney fees must also be reversed because the determination of prevailing party status must await *final* resolution of the matter." We have concluded the court correctly sustained the demurrers without leave to amend. More importantly, the court ruled the attorney fee award was based on a contractual obligation, not because Celink and UFG were prevailing parties. The co-trustees offer no other argument challenging the order granting the attorney fee motion. We treat the issue as waived. (*Badie, supra,* 67 Cal.App.4th at pp. 784-785 [appellant cannot raise an issue and fail to support it with reasoned argument or record citations].)

III

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

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.