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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DAVID COLLINS et al., Plaintiffs and Appellants, v. PAUL FINANCIAL, LLC, et al., Defendants and Respondents.	B283219 (Los Angeles County Super. Ct. No. EC062680)

APPEAL from a judgment of the Superior Court of Los Angeles County, William D. Stewart, Judge. Affirmed.

Law Offices of Michael D. Finley and Michael D. Finley for Plaintiffs and Appellants.

No appearance by Defendants and Respondents.

INTRODUCTION

Plaintiffs David Collins and Yvette Herrera obtained a default judgment against defendants Paul Financial, LLC, and Barry Matthews Silver in the amount of $4.9 million, plus an additional $6 million in punitive damages against Paul Financial only. They appeal from this judgment in their favor, asserting the trial court committed several reversible errors. They fail to support their conclusory statements with relevant argument or authority, however, and do not demonstrate how they are prejudiced or why the judgment should be reversed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, plaintiffs defaulted on a note secured by a deed of trust on their home. Facing potential foreclosure, they have spent years in the court system in unsuccessful efforts to cancel the promissory note and void the deed of trust.

In their first lawsuit, they recorded a lis pendens and sued the assignee of the deed of trust and the loan servicer (Deutsche Bank National Trust Co. and OCWEN Loan Servicing, LLC) for quiet title, cancellation of loan instruments, violation of the Truth in Lending Act, fraud, defamation of title, defamation of credit, quasi contract, accounting, constructive trust, and violation of Business and Professions Code section 17200. The trial court sustained defendants' demurrer and granted the motion to strike punitive damages, denied leave to amend, and expunged the lis pendens. The judgment in defendants' favor was affirmed by Division Two of this court. (*Collins v. Deutsche Bank National Trust Company* (July 6, 2016, B260099) [nonpub. opn.].)

While the first lawsuit was still pending in the superior court, plaintiffs filed this action on June 20, 2014, against GMAC

Mortgage, LLC, and Quality Loan Service Corporation (collectively, GMAC), reprising many of the same causes of action. The original complaint is not in the appellate record, but the verified first amended complaint—which added defendants Paul Financial and Silver—included eight causes of action: quiet title, cancellation of instrument, violation of the Truth-in-Lending Act, defamation of title, defamation of credit, wrongful foreclosure, accounting, and violation of Business and Professions Code section 17200.

GMAC, named in all causes of action except the one seeking an accounting, filed a demurrer, motion to strike punitive damages, and motion to expunge the lis pendens. On April 17, 2015, the trial court sustained defendants' demurrer and granted the motion to strike the punitive damage, denied leave to amend, and expunged the lis pendens. A judgment in favor of GMAC was entered on May 13, 2015. Plaintiffs did not appeal.

Instead, they obtained the defaults of the remaining defendants, Paul Financial and Silver. The defaulting parties were named as defendants in the fraud and Business and Professions Code section 17200 causes of action. Only Paul Financial was a defendant in the causes of action for cancellation of instruments (which included the deed of trust and promissory note), violation of the Truth in Lending Act, and accounting. Neither defaulting party was named as a defendant in the already dismissed cause of action to quiet title.

A default prove-up hearing began on October 25, 2016; a partial reporter's transcript of that proceeding is included in the record on appeal. During the prove-up hearing, plaintiffs' counsel advised the court his clients were "asking to void the note and to cancel the deed of trust." The trial court was skeptical that could

be accomplished in a default hearing against Paul Financial and Silver.

The default prove-up hearing was continued to November 10, 2016. The trial court doubted the note and deed of trust could be canceled without notice to GMAC and the prevailing defendants in the earlier lawsuit. Counsel sought to allay the trial court's concerns by arguing that voiding the deed of trust and note was "not technically relief against" the previously dismissed parties. The trial court was not persuaded: "What I am saying, counsel, is I am not going to give you an order that cancels—it just won't work. It is not due process of law for [certain defendants] to be out of the case, and then you get a judgment against them." In response, plaintiffs' counsel reiterated the judgment would be "against" the deed of trust and promissory note, not the prevailing defendants. The trial judge reiterated he would not "sign [an in rem] judgment as to this property. In personam, no problem."

The colloquy nonetheless continued. The trial court insisted there had been no rescission that would entitle plaintiffs to void the deed of trust and note. Plaintiffs' counsel disagreed. Finally, the trial judge asked if plaintiffs' counsel had submitted a proposed judgment. Counsel had not, adding he "felt that the court would need to pronounce what the judgment would be for [him] to prepare it." The trial court responded, "Well, basically, I told you. It'll be an in personam judgment." At that point, counsel detailed the damages plaintiffs sought against Paul Financial and Silver. The trial court repeated it would issue only an in personam judgment. Persisting, plaintiffs' counsel said, "Okay. And so the court is granting an order for the note to be declared void and the deed of trust to be cancelled, but only as to

these defendants: Paul Financial, LLC, and Barry Matthew[s] Silver. [¶] Is that the court's position?" The trial court's response: "Correct."

After the trial court received the proposed judgment, which purported to void the deed of trust and cancel the note, the court clerk contacted GMAC's counsel.[1] GMAC's counsel appeared at the next two hearings and argued the judgment should not include any language concerning the deed of trust or the promissory note. During the second hearing, the trial court offered plaintiffs the option to convert the lawsuit into one for quiet title, with notice to all persons or entities claiming an interest in the property, or to delete the proposed references to the note and deed of trust. At plaintiffs' request, the matter was continued for one month.

Before the third and final hearing, plaintiffs requested a statement of decision "specifying the legal and factual [basis] for the decision(s) [the trial court] makes at the hearing on 3/24/2017." Plaintiffs declined to select either option suggested by the trial court and argued, "[t]he only valid option under California law is for the court to enter the [a]mended proposed [j]udgment [p]laintiffs' counsel has submitted."

After this hearing, the trial court took the matter under submission. The trial court issued a default judgment against Paul Financial and Silver that reads in pertinent part, "1. The Note secured by Deed of Trust . . . is ~~Void~~ unenforceable as to defendants PAUL FINANCIAL, LLC, and BARRY MATTHEWS SILVER only. [¶] 2. The Deed of Trust . . . against the following

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[1] GMAC's counsel also had represented the prevailing defendants in the first lawsuit.

property is ~~Cancelled~~ unenforceable as to defendants PAUL FINANCIAL, LLC, and BARRY MATTHEWS SILVER only . . . ."

Plaintiffs timely appealed. The GMAC defendants sought leave to intervene "if necessary to protect their right, title and interest in the Note and Deed of Trust." We denied the motion to intervene.

DISCUSSION

Trial court judgments are presumed to be correct. We reverse a judgment only if there has been a miscarriage of justice. (Cal. Const., art. VI, § 13.) It is an appellant's burden to establish the trial court erred and then to demonstrate prejudice as the result of the error. (*Widson v. International Harvester Co.* (1984) 153 Cal.App.3d 45, 53.)

Plaintiffs assert the trial court erred in six respects: (1) It required service of the proposed judgment on counsel for parties whose demurrer had been sustained without leave to amend; (2) it engaged in ex parte communications, through the courtroom clerk, with counsel for the previously dismissed parties; (3) it permitted the previously dismissed parties to make untimely objections to the proposed default judgment; (4) it "demanded" that plaintiffs' counsel elect between deleting the "in rem" language in the proposed judgment or being granted a new trial on quiet title allegations; (5) it denied the request for a statement of decision on issue number (4); and (6) the modified proposed judgment was inconsistent with the trial court's ruling at the default prove-up hearing. Then, with the exception of issues (3) and (5), plaintiffs simply conclude the trial court's actions

constituted prejudicial and reversible error.[2] This is insufficient to demonstrate either error or prejudice.

Plaintiffs asked for and were awarded a multi-million dollar default judgment that did not include language voiding the note and canceling the deed of trust. But plaintiffs fail to explain how they are entitled to both damages and, in effect, rescission. (See, e.g., *Wong v. Stoler* (2015) 237 Cal.App.4th 1375, 1385 ["Rescission and damages are alternative remedies . . . [and electing] 'one [remedy] bars recovery under the other' "].) Nor have plaintiffs articulated any prejudice as a result of the default judgment the trial court did enter.

Instead, plaintiffs' opening brief is a series of statements without any meaningful legal argument or authority. (Cal. Rules of Court, rule 8.204(a)(1)(B).) In many instances, plaintiffs' citations to the reporter's transcript are inaccurate. As the Court of Appeal noted in *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, "When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration. . . . We are not required to examine undeveloped claims or to supply arguments for the litigants." (*Id.* at p. 52.)

Plaintiffs' overarching complaint, although they cite no authority to support their position, is that the trial court was obligated to enter a default judgment that tracked the language it accepted at the November 10, 2016 hearing, i.e., that it would

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[2] Plaintiffs do not claim any prejudice as a result of issues (3) and (5); we deem them forfeited. We will not address those issues further, except to note the posttrial discussions were not the functional equivalent of a trial to the court involving controverted issues and did not trigger Code of Civil Procedure section 632.

sign a judgment voiding the note and canceling the deed of trust as to Paul Financial and Silver, against whom damages were awarded. This statement came at the end of a lengthy, repetitive exchange. Not only was the statement at odds with everything else the trial court said on the record during that hearing—as well as at the subsequent hearings—it was not controlling. *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229 explains: "There are instances in which a court's oral comments may be valuable in illustrating the trial judge's theory, but they may never be used to impeach the order or judgment on appeal. [Citation.] This is because a trial court retains inherent authority to change its decision, its findings of fact, or its conclusions of law at any time before entry of judgment and then the judgment supersedes any memorandum or tentative decision or any oral comments from the bench. [Citations.] Thus, a trial judge's prejudgment oral expressions do not bind the court or restrict its power to later declare final findings of fact and conclusions of law in the judgment. . . . [T]he appellate court will assume that, during the period before rendition of judgment, the trial court realized any error and corrected it." (*Id.* at p. 268.) We make that assumption here.

DISPOSITION

The judgment is affirmed. No costs are awarded on appeal.

DUNNING, J.*

We concur:

BIGELOW, P. J.

GRIMES, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.