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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

WELLS FARGO HOME MORTGAGE, INC., Plaintiff and Respondent, v. CADLEROCK JOINT VENTURE, L.P., et al., Defendants and Appellants.	B229409 (Los Angeles County Super. Ct. No. YC059419)
LIEM THANH NGUYEN et al., Plaintiffs and Respondents, v. CADLEROCK JOINT VENTURE, L.P., et al., Defendants and Appellants.	B231027 (Los Angeles County Super. Ct. No. YC058189)

APPEALS from judgments of the Superior Court of Los Angeles County, Michael P. Vicencia, Judge. Affirmed.

Brewer & Brewer, Lance A. Brewer and Templeton Briggs for Defendants and Appellants.

Law Offices of Mary Jean Pedneau, Mary Jean Pedneau, William R. Larr and Susan S. Vignale for Plaintiff and Respondent Wells Fargo Home Mortgage, Inc.

Greenwald & Hoffman, John R. Flocken, Paul Evan Greenwald and Paul A. Hoffman for Plaintiffs and Respondents Liem Thanh Nguyen and Thu Nguyet Truong.

This consolidated appeal involves a dispute regarding the payment in full of a promissory note secured by a second deed of trust and the propriety of the award of attorney fees. At trial, the court determined the note executed by Liem Thanh Nguyen (Liem) and Thu Nguyet Truong, his wife (collectively the Nguyens), had been paid in full eight years before Cadlerock Joint Venture, L.P. (Cadlerock), notified the Nguyens of its intent to foreclose on the deed of trust. The court awarded the Nguyens $272,400 in attorney fees.

Cadlerock, The Cadle Company, Inc. (Cadle), and Law Offices of Les Zieve (collectively the Cadlerock parties) appeal from the judgment for quiet title and cancelation of written instruments in favor of the Nguyens and the judgment for quiet title, cancelation of written instrument, and declaratory relief in favor of Wells Fargo Home Mortgage, Inc. (Wells Fargo), holder of the first deed of trust. On appeal, the Cadlerock parties contend the evidence is insufficient to support the finding that the note had been paid in full and challenge, as excessive, the attorney fee award to the Nguyens.[1]

Based on our review of the record and applicable law, we affirm both judgments. Substantial evidence supports the trial court's finding that the note had been paid in full,

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[1] Although the action filed by the Nguyens and that filed by Wells Fargo had been consolidated for trial, the trial court severed the actions for the purpose of rendering separate judgments. On July 17, 2012, we consolidated these appeals for argument and disposition.

and the Cadlerock parties have failed to carry their burden to establish the $272,400 attorney fee award is an abuse of discretion.

BACKGROUND

1. *First Deed of Trust Securing Loan for Home Purchase*

In 1994, Countrywide Funding Corporation (Countrywide) loaned the Nguyens $126,000 to finance the purchase of the Nguyen residence, which is located at 14867 Purche Avenue in Gardena. The Nguyens executed a promissory note in favor of Countrywide secured by a first deed of trust (First Deed of Trust) which was recorded on May 25, 1994.

2. *Second Deed of Trust Securing Note for Loan of $64,000*

On January 9, 1998, the Nguyens signed a promissory note (Nguyen Note) secured by a second deed of trust on the Nguyen home in favor of Pacific Shore Funding (Pacific Shore), which loaned the Nguyens $64,000.

MBNA then acquired the note from Pacific Shore at some time not reflected in the record (MBNA or Pacific Shore loan).

3. *Unsuccessful Restaurant Venture*

Liem had known Huang Trung Nguyen (Trung) for about five years as of early January 1998. They were friends and fellow church members. Trung persuaded Liem, who trusted him, to lend him $64,000 to open a Vietnamese restaurant. The Nguyens borrowed this amount from Pacific Shore for this purpose. Liem gave Trung a substantial portion of the loan proceeds. Liem used loan proceeds to pay off credit cards which Liem had allowed Trung to use for the restaurant. He also gave Trung a bank loan check for $11,156. Although some loan funds were used to pay off the loan on Liem's Toyota van, Liem sold the van and gave the proceeds to Trung. Trung also persuaded Liem to cosign the restaurant lease.

In return, Trung agreed to repay the Pacific Shore loan along with incurred interest and to pay Liem 10 percent of his annual net profits until the loan was repaid. On March 27, 1998, Liem and Trung entered into a promissory note which required Trung to make payments to MBNA, the assignee of the loan.

In January 1999, the restaurant went out of business. After its closure, Trung stopped making payments to MBNA and the landlord. Liem never made any payments on the MBNA loan because at the time he did not have any money. His practice was to turn over the loan payment bill to Trung, who then paid it directly.

The landlord demanded payment from Liem, but he had insufficient funds. In response, the Nguyens filed a chapter 7 bankruptcy petition on May 4, 1999. The Nguyens were discharged from bankruptcy on August 16, 1999. Although the lease debt was discharged, the debt to MBNA secured by the second deed of trust was not discharged.

4. *Payment in Full and Satisfaction of Note Secured by Second Deed of Trust*

In May 1999, Liem revealed to the pastor of the church he and Trung attended the financial problem the Nguyens faced from the closing of Trung's restaurant and requested the pastor ask the congregation to pray for him. Liem was hoping for a miracle. Shortly, "a few days later or a few weeks later," the pastor addressed the congregation, which included mutual friends of Liem and Trung, regarding the Nguyens' financial problem.

After the pastor's speech to the congregation, Liem received at home a two-page statement dated June 4, 1999, from MBNA (Charge-off Statement) in which ".00" was listed as the amount under the headings: "PAYMENT DUE"; "PAST DUE"; "CURRENT DUE"; "ESCROW DUE"; "FEES DUE"; "LATE CHARGES DUE"; PARTIAL AMOUNT"; and "TOTAL AMOUNT DUE." Under the description for "TRANSACTION ACTIVITY," "63,835.57" was listed as the beginning principal "05/21" and ".00" was listed as the ending principal "06.04," ".00" was the amount also listed for "06/04/99" under heading "AUTO CHARGE OFF."

At trial, Liem testified that at the time of receipt, he understood this statement to signify the total amount owing was "zero" and no further payment was due, but he did not know what was meant by "'June 4th, 1999, amount zero, auto charge off.'" At trial, he understood these matters to mean the loan was "not being paid off."

Liem received a letter dated June 8, 1999, from MBNA on its letterhead (MBNA Letter). The MBNA Letter was authored by Anamaria Anagnostou, an MBNA "Lien Satisfaction Representative." Enclosed with the letter was a copy of the Nguyen Note which was stamped: "MBNA Consumer Services"; "PAID IN FULL"; "JUN 7, 1999"; and "SATISFIED." Liem believed an anonymous benefactor had paid off his loan.

The MBNA Letter read in pertinent part: "Thank you for your final payment on your home equity account with MBNA Consumer Services, Inc. We are in the process of releasing the lien placed on your property by MBNA Consumer Services, Inc. for the above referenced account. [¶] We also have enclosed a copy of your promissory note or HELOC agreement, stamped 'Paid in full, satisfied'." ("HELOC" is an acronym for Home Equity Line of Credit.)

In a telephone conversation shortly after receipt of this letter, Liem told Anagnostou he had not paid off the loan and asked her to identify the payer. Anagnostou responded that "she did not know," "everything was being paid for," and "the account [was] being paid for and closed, no longer being open."

5. *Cadlerock's Acquisition of Nguyen Note in March 2000*

Later, on March 31, 2000, MBNA sold 527 of its loan accounts to Cadle. One of the loans was the Pacific Shore loan to the Nguyens. On the same date Cadle sold the loan account package to Cadlerock for the total sale price of $862,893.11, a discount price of six cents per dollar of loan value. The cost attributed to the Pacific Shore loan was $3,830.13, or 6 percent of the outstanding principal balance. The written purchase contract expressly provided that Cadlerock accepted the loans "'as is', 'where is', 'with all faults', and without recourse."

6. *2004 Refinance of Purchase Loan Secured by First Deed of Trust*

In 2004, the Nguyens decided to refinance their first mortgage to take advantage of lower interest rates. On April 20, 2004, ComUnity Lending, Inc. (ComUnity), loaned $116,000 to the Nguyens to refinance the existing first mortgage loan on the Nguyen home. (On the final title policy, "Community Lending" was listed as the lender.) At this time, Wells Fargo, having earlier bought the Countrywide loan, was the holder of the

First Deed of Trust, which had been recorded on May 25, 1994. Wells Fargo agreed to a full release and reconveyance of the First Deed of Trust in exchange for $110,622.57, plus $547.14 interest.

The Pacific Shore second deed of trust remained a lien on the title because no reconveyance of that deed of trust had been recorded. Liem, however, provided ASAP Escrow, Inc. (ASAP), the escrow agent, with a copy of both the MBNA Letter and the stamped copy of the Nguyen Note marked paid in full and satisfied.

When Jillian Nguyen, an ASAP escrow officer, asked MBNA over the telephone about the Pacific Shore loan, "they" responded the records could not be located and indicated they would get back to her after she faxed over a copy of the MBNA Letter. Although Jillian faxed the letter, she never heard back from MBNA. She then put the matter in the lap of Old Republic Title Company (Title Insurer).

Terri Rausin, the title officer, testified she relied on the MBNA Letter and stamped copy of the Nguyen Note marked paid in full and satisfied, which Liem had supplied, in eliminating the lien from the title report; it was a "normal practice" to do so in the industry because in 2004 it was common that the public record did not reflect the recording of reconveyance of deeds of trust whose notes had been paid off. William Jacobs, a Wells Fargo expert, testified no red flag would arise from the absence of such a reconveyance in view of the commonness of such an event. He also testified that in 2004 the standard practice was not to demand the original note because it "would not be released until the lien was satisfied, typically by a reconveyance." Rausin added that "[t]he lack of any documentation in regards to a delinquency would say to [her] that even more so that it was paid in full."

After eliminating this "Item 7," namely, the Pacific Shore deed of trust exception from coverage in the preliminary title report, Title Insurer issued a final title insurance policy to the new lender. This policy contained no exception for the second deed of trust and insured the new lender as the holder of the First Deed of Trust.

Wells Fargo later became the assignee of the new loan and is currently the holder of the First Deed of Trust securing that loan.

7. *May 5, 2008 Payment Demand under Threat of Foreclosure*

For nine years up until May 5, 2008, no one had told Liem that the $64,000 Pacific Shore loan was due. By letter dated May 5, 2008, Cadlerock advised the Nguyens of the default on the Pacific Shore loan in the amount of $147,619.14, which included accumulated interest, and advised if this default were not cured within 10 days, Cadlerock intended to enforce the debt, possibly foreclosing on the Nguyen home pursuant to the Nguyen Note and second deed of trust. Liem contacted Wells Fargo for assistance.

On June 4, 2008, Cadlerock recorded a notice of default and election to sell under deed of trust. Cadlerock had the original second deed of trust on which was stamped "paid in full" but this phrase was "blacked-out." Emily Danes, a Cadlerock account officer for the Nguyen loan, could not testify that Cadlerock did not make these black marks. Cadlerock also had the original Nguyen Note, which was "not stamped in any way."

In her deposition, Julie Musick, Cadlerock's former account manager, testified Liem telephoned and advised her that the loan had been paid off. On June 17, 2008, Musick told him he still owed the money because she would not accept the MBNA Letter or the stamped copy of the Nguyen Note as proof of payment. Liem sent Cadlerock a letter explaining the loan had been paid a long time ago.

8. *Notice of Trustee's Sale and of Substitution of Trustee*

On or about July 30, 2008, a "Substitution of Trustee" was filed, which substituted Law Offices of Les Zieve as trustee in place of Fidelity National Title and described Cadlerock as "beneficiary" under the second deed of trust.

Cadlerock later served the Nguyens with a "Notice of Trustee's Sale," which set October 1, 2008, as the date of the foreclosure sale of the Nguyen home.

The trial court issued a temporary restraining order as to the October 1, 2008 sale and then a preliminary injunction enjoining such a foreclosure sale.

DISCUSSION

1. *Substantial Evidence Supports Finding Nguyen Note Satisfied Prior to Cadlerock Purchase*

Cadlerock contends the evidence is insufficient to support the trial court's finding that the Nguyen Note had been satisfied, namely, paid in full, prior to Cadelerock's purchase of the note. We disagree.

a. *Standard of Review*

"[A]s so often stated, all intendments are in favor of the judgment and this court must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court. The test, of course, is not whether there is a substantial conflict in the evidence but whether there is substantial evidence in favor of the respondent." (*Crogan v. Metz* (1956) 47 Cal.2d 398, 403–404.) And "[a] reviewing court may not reappraise the credibility of witnesses and reweigh the evidence." (*People v. De Paula* (1954) 43 Cal.2d 643, 649.)

The trial court ordered the Nguyens to prepare a statement of decision. No statement of decision is in the record. In a reply brief filed February 1, 2012, the Cadlerock parties assert that on August 9, 2010, its counsel "waived the preparation by NGUYEN's counsel of his own version of a Statement of Decision and said CADLEROCK would take the trial court's statements made at the end of trial and on the record in the Reporter's Transcript, as being a sufficient statement of why the trial court reached its decision." Hence, there is no statement of decision.

And that being the case, "[b]ecause we review the correctness of the order, and not the court's reasons, we will not consider the court's oral comments or use them to undermine the order ultimately entered. (Cf. *Selfridge v. Carnation Co.* (1962) 200 Cal.App.2d 245, 249 ['oral opinions or statements of the court may not be considered to reverse or impeach the final decision of the court which is conclusively merged in its findings and judgment']; *Birch v. Mahaney* (1955) 137 Cal.App.2d 584, 588, ['remarks made by a trial judge during a trial or argument, or even an opinion filed by him, cannot

be used to impeach a formal decision, order or judgment later made or entered'].)" (*Whyte v. Schlage Lock Co*. (2002) 101 Cal.App.4th 1443, 1451; see also *Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530.)

b. *Inference Nguyen Note Paid in Full*

The trial court concluded mistakes were made in processing the Nguyen loan by MBNA and acknowledged contrary inferences could be drawn: (1) The Nguyen Note was not in fact paid in full in view of the "charge-off statement" or (2) The note had been paid in full in view of the MBNA Letter and stamped copy of the Nguyen Note. Evidence was presented that a letter stating the note was paid off is contradictory to a statement indicating a charge-off, which was computer-generated. "The charge-off[] term means that the loan was not paid in full and that the balance was written off for the full amount [of] nonpayment."

The court found these facially conflicting inferences easily could be reconciled as both being true, noting that according to "Occam's Razor," "the simplest explanation" or "the theory with the least assumptions" is usually the one that is right.

The court explained: The "charge off" statement was generated because sometime after Liem declared bankruptcy on May 4, 1999, MBNA decided to charge off the Nguyen debt and did so before June 4, 1999. Danes testified that she did not believe the "auto charge off" entry was a mistake because Liem "filed a Chapter 7 bankruptcy. MBNA would have been noticed of that bankruptcy roughly around the same time that this auto charge off would have occurred. It's very typical for a bank to charge off a loan when the borrower goes into a Chapter 7 bankruptcy." The court took judicial notice that June 4, 1999, would be a billing statement date, which is based usually on a 30-day billing cycle.

The court concluded someone, however, paid off the Nguyen Note between May 4 and June 4, 1999. This "someone" was "not a good Samaritan person, a fantasy person out there"; rather, this someone "knows how to pay off this loan, who knows where to mail payments, who's been getting statements and knows how much is due." In other words, this "someone" is "the other guy who is legally obligated contractually to pay off

this loan." The court also concluded this guy "found some way and got some money and paid off the loan." Noting Trung was very adept at getting money from others and he was the only one who ever made a payment on the Nguyen loan, the court drew the inference that it was probably Trung who paid off the loan.

The trial court found neither the copy of the Nguyen Note stamped "paid in full" and "satisfied" nor the sending of the MBNA Letter advising the Nguyens that the "final payment" on the loan had been made was the product of a *material* mistake. Rather, these documents embodied a true statement of fact, namely, the Nguyen Note truly had been paid in full.

The court explained that to establish the inference that the Nguyen Note had been paid off was false, a series of missteps or mistakes by various persons had to have been committed, which the trial court found would be "incredible." We agree.

In concluding the Nguyen Note was paid in full and satisfied, the trial court relied on the deposition testimony of Michael Albergo and Joni Smith, former managing employees of MBNA, who addressed MBNA's process for releasing a lien that had been satisfied, namely, paid in full. Albergo was Anagnostou's direct supervisor, and Smith was Albergo's supervisor.

The function of the lien satisfaction department was to release liens on paid loans. Full payment would have to be posted before a lien release could be completed.

An "[a]uto charge off indicates the loan was not paid" and the department was "required to charge off if the account is not paid," meaning it would "write it off." The department did not handle any attempt to collect on the loan and did not make the decision to "charge off" a loan, which decision is "systemic," namely, no one person looking at the account would make the determination to charge off the loan. "It is a systemic process that happens, happened." If an account in fact had been "charged off," no letter would be sent to the consumer that an account had been paid (Satisfaction Letter). Albergo could not state unequivocally the Nguyen loan was in fact charged off. Smith testified that including a charge-off statement in the letter would be a mistake.

MBNA would not send a charge-off statement to the debtor, nor would MBNA send of a Satisfaction Letter if the loan were charged off.

According to MBNA protocol, an associate in the lien satisfaction department would not generate a Satisfaction Letter on his or her own initiative. Rather, the associate worked from a daily computer "system-generated" "list" or "report" that specified which loan was satisfied. This list or report was posted by another department. The lien satisfaction department did not handle payments, which was the function of FISERV, a third party. Since 1999, FISERV no longer had records for the Nguyen loan.

The lien satisfaction department did not "download" or pull up information about a loan that was paid off. Such information would simply appear on its computer as a "systematic" matter, meaning this information, without any action on the part of the department, would be loaded into its computer system. "The account enters the system, and then it will show the zero balance accounts, the accounts with the zero balance, and then [the lien satisfaction] associate would go in and pull the — pull that report." This associate would handle the account from beginning to end. The members of the department were "cross educated," and thus any one of them could do this. Additionally, they "could work other . . . associate's work without being assigned that work." All associates would be provided information about department policies and procedures to follow but no training classes were given; it was "on the job training."

A two-level review process would then ensure the associate performed "research" to verify the information regarding a lien satisfaction, including looking at the FISERV system, and then his or her research would be reviewed by a manager. In the case of Anagnostou, her work would be reviewed by either Albergo or his supervisor, Smith. Among the matters reviewed, the supervisor would have the payment history and "a copy of the last payment, the statement showing the last payment on the account," and he or she would "look at the comments on the account." The actual name identifying who made the payoff on an account was not information supplied to the lien satisfaction department.

If some discrepancy cropped up that the supervisor could not resolve, the loan would be referred back to the payment department or the legal department.

Following verification that the account (note) was paid off, the associate would then send out a standard MBNA letter advising the customer of this fact, accompanied by a copy of the original note stamped paid in full and satisfied. These were the only two items given to the customer. The customer would not get the original note.

No evidence was presented that: (1) FISERV mistakenly listed the Nguyen Note as paid in full; (2) research revealed the Nguyen Note in fact had not been paid in full; or (3) the supervisor of Anagnostou or whomever researched the Nguyen Note failed to review the appropriate data or was remiss in failing to find the note in fact had not been paid in full.

The above uncontradicted evidence of how the lien satisfaction department operated and the built-in safeguards against an erroneous determination that a particular loan was paid in full constitutes substantial evidence in support of the trial court's finding the Nguyen Note was paid in full and satisfied before the MBNA Letter accompanied by the copy of the stamped Nguyen Note marked paid in full and satisfied was sent to the Nguyens.

Additionally, an inference can be drawn that although the lien department had a copy of the June 4, 1999 Charge-off Statement, the department also had information that the Nguyen Note in fact had been paid off prior to its sending the MBNA Letter dated June 8, 1999, to the Nguyens. This inference fully supports the trial court's hypothesis that the Nguyen Note was paid off after the Charge-off Statement was generated. Accordingly, the existence of the Charge-off Statement is of no import as to whether the Nguyen Note was paid off.

The immaterial mistakes made by the lien satisfaction department prior to it sending the MBNA Letter and stamped copy of the Nguyen Note marked paid in full and satisfied do not compel a contrary conclusion.

Albergo testified in his deposition that copies of a note should not be made before the original was stamped paid. In her deposition, Smith testified MBNA's procedure did

not allow only the copy of a note to be stamped. And the court noted it was a mistake to stamp the original deed of trust paid in full. A ”vendor,” such as the vendor here, Nationwide Recording Services, a division of Fidelity National, not the lien satisfaction department, created reconveyance documents, including a reconveyance deed of trust, for release of the lien.

It may be the case that in processing the Nguyen Note, the individual who carried out the task of stamping the original note paid in full and satisfied inadvertently copied the original note; stamped the original deed of trust mistakenly rather than the original note, and then stamped the copy of the note. In any event, the mistake of not stamping the original note paid in full is inconsequential to whether the Nguyen Note in fact was paid in full and satisfied. Similarly, the stamping of the original deed of trust paid in full, which stamp subsequently was blackened for an unknown reason by an unidentified person, does not inform on the issue of whether the Nguyen Note was paid in full and satisfied.

And resolution of the issues whether Anagnostou herself processed the Nguyen account in the lien satisfaction department and whether she signed the MBNA Letter is inconsequential to the pivotal issue of whether the Nguyen Note in fact was paid in full and thereby satisfied.

The evidence presented reflected Anagnostou had a “[s]olid work ethic,” she was “competent” in carrying out her duties, she was “honest,” and she did not make an “overwhelming amount of mistakes . . . .” Anagnostou authored the document entitled “‘Lien Satisfaction Desktop Procedures’” in February 1999. Neither Albergo nor Smith had any reason to believe she did not send the MBNA Letter, and each believed that she did send it.

In her deposition, however, Anagnostou testified that she did not recall downloading a report. She did recall “Claudia” did a lot of the downloading. She also could not say whether she sent out the MBNA Letter, but she acknowledged the letter was generated from her computer with her name on it and that the signature was in the font she used. Other evidence was presented that the MBNA Letter did not bear the

original signature of Anagnostou and the MBNA Letter was simply "an automated letter" without "an original signature."

It is of no import whether Anagnostou processed the Nguyen account in full, in part, or not at all. And the fact that the MBNA Letter was not signed personally by Anagnostou is insignificant. Nothing in the record reflects that the MBNA policies and procedures were not followed, regardless by whom, in verifying the Nguyen Note was paid in full and satisfied. Also, the lien satisfaction department was entitled to rely on the FISERV report that the Nguyen Note was paid in full.

c. *Conclusion*

Accordingly, the record contains substantial evidence, as recounted above, which supports the trial court's findings that indeed the Nguyen Note was paid in full and satisfied in May 1999, and that when Cadlerock bought the underlying loan, the obligation evidenced by this note and secured by the second deed of trust already had been extinguished. Thus, the Cadlerock parties are not entitled to seek foreclosure under the second deed of trust.

2. *$272,400 Award of Attorney Fees Not Abuse of Discretion*

The Cadlerock parties challenge the award of attorney fees in the amount of $272,400 to the Nguyens as an abuse of discretion. No abuse transpired.

a. *Background*

Following the trial, the Nguyens made a motion for an award of attorney fees in the amount of $363,200. In his declaration executed November 5, 2010, Paul Evan Greenwald, a partner in the law firm of Greenwald & Hoffman, LLP, attorney of record for the Nguyens, stated his hourly rate was $350 and listed the lesser hourly rates of three other attorneys in the firm who represented the Nguyens. He further stated that, to date, the Nguyens had incurred "a total of $351,650 in attorney fees for 1,373.8 hours work that was performed from September 12, 2008 through August 11, 2010 (not including items not claimed and, therefore, deducted for such things as preparation of answer to Wells Fargo complaint, fees related to the motion to amend and subsequent settlement of

the third cause of action for slander of title)." He attached to his declaration various itemized billing invoices of the firm as evidentiary support.

In opposition, Cadlerock challenged the amount of fees sought as "absolutely unreasonable for the litigation involved," "excessive," and needing apportionment for the unrelated slander of title claim (third cause of action).

The Nguyens replied by claiming waiver of right to object on the part of Cadle and the Law Offices of Les Zieve, which failed to submit any opposition. The Nguyens pointed to the absence of "competent evidence" from Cadlerock and argued Cadlerock "sets forth a laundry list of billing entries in summary fashion (many of which [challenges] are simply incorrect)" and contentions that are "erroneous, misleading, and/or just factually incorrect."

The Nguyens further argued that a greater award of fees was warranted pursuant to Los Angeles Superior Court Local Rules, rule 3.2(d), "because of extraordinary services" rendered for which claim was "accompanied by an itemized statement of the services rendered or to be rendered."

In his December 12, 2009 declaration, Greenwald delineated certain fees necessitated by the "ill conceived litigation tactics" of the Cadlerock parties.

At the hearing, the trial court ruled that "some portion of the request for attorney's fees should be reduced" because "the [third] cause of action [for slander of title] was settled, . . . the settlement was dismissal, and all parties [are] to bear their own fees and costs." The court then tentatively ruled that the fair amount for a fee award would be $263,737.50, a reduction from the $351,650 sought by the Nguyens. Cadlerock argued the fee should be further reduced because $263,000 would be an "unconscionable fee" in that Liem would have been unable to pay such a sum and his attorney would never have charged him such a fee. Rather, an award in this amount would be a "windfall" to counsel. Cadlerock further argued that it was the Nguyens, not Cadlerock, that "ran up the fees."

The trial court disagreed that charging more than what the client could pay was unconscionable because this was "a very common practice among lawyers" since "there

is often other sources of funds." What the court thought to be "unconscionable" was the fact that the Nguyens "for many, many years, in reliance on the documents . . . received, believed that their home had been paid off" and then "a decade later someone was . . . trying to take away their home based on that ten year old note." The court stated this case was "extraordinary" because the court had "plenty of cases where people are trying to stop foreclosures" but "none where they say, 'Look, I paid this off ten years ago, here's my payment in full.' [The court had] never seen this before." The court also was not persuaded by Cadlerock's claim that certain fees amounted to "thousands and thousands and thousands of dollars of duplication of work."

After further calculations, the trial court determined the amount of the attorney fee award to be $272,400, which was a reduction of $90,800, or 25 percent of the amount sought.

b. *Standard of Review*

The trial court has broad discretion to fix the amount of reasonable attorney fees to be awarded under Civil Code section 1717. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094–1095.) "'The experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong' — meaning that it abused its discretion. [Citations.]" (*Id.* at p. 1095.)

And "'[a] decision will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.] In the absence of a clear showing that its decision was arbitrary or irrational, a trial court should be presumed to have acted to achieve legitimate objectives and . . . its discretionary determinations ought not be set aside on review.' [Citation.]" [Citation.] Accordingly, an abuse of discretion transpires if "'the trial court exceeded the bounds of reason'" in making its award of attorney fees. [Citation.]' [Citation.]" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 557.)

c. *$272,400 Attorney Fee Award Not Abuse*

The Cadlerock parties' opening brief is essentially a blizzard of attacks on the prosecution by counsel for the Nguyens of the third cause of action for slander of title, which they characterize as an extreme waste of time for which counsel should not be compensated with an award of fees. In their reply brief, the Cadlerock parties further contend counsel for the Nguyens also ran up the fees for the third cause of action for slander of title, which was "frivolous and unfounded." As discussed above, the trial court resolved the issue of attorney fees regarding the third cause of action for slander of title claim by reducing the fee award by one-quarter in view of the settlement of the slander of title claim, which resulted in dismissal of the cause of action and an agreement that each party would bear its own fees and costs.

Finally, in their reply brief, the Cadlerock parties also challenge the $272,400 attorney fee award as "so excessively large that it shocks the conscience," it is "inflated and excessive," and the award includes fees for unnecessary work, including Greenwald's attendance at depositions of Wells Fargo witnesses "who could not and did not possess any evidence whatsoever that the Note had been paid 4 years before (other than having been given [the] same [MBNA] Letter and [Nguyen] Note copy)." They also contend no "novel or difficult question or litigation activity" existed which would warrant "the hours necessary for three attorneys, with the lead attorney at $350 an hour, to [justify a] $272,400 attorney fee award . . . ."

The thrust of the Cadlerock parties' contentions is the trial court should have awarded the Nguyens a significantly lesser amount as attorney fees. Yet they fail to demonstrate that the trial court abused its discretion in awarding fees.

d. *Conclusion*

As prevailing parties, the Nguyens are entitled to an award of reasonable attorney fees. The trial court determined $272,400 was reasonable. The record reflects this amount was not the product of an abuse of discretion.

DISPOSITION

The judgment in favor of the Nguyens and the judgment in favor of Wells Fargo are affirmed. The Nguyens and Wells Fargo shall recover costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.