

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ISKANDER SABBAGH et al.,

Plaintiffs and Appellants,

v.

MARIYAN KHOSRAVIZADEH  
et al.,

Defendants and Respondents.

B264768

(Los Angeles County  
Super. Ct. No. LC099632)

APPEAL from a judgment of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Steven W. O'Reilly for Plaintiffs and Appellants.

Carlson Law Group, Stuart T. Miller; Dentons US and Jules S. Zeman for Defendants and Respondents.

\* \* \* \* \*

In a previous appeal in this action to which defendants and respondents Mariyan Khosravizadeh and Steadfast In Commitment, Inc., doing business as RE/MAX Grand Central (Steadfast) were not parties, we affirmed the grant of summary judgment in favor of defendant Shahrokh Davood. Mr. Davood bought the home of plaintiffs and appellants Iskander and Sozan Sabbagh in a short sale to avoid foreclosure. (*Sabbagh v. Davood* (Mar. 30, 2016, B261104) [nonpub. opn.].) Some months after granting summary judgment for Mr. Davood, the court entered summary judgment in favor of Ms. Khosravizadeh, plaintiffs' broker, and Steadfast, her employer (defendants). This appeal is from the summary judgment in favor of defendants.

Several months before granting summary judgment for defendants, the trial court granted partial judgment on the pleadings, leaving two causes of action for fraud and breach of fiduciary duty, the causes of action on which the court granted summary judgment. Plaintiffs do not appeal the partial grant of judgment on the pleadings.

As was the case with the earlier appeal, plaintiffs submitted a brief with insufficient citations to the record and failed to give us legal authority to support their contentions. We affirm.

## **BACKGROUND**

### **1. The Complaint**

The operative pleading is the verified first amended complaint. The causes of action remaining after the court granted a partial judgment on the pleadings include the second cause of action for fraud and the third cause of action for breach of fiduciary duty. Both causes of action rest on the following general allegations:

In early 2012, plaintiffs were in default on their mortgage payments to Bank of America. Plaintiffs retained defendants to conduct a short sale on their behalf. Plaintiffs made an oral agreement with Mr. Davood to sell their home in September 2012. In early October 2012, plaintiffs met with defendants and Mr. Davood at their home to finalize their agreement. Plaintiffs and Mr. Davood orally agreed that plaintiffs would sell their home to Mr. Davood for \$196,800; they had 90 days to a year in which to buy it back at the same price; and they could stay in their home if they paid Mr. Davood \$1,500 a month in rent for one year, or until they repurchased their home.

Ms. Khosravizadeh assured plaintiffs these terms would be part of the final purchase agreement. Plaintiffs signed and notarized the purchase agreement but did not receive a copy. Escrow closed October 11, 2012. On Thanksgiving Day of 2012, Ms. Khosravizadeh told plaintiffs they would have to pay defendant \$350,000 to repurchase their home, and that defendant would pay them \$20,000 to move out. Plaintiffs refused to move, and were told eviction proceedings were underway.

Plaintiffs allege defendants defrauded them and breached their fiduciary duties owed to plaintiffs, because the written purchase agreement had different terms than their oral agreement, and in other respects.

## **2. Our Opinion in the Prior Appeal**

We affirmed the grant of summary judgment in favor of Mr. Davood on the basis of his unclean hands defense because there was no material disputed fact concerning plaintiffs' conduct in relation to the transaction. We said in part: "The undisputed evidence summarized in the trial court's ruling includes plaintiff Iskander Sabbagh's own admissions that he knew he was doing

something wrong by making the agreement with defendant to short sell the property and then have it reconveyed to himself. Mr. Sabbagh stated in a verified interrogatory response: ‘The broker initially told us that it would be difficult for us to stay in possession, but that changed when she contacted Mr. Davood, the buyer. The broker and the buyer said that we could stay in possession and that I should get someone that I trust and put the utilities and the lease in their name. The meeting at my house in early November was also for the broker to draw up the lease agreement, to show the house to [the] tenant and have him sign the lease. I was instructed to make it appear that I no longer live at the house.’

“Plaintiffs also submitted the declaration of plaintiff Sozan Sabbagh, who testified, ‘We were in default on our home loan in February 2012. My husband had lost his job and it looked more and more like we might lose our house. . . . [¶] . . . In trying to save our house my husband got himself involved with some shady characters and desperate situations.’ Mrs. Sabbagh also testified that she read and, at her husband’s urging, signed a document that the broker told her the bank required, stating that she and her husband were going to vacate their home or pay \$200 a day penalty. She testified further, ‘In November of 2012 [my husband] was involved with a new group of dangerous characters and I think that he was borrowing cash money against the house and making bad decisions. . . . On November 2, 2012, my husband was sweating and panicky about a group of people that were making a deal involving the sale of our house.’” (*Sabbagh v. Davood, supra*, B261104, pp. 5-6.)

We viewed the prior appeal as a case presenting no material disputed fact concerning plaintiffs’ unconscientious

conduct and therefore found no error in the grant of summary judgment on the basis that the unclean hands defense barred all of plaintiffs' causes of action. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 56 [unclean hands is a complete defense to legal and equitable causes of action].)

### **3. The Court Grants Summary Judgment for These Defendants**

The hearing on these defendants' motion for summary judgment was held on February 23, 2015. The court issued its ruling granting summary judgment that day.

As plaintiffs acknowledge, the "court prepared a lengthy tentative order which became the final order, there being no oral argument presented by counsel."

As to the fraud cause of action, the court found it was undisputed that plaintiffs could not prove justifiable reliance or damages.

The court found the alleged oral agreement between plaintiffs and Mr. Davood "is contrary to the provisions of the short sale agreement under which the parties represented they had no agreements written or oral that would permit the seller or his family members to remain on the property as renters or to regain ownership of the property at any time after the execution of the short sale transaction." Plaintiffs did not dispute these provisions of the short sale agreement. The court found there was no triable issue of fact regarding justifiable reliance because Mr. Sabbagh offered no explanation "why he thought he could ignore a legal document he was signing." (Mrs. Sabbagh did not submit a declaration in opposition to defendants' summary judgment motion.)

The court also found there was no disputed fact that plaintiffs could not prove damages. “The undisputed fact is that plaintiff owed at least \$520,000 at the time of the short sale. The property appraised at just under \$200,000. Thus, plaintiff gained over \$300,000 in loan forgiveness. Plaintiff did not suffer damages due to the short sale and in fact, was given \$3,000 relocation fees by the bank. The plaintiffs received \$2,000.00 from a government assistance program. [¶] Regarding benefit of the bargain, plaintiff gave away a house worth \$200,000 and received over \$300,000 in loan forgiveness plus \$5000 in relocation assistance. [¶] Plaintiffs have provided no evidence of a different calculation. [¶] Regarding out of pocket damages, plaintiffs have offered no evidence of any out of pocket loss.”

The court found, as to the breach of fiduciary duty cause of action, that defendants “cannot be held liable for failing to help plaintiffs defraud the bank,” and the duty of a fiduciary does not include “finding a buyer who is willing to enter into an illegal contract.”

The court also found both causes of action were barred by the defense of unclean hands. “Here, it is clear that plaintiff understood that he was doing something ‘wrong’ by making the agreement to short sell the property and then have it reconveyed to plaintiff. Plaintiff admits in his own responses to Form Interrogatories that before the Escrow agreement was signed he was told he needed to find someone he trusted to pretend to lease the property and to put utilities in that person’s name. This admission shows that plaintiff understood that he needed to conceal that he was actually retaining an interest in the property. It would be inequitable to enforce the agreement or to provide relief for fraud.”

## DISCUSSION

### 1. Standard of Review

“[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*)). “Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to that cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was “‘to liberalize the granting of [summary judgment] motions.’” (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542 (*Perry*), quoting *Aguilar, supra*, 25 Cal.4th at p. 848.) It is no longer called a “disfavored” remedy. “Summary judgment is now seen as a ‘particularly suitable means to test the sufficiency’ of the plaintiff’s or defendant’s case.” (*Perry*, at p. 542.)

On appeal, “we take the facts from the record that was before the trial court. . . . ‘We review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.’” ’” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citation omitted.)

### 2. Plaintiffs Have Not Demonstrated Reversible Error.

#### a. The summary judgment ruling

In their brief on appeal, plaintiffs do not contend there are any disputed facts concerning the unclean hands defense. Indeed, in their response to the separate statement of undisputed

facts, they admitted that Ms. Khosravizadeh and Mr. Davood told them they would need to find someone they trusted to pretend to lease their house and to put the utilities in that person's name. Plaintiffs' argument boils down to this: they should not be found to have unclean hands because the illegal oral agreement was their broker's idea, and they only did what she told them to do.

In explaining the ruling on the fraud cause of action, the court discussed plaintiffs having kept \$5,000 in relocation payments; the court said nothing about that in discussing plaintiffs' unclean hands. Nonetheless, in developing their argument on appeal that plaintiffs should not be barred from relief by the unclean hands doctrine, they say: "When the relocation funds were distributed [plaintiffs] were just following instruction and were told to keep the money. After all, it was a short sale and that's what people do."

We find plaintiffs' *chutzpah* appalling. As we did in the prior appeal, we find this is a proper case for the grant of summary judgment on the unclean hands defense because there is no material disputed fact concerning plaintiffs' conduct in relation to the transaction or matter before the court. (See, e.g., *Pond v. Insurance Co. of North America* (1984) 151 Cal.App.3d 280, 289-292; see also *DeRosa v. Transamerica Title Ins. Co.* (1989) 213 Cal.App.3d 1390, 1395-1398.)

Therefore, we need not discuss the other bases for the court's ruling. We note only briefly: The court's ruling on the fraud and breach of fiduciary duty causes of action rested largely on the finding that the alleged oral contract with Mr. Davood was illegal. Plaintiffs provide no citation to any legal authorities concerning the legality or illegality of the alleged oral contract. In the absence of any citation to or discussion of the law bearing



on the question whether the alleged oral contract was illegal and against public policy as an attempt to fraudulently obtain relocation benefits and remain in their home, we also treat plaintiffs' challenge to the grant of summary judgment on this basis as waived. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.)

**b. The denial of plaintiffs' motion for leave to file a second amended complaint**

Plaintiffs also contend the court erred in denying their motion for leave to file a second amended complaint.

The clerk's transcript includes defendants' opposition to the motion and plaintiffs' reply, as well as the minute order and notice of the court's order denying leave to amend. The clerk's transcript does not include the motion for leave to amend or the proposed second amended complaint. Plaintiffs filed a motion on appeal to augment the record. On March 8, 2016, we granted the motion.

The proposed second amended complaint would add new allegations to the breach of fiduciary duty allegations and new causes of action for constructive fraud and unfair business practices against both defendants, and a cause of action for negligent retention against Ms. Khosravizadeh's employer. The new facts include that Ms. Khosravizadeh was convicted of a felony drug offense in 2010 and of arson in 2012, and despite knowing her real estate license was in jeopardy, defendants did not disclose these convictions to plaintiffs. Plaintiffs also sought to allege Ms. Khosravizadeh kept their home off the market and then arranged to sell it to her friend at a rock bottom price. Plaintiffs also sought to allege Ms. Khosravizadeh told them they

could legally stay in their house after the short sale when she knew it was illegal; and she allowed Mr. Davood to evict them.

Plaintiffs make no argument and cite no authorities demonstrating the court erred in denying leave to amend. In the absence of any legal discussion concerning the denial of leave to amend, we treat plaintiffs' claim of error on this basis as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 ["[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration."]; *McComber v. Wells, supra*, 72 Cal.App.4th at p. 522.)

We see no reason to think these new allegations would have defeated summary judgment, as they are irrelevant to the bases for the court's ruling.

#### **DISPOSITION**

The judgment is affirmed. Defendants and respondents Mariyan Khosravizadeh and Steadfast In Commitment, Inc., doing business as RE/MAX Grand Central are to recover their costs on appeal.

GRIMES, J.

WE CONCUR:

FLIER, Acting P. J.

SORTINO, J.\*

---

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