Filed 9/23/19 Arredondo v. Deutsche Bank National Trust Co. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LORENA ARREDONDO et al., Plaintiffs and Appellants, v. DEUTSCHE BANK NATIONAL TRUST COMPANY et al., Defendants and Respondents.	B288007 (Los Angeles County Super. Ct. No. PC056820)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen Pfahler, Judge. Affirmed in part; reversed in part and remanded.

Law Offices of Stanley H. Kimmel and Stanley H. Kimmel for Plaintiffs and Appellants.

Wolfe & Wyman, Stuart B. Wolfe and Cathy L. Granger for Defendants and Respondents.

Lorena and Martin Arredondo[1] appeal from a judgment of dismissal entered after the trial court sustained without leave to amend the demurrer filed by Deutsche Bank National Trust Company (Deutsche Bank), Carrington Mortgage Services, and Atlantic & Pacific Foreclosure Services (collectively defendants)[2] to the Arredondos' claim in their fourth amended complaint for violation of the Rosenthal Fair Debt Collection Practices Act (the Rosenthal Act; Civ. Code, § 1788 et seq.)[3] and granted defendants' motion to strike the claims for violation of the unfair competition law (UCL; Bus. & Prof. Code, § 17200 et seq.) and aiding and abetting violation of the UCL. The Arredondos alleged Deutsche Bank and Carrington, as the lender and servicer, respectively, of a mortgage on the Arredondos' home, made misrepresentations to the Arredondos about their ability to retain title to their home by continuing to make payments on their mortgage following the foreclosure by the junior lien holder.

The trial court sustained defendants' demurrer to the Rosenthal Act cause of action, finding the alleged misrepresentations were not sufficient to state a claim because the Arredondos knew about the foreclosure, and therefore they

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1 We refer to Lorena and Martin individually by their first names and collectively as the Arredondos.

2 Carrington Foreclosure Services, LLC is the successor to Atlantic & Pacific Foreclosure Services. In the fourth amended complaint, the Arredondos erroneously identified Carrington Mortgage Services as the successor to Atlantic & Pacific. We refer to the Carrington defendants collectively as Carrington because both are subsidiaries of Carrington Holding Company.

3 All statutory references are to the Civil Code unless otherwise indicated.

were on notice they no longer owned their home and did not reasonably rely on the representations by Deutsche Bank and Carrington. The court granted defendants' motion to strike the UCL causes of action on the basis the claims were beyond the scope of the court's order granting the Arredondos leave to amend their prior complaint.

The trial court erred in sustaining the demurrer to the Rosenthal Act claim, but it acted within its discretion in striking the UCL causes of action. We reverse the entry of judgment and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND[4]

A. *Ownership of the Property*

In 2003 the Arredondos purchased a property located at 680 Griswold Avenue in San Fernando (the property) to use as their personal residence. In 2005 Lorena obtained a home improvement loan from New Century Mortgage Corporation secured by a deed of trust on the property, which deed of trust was later assigned to Deutsche Bank as the indenture trustee for New Century; the loan was serviced by Carrington. In 2007 the Arredondos obtained a second loan from New Haven Financial,

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[4] The facts are taken from allegations of the fourth amended complaint and the documents attached to defendants' request for judicial notice in support of their demurrer to the fourth amended complaint. Although it is unclear whether the trial court granted defendants' request for judicial notice, on our own motion we take judicial notice of the foreclosure documents attached as exhibits 1, 2, and 4 through 7 to defendants' request for judicial notice. (Evid. Code, §§ 452, subd. (c), 459, subd. (a).)

Inc., secured by a second deed of trust on the property in favor of beneficiaries known as the Strickstein Group. In 2009 the Strickstein Group foreclosed on the property. Deutsche Bank continued to hold the first deed of trust, serviced by Carrington, with an outstanding balance.

B. *Collection of the First Loan*

On March 1, 2009 Martin called Carrington to discuss the Deutsche Bank loan and to disclose the 2009 foreclosure sale. The Carrington representative advised Martin "that the Arredondo's [*sic*] could save their home, and that they should continue making payments to [Carrington] in order to qualify for a loan modification . . . ."

In November 2010 Carrington "offered Lorena a loan modification 'to permit her to stay in her home,'" and sent the Arredondos a loan modification agreement that provided "on payment of the outstanding loan balance in full, a reconveyance would be issued and recorded providing Lorena with clear fee simple title to the subject property." Carrington approved the loan modification and, as a result, the Arredondos continued to live at the property and made monthly payments on the modified loan.

Lorena was unable to pay the delinquent loan payments demanded by Carrington, and on May 9, 2012 Lorena filed for bankruptcy. Lorena listed the property in the bankruptcy case as real property she owned. Deutsche Bank filed a claim as a secured creditor in the bankruptcy case, representing the note executed by Lorena "was secured by Lorena's ownership of [the property]." Carrington similarly filed a claim as a secured creditor.

In July 2015 Deutsche Bank obtained relief from the automatic stay to redress Lorena's default under the loan modification agreement. Carrington offered the Arredondos a second loan modification, instructing Lorena to stop making loan payments until the modification was finalized. The Arredondos complied and stopped making their monthly payments. However, on February 29, 2016 Deutsche Bank foreclosed on the property and recorded a trustee's deed upon sale.[5] In April 2016 Deutsche Bank filed an unlawful detainer action, seeking to evict the Arredondos.

C. *The Filing of this Action and Defendants' Prior Demurrers*

The Arredondos filed this action on January 7, 2016, seeking to quiet title to the property and for damages and other equitable relief.[6] On January 31, 2017 the Arredondos filed their

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[5] Although the Strickstein Group previously foreclosed on the property, it obtained title to the property subject to the senior deed of trust held by Deutsche. (*Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 824 ["A valid foreclosure terminates all interests in the real estate junior to the mortgage being foreclosed [citation], but it does not terminate interests senior to the mortgage."]; *Sumitomo Bank v. Davis* (1992) 4 Cal.App.4th 1306, 1314.)

[6] Because the appellate record is incomplete, we obtained the superior court file to facilitate our review. On our own motion we augment the record to include the following documents filed in the superior court: the complaint filed on January 7, 2016, the third amended complaint filed on January 31, 2017, the demurrer to the third amended complaint filed on March 16, 2017, and the Arredondo's opposition to the demurrer filed on July 14, 2017. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

third amended complaint, to which defendants demurred.[7] Following a hearing, the trial court sustained the demurrer, but granted "leave to amend to add a cause(s) of action solely for unfair debt collection practices."

On August 3, 2017 the Arredondos filed their fourth amended complaint, asserting causes of action for violation of the Rosenthal Act, violation of the UCL, and aiding and abetting violation of the UCL. The complaint alleged defendants violated the Rosenthal Act by using "false, deceptive, or misleading representations" to collect payments from the Arredondos, including misrepresenting "the Arredondo[s] could 'save their home,'" Lorena owned the property securing the loan, and payments to Carrington would preserve Lorena's ownership of the property. The Arredondos alleged the representations also constituted unlawful business practices under the UCL, and defendants aided and abetted violation of the UCL.

The Arredondos sought to recover under the Rosenthal Act the payments they made to Carrington after March 1, 2009, statutory penalties, attorneys' fees, and costs. They also sought restitution under the UCL, including return of the payments made by the Arredondos, attorneys' fees, and costs.

D. *Defendants' Demurrer to the Fourth Amended Complaint and Motion To Strike*

Defendants demurred to all causes of action in the fourth amended complaint and moved to strike the UCL causes of action. They argued the Rosenthal Act claim failed as a matter of

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[7] Defendants filed two prior demurrers, but the Arredondos amended their complaints before the demurrers were heard.

law because the Strickstein Group foreclosed on the property in 2009 and recorded a trustee's deed upon sale transferring ownership to the Strickstein Group, placing the Arredondos on notice they no longer owned the property. Thus, the Arredondos did not reasonably rely on Carrington's assurances they could save their home by repaying their debt to defendants. Defendants also argued the foreclosure by the Strickstein Group did not alter the Arredondos' obligation to make payments on Deutsche Bank's loan, and therefore defendants had a right to collect payments on the loan. The Arredondos argued in their opposition defendants' representations were actionable under the Rosenthal Act, which prohibited false representations made in the collection of a debt, because whether they reasonably relied on defendants' representations was a question of fact.

In a motion to strike, defendants argued the UCL causes of action violated the court's order granting the Arredondos leave to amend the third amended complaint. The Arredondos responded that the UCL claims were closely related to the Rosenthal Act claims, and the trial court's order granted leave to add "cause(s) of action." The Arredondos also asserted the third cause of action for aiding and abetting violation of the UCL was necessary to "cover the identities of defendants which have traded names."

E. *The Trial Court's Ruling*

On November 8, 2017, after oral argument, the trial court sustained defendants' demurrer without leave to amend as to the first cause of action. The court reasoned a claim under the Rosenthal Act required "a finding that [the Arredondos] were deceptively led to believe that they owned their home," but the fact the Arredondos had constructive notice from the 2009

foreclosure that they no longer had an interest in the property "vitiate[d] this allegation." The court granted defendants' motion to strike the second and third causes of action, explaining the "record supports no finding of leave beyond the Rosenthal . . . Act claim." The trial court found the demurrer as to the UCL claims was moot in light of its ruling granting the motion to strike.

On December 18, 2017 the trial court entered a judgment of dismissal. The Arredondos timely appealed.

DISCUSSION

A. *The Record Is Sufficient for Appellate Review*

Defendants contend we should affirm the judgment because the appellate record does not include a transcript of the hearing on the demurrer or a settled statement, and therefore the appellate record does not show whether the trial court granted defendants' request for judicial notice and considered the supporting documents. As defendants argue, a "'judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.'" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.) "[D]ismissal of an appeal may be warranted in the absence of a reporter's transcript when such a transcript is necessary for meaningful review." (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 933; accord, *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187.)

However, on review of an order sustaining a demurrer, "this court 'may consider other relevant matters of which the trial court could have taken judicial notice and we may treat such

matters as having been pleaded.'" (*Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 156; accord, *Helix Land Co. v. City of San Diego* (1978) 82 Cal.App.3d 932, 937 [court reviewing order sustaining demurrer may consider "relevant matters of which the trial court could have taken notice"].) Because we have taken judicial notice of the relevant documents attached to defendants' request, the record is sufficient for our review. (See *Bel Air Internet, LLC v. Morales, supra*, 20 Cal.App.5th at p. 933 [no reporter's transcript required because respondent did not "identify any particular matter addressed at the hearing that [the] court must consider to decide the appeal"]; cf. *Foust v. San Jose Construction Co., Inc.*, *supra*, 198 Cal.App.4th at pp. 187-188 [reporter's transcript necessary for meaningful review where appellant's argument was based on his trial testimony].)

B. *Standard of Review*

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162; accord, *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) '"'"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . .' Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context."'" (*Centinela Freeman Emergency Medical Associates*, at p. 1010; accord, *Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 162.)

A trial court abuses its discretion by sustaining a demurrer without leave to amend where "'there is a reasonable possibility that the defect can be cured by amendment.'" (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; accord, *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) "'The plaintiff has the burden of proving that [an] amendment would cure the legal defect, and may [even] meet this burden [for the first time] on appeal.'" (*Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1132; accord, *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 971.)

We review an order granting a motion to strike for abuse of discretion. (*Ruiz v. Musclewood Investment Properties, LLC* (2018) 28 Cal.App.5th 15, 24; *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282.) "Discretion is abused only when, in its exercise, the trial court '"exceed[ed] the bounds of reason, all of the circumstances before it being considered."'" (*Quiroz*, at p. 1282; accord, *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

C. *The Trial Court Erred in Sustaining Defendants' Demurrer to the Arredondos' Rosenthal Act Claim*

1. *The Rosenthal Act*

The Rosenthal Act was enacted in 1977 "to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts . . . ." (Stats. 1977, ch. 907, § 1; § 1788.1, subd. (b).) "The Rosenthal Act is '"a remedial statute [that] *should be interpreted broadly* in order to effectuate its purpose."'" (*Davidson v. Seterus, Inc.* (2018)

21 Cal.App.5th 283, 295 (*Davidson*).) The statute defines consumer debt as "money, property or their equivalent, due or owing or alleged to be due or owing" as a result of a "consumer credit transaction." (§ 1788.2, subd. (f).) A "consumer credit transaction" is defined as a transaction in which "property, services or money is acquired on credit . . . primarily for personal, family, or household purposes." (§ 1788.2, subd. (e).) A "debt collector" under the Rosenthal Act includes "a mortgage servicer who engages in debt collection practices in attempting to obtain repayment of mortgage debt . . . ." (*Davidson*, at p. 304; accord, *Alborzian v. JPMorgan Chase Bank, N.A.* (2015) 235 Cal.App.4th 29, 34 (*Alborzian*) [consumer could assert claim under Rosenthal Act against lender attempting to collect on mortgage loan secured by junior lien].)[8] A creditor may also be held vicariously liable under the Rosenthal Act for "actions of an agent collecting a debt on its behalf." (*Cavalry SPV I, LLC v. Watkins* (2019) 36 Cal.App.5th 1070, 1085; accord, *Huy Thanh Vo v. Nelson & Kennard* (E.D.Cal. 2013) 931 F.Supp.2d 1080, 1091-1094.)

In 1999, the Rosenthal Act was amended to ""harmonize state and federal law by applying federal debt collection standards and remedies to all parties defined as debt collectors under California law."" (*Timlick v. National Enterprise Systems, Inc.* (2019) 35 Cal.App.5th 674, 687-688.) Specifically, section 1788.17 provides that, in addition to requirements imposed by other sections of the Rosenthal Act, "every debt collector

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[8] Senate Bill No. 187 (2019-2020 Reg. Sess.) is pending before the Legislature, which would amend section 1788.2, subdivision (f), to make clear "[t]he term[] 'consumer debt' . . . includes a mortgage debt." Section 1 of the Senate Bill No. 187 states the amendments "are declaratory of . . . existing law."

collecting or attempting to collect a consumer debt shall comply with the provisions of [title 15 of the United States Code] Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k," the federal Fair Debt Collection Practices Act (FDCPA; 15 U.S.C. 1692 et seq.). (See *Davidson, supra*, 21 Cal.App.5th at p. 295 ["the Rosenthal Act generally requires debt collectors to comply with the provisions of the FDCPA"].)[9]

As relevant here, section 1788.17 of the Rosenthal Act incorporates section 1692e of the FDCPA, which provides, "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." "Whether a debt collection effort entails false representations, threats, or deception is judged objectively from the perspective of the "'least sophisticated debtor.'" [Citations.] This unsavvy consumer is charged with a "'basic level of understanding and willingness to read with care . . . ,' [citation]' but is of "'below average sophistication or intelligence,'" and is "'uninformed or naive.'" [Citation.] He or she is 'under no obligation to seek explanation of conflicting or misleading language in debt collection letters.'" (*Alborzian, supra*, 235 Cal.App.4th at p. 37; accord, *Afewerki v. Anaya Law Group* (9th Cir. 2017) 868 F.3d 771, 775 ["[T]he FDCPA does not ask the

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[9] Unlike the Rosenthal Act, the FDCPA only regulates conduct of third party debt collectors, not a consumer's creditors. (*Davidson, supra*, 21 Cal.App.5th at p. 303.) Thus, creditors may be liable for violations of the FDCPA under the Rosenthal Act even though they are not liable under the FDCPA. (*Davidson*, at pp. 303-304; *Alborzian, supra*, 235 Cal.App.4th at p. 36, fn. 7.)

subjective question of whether an individual plaintiff was actually misled by a communication."].)[10]

Under the Rosenthal Act, a representation, even if not literally false, ""is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate."' [Citations.] In this regard, what is implied is just as important as what is stated." (*Alborzian, supra*, 235 Cal.App.4th at p. 37; accord, *Gonzales v. Arrow Financial Services, LLC* (9th Cir. 2011) 660 F.3d 1055, 1064 [under the FDCPA, "a literally true statement can still be misleading"].)

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[10] The majority of federal courts use the same "least sophisticated debtor" or "least sophisticated consumer" test in determining whether communications constitute misrepresentations under section 1692e of the FDCPA. (See *Schultz v. Midland Credit Management* (3d Cir. 2018) 905 F.3d 159, 162; *Afewerki v. Anaya Law Group, supra*, 868 F.3d at p. 775; *Bishop v. Ross Earle & Bonan, P.A.* (11th Cir. 2016) 817 F.3d 1268, 1274; *Powell v. Palisades Acquisition XVI, LLC* (4th Cir. 2014) 782 F.3d 119, 126; *Easterling v. Collecto, Inc.* (2d Cir. 2012) 692 F.3d 229, 233-234; *Wallace v. Washington Mutual Bank, F.A.* (6th Cir. 2012) 683 F.3d 323, 326.) Other federal circuits use the term "unsophisticated debtor," although "[i]n practice, 'least sophisticated' and 'unsophisticated' appear to be the same." (*Jones v. Dufek* (D.C. Cir. 2016) 830 F.3d 523, 525, fn. 2; see *O'Boyle v. Real Time Resolutions, Inc.* (7th Cir. 2018) 910 F.3d 338, 344; *Strand v. Diversified Collection Serv.* (8th Cir. 2004) 380 F.3d 316, 317-318; *Peter v. GC Services, L.P.* (5th Cir. 2002) 310 F.3d 344, 348, fn. 1 [declining to decide whether the "'least sophisticated consumer'" or "'unsophisticated consumer'" standard applied].)

2. *The fourth amended complaint sufficiently alleges defendants made false and misleading representations in connection with collection of the Deutsche Bank debt*

Defendants contend the Arredondos have not alleged facts sufficient to state a claim under the Rosenthal Act because the Arredondos were aware of the Strickstein Group's foreclosure on their property, and therefore they were on notice they no longer owned the property and could not "save their home" by making payments on Deutsche Bank's loan. This contention lacks merit because the least sophisticated debtor with knowledge of the foreclosure sale could nonetheless have been misled to believe making loan payments could preserve the Arredondos' ownership interest in the property.

In *Alborzian*, a senior lien holder foreclosed on the plaintiffs' property, making the junior lien unenforceable because the purchase price was insufficient to pay off the junior lien. (*Alborzian, supra*, 235 Cal.App.4th at p. 35.) The junior lien holder sent the plaintiffs a debt collection letter, stating the lender would accept a lower payment on the loan "'as settlement for [the plaintiffs'] loan balance,'" offered a "'short "window of opportunity" . . . before [their] debt is accelerated'" and warned a delay would "leave plaintiffs 'fewer options.'" (*Id*. at pp. 33-34.) The letter also "disavowed being 'an attempt to collect a debt or to impose personal liability' '[t]o the extent [plaintiffs'] obligation was discharged . . . .'" (*Id*. at p. 34.) The lender followed up with a second letter that offered to settle, affirmed a balance on the loan was "'currently due,'" and offered to accept a lower amount "to 'close this debt once and for all' and to 'stop' 'all calls and efforts to collect the amount owed.'" (*Ibid*.)

The Court of Appeal concluded the letters were actionable as misrepresentations under the Rosenthal Act, reasoning the "'wiggle room'" language in the first letter stating it was not an attempt to collect a debt that was discharged did "not negate the otherwise clear implication of the letters that the debt [was] enforceable because the recipient would have no idea that his or her 'original obligation was discharged' unless he or she happened to be familiar with [the statutory provisions]. Few savvy consumers have such mastery of the Code of Civil Procedure, to say nothing of their less savvy cousins." (*Alborzian, supra*, 235 Cal.App.4th at p. 37.) The court added, "'When language in a debt collection letter can reasonably be interpreted to imply that the debt collector will take action it has no intention or ability to undertake, the debt collector that fails to clarify that ambiguity does so at its own peril.'" (*Id*. at p. 38.)

In this case, the Arredondos alleged Carrington advised them if they continued to make payments they "could 'save their home,'" it offered a loan modification "to permit [Lorena] to stay in her home," and it stated if the Arredondos paid the outstanding loan balance, "a reconveyance would be issued and recorded providing [the Arredondos] with clear fee simple title to the subject property." Further, the Arredondos continued to live in their home after the Strickstein Group foreclosed on the property. As in *Alborzian*, viewing the alleged representations "objectively from the perspective of the '"least sophisticated debtor,"'" the "unsavvy consumer" in the Arredondos' position would not have understood they could not save their home and obtain full title to the property, unless they had an understanding of the effect of a foreclosure by a junior lien holder on their title to the property. (*Alborzian, supra*, 235 Cal.App.4th

at pp. 37-38.) Indeed, given (as alleged) that the Arredondos were continuing to live in their home while making payments, and Deutsche Bank and Carrington filed claims in Lorena's bankruptcy stating they had a lien on property she owned, debtors in the Arredondos' position could reasonably have believed defendants' representations were true that making payments to Carrington would allow them to stay in the property and save their home.

Defendants seek to distinguish *Alborzian* on the basis the Arredondos still owed a debt to Deutsche Bank that was enforceable, unlike the Alborzians' unenforceable debt. This argument fails to recognize the scope of the Rosenthal Act. The Arredondos do not contend defendants violated the Rosenthal Act simply by collecting on the senior loan, but rather, defendants allegedly violated the act by making misrepresentations to pressure the Arredondos to continue paying on the loan. As the *Alborzian* court observed, whether the plaintiffs there could proceed on their claims did "not depend upon whether [the lender] may *enforce* its loan . . . , but rather on whether [the lender] may *attempt to collect* on its loan." (*Alborzian, supra*, 235 Cal.App.4th at p. 36.) The court noted the lender was not barred from attempting to get the borrower to pay off the loan voluntarily, although it could not sue to enforce the debt. (*Ibid.*) However, the lender could not make unlawful false representations in its attempt to elicit payments. (*Id.* at pp. 37-38.)

D. *The Trial Court Did Not Abuse Its Discretion in Granting Defendants' Motion To Strike the UCL Causes of Action*

A trial court has discretion to "[s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436, subd. (b).) The Arredondos contend the trial court abused its discretion in granting defendants' motion to strike because the UCL claims fell within the scope of the trial court's grant of leave to amend to allege "cause(s) of action regarding unfair debt collection practice[s]." The trial court did not abuse its discretion.

"The meaning of a court order or judgment is a question of law within the ambit of the appellate court. [Citation.] '. . . In construing orders they must always be considered in their entirety, and the same rules of interpretation will apply in ascertaining the meaning of a court's order as in ascertaining the meaning of any other writing. If the language of the order be in any degree uncertain, then reference may be had to the circumstances surrounding, and the court's intention in the making of the same.'" (*In re Ins. Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1429-1430 [interpreting court's order regarding notice to putative class members of plaintiffs' request for discovery of personal information]; accord, *Dow v. Lassen Irrigation Co.* (2013) 216 Cal.App.4th 766, 780 [""The same rules apply in ascertaining the meaning of a court order or judgment as in ascertaining the meaning of any other writing.""]; *Mendly v. County of Los Angeles* (1994) 23 Cal.App.4th 1193, 1205.) We review de novo the interpretation of a court order. (*In re Ins. Installment Fee Cases*, at p. 1426.)

The trial court's order granting the Arredondos leave to amend to allege a "cause(s) of action regarding unfair debt

collection practice[s]" clearly allows an amendment to allege a claim under the Rosenthal Act, which is a law governing "unfair debt collection practice[s]." Similarly, the order would have allowed the Arredondos to allege a claim under the FDCPA (although, as discussed, an FDCPA claim would not have been cognizable as to the Arredondos' original creditors). However, the court's order is ambiguous as to whether it allowed assertion of a claim for unfair business practices. The Arredondos contend the trial court abused its discretion in narrowly interpreting its prior order because its UCL claim is related to its Rosenthal Act claim. Although it is true the UCL claim is premised on the same allegations supporting the Rosenthal Act claim, the question before us is not whether the trial court abused its discretion in limiting leave to amend to allegations of "unfair debt collection practice[s]" after sustaining defendants' demurrer to the third amended complaint.[11] Rather, the question is whether the trial

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[11] The Arredondos do not argue on appeal the trial court abused its discretion in limiting leave to amend in its August 10, 2017 order. Indeed, their notice of appeal only identifies the appeal as arising from a "[j]udgment of dismissal after an order sustaining a demurrer," not the trial court's August 10, 2017 order. Further, they did not include in the appellate record the court file relating to the demurrer to the third amended complaint, other than the August 10, 2017 order. Therefore, although plaintiffs may request leave to amend following the sustaining of a demurrer on appeal (*Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority, supra*, 19 Cal.App.5th at p. 1132), the trial court's ruling on the demurrer to the third amended complaint is not properly before us.

court erred in interpreting its prior order to allow the Arredondos to allege a Rosenthal Act claim, but not a UCL claim. It did not.

Because the meaning of the trial court's August 10, 2017 order is uncertain, we consider "'the circumstances surrounding, and the court's intention in the making of the [order].'" (*In re Ins. Installment Fee Cases, supra*, 211 Cal.App.4th at pp. 1429-1430.) In their opposition to defendants' demurrer to the third amended complaint, the Arredondos argued the complaint sufficiently alleged facts to support their fraud, breach of contract, and specific performance claims. But they added, "IF the court requires additional factual allegations, [p]laintiffs respectfully seek leave of court to amend and allege the modification agreement was signed and sent back to [d]efendants, and that [p]laintiffs justifiably relied on representations from [d]efendants as well as on [d]efendants' conduct consistent with loan modification." Nowhere in their opposition did the Arredondos request leave to amend to allege a new cause of action. Nor does the trial court's August 10, 2017 order state the reason the court allowed leave to amend to allege only new causes of action for unfair debt collection practices. Likewise, the appellate record does not contain a transcript or settled statement showing a discussion, if any, of the Arredondos' request for leave to amend at the August 10, 2017 hearing.

Further, the trial court's November 8, 2017 ruling on defendants' motion to strike states "the court record supports no finding of leave beyond the Rosenthal . . . Act claim." The Arredondos have not provided a transcript or settled statement from the November 8, 2017 hearing that supports their argument the trial court's prior order was intended to include a UCL claim within the scope of leave to amend. It appears the Arredondos

themselves interpreted the Rosenthal Act claim in their fourth amended complaint to be an "unfair debt collection practice" claim and the UCL claim to be an "unfair competition" claim, identifying the causes of action in this manner.

The Arredondos therefore have not overcome the presumption of correctness of the trial court's November 8, 2017 order finding the August 10, 2017 order granted leave to amend to add only a Rosenthal Act claim. As we explained in *Randall v. Mousseau, supra*, 2 Cal.App.5th at page 935, "Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant." (Accord, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141 ["'Because [the appellant] failed to furnish an adequate record of the attorney fee proceedings, [the appellant's] claim must be resolved against [him].'"]; *Baranchik v. Fizulich* (2017) 10 Cal.App.5th 1210, 1227 ["Because the record is inadequate for appellate review, we presume the court ruled correctly and affirm."].) On the record before us, the trial court did not abuse its discretion in granting the motion to strike.

DISPOSITION

The judgment is reversed. The trial court is directed on remand to vacate the order sustaining defendants' demurrer as to the first cause of action for violation of the Rosenthal Act and to enter an order overruling the demurrer as to the first cause of action. The trial court's ruling granting the motion to strike and finding the demurrer to the second and third causes of action was

moot is affirmed. The Arredondos are to recover their costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.